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

**SUPPORTING STATEMENT PART A**
**HIGH-COST MORTGAGE AND HOMEOWNERSHIP COUNSELINGAMENDMENTS TO THE TRUTH IN LENDING ACT (REGULATION Z) 12 CFR 1026**
**(OMB CONTROL NUMBER: 3170-0023)**

---

## OMB TERMS OF CLEARANCE:

When the Office of Management and Budget (OMB) last approved this information collection request on January 31, 2013, OMB provided the following terms of clearance:

*The Burden for HOEPA has been transferred out of 3170-0015 (Regulation Z) to clarify burden calculations for the public while multiple amendments to Regulation Z occur over several months. In the future, CFPB may consolidate all HOEPA/Regulation Z under one control number following an internal assessment of this option*.

This assessment is ongoing as the Bureau considers the best way to account for the burdens under regulation Z in a way that is most clear to the public.


## Abstract:

The Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Creditors are subject to disclosure and other requirements that apply to open-end credit (e.g., revolving credit or credit lines) and closed-end credit (e.g., installment financing). TILA imposes disclosure requirements on all types of creditors in connection with consumer credit, including mortgage companies, finance companies, retailers, and credit card issuers, to ensure that consumers are fully apprised of the terms of financing prior to consummation of the transaction and, in some instances, during the loan term. It also imposes advertising disclosure requirements on advertisers of consumer credit. TILA also establishes billing error resolution procedures for open-end credit and limits consumer liability for the unauthorized use of credit cards.

An amendment to TILA, the Home Ownership and Equity Protection Act (HOEPA), imposes, among other things, various disclosure and other requirements on certain creditors offering high-cost mortgages to consumers. The CFPB promulgated its Regulation Z to implement TILA, as required by the statute. The CFPB enforces TILA as to certain creditors and advertisers. TILA also contains a private right of action for consumers and provides enhanced remedies to consumers in high-cost mortgages for violations of HOEPA.


## A. JUSTIFICATION

### 1. Circumstances Necessitating the Data Collection

The Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Creditors are subject to disclosure and other requirements that apply to open-end credit (e.g., revolving credit or credit lines) and closed-end credit (e.g., installment financing). TILA imposes disclosure requirements on all types of creditors in connection with consumer credit, including mortgage companies, finance companies, retailers, and credit card issuers, to ensure that consumers are fully apprised of the terms of financing prior to consummation of the transaction and, in some instances, during the loan term. It also imposes advertising disclosure requirements on advertisers of consumer credit.

An amendment to TILA, the Home Ownership and Equity Protection Act (HOEPA) was enacted in 1994 to address abusive practices in refinances and closed-end home equity loans with high interest rates or high fees. Since HOEPA's enactment, refinances and closed-end home equity mortgage loans meeting any of the HOEPA's high-cost coverage tests have been subject to special disclosure requirements and restrictions on loan terms, and consumers with high-cost mortgages have obtained enhanced remedies for violations of the law. In January 2013, CFPB issued a rule that implemented changes to HOEPA as required by the Dodd-Frank Act. These changes have extended the coverage of the HOEPA to types of loans that were previously not covered: mortgages for home purchase and open-end home equity loans (or HELOC's). In the current form, the HOEPA part of Regulation Z applies to almost any loans secured by a consumer's principal dwelling that meet high cost coverage tests, as specified in 12 CFR 1026.32(a)(2) . Below we call such loans "HOEPA loans". Exceptions include: reverse mortgages, construction loans, and certain types of government sponsored loans.

Below we summarize information collection requirements imposed by HOEPA.

Disclosure

Creditors that extend HOEPA loans are required to provide a disclosure to borrowers in high-cost mortgages three days prior to consummation of the loan, as specified in 12 CFR 1026.32(c) .The disclosure includes a warning that the consumer could lose the home if the consumer fails to meet his or her obligations under the transaction. The disclosure also includes certain other items of information about the transaction, including, for example, the annual percentage rate, the regular payment amount, and the single maximum payment amount for variable-rate transactions.

Counseling and certification requirements

Prior to extending credit under a high- cost mortgage, creditors must receive certification that a consumer has obtained counseling on the advisability of the mortgage from a HUD-approved counselor, or at the discretion of HUD's Secretary, a State housing finance authority. Details on the content and timing of the certification are provided in 12 CFR 1026.34(a)(5).

In order to help consumers obtain information about resources for counseling, creditors are required to provide consumers who will receive a high-cost mortgage with a notice containing the website addresses and telephone numbers of the CFPB and HUD for access to information about housing counseling, and a list of five counselors or counseling organizations certified or approved by HUD to provide high-cost mortgage counseling. Creditors are deemed to have complied with this requirement by satisfying a separate homeownership counselor list requirement contained in Regulation X (12 CFR

1024.20(a)), whereby lenders are required to provide applicants for a federally related mortgage loan a list of five homeownership counselors or counseling organizations certified or otherwise approved by HUD.[2]

Recordkeeping

Creditors are required to retain evidence of compliance with the regulation (other than the advertising requirements) for two years after the date disclosures are required to be made or other action is required to be taken. *See* 12 CFR 1026.25(a). Regulation Z also provides that administrative agencies responsible for enforcing the TILA may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under the TILA. The recordkeeping requirement ensures that records that might contain evidence of violations of the TILA remain available to agencies, as well as to private litigants.

## 2. Use of the Information

As noted above, consumers generally rely on the disclosures required by TILA and Regulation Z to shop among options and to facilitate informed credit decision making. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of financing offered. Additionally, enforcement agencies and private litigants need the information in these disclosures to enforce TILA and Regulation Z. *See* 15 U.S.C. 1607, 1640.

Requiring creditors to receive certification that consumers received required homeownership counseling prior to extending credit will enhance consumers' ability to make informed credit decisions by ensuring that they received assistance from a federally-approved counselor or counseling organization when evaluating whether to proceed with a high-cost mortgage transaction. Requiring creditors to provide consumers with a list of homeownership counselors will help consumers to locate appropriate counseling resources.

Federal and State enforcement agencies and private litigants use records retained under the requirement of Regulation Z to ascertain whether accurate and complete disclosures of the cost of credit have been provided to consumers prior to consummation of the credit obligation and, in some instances, during the loan term. The information is also used to determine whether other actions required under TILA have been met. The information retained provides the primary evidence of law violations in TILA enforcement actions brought by federal agencies. Without the Regulation Z recordkeeping requirement, the agencies' ability to enforce TILA would be significantly impaired.

## 3. Use of Information Technology

Regulation Z contains rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation Z, within the context of the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001 *et seq*. 12 CFR 1026.5(a)(1)(iii), 1026.17(a)(1). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN.

Use of such electronic communications is consistent with the Government Paperwork Elimination Act (GPEA), Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504, note. ESIGN and GPEA serve to reduce businesses' compliance burden related to federal requirements, including Regulation Z, by enabling businesses to use more efficient electronic media for disclosures and compliance.

Regulation Z also permits creditors to retain records in electronic format.

Both HUD and CFPB both maintain websites that allow lenders to search for homeownership counselors or counseling organizations in the area, which should minimize the burden associated with compiling and transmitting the list to the borrower.

## 4. Efforts to Identify Duplication

Some of the information concerning credit cost in the statutorily-mandated HOEPA disclosure is contained in other disclosures required by TILA and Regulation Z or contractual documents. However, TILA mandates that creditors provide additional warnings and information to consumers in high-cost mortgages. The creditor (and/or advertiser) is the only source of this information. No other federal law mandates these disclosures. The CFPB is unaware of specific state laws that duplicate these requirements, although some states have rules applicable to high-cost consumer credit transactions.

As discussed above, creditors are deemed in compliance with the Regulation Z requirements to provide a list of housing counselors or counseling organizations to prospective borrowers in high-cost mortgages by satisfying a separate homeownership counselor list requirement as a part of Regulation X. This compliance method eliminates paperwork duplication while retaining the substantive requirements in Regulation Z, which provides consumers a private right of action that is not available under Regulation X and which provides, for high-cost mortgages, the additional remedies available to consumers for violations of HOEPA.

## 5. Efforts to Minimize Burdens on Small Entities

TILA and Regulation Z recordkeeping and disclosure requirements are imposed on all creditors. The recordkeeping requirement is mandated by Regulation Z. The disclosure requirements are mandated jointly by TILA and Regulation Z.

Most creditors today use some degree of computerization in their business, and Regulation Z permits businesses to rely on third parties to meet their recordkeeping and disclosure requirements. This flexibility yields reduced recordkeeping and disclosure costs. Moreover, Regulation Z provides a model form and clauses that may be used in compliance with the statutorily-required HOEPA disclosure. Correct use of these forms and clauses insulates a creditor from liability as to proper format.

## 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. If the retention period were shortened, consumers who sue under TILA, and the administrative agencies, might find that creditor records needed to prove violations of TILA no longer exist.

As noted, the disclosure requirements are needed to facilitate comparison cost shopping and to spur informed credit decision making. Without these requirements, consumers would not have access to this critical information. Their right to sue under TILA would be undermined, and enforcement agencies could not fulfill their mandate to enforce TILA.

## 7. Circumstances Requiring Special Information Collection

The collections of information in Regulation Z 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 has published a notice at Federal Register allowing the public 60 days to comment on this proposed the 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 also published 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

The required recordkeeping and disclosures contain private financial information about persons who use consumer credit that is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may constitute confidential customer lists.

## 11. Justification for Sensitive Questions:

This regulation concerns the requirement to disclose certain material to buyers that meet the regulation's criteria, as such there are no questions asked by the Bureau and therefore no collection of information of a sensitive nature.

## 12. Estimated Burden of Information Collection

Labor Hours: 85

**Exhibit 1: Burden Hour Summary**

| Information Collection Requirement | No. of Respondents | Annual Responses | Average Response Time | Annual Burden Hours | Hourly Rate | Hourly Costs |
|---|---|---|---|---|---|---|
| Disclosure | 307 | 1,279 | 0.03 | 42.6 | $28.76 | $1,226 |
| List of counselors | 307 | 1,279 | 0 | 0 | 0 | 0 |
| Certification | 307 | 1,279 | 0.03 | 42.6 | $28.76 | $1,226 |
| Record keeping | 307 | 1,279 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Total hours:** | **85** | | | | | |
| **Total labor cost:** | **$2,452** | | | | | |
| **CFPB respondents** | **55** | | | | | |
| **CFPB response share** | **14%** | | | | | |
| **CFPB responses** | **185** | | | | | |
| **CFPB allocated hours** | **12** | | | | | |
| **CFPB allocated labor cost** | **$355** | | | | | |

The CFPB estimates that the total ongoing cost associated with HOEPA is 85 hours, and the associated labor cost is $3,837. As of December 2014, there are 145 depository institutions (114 depository institutions with total assets of more than $10 billion and 31 affiliates) over which CFPB has primary enforcement authority with respect to Regulation Z. According to CFPB's estimates, only seven of these entities originated high cost mortgages in 2014.

The CFPB and the FTC generally both have enforcement authority over non-depository institutions for Regulation Z. Therefore, the CFPB has allocated to itself half of the estimated burden to non-depository institutions. According to CFPB's estimates, 48 non-depository institutions originated high cost mortgages in 2014.

The combined CFPB share is estimated to be 14%, which the sum of all HOEPA loans originated by depositary institutions under CFPB's supervisory authority, and 50% of HOEPA loans originated by non-depositary institutions, divided by the total number of HOEPA loans originated in 2014.

The data source used for estimating the count of HOEPA loans and the count of respondents is HMDA 2014.

Other assumptions we used were that it would take two minutes of response time to deliver a disclosure and obtain certification from the consumer about meeting with a housing counselor, but that there is no burden for recordkeeping because disclosures are disclosures are generated and saved electronically, and cost of storing certification is assumed to be minimal. Additionally, generating the list of housing counselors falls under Regulation X, and as such counts for burden under the high-cost supporting statement for that regulation, and not this one for Regulation Z. In all cases the burden is borne on a loan officer, whose wage is $28.76/hr, the hourly median wage for loan officers in BLS[1].

**13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers**

We estimate that the total materials cost burden is $0, as disclosures are delivered electronically, cost of storing the certification from the consumer about meeting with a housing counselor is assumed to be minimal, and lenders do not pay extra fees for HOEPA functionality in loan document processing software.

**14. Estimated Cost to the Federal Government**

[1] Hourly rate labor costs are the median hourly wages from the Bureau of Labor and Statistics (BLS) for affected occupational groups. Occupational groups for the PRA burden of the HOEPA provisions of regulation Z are defined as loan officers (http://www.bls.gov/ooh/business-and-financial/loan-officers.htm#tab-1).

There are no additional costs to the Federal Government.

## 15. Program Changes or Adjustments

| | Total Respondents | Annual Responses | Burden Hours | Cost Burden (O & M) |
|---|---|---|---|---|
| Total Annual Burden Requested | 55 | 185 | 12 | $0 |
| Current OMB Inventory | 408 | 25,890 | 863 | $0 |
| Difference (+/-) | -353 | -25,705 | -851 | $0 |
| Program Change | 0 | 0 | 0 | $0 |
| Discretionary | 0 | 0 | 0 | $0 |
| New Statute | 0 | 0 | 0 | $0 |
| Violation | 0 | 0 | 0 | $0 |
| Adjustment | -353 | -25,705 | -851 | $0 |

The changes in burden and costs are the result of several changes. Primarily, it is the result of a dramatic decline in the total volume of HOEPA originations between 2013 and 2014. To a lesser extent, the previous supporting statement assumed burden for providing a list of housing counselors to high-cost mortgage borrowers, which we are now assuming under the Regulation X supporting statement.

## 16. Plans for Tabulation, Statistical Analysis, and Publication

The results of the information collection will not be published.

## 17. Display of Expiration Date

There is no information collection instrument associated with this OMB number on which to display the expiration date. The OMB control number and expiration date associated with this PRA submission 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.