

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

**SUPPORTING STATEMENT PART A  
LOAN ORIGINATOR COMPENSATION AMENDMENTS TO THE  
TRUTH IN LENDING ACT  
(REGULATION Z) 12 CFR 1026  
(OMB CONTROL NUMBER: 3170-0031)**

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**OMB TERMS OF CLEARANCE:**

Not applicable. The Office of Management and Budget (OMB) did not provide Terms of Clearance when approved this information collection on April 17, 2013.

**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. The Dodd-Frank Act then amended TILA to include, among other things, provisions about the qualifications and compensation of mortgage loan officers, in order to ensure consumers are getting a fair deal on their loans.

**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 reasonable and fair.

TILA section 129B includes several 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 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

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

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 are in the interest of consumers and the public.

Regulation Z to implements the statutory provisions described above and to creates 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*

Section 1026.25(c)(2) establishes 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.

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

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, the CFPB believed it was 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>.

### **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 has imposed additional recordkeeping requirements, which extend the retention period for creditors to three years and subjects loan originator organizations to similar recordkeeping requirements for three years. As discussed in item 12 below, in extending the record retention requirement for creditors 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 unduly burden small entities, however. Most

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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.

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.

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**

Regulation Z supports private actions and regulatory enforcement actions. As discussed in item 1 above, the 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 are the stricter screening of individual loan originators, on an ongoing basis and with regard to some loan officers currently employed who have not previously been screened, with backgrounds suggesting they could pose risks to consumers . This will also raise the level of loan originator expertise regarding the origination process. As the CFPB explained in the Dodd-Frank Act section 1022(b)(2) analysis, both of these effects will likely decrease the harm

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<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)).

<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.

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**

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 has 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**

No information is collected by the CFPB, except to the extent there is an enforcement action by the CFPB against an entity affected by this rule. Information that may be collected for law enforcement purposes would be covered by the following Systems of Records Notices (SORNs): CFPB.004 Enforcement Database, 76 FR 45757, that can be found at <https://www.federalregister.gov/articles/2011/08/01/2011-19424/privacy-act-of-1974-as-amended>; and the CFPB.018 CFPB Litigation Files SORN, 77 FR 27446, that can be found at <https://www.federalregister.gov/articles/2012/05/10/2012-11233/privacy-act-of-1974-as-amended>.

#### **11. Justification for Sensitive Questions**

Questions regarding prior misconduct are the most sensitive among the data that is being collected. However, answers to these questions are essential for meeting the objectives of the loan originator provisions of Regulation Z. This information is used by employers to ascertain whether certain MLOs are prohibited from being hired due to violations of other financial statutory requirements, or in general whether an individual is fit for employment by the institution. The information is also used by consumers to ascertain the trustworthiness of the MLO they are transacting with. Finally, Federal regulatory agencies use this information to ascertain whether employers are meeting the requirements of using this system's information to make judgments on

MLO hires.

**12. Estimated Burden of Information Collection**

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 its estimated burden to 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.

The CFPB estimates that there are 26,789 institutions subject to the rule, of which 142 depository institutions (DI) and half of the 16,223 non-depository loan originator institutions are CFPB respondents. The CFPB respondents incur approximately 95,439 burden hours annually, from information collections related to recordkeeping and background investigations of mortgage loan officers (MLOs). The full calculations, including one-time burden for new entities to begin compliance with the required collections, and the ongoing cost of maintaining compliance, are shown in table 1.

**Table1**

Provision	Information Collection	One Time Labor Burden		Ongoing labor Burden			Total
		Respondents	Burden Per Response (hrs)	Respondents	Responses	Burden Per Response (hrs)	
1012.36(f)(3)(i)	Criminal Background Check	3	0.2	101	1,238	0.01	16
1026.36(f)(3)(i)	Furnishing of credit info	3	1.9	243	40,466	0.1	4,275
1026.36(f)(3)(ii)(B)	Information about Findings Against the Individual by Government Jurisdictions	3	1	101	1,238	0	3
1026.36(g)	Name and NMLSR ID on Loan Documents	3	1	243	0	0	3
1026.25(c)(2)(i)	Recordkeeping (Loan Originator Comp)	1,203	10	8,254	8,254	4	45,169
1026.25(c)(2)(ii)	Recordkeeping (All outside compensation)	1,203	10	8,254	8,254	4	45,169
				8,254	49,958		94,635

For the required criminal background check, the CFPB assumes burden for the estimated 201 non-profit loan originator organizations that perform this collection for each new MLO hired, for which the CFPB takes burden for 101 (half of the 201, rounded). The CFPB assumes 3 new entrants each year into this space. The CFPB does not assume burden for private non-depository loan originators because a criminal background check is performed in conjunction with state licensing requirements required by Regulation H (SAFE). The CFPB also does not assume burden for depository institutions that already perform a criminal background check under the FDIC act sec. 19.

For the required credit check, the CFPB assumes burden for the estimated 343 non-profit loan originator and depository loan originators subject to CFPB supervision, for which the CFPB takes burden for 201 (142 CFPB DIs plus half of the 201 non-profit organizations we take burden for). The CFPB does not assume burden for private non-depository loan originators because a credit check is already performed in conjunction with state licensing requirements required by Regulation H (SAFE).

For the collection of information about government jurisdiction findings, the CFPB assumes there is no ongoing burden to non-profit loan originators. Non-profit loan originators who are not licensed by the state do not need to retrieve NMLSR reports, and are in compliance when they are considering information collected during the usual interview process. For private loan originators, this activity is performed in conjunction with other regulations described previously.

The CFPB also assumes no ongoing burden for putting the loan officer’s name and NMLSR ID on loan documents, since this should be a one-time process to change forms and be set after that.

The CFPB assumes burden associated with the recordkeeping requirements for all CFPB supervised depository loan originators, and half of non-depository loan originators (142 CFPB DIs and half of the 16223 non-DIs

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

In addition to the burden above, there is a materials cost associated with collecting criminal history and credit information. The costs are show in Table 2. For each information collection, the CFPB assumes burden for the same sets of institutions described in section 12. The total cost associated with the information collections for CFPB respondents is \$265,388.

**Table 2**

Provision	Information Collection	Ongoing Materials Burden			Total
		Respondents	Responses	Cost Per Response	
1012.36(f)(3)(i)	Criminal Background Check	101	1,238	\$50	\$61,922
1026.36(f)(3)(i)	Furnishing of credit info	243	40,466	\$5	\$203,465
1026.36(f)(3)(ii)(B)	Information about Findings Against the Individual by Government Jurisdictions	101	1,238	\$0	\$0
1026.36(g)	Name and NMLSR ID on Loan Documents	243	-	\$0	\$0
1026.25(c)(2)(i)	Recordkeeping (Loan Originator Comp)	8,254	8,254	\$0	\$0
1026.25(c)(2)(ii)	Recordkeeping (All outside compensation)	8,254	8,254	0	\$0
		8,254	49,958		\$265,388

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

As the Bureau does not collect any information, there are no costs to the Bureau associated with this information collection.

**15. Program Changes or Adjustments**

**Table 3**

	<b>Total Respondents</b>	<b>Annual Responses</b>	<b>Burden Hours</b>	<b>Cost Burden (O &amp; M)</b>
Total Annual Burden Requested	8,254	49,958	94,635	\$265,388
Current OMB Inventory	11,280	34,943	114,353	\$240,054
Difference (+/-)	-3,027	15,015	-19,718	\$25,334
Program Change	0	0	0	\$0
Discretionary	0	0	0	\$0
New Statute	0	0	0	\$0
Violation	0	0	0	\$0
Adjustment	-3,027	15,015	-19,718	\$25,334

The CFPB has decreased its estimate of total respondents by 3,027, increased its estimate of annual responses by 15,015, and its estimate of cost burden by \$25,344 annually as a result of changes in the size of the covered market and new estimation techniques. The decrease of 19,718 annual burden hours is partially affected by the new estimations, but is also due to the exclusion of one time burden that was counted under the initial rulemaking, but is no longer incurred by existing entities. The adjustments to these numbers are shown in table 3.

**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](http://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.