

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

SUPPORTING STATEMENT PART A

**PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH-COST INSTALLMENT LOANS
(12 CFR PART 1041)**

(OMB CONTROL NUMBER: 3170-00XX)

OMB TERMS OF CLEARANCE: Not applicable. This is a request for a new Office of Management and Budget (OMB) control number.

ABSTRACT: This regulation applies to non-depository institutions and loan brokers engaged in consumer lending, credit intermediation activities, or activities related to credit intermediation, along with banks and credit unions that make loans that are subject to the rule. The purpose of this rule is to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions, to set forth requirements for preventing such acts or practices, and to provide certain partial conditional exemptions from aspects of this rule.

NOTE-TO-REVIEWERS

The collections of information related to the 2017 Final Rule (82 FR 54472) were previously submitted to OMB in accordance with the Paperwork Reduction Act of 1995 (“PRA”) and assigned OMB Control Number 3170-0065 for tracking purposes. The collection of information is not yet active, however, as OMB has not yet approved the 2017 Final Rule information collection request. The Bureau is issuing a new proposed rule (“2019 Proposed Rule,” “proposal,” or “proposed rule”) on the same subject matter as the 2017 Final Rule. The 2019 Proposed Rule would retain certain associated information collections from the 2017 Final Rule, which this supporting statement describes and analyzes. Generally, the 2019 Proposed Rule and associated information collections would substantially revise or remove several of the information collection requirements contained in the 2017 Final Rule. As such, the Bureau has submitted this new information collection request associated with the 2019 Proposed Rule seeking approval and a new OMB control number pursuant to section 3507(d) of the PRA.

JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The Bureau is issuing a proposed rule for payday, vehicle title, and certain high-cost installment loans (12 CFR part 1041) pursuant to Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481, *et seq.*). The current proposed rule would rescind the determination that certain consumer credit transactions are unfair and abusive acts or practices and likewise rescind the requirements for preventing such acts or practices, and the partial conditional exemptions described in the 2017 Final Rule. This proposal preserves the 2017 Final Rule's requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers and mandates certain recordkeeping requirements. The following statement describes the remaining impact the 2017 Final Rule is expected to have with respect to the burdens and costs relevant to the reporting requirements described in the Paperwork Reduction Act.

For most consumers, credit provides a means of purchasing goods or services and spreading the cost of repayment over time. Consumers living paycheck to paycheck and with little to no savings have used credit as a means of coping with shortfalls, with the credit allowing them to cover miscellaneous living and short-term expenses until they receive additional income. These shortfalls can arise from mismatched timing between income and expenses, misaligned cash flows, income volatility, unexpected expenses or income shocks, or expenses that simply exceed income. Whatever the cause of the shortfall, consumers in these situations sometimes seek what may broadly be termed a "liquidity loan." There are a variety of loans and products that consumers use for these purposes including credit cards, home equity loans and lines of credit, deposit account overdraft, pawn loans, payday loans, vehicle title loans, and installment loans.

Credit cards, home equity loans and lines of credit, and deposit account overdraft services are already subject to federal consumer protection regulations and requirements. The Bureau considers these markets to be outside the scope of this rulemaking. This rulemaking is focused on three general categories of liquidity loan products: (1) short-term loans, (2) longer-term balloon payment loans, and (3) certain higher-cost longer-term installment loans. The largest category of short-term loans are "payday loans," which are generally required to be repaid in a lump-sum single payment on receipt of the borrower's next income payment, and short-term vehicle title loans, which are also almost always due in a lump-sum single payment, typically within 30 days after the loan is made. The second category consists of longer-term loans with a balloon payment, which the rule generally defines as having a single payment or, where there are multiple payments, a payment that is at least twice as large as any other payment. The third category consists of higher-cost longer-term installment loans. It includes both what are often referred to as "payday installment loans"—that is, loans that are repaid over time with each payment timed to be paid with the borrower's income payment and electronically deducted from an account into which the income payment is deposited—and vehicle title installment loans.

While loans covered by this rulemaking are most often made by non-bank lenders, some depository institution products also fit these descriptions. Some of these loans are available at storefront locations and branches, others are available on the Internet, and some loans are available through multiple delivery channels. The rulemaking covers both closed-end loans and open-end lines of credit.

2. Use of the Information

The Bureau's proposed rulemaking includes information collection requirements related to (1) upcoming payment notices (including unusual payment notices), and consumer rights notices; and (2) retention of loan agreement obtained when making a covered short-term loan, covered longer-term balloon payment loan, or covered longer-term installment loan, and payment practices.

Under § 1041.8, lenders would obtain a new and specific authorization from a consumer in order to withdraw payment from a consumer's deposit account after two consecutive payment transfer attempts have failed. The new and specific authorization would ensure that consumers maintain control of their deposit account and enable the lender to withdraw payments on a covered loan from the consumer's deposit account after two consecutive failed payment transfer attempts.

Loan disclosures would be provided, as applicable, by lenders or vendors working on their behalf. Under the rule, disclosures may be provided through a variety of channels, including electronically. Under § 1041.9, the rule would require lenders making covered loans to provide disclosures before initial payment withdrawal attempts, and before any unusual withdrawal attempts. The payment notice would alert consumers to the upcoming withdrawal, including potential changes to the typical payment amount, thereby mitigating the risk of certain adverse consequences associated with payment transfer attempts when the consumer's account lacks sufficient funds. Also under § 1041.9, the rule would also require lenders to provide a consumer rights notice in certain circumstances when two payment transfer attempts have failed. Lenders making covered loans would be required to provide this notice, as applicable. The consumer rights notice would ensure that the costs, benefits, and risks of the loan and associated payments are effectively disclosed to consumers.

Under § 1041.12 lenders would be required to retain several types of documentation related to evidence of compliance with the requirements of the rule. The rule requires lenders to use electronic records to satisfy certain recordkeeping requirements. The recordkeeping requirements would facilitate the Bureau's supervision and enforcement of the requirements of the rule.

3. Use of Information Technology

The rule is conscious of the use of information technology and other automated means as a

solution to potentially reduce or limit the information collection burdens associated with the rule. For example, the required disclosures could be made electronically through various means, and required reports could also be obtained and retained electronically. Additionally, the recordkeeping provision in § 1041.12 would not limit the use of available technology to maintain required records. The rule would allow covered persons to retain records in any legible form, and in the same manner, format, or place as such records are kept in the ordinary course of business (*See* § 1041.12(b)). The rule does, however, require lenders to retain certain data in an electronic, tabular format. Thus, this rule is consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. 3504.

4. Efforts to Identify Duplication

The recordkeeping, reporting, and disclosure provisions in the rule would not duplicate any other Federal information collection requirement. The information collection requirements are unique to this rule.

5. Efforts to Minimize Burdens on Small Entities

The disclosure and recordkeeping requirements would be imposed on all lenders making covered short-term and longer-term balloon-payment loans, and some of the disclosure and recordkeeping requirements would apply to covered high-cost installment loans as well. The Bureau estimates that approximately 90% of respondents are small entities. Most lenders today utilize some measure of computerization in their business, and the rule would permit lenders to rely on computer support, among other alternatives, to meet their recordkeeping, reporting, and disclosure requirements. This flexibility presumably would yield reduced disclosure, reporting, and recordkeeping costs (*see* section 3 of this supporting statement, above). The rule also provides model forms that could be used to comply with certain of its requirements, and lenders that use the model forms would be deemed to be in compliance with the disclosure requirement with respect to such model forms.

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

If the rule, including the information collection requirements contained therein, is not adopted, some of the most vulnerable consumers who rely on the loan products that are covered by this rule would not have the protections contained in the rule that are intended to prevent certain unfair and abusive acts or practices in connection with certain consumer credit transactions.

Without the recordkeeping and reporting requirements, the Bureau would not have a tangible mechanism to ensure that consumers are receiving the protections contained in the rule.

7. Circumstances Requiring Special Information Collection

There are no special circumstances. The collection of information requirements are consistent with the applicable guidelines contained in 5 CFR § 1320.5(d)(2).

8. Consultation Outside the Agency

In accordance with 5 CFR § 1320.11, the Bureau has 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. Comments received in response to the notice of proposed rulemaking will be addressed in the preamble to the final rule.

9. Payments or Gifts to Respondents

Not applicable. No payment, gifts, or other incentives are provided to respondents.

10. Assurances of Confidentiality

The Bureau does not collect any information under this rule. To the extent that information covered by a recordkeeping requirement is collected by the Bureau for law enforcement purposes, the confidentiality provisions of the Bureau's rules on Disclosure of Records and Information, 12 CFR part 1070, would apply.

11. Justification for Sensitive Questions

There is no information of a sensitive nature being requested by the bureau under this information collection.

12. Estimated Burden of Information Collection

In calculating the potential burdens of information collections that are required by the rule, the Bureau generally relies on estimates of the market as it existed at the time of the Notice of Proposed Rulemaking. The actual burden hours are likely to be substantially smaller in light of the impact the rule will have on the number of covered persons and number of covered loans originated. Using the Bureau's burden estimation methodology, the total estimated burden for the approximately 9,900 institutions subject to the rule, including Bureau respondents, would be approximately 3,189,587 labor burden hours annually.

The aggregate estimates of total burdens are based on estimated costs that are averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent.

Exhibit 1: Burden Hour Summary ¹

Information Collection Requirement	No. of Respondents	Type of IC	Frequency	Annual Responses	Average Response Time	Annual Burden Hours	Hourly Rate ²	Annual Burden Hour Costs
Disclosures & 1041.9	9,045	3 rd Party Disclosure	On occasion	231,732,981	0.013	3,054,872	\$21.19	\$64,723,890
Prohibited payment transfer attempts – requirements and conditions for obtaining consumer’s authorization [§ 1041.8]	9,045	Recordkeeping	On occasion	14,478,524	0.009	134,715	\$25.54	\$3,440,461
Record Retention [§ 1041.12] ³	9,887	Recordkeeping	On occasion	120,085,002	0	0	\$0	\$0
Totals:	9,887*			366,296,507		3,189,587		68,164,351

*Note: Unduplicated count. Total number of entities that would be required to comply with this regulation.

A. Disclosures

The rule requires notices related to lenders’ attempts to obtain payments on covered loans by initiating withdrawals from borrowers’ deposit accounts or prepaid card accounts.

The Bureau believes that all lenders originating covered loans would incur some burden due to the disclosure requirements with the exception of lenders making vehicle title loans. The disclosures are required when lenders obtain and use the ability to initiate withdrawals from consumers’ accounts for payment on a covered loan. Vehicle title lenders do not typically obtain and use the ability to initiate withdrawals from consumers’ accounts. Thus, when calculating the estimated burden of the notices on respondents, specifically for non-depositories, vehicle title lenders are excluded.

Under the rule, it would be the lender’s responsibility to deliver each of the disclosures, although an affiliate or service provider may create and deliver the notices on the lender’s behalf.

¹ Hourly rate and average response Time estimates are subject to rounding error because they are derived from the annual responses, average response time, and annual burden hour costs estimates.

² Bureau of Labor Statistics, May 2016, Occupational Employment and Wage Estimates, <http://www.bls.gov/oes/current/oesrci.htm>. The hourly rate and annual burden hour costs incorporate BLS wages which are weighted averages composed of the average wages for a specific sector and corresponding occupation.

³ This information collection requires lenders to retain records of the loan and payments made under it for 36 months. The bureau believes that lenders do this for their own business purposes in the ordinary course of business already and so is assigning zero burden to this information collection

i. Unusual Payment Disclosure

For all covered loan payments, other than for loans made under one of the conditional exemptions, where lenders obtain and use the ability to initiate withdrawals from consumers' accounts for loan payments, the rule would require payment disclosures, which vary depending on the nature of the payment request. If a respondent is attempting to withdraw an unusual payment from the borrower's account, such as a payment that is being withdrawn on a day different from what was originally scheduled or a payment for a higher amount than was originally provided in the payment schedule, the payment notice will provide the borrower with that information as well. Using information from industry and data provided to the Bureau by lenders, the Bureau has estimated the total number of loans that would be covered by the rule. Additionally, the Bureau has used data from several lenders to calculate the average number of payments for each of the products that would be covered by the rule. The Bureau believes that 4 percent of the payment requests would be subject to the unusual payment notice.⁴

The Bureau estimates there would be no labor burden associated with these payments disclosures.

ii. Consumer Rights Disclosure

For the consumer rights disclosure, respondents would be required to provide a consumer rights notice to borrowers after a respondent has made two consecutive unsuccessful attempts to withdraw payment from a borrower's deposit account. This disclosure requirement would apply to all covered loans that meet the other criteria for the disclosure. Based on industry data and Bureau analysis, the Bureau uses estimates of the number of loan payments that are made and the share of loan payments that fail twice in a row to determine the number of payments that would be subject to the consumer rights notice. The Bureau estimates that about 4 percent of payment requests would cause the need for the consumer rights notice.

The Bureau estimates there would be no labor burden associated with the consumer rights disclosures.

B. Obtaining a New and Specific Authorization

After a respondent has made two consecutive unsuccessful attempts to withdraw payment for a

⁴ Additionally, the Bureau believes the elimination of allowing lenders to automatically tack on late fees to regularly scheduled payments from the post-cap re-authorization requirements should have no effect on the lenders' unusual payment notice burdens. The unusual late payment notice requirement for fee-only debits applies regardless of whether the lender is debiting under an original authorization or a new.

covered loan from a borrower's account, the rule would prohibit lenders from making additional payment attempts to withdraw funds from the borrower's account unless a new and specific authorization is obtained from the borrower to do so. The Bureau believes that most respondents would send the request to obtain a new and specific authorization while sending the consumer rights disclosure as described in the "Disclosures" section.

As discussed in the "Disclosures" section, vehicle title lenders do not typically obtain and use the ability to initiate payment withdrawals from consumers' accounts, and thus, such lenders are excluded when calculating the burden for obtaining a new and specific authorization to withdraw payment from a borrower's deposit account.

i. One-Time Burden

The Bureau estimates that 25 percent of small storefront lenders and all the remaining respondents would upgrade their websites to allow for borrowers to provide authorization online. The Bureau estimates that it would take the respondents 40 burden hours to perform these upgrades. For depositories, the annualized one-time burden to program their systems to obtain authorization through their websites would be 24,173 burden hours, the equivalent of \$1,198,259 in burden hour costs. For non-depositories, the annualized one-time to program their systems to obtain authorization through their websites would be 15,360 labor burden hours, the equivalent of \$742,594 in burden hour costs.

ii. Ongoing Costs

When borrowers do not provide a new and specific authorization on the lender's website, there would be labor burden to the lenders to obtain the consumer's authorization. When consumers reauthorize by clicking a link, the marginal cost would be zero. When consumers reauthorize by responding to a lender's new and specific authorization request with another email, phone call, or store visit, the cost to lenders to process the reauthorization would be two minutes. The Bureau estimates that storefront lenders would engage with consumers for 80 percent of the authorization requests. For lenders operating online, the Bureau estimates that lenders would engage with consumers for 50 percent of the authorization requests. For depositories, the total annual burden to obtain a new and specific authorization would be 1,105 labor burden hours, the equivalent of \$18,978 in burden hour costs. For non-depositories, total annual burden to obtain authorization through their websites would be 94,077 labor burden hours, the equivalent of \$1,480,631 in burden hour costs.

C. Recordkeeping Requirements

Under § 1041.12 lenders would be required to retain several types of documentation related to evidence of compliance with the requirements of the rule. The rule requires lenders to use electronic records to satisfy certain recordkeeping requirements. Section 1041.12 provides that a

lender making a covered loan must develop and follow written policies and procedures that are reasonably designed to ensure compliance with the requirements of part 1041. Section 1041.12(b) provides that a lender must retain evidence of compliance with part 1041 for 36 months after the date on which a covered loan ceases to be an outstanding loan. Section 1041.12(b)(1) through (4) sets forth particular requirements for retaining specific records, including retention of the loan agreement and documentation obtained in connection with originating a covered short-term or longer-term balloon-payment loan (§ 1041.12(b)(1)); retention of electronic records in tabular format for covered short-term or longer-term balloon-payment loans regarding origination calculations and determinations under § 1041.5 ((§ 1041.12(b)(2)) and as well as type, terms, and performance (§ 1041.12(b)(3)); and retention of records relating to payment practices for covered loans (§ 1041.12(b)(4).

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

The Bureau estimates the material cost burden to respondents as a result of each of the information collections.

Using the Bureau’s cost burden estimation methodology, the total estimated cost burden annually for the approximately 9,900 institutions subject to the rule, including Bureau respondents, would be approximately \$11,188,035. For the Bureau institutions subject to this rule, the total estimated cost burden annually would be approximately \$4,698,455. The Bureau assumes that the one-time costs to comply with requirements, such as software upgrades, includes costs to hire outside firms to assist with the implementation of the requirements. While the Bureau believes these costs to be marginal, these one-time cost estimates could potentially underestimate the true cost for some lenders.

Exhibit 2: Cost Burden Summary ⁵

Description of Costs (O&M)	Per Unit Costs	Quantity	Total Cost
Information Collection Requirement			
Disclosures & 1041.9]	\$0.05	231,732,981	\$10,961,522
Prohibited payment transfer attempts – requirements and conditions for obtaining consumer’s authorization [§ 1041.8]	\$0.02	14,478,524	\$226,513
Totals:		366,296,507	\$11,188,035

⁵ Per unit cost estimates are subject to rounding error because they are derived from the quantity and total cost estimates.

A. Disclosures

i. Unusual Payment Disclosure

The Bureau believes that 4 percent of payment requests would be subject to the unusual payment notice.

For both covered short-term and longer-term loans originated in a storefront, the Bureau estimates that 10 percent of the payment notices would be delivered by mail, 80 percent of the payment notices will be delivered by e-mail, and 10 percent of the payment notices would be delivered by text message. For covered loans originated online, the Bureau estimates that 80 percent of the payment notices would be delivered by e-mail, and 20 percent of the payment notices would be delivered by text message.

Similar to the section above, for each unusual payment notice, the Bureau estimates lenders would pay the vendor \$0.53 or \$1.00, depending on volume, for disclosures delivered by mail, \$0.01 for disclosures delivered by e-mail, and \$0.08 for disclosures delivered by text message. The total annual burden that non-depositories would incur for the payment notices would be \$670,589 in materials cost.

ii. Consumer Rights Disclosure

The Bureau estimates that about 4 percent of payment requests would cause the need for the consumer rights notice. For loans originated at a storefront location, the Bureau estimates 10 percent of notices would be delivered by mail, 80 percent of notices would be delivered by e-mail, and 10 percent of notices would be delivered by text message. For loans originated online, the Bureau estimates that 20 percent of notices would be delivered by e-mail, and 80 percent of notices would be delivered by text message. The total annual burden imposed on depositories to provide the consumer rights disclosure would be \$17,620 in materials cost. The total annual burden imposed on non-depositories to provide the consumer rights disclosure would be \$259,771 in materials cost.

14. Estimated Cost to the Federal Government

There are no additional costs to the Federal Government.

15. Program Changes or Adjustments

Since this is a new information collection request associated with a new rulemaking, all the burden considered in this request is considered to be a program change. However this Proposed Rule (RIN 3170-AA80) would substantially reduce the burdens associated with the current rule for 12 CFR § 1041 for which an information collection request is currently still pending at OMB

under OMB number 3170-0065. The proposed rule could result in a burden reduction of 5,010,232 hours (from 8,199,819 to 3,189,587) and 89,656,332 cost burden (from \$100,844,367 to \$11,188,035) from what the Bureau estimated for the burdens associated with current rule.

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 PRA submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov, as well as in the Code of Federal Regulations. There are no required forms or other documents upon which display of the control number and expiration date would be appropriate.

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.

PART B: COLLECTIONS OF INFORMATION USING STATISTICAL METHODS

Not applicable. The information collections contained in this rule do not involve the use of statistical methods.

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