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4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2023-0017]

Regulation Z's Mortgage Loan Originator Rules Review Pursuant to the Regulatory Flexibility Act

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of section 610 review and request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is conducting a review of Regulation Z's Mortgage Loan Originator Rules (Loan Originator Rules) pursuant to section 610 of the Regulatory Flexibility Act. Regulation Z, which implements the Truth in Lending Act (TILA), among other things, imposes certain requirements on: loan originator compensation; qualification of, and registration or licensing of, loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single premium credit insurance. As part of this review, the Bureau is seeking comment on the economic impact of the Loan Originator Rules on small entities. These comments may assist the Bureau in determining whether the Loan Originator Rules should be continued without change or amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities, consistent with the stated objectives of applicable Federal statutes.

DATES: Comments must be received on or before [**INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2023-0017, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: 2023-Notice-RFAReviewLoanOriginator@cfpb.gov*. Include Docket No. CFPB-2023-0017 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Loan Originator Rules RFA Review, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. **Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics).** In general, all comments received will be posted without change to www.regulations.gov.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Ezer Smith, Attorney-Advisor, or Lanique Eubanks, Senior Counsel, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact *CFPB_Acccessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

The Regulatory Flexibility Act (RFA)[1] requires each agency to consider the effect on small entities for certain rules it promulgates.[2] Specifically, section 610 of the RFA provides that each agency shall publish in the *Federal Register* a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities.[3]

Section 610 provides that the purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.[4] As set forth in section 610, in each review, agencies must consider several factors:

(1) The continued need for the rule;

(2) The nature of public complaints or comments on the rule;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with Federal, State, or other rules; and

(5) The time since the rule was evaluated or the degree to which technology, market conditions, or other factors have changed the relevant market.[5]

I. List of Rules for Review

This section lists and briefly describes the rules that the Bureau plans to review in 2023 under the criteria described by section 610 of the RFA and pursuant to the Bureau's review

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[1] Pub. L. 96-354, 94 Stat. 1164 (1980).

[2] The terms "small entity" and "rule" are defined in the RFA to include small businesses, small governmental jurisdictions, and small organizations. *See* 5 U.S.C. 601.

[3] 5 U.S.C. 610(a). The Bureau published its plan for conducting reviews under section 610 of the RFA in the *Federal Register* in 2019. *See* 84 FR 21732 (May 15, 2019).

[4] 5 U.S.C. 610(a).

[5] 5 U.S.C. 610(b).

plan.[6]

A. The Rules

On July 21, 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[7] which amended the Truth in Lending Act (TILA)[8] by, among other things, expanding on previous efforts by lawmakers and regulators to strengthen loan originator qualification requirements and regulate industry compensation practices.[9] Congress enacted TILA based on findings that the informed use of credit resulting from consumers' awareness of the cost of credit would enhance economic stability and would strengthen competition among consumer credit providers.[10] One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.[11] TILA also contains procedural and substantive protections for consumers. Section 1403 of the Dodd-Frank Act created new TILA section 129B(c) for residential mortgage loans which, among other things, imposed restrictions on loan originator compensation, strengthened loan originator qualification requirements, banned certain mandatory arbitration clauses, and prohibited the financing of single-premium credit insurance and waivers of Federal consumer claims.[12]

From September 2010 to October 2013, the Board of Governors of the Federal Reserve System (Board) published two rules that were similar to new TILA section 129B(c) and the Bureau published three rules implementing the TILA amendments.[13] This document refers to

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[6] 84 FR 21732 (May 15, 2019).

[7] Pub. L. 111-203, 124 Stat. 1376 (2010).

[8] 15 U.S.C. 1601 *et seq.*

[9] *See* 15 U.S.C. 1639b; 12 U.S.C. 5103.

[10] 15 U.S.C. 1601(a).

[11] *Id.*

[12] Dodd-Frank Act section 1403, 124 Stat. 2139.

[13] After enactment of the Dodd-Frank Act, in the preamble to the 2010 rule, the Board expressed its intent to implement TILA section 129B(c) in a future rulemaking after notice and opportunity for further public comment. 75 FR 58509, 58509 (Sept. 24, 2010).

these five rules together as "Regulation Z's Mortgage Loan Originator Rules," "the Loan Originator Rules," or "the Rules."

Regulation Z's Mortgage Loan Originator Rules, among other things, prohibit compensating loan originators based on a term of a mortgage transaction or a proxy for a term of a transaction,[14] prohibit dual compensation,[15] prohibit steering practices that do not benefit a consumer,[16] implement licensing and qualification requirements for loan originators,[17] and prescribe rules for recordkeeping and compliance.[18] The Rules are designed primarily to protect consumers by reducing incentives for loan originators to steer consumers into loans with particular terms and by ensuring that loan originators are adequately qualified.

1. The Board's 2010-2011 Rules

The Board published its first and second rules to regulate certain mortgage loan origination practices (collectively, the Board's Rules) on September 24, 2010,[19] and July 20, 2011.[20] The Board explained that it aimed to protect consumers from unfair or abusive lending practices that can arise from certain loan originator compensation practices, while preserving responsible lending and sustainable home ownership.[21] The Board's Rules amended Regulation Z to include new restrictions on loan originator compensation and practices and record retention requirements that were similar to many of the Dodd-Frank Act's TILA amendments. The

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[14] *See* 12 CFR 1026.36(d)(1).

[15] *See* 12 CFR 1026.36(d)(2)

[16] *See* 12 CFR 1026.36(e).

[17] *See* 12 CFR 1026.36(f).

[18] *See* 12 CFR 1026.25(c)(2).

[19] 75 FR 58509 (Sept. 24, 2010).

[20] 76 FR 43111 (July 20, 2011).

[21] 75 FR 58509, 58509 (Sept. 24, 2010).

Board's Rules primarily applied to closed-end consumer credit transactions secured by a dwelling.[22] The Board's Rules took effect on April 6, 2011.[23]

Definition of Loan Originator. Under the Board's Rules, the term "loan originator" was defined as a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person.[24] The term "loan originator" includes an employee of the creditor if the employee meets this definition.[25] The term "loan originator" includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a bona fide warehouse line of credit, or out of deposits held by the creditor.[26] For purposes of the Board's Rules, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.[27] Therefore, the activities of a "loan originator" include both mortgage broker entities as well as individual mortgage loan officers.

Prohibited Payments to Loan Originators: Compensation Based on Transaction Terms or Conditions. The Board's Rules prohibited paying compensation, directly or indirectly, to a

[22] *Id.* In comment 36-1, the Board's Rules explained the scope of coverage of a number of provisions, such as prohibited payments to loan originators under 12 CFR 226.36(d) and the prohibition on steering 12 CFR 226.36(e) both applying to closed-end consumer credit transactions secured by a consumer's principal dwelling and secured by first or subordinate liens, and reverse mortgages that are not home-equity lines of credit subject to certain restrictions.

[23] The Board initially set the compliance date for the September 2010 Board Rule as April 1, 2011. *See* 75 FR 58509 (Sept. 24, 2010). On March 31, 2011, the United States Court of Appeals for the District of Columbia Circuit entered an administrative stay of the September 2010 Board Rule, *see* Per Curiam Order at 1, *Nat'l Assoc. of Mortg. Brokers v. Fed. Rsrv. Sys.*, No. 11-5078 (D.C. Cir. Mar. 31, 2011), which it then dissolved on April 5, 2011. *See* Per Curiam Order at 1, *Nat'l Assoc. of Mortg. Brokers*, No. 11-5078 (D.C. Cir. Apr. 5, 2011). On July 10, 2011, the Board published final revisions to the official staff commentary to the September 2010 Board Rule. *See* 76 FR 43111 (July 20, 2011). These revisions, which were effective as of July 20, 2011, updated the compliance date for the September 2010 Board Rule from April 1, 2011, to April 6, 2011, to reflect the issuance and dissolution of the administrative stay.

[24] 75 FR 58509, 58533 through 58535 (Sept. 24, 2010) (codified at 12 CFR 226.36(a)(1) and comment 36(a)-1.i).

[25] *Id.* at 58534, 58535 (codified at 12 CFR 226.36(a)(1) and comment 36(a)-1.i).

[26] *Id.* (codified at 12 CFR 226.36(a)(1) and comment 36(a)-1.i-ii, -3).

[27] *Id.* (codified at 12 CFR 226.36(a)(2) and comment 36(a)-2).

mortgage broker or any other loan originator that was based on a mortgage transaction's terms or conditions, other than the amount of credit extended.[28]

Prohibited Payments to Loan Originators: Payments by Persons other than the Consumer. The Board's Rules prohibited any person from paying compensation to a loan originator for a particular transaction if the consumer pays the loan originator's compensation directly (dual compensation).[29]

Prohibition on Steering. The Board's Rules prohibited a loan originator from steering a consumer to consummate a loan that provides the loan originator with greater compensation than other transactions the loan originator offered or could have offered to the consumer, unless the loan is in the consumer's interest.[30] The Board's Rules also included a safe harbor provision providing that a loan originator could satisfy the anti-steering provisions if it presented a consumer with loan options that met certain criteria.[31]

Record Retention: Prohibited Payments to Loan Originators. The Board's Rules provided that for each transaction subject to the provisions concerning prohibited payments to loan originators, a creditor must maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction.[32]

2. The Bureau's 2013 Rules

In 2013, the Bureau issued three rules amending Regulation Z to implement the Dodd-Frank Act's amendments to TILA regarding loan originator compensation as well as the Dodd-Frank Act's provisions prohibiting certain arbitration agreements and the financing of certain credit insurance in connection with a mortgage loan. The Bureau issued its first rule on February

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[28] 75 FR 58509, 58534 through 58536 (Sept. 24, 2010) (codified at 12 CFR 226.36(d)(1) and comment 36(d)(1)-1 to -9).

[29] *Id.* at 58534, 58536, 58537 (codified at 12 CFR 226.36(d)(2) and comment 36(d)(2)-1 to -3).

[30] *Id.* at 58534, 58537 (codified at 12 CFR 226.36(e)(1) and comment 36(e)(1)-1 to -3).

[31] *Id.* (codified at 12 CFR 226.36(e)(2) and (3) and comments 36(e)(1)-1 to -3 and 36(e)(2)-1 to -4).

[32] *Id.* at 58534 (codified at comment 25(a)-5).

15, 2013,[33] the second on May 31, 2013,[34] and the third on October 1, 2013[35] (collectively the Bureau's Rules). The Bureau explained in the preamble to the first of the Bureau's Rules that the mortgage market crisis focused attention on the critical role that loan officers and mortgage brokers play in the loan origination process, noting that consumers rely heavily on loan officers and mortgage brokers to guide them and how, prior to the crisis, training and qualification standards for loan originators varied widely and compensation was frequently structured to give loan originators strong incentives to steer consumers into more expensive loans.[36] The Bureau further explained that the Dodd-Frank Act was expanding on previous efforts by lawmakers and regulators to strengthen loan originator qualification requirements and regulate industry compensation practices and that the Bureau was issuing new rules to implement the Dodd-Frank Act requirements, as well as revising and clarifying existing regulations and commentary on loan originator compensation.[37]

The Bureau's Rules addressed the following major topics:

Definition of Loan Originator. The Bureau's Rules expanded upon the definition of a "loan originator" by outlining a set of activities or services that, if done for or in the expectation of compensation or gain, makes the person doing such activities or performing such services a loan originator, unless otherwise excluded. The term "loan originator" means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application; offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or

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[33] 78 FR 11280 (Feb. 15, 2013).

[34] 78 FR 32547 (May 31, 2013).

[35] 78 FR 60382 (Oct. 1, 2013).

[36] 78 FR 11280, 11280 (Feb. 15, 2013).

[37] *Id.*

will perform any of these activities.[38] The definition of loan originator includes five specific exclusions, including for persons who "perform[] purely administrative or clerical tasks" on behalf of a loan originator and who engage in certain seller financing activities.[39] The term "loan originator organization" is any loan originator that is not an individual loan originator.[40] Therefore, the term "loan originator" includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition.[41]

Prohibited Payments to Loan Originators: Payments Based on a Term of a Transaction. The Bureau's Rules clarified and revised Regulation Z to prevent evasion of the prohibition on compensation based on a term of a transaction adopted in the Board's Rules. For example, the Bureau's Rules expressly prohibited compensation based in whole or in part on a factor that is a "proxy" for a term of a transaction.[42] In addition, to prevent incentives to upcharge consumers on their loans, the Bureau's Rules prohibited loan originator compensation based upon the profitability of a transaction or a pool of transactions.[43] However, the Bureau's Rules permitted

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[38] *Id.* at 11410, 11414, 11415 (codified at 12 CFR 1026.36(a)(1)(i) and comment 36(a)-1.i.A).

[39] *Id.* at 11410, 11415, 11416 (codified at 12 CFR 1026.36(a)(1)(i)(A) through (E) and comments 36(a)-1.ii-v; -4); 78 FR 60382, 60445 (Oct. 1, 2013) (codified at comment 36(a)(1)(i)(B)-1).

[40] 78 FR 11280, 11410, 11415 (Feb. 15, 2013) (codified at 12 CFR 1026.36(a)(1)(i) and comment 36(a)-1.i.D).

[41] *Id.* at 11410, 11415 (codified at 12 CFR 1026.36(a)(1)(i) and comment 36(a)-1.i.B). In its October 2013 Rule, the Bureau further clarified the definition of loan originator to address: (1) when employees of a creditor or loan originator in certain administrative or clerical staff roles are not considered "loan originators," (and not also agents and contractors, as initially written in the final rule) and (2) when employees of manufactured housing retailers may be classified as "loan originators." 78 FR 60382, 60441-45 (Oct. 1, 2013) (codified at 12 CFR 1026.36(a)(1)(i) and comments 36(a)-1, -4, -5, and 36(a)(1)(i)(B)-1).

[42] 78 FR 11280, 11411, 11418 through 11423 (Feb. 15, 2013) (codified at 12 CFR 1026.36(d)(1) and comment 36(d)(1)-1 to -8, -10); 78 FR 60382, 60446 through 60449 (Oct. 1, 2013) (codified at comment 36(d)(1)-1, -3, -6). The Board's rule previously included commentary clarifying that a proxy for a transaction term or condition would also violate the rule, but the Board's Rule did not define proxy and provided only one example, and stakeholders subsequently requested additional clarity from the Bureau on proxies. *See* 78 FR 11280, 11323, 11324 (Feb. 15, 2013). The Bureau's Rule included a definition of proxy in the regulatory text and two new commentary examples. Under the Bureau's Rules, a factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction. *Id.* at 11411, 11419 (codified at 12 CFR 1026.36(d)(1)(i) and comment 36(d)(1)-2.ii).

[43] 78 FR 11280, 11411, 11418, 11419 (Feb. 15, 2013) (codified at 12 CFR 1026.36(d)(1)(i) and comment 36(d)(1)-1 and -2).

certain bonuses and retirement and profit-sharing plans to be based on the terms of multiple loan originators' transactions.[44]

Payments by Persons other than Consumer: Dual Compensation. The Bureau's Rules added an exception to the prohibition on dual compensation included in the Board's Rules that allowed mortgage brokers to pay their employees or contractors commissions even if the consumer paid loan originator compensation to the mortgage broker, as long as the commissions are not based on the terms of the loans that they originate.[45]

Steering. The Bureau's Rules made only minimal changes to the Board's anti-steering provisions codified in 12 CFR 1026.36(e). The Bureau's Rules revised the Board's steering provisions to clarify that where two or more loans available to be presented to a consumer by a loan originator, for purposes of the safe harbor, have the same total dollar amount of discount points, origination points, or origination fees, the loan originator must present the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points, or origination fees for which the loan originator has a good faith belief that the consumer likely qualifies.[46] The Bureau's Rules also clarified, in the Official Interpretations, that the loan with the lowest interest rate for which the consumer likely qualifies is the loan with the lowest rate the consumer can likely obtain, regardless of how many discount points, origination points or origination fees the consumer must pay to obtain it.[47]

Loan Originator Qualification and Identification Requirements. The Bureau's Rules implemented a Dodd-Frank Act provision that establishes certain qualification requirements for loan originators.[48] The Bureau's Rules imposed duties on loan originator organizations to ensure

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[44] *Id.* at 11411, 11419 through 11423 (codified at 12 CFR 1026.36(d)(iii) through (iv) and comment 36(d)(1)-3).

[45] *Id.* at 11412, 11423, 11424 (codified at 12 CFR 1026.36(d)(2)(i)(C) and comment 36(d)(2)(i)-1).

[46] *Id.* at 11412, 11424 (codified at 12 CFR 1026.36(e)(3)(i)(C), read in conjunction with 12 CFR 1026.36(e)(3)(ii), and comment 36(e)(3)-3).

[47] *Id.* at 11424 (codified at comment 36(e)(3)-3).

[48] *Id.* at 11412, 11424 through 11426 (codified at 12 CFR 1026.36(f) and comments 36(f)-1 to -3, 36(f)(1)-1, 36(f)(2)-1, 36(f)(3)-1, 36(f)(3)(i)-1 to -2, 36(f)(3)(ii)-1 to -3, 36(f)(3)(ii)(B)-1 to -2, and 36(f)(3)(iii)-1); 78 FR

that their individual loan originators are licensed or registered as applicable under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)[49] and other applicable law.[50] The Bureau's Rules required that loan originator employers whose employees are not required to be licensed—including employers that are depository institutions and bona fide nonprofits—must ensure that their employees meet certain character, fitness, and criminal background standards and must provide their employees with appropriate training.[51] The Bureau's Rules also implemented a Dodd-Frank Act requirement that loan originators provide their unique identifiers under the Nationwide Mortgage Licensing System and Registry (NMLSR) on loan documents.[52]

Prohibition on Mandatory Arbitration Clauses and Waivers of Certain Consumer Rights. The Bureau's Rules implemented Dodd-Frank Act restrictions on mandatory arbitration clauses and waivers of Federal consumer claims. The Bureau's Rules prohibited both (1) including clauses in a contract or other agreement for a consumer credit transaction secured by a dwelling that require the consumer to submit disputes arising out of that agreement to binding arbitration;[53] and (2) the application or interpretation of provisions of such loans or related agreements so as to bar a consumer from bringing a claim in court in connection with any alleged violation of Federal law.[54]

Prohibition on Financing Single-Premium Credit Insurance. The Bureau's Rules prohibited financing any premiums or fees for credit insurance (such as credit life insurance) in connection with a consumer credit transaction secured by a dwelling (while allowing credit

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60382, 60441, 60442, 60449 (Oct. 1, 2013) (codified at 12 CFR 1026.36(f)(3)(i) through (ii) and comments 36(f)(3)(i)-1, -2 and 36(f)(3)(ii)-1, to -2).

[49] 12 U.S.C. 5101 *et seq.*

[50] 78 FR 11280, 11412 (Feb. 15, 2013) (codified at 12 CFR 1026.36(f)(1)-(2)).

[51] *Id*. at 11412, 11413, 11426 (codified at 12 CFR 1026.36(f)(3) and comments 36(f)(3)(ii)(B)-1, -2, 36(f)(3)(iii)-1, -2).

[52] *Id.* at 11413, 11426, 11427 (codified at 12 CFR 1026.36(g) and comments 36(g)-1 to -3, 36(g)(1)(ii)-1).

[53] *Id.* at 11413 (codified at 12 CFR 1026.36(h)(1)).

[54] *Id.* (codified at 12 CFR 1026.36(h)(2)).

insurance to be paid for on a monthly basis).[55] The Bureau subsequently clarified what constitutes financing of such premiums by a creditor, when credit insurance premiums are considered to be calculated and paid on a monthly basis, and when including the credit insurance premium or fee in the amount owed is prohibited.[56]

Other Provisions. The Bureau's Rules also extended existing recordkeeping requirements concerning loan originator compensation in two ways. First, they required a creditor to maintain records sufficient to evidence all compensation it pays to a loan originator and the compensation agreement that governs those payments for three years after the date of payment. Second, they required a loan originator organization to maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person; all compensation it pays to any individual loan originator; and the compensation agreement that governs each such receipt or payment, for three years after the date of each such receipt or payment.[57] Pursuant to the Dodd-Frank Act, the Bureau's Rules implemented the requirement for depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries to establish and maintain procedures reasonably designed to assure and monitor compliance with the compensation, steering, qualification, and identification requirements.[58] The Bureau's Rules also clarified that the required procedures must be "written" to promote transparency, consistency, and accountability.

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[55] 78 FR 11280, 11413 (Feb. 15, 2013) (codified at 12 CFR 1026.36(i)); 78 FR 60382, 60442, 60449 (Oct. 1, 2013) (codified at 12 CFR 1026.36(i) and comment 36(i)-1).

[56] 78 FR 60382, 60383 (Oct. 1, 2013) (codified at 12 CFR 1026.36(i)(2)(ii) and (iii) and comment 36(i)-1).

[57] 78 FR 11280, 11410, 11413, 11414 (Feb. 15, 2013) (codified at 12 CFR 1026.25(c)(2) and comment 25(c)(2)-1 to -2).

[58] *Id.* at 11413 (codified at 12 CFR 1026.36(j)); 78 FR 60382, 60442 (Oct. 1, 2013) (codified at 12 CFR 1026.36(j)(2)). This provision is similar to the registration procedures pursuant to the Dodd-Frank Act requirement added by TILA section 129B(b)(2) and a final rule promulgated by the Federal prudential regulatory agencies for banks, thrifts, and credit unions requiring the institutions the Federal prudential regulatory agencies regulate to adopt and follow written policies and procedures designed to assure compliance with the registration requirements of the SAFE Act. This specific final rule was inherited by the Bureau and designated as Regulation G.

The prohibition on mandatory arbitration clauses and waivers of Federal consumer claims took effect on June 1, 2013.[59] The remaining provisions adopted by the Bureau's 2013 Rules took effect on January 1, 2014,[60] with the exception of the ban on financing credit insurance, which took effect on January 10, 2014.[61]

No Prohibition on Consumer Payment of Upfront Points and Fees. Section 1403 of the Dodd-Frank Act contains a section that would generally have prohibited consumers from paying upfront points or fees on transactions in which the loan originator compensation is paid by a person other than the consumer (either to the creditor's own employee or to a mortgage broker). However, the Dodd-Frank Act also authorizes the Bureau to waive or create exemptions from the prohibition on upfront points and fees. The Bureau opted to include a complete exemption to the prohibition on upfront points and fees in the Bureau's Rules, noting that the Bureau needed to examine the impact such a prohibition would have on the mortgage market.[62]

B. The Market

The Bureau monitors the mortgage origination market as part of its oversight and enforcement of TILA and Regulation Z, including the mortgage origination rules that are the subject of this review, as well as other aspects of the regulation applicable to the market and through oversight of the SAFE Act and Real Estate Settlement Procedures Act in Regulations G, H and X, respectively.

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[59] 78 FR 11280, 11280 (Feb. 15, 2013).

[60] 78 FR 60382, 60383 (Oct. 1, 2013).

[61] The February 2013 Bureau Rule initially set a June 1, 2013, effective date for the provisions containing the mandatory arbitration clause prohibition and credit insurance financing prohibition (amendments to 12 CFR 1026.36(h) and (i)) and a January 10, 2014 effective date for all other provisions. On May 31, 2013, the Bureau issued a final rule delaying the effective date for the credit insurance financing prohibition from June 1, 2013 to January 10, 2014. *See* 78 FR 32547, 32549, 32550 (May 31, 2013). The Bureau delayed the effective date of these provisions to permit the Bureau to clarify, before the provisions took effect, their applicability to transactions other than those in which a lump-sum premium is added to the loan amount at closing. The Bureau's October 2013 Rule retained the January 10, 2014 effective date for the credit insurance financing prohibition (12 CFR 1026.36(i)) but changed the effective date for the amendments to 12 CFR 1026.36(a), (b), (d), (e), (f), and (j) from January 10, 2014 to January 1, 2014. 78 FR 60382, 60383 (Oct. 1, 2013).

[62] 78 FR 11280, 11281 (Feb. 15, 2013) (codified at 12 CFR 1026.36(d)(2)(ii)).

1. Market Structure and Participants

The mortgage origination market is one of the United States' largest consumer financial markets, with an average estimated annual origination volume of about 10 million[63] mortgages for $2.2 trillion[64] over the past 10 years.[65] The market had been growing in recent years by most measures until a sharp slowdown occurring in 2022 with the rapid increase in mortgage rates. Market volume is driven by interest rates, credit availability, and demand for housing. During periods of relatively low interest rates, demand for mortgages is generally strong because purchasing power is strong (i.e., the monthly cost of a mortgage relative to the loan balance is low). When interest rates increase, purchasing power is reduced and therefore demand weakens. Conversely, when interest rates decrease, purchasing power is increased, driving increased mortgage demand. Decreasing interest rates also drive demand for refinances independent from the demand for home purchases. This can lead to large spikes in mortgage origination demand after large drops in interest rates, as was seen in 2020 and 2021, with rapid reduction in demand

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[63] *See* CFPB, *Data Point: 2021 Mortgage Market Activity and Trends* (Sept. 19, 2022), https://files.consumerfinance.gov/f/documents/cfpb_data-point-mortgage-market-activity-trends_report_2022-09.pdf (*HMDA Datapoint 2021*)*;* CFPB, *Data Point: 2018 Mortgage Market Activity and Trends* (Aug. 30, 2019), https://files.consumerfinance.gov/f/documents/cfpb_2018-mortgage-market-activity-trends_report.pdf (*HMDA Datapoint 2018*); and CFPB, *Data Point: 2017 Mortgage Market Activity and Trends* (May 7, 2018), https://files.consumerfinance.gov/f/documents/bcfp_hmda_2017-mortgage-market-activity-trends_report.pdf (*HMDA Datapoint 2017*). The Bureau calculates average annual HMDA reportable originations based on total annual originations for 2018 to 2021 from Table 1 in *HMDA Datapoint 2021* and total annual originations for 2011 to 2017 from Table 1A in *HMDA Datapoint 2018*. In *HMDA Datapoint 2018,* the Bureau estimated that HMDA reporters originated about 90 percent of all originations in the U.S. (*see* page 11). The Bureau calculates average annual total originations by multiplying the average annual HMDA reportable originations by 1.11. The Bureau notes that its 2015 HMDA final rule implemented several reporting changes that took affected data collected starting in 2018. For example, the 2015 HMDA rule changed reporting of open-end LOCs from optional to mandatory. The Bureau does not adjust annual HMDA reportable originations across time to account for this change when calculating average annual originations.

[64] *See* Fed. Rsrv. Bank of N.Y., *Quarterly Report on Household Debt and Credit Q3 2022* (Nov. 15, 2022), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/hhd_c_report_2022q3.xlsx. The Bureau calculates average annual mortgage origination dollar volume by summing total mortgage originations across quarters for each year from 2011 to 2021 and taking the average over those years (see page 6 data tab in spreadsheet).

[65] The Bureau notes that the Nationwide Multistate Licensing System (NMLS) *2021 Annual Mortgage Report* implies a lower annual average dollar volume of originations of $1.3 trillion between 2012 and 2021. *See* NMLS, *2021 Annual Mortgage Report*, https://mortgage.nationwidelicensingsystem.org/about/Reports/2021%20Annual%20Mortgage%20Report.xlsx.

when interest rates increase, as was seen in 2022.[66] The availability of credit also affects demand for mortgages. As credit availability is eased, the ability to obtain mortgage financing is relaxed, enabling more potential purchasers to access mortgage credit, thereby increasing demand. Conversely, a tightening in credit availability will restrict access to mortgage financing and therefore reduce demand. These effects of credit availability in the market were most pronounced in the lead up to the Great Recession of 2007-2009, where lax credit underwriting standards led to high demand for home purchases even as interest rates began to rise. Subsequently, the crash in the value of owned homes and the mortgage market led to severe tightening of credit standards and dampening demand for home ownership even as interest rates declined.

Participation in the market is diverse, ranging from the largest banks to small community banks, credit unions, and non-depository lending institutions. Participation by large banks has declined over the past 10 years as large non-depository creditors emerged as the primary mortgage providers. In 2014, 11 of the top 25 creditors were depository institutions, while in 2021 only six of the top 25 were depository institutions.[67] In addition to the trend toward mortgage lending by non-depository institutions, the market has experienced consolidation with respect to the participation of large creditors. In 2014, the top 25 creditors represented 34 percent of the market, while in 2021 the top 25 represented 44 percent.[68]

Most of the Rules apply to institutions that engage in originating or extending closed-end, consumer credit transactions secured by a dwelling.[69] Therefore, all small entities that originate

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[66] *See HMDA Datapoint 2021*. The Bureau's most recent data point article found that the number of closed-end originations (excluding reverse mortgages) in 2021 slightly increased by 2.4 percent from 2020. Whereas the number of originations increased by 66.8 percent between 2019 to 2020 largely driven by the refinance boom that began in 2020. Most of the increase from 2020 to 2021 was driven by an increase in the number of home purchase loans while the volume of refinance transactions continued to remain elevated.

[67] *See* Neil Bhutta *et al.*, Fed. Rsrv. Bd., *The 2014 Home Mortgage Disclosure Act Data*, 101 Fed. Res. Bulletin at T.12 (Nov. 2015), https://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf (HMDA Bulletin 2014); *HMDA Datapoint 2021* at T.6A.

[68] *Id.*

[69] 12 CFR 1026.36(b).

or extend closed-end consumer credit transactions secured by a dwelling, such as depository institutions and non-depository institutions, including mortgage brokers, are likely subject to at least some aspects of the Rules.

The Bureau estimates the number of small depository institutions using Federal Financial Institutions Examination Council (FFIEC) and National Credit Union Administration (NCUA) Reports of Condition and Income (call reports) data and estimates the number of non-depository institutions using the Economic Census. In 2010, prior to the implementation of the Board's 2010 Rule, there were 15,146 depository institutions (i.e., banks, thrifts, and credit unions).[70] Of these institutions, 11,180 (74 percent) originated mortgages and were subject to the subsequent Regulation Z Loan Originator Rules.[71] According to the current Small Business Administration (SBA) threshold of $850 million or less in total assets,[72] 14,152 (93 percent) of depository institutions were small at the end of 2010. Of these small depository institutions, 10,216 (72 percent) were subject to the Rules. The trend toward depository institution consolidation (which began prior to 2010) has reduced the total number of depository institutions, and the share of depository institutions that originate mortgages has increased slightly since 2010. As of the end of 2021, 7,876 out of 9,887 (80 percent) depository institutions and 6,299 out of 8,278 (76 percent) small depository institutions were subject to the Rules.[73]

The Bureau relies on data from the 2007 and 2017 Economic Census to estimate the number of non-depository institutions, including mortgage brokers, that employed loan originators prior to the implementation of the Board's 2010 Rule and the number of institutions

[70] Calculated from FFIEC Call Report data, NCUA Call Report data, and Thrift Financial Report data for all quarters of 2010, accessed on January 6, 2023.

[71] The Bureau classifies a bank or thrift as originating any mortgages if the institution reported a positive outstanding balance of closed-end loans secured by 1-4 family residential properties on its Call Report in any of the prior four quarters. The Bureau classifies a credit union as originating mortgages if the institution reported a positive total number of real estate loans granted year-to-date in the final quarter of the year.

[72] 13 CFR 121.201. Depository institutions have North American Industry Classification System (NAICS) codes of 522110 (Commercial Banking), 522130 (Credit Unions), and 522180 (Savings Institutions and Other Depository Credit Intermediation). All three industries have size standards of $850 million as of December 19, 2022.

[73] Calculated from FFIEC Call Report data and NCUA Call Report data for all quarters of 2021, accessed on January 9, 2023.

currently subject to the Regulation Z Loan Originator Rules.[74] In 2007,[75] there were 20,625 mortgage brokers, 20,393 of which were small according to the SBA's current size standards.[76] The same year, there were 10,539 non-depository creditor institutions that originated mortgages, 10,206 of which were small.[77] The Bureau assumes that all these non-depository institutions are subject to the Rules. The non-depository mortgage industry has also experienced substantial consolidation in the last 10 years. In 2017, the number of mortgage brokers decreased by 67 percent to 6,809, of which 6,670 were small.[78] Similarly, the number of non-depository creditor institutions decreased by 68 percent to 3,289 in 2017, of which 2,904 were small.[79]

2. Mortgage Origination Process

The primary mortgage origination market, which encompasses the interaction of the consumer with the loan originator, can be generally divided into two types of origination channels—retail and wholesale. In a retail transaction, the consumer deals with a loan officer who is an individual loan originator employed by the creditor, such as a bank, credit union, or non-depository creditor. The creditor may operate a network of branches or communicate with consumers through mail, the internet, or by phone. The entire origination transaction is conducted within the corporate structure of the creditor, and the loan is closed using funds

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[74] *See* U.S. Census Bureau, *Stats. of U.S. Bus. Data by Enter. Receipts Size 2017* (May 2021), https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html (SUSB 2017); U.S. Census Bureau, *Stats. of U.S. Bus. Data by Enter. Receipts Size 2007* (2007), https://www.census.gov/data/tables/2007/econ/susb/2007-susb-annual.html (SUSB 2007).

[75] The Bureau is aware that a substantial portion of the changes from 2007 to 2017 may have occurred prior to the 2010 Board Rule due to the severe downturn in the mortgage market at that time. The Economic Census is only conducted for years that end in 2 and 7. The Bureau does not have access to the necessary data to estimate the number of small entities in 2010.

[76] The NAICS code for Mortgage Brokers is 522310. As of December 19, 2022, the SBA size standard threshold for Mortgage Brokers is $15 million in annual average receipts. The Bureau calculates the number of firms and small firms using the SUSB 2007.

[77] The Bureau measures non-depository creditor mortgage originators using NAICS 522292 (Real Estate Credit). As of December 19, 2022, the SBA size standard threshold for Real Estate Credit firms is $47 million in annual average receipts. In the SUSB 2007 and 2017, the Census provides counts of firms by receipt size buckets that do not correspond to all size standards. The Bureau calculates the number of small Real Estate Credit firms as the number of firms below $45 million in receipts reported in the SUSB 2007 and SUSB 2017.

[78] Calculated from SUSB 2007 and SUSB 2017. *See* note 76, *supra*.

[79] Calculated from SUSB 2007 and SUSB 2017. *See* note 77, *supra*.

supplied by the creditor. Depending on the type of creditor, the creditor may hold the loan in portfolio or sell the loan to investors on the secondary market, as discussed further below.

In a wholesale transaction, the consumer deals with an individual loan originator that is a mortgage brokerage firm or employed by such a mortgage brokerage firm. In essence, the wholesale origination channel consists of creditors that utilize independent third parties to perform the duties of a loan originator, whereas the retail channel consists of creditors that utilize employees to perform such duties. Because, in the context of a wholesale transaction, the mortgage broker operates as a third party, the mortgage broker seeks offers from many different creditors, and then act as a liaison between the consumer and whichever creditor ultimately closes the loan. Generally, at closing, the loan is consummated by using the creditor's funds, and the mortgage note is written in the creditor's name. The creditor may hold the loan in portfolio or sell the loan on the secondary market.

Both retail loan officers and mortgage brokers provide information to consumers about different types of loans and advise consumers on choosing a loan. Consumers may rely on loan officers and mortgage brokers to determine what kind of loan best suits the consumer's needs. Loan officers and mortgage brokers also take a consumer's completed loan application for submission to the creditor's loan underwriter. The application includes the consumer's credit and income information, along with information about the home to be used as collateral for either a purchase or refinance. Consumers can work with multiple loan originators to compare the loan offers that loan originators may obtain on their behalf from creditors. The loan originator or creditor may request additional information or documents from the consumer to support the information in the application and obtain an appraisal of the property. After origination, the process for underwriting and loan closing generally occurs with the creditor. However, the retail loan officer or mortgage broker generally serves as the liaison for the consumer throughout the process.

As stated, after a loan is closed, the mortgage creditor who made the loan either through the retail or wholesale origination channel may keep the loan in portfolio or sell the loan on the secondary market. To accomplish this, the creditor may sell the whole loan to another mortgage lender or investor in what is referred to as a correspondent sale, or the creditor may place the loan into a security to be sold on the secondary market. A purchaser of a correspondent sale loan may also place the loan into a security to be sold. In the current marketplace, a majority of loans originated are ultimately placed into Mortgage Backed Securities (MBSs) for sale in the secondary market. When a creditor sells a loan into the secondary market, the creditor is exchanging an asset (the loan) that produces regular cash flows (principal and interest) for an upfront cash payment from the buyer.[80] The upfront cash payment represents the buyer's present valuation of the loan's future cash flows, using assumptions about the rate of prepayments due to property sales and refinancings, the rate of expected defaults, the rate of return relative to other investments, and other factors. Secondary market buyers assume considerable risk in determining the price they are willing to pay for a loan. If, for example, loans prepay faster than expected or default at higher rates than expected, the investor will receive a lower return than expected. Conversely, if loans prepay more slowly than expected, or default at lower rates than expected, the investor will earn a higher return over time than expected.

3. Loan Originator Compensation Structure

Loan originators are typically paid a commission that is a percentage of the loan amount. Prior to 2010, it was common for the percentage to vary based upon the interest rate of the loan or other loan terms: commissions on loans with higher interest rates, or with terms such as prepayment penalties, were higher than commission on loans with lower interest rates or lack of prepayment penalties (just as the premiums paid by the secondary market for loans vary with the

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[80] For simplicity, this discussion assumes that the secondary market buyer is a person other than the creditor, such as Fannie Mae, Freddie Mac, or another institutional financial entity. In practice, some creditors may securitize their own loans and sell the securities directly. In this case, the secondary market price is determined by the price investors are willing to pay for the subsequent securities. This scenario also does not consider various risk mitigation techniques, such as risk-sharing counterparties, credit risk enhancements, or security derivatives.

interest rate or other terms). This was typically called a "yield spread premium."[81] In the wholesale context the mortgage broker might keep the entire yield spread premium as a commission, or they might provide some of the yield spread premium to the borrower as a credit against closing costs.[82]

While this system was in place, it was common for loan originator commissions to mirror secondary market pricing closely. The "price" that the creditor offered to its mortgage brokers or made available to its loan officers was somewhat lower than the price that the creditor expected to receive from the secondary market—the creditor kept the difference as corporate revenue. However, the underlying mechanics of the secondary market flowed through to the loan originator's compensation. The higher the interest rate on the loan or the more in upfront charges the consumer paid to the creditor (or both), the greater the compensation available to the loan originator. This created a situation in which the loan originator had a financial incentive to steer consumers into loans with higher interest rates or less favorable terms or to impose on the consumer additional upfront charges payable to the creditor. In a perfectly competitive and transparent market, competition would ensure that this incentive would be countered by the need to compete with other loan originators to offer attractive loan terms to consumers. However, the mortgage origination market is neither always perfectly competitive nor always transparent, and consumers (who take out a mortgage only a few times in their lives) may be uninformed about how prices work and what terms they can expect. While these rules and other CFPB rules have improved transparency and helped to foster shopping, survey responses of mortgage borrowers continue to show that a significant portion of consumers who take out a mortgage for home purchase fail to shop prior to application; that is, they seriously consider only a single creditor or

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[81] The term "yield spread premium" has been used in different contexts in the mortgage industry. Some use the term to mean solely a payment from a creditor to a mortgage broker for a higher interest rate, while others use the term to mean anytime a mortgage is priced at a rate and term that would generate a premium upon sale in the secondary market.

[82] Both retail loan officers and mortgage brokers received compensation in this fashion. Some retail loan officers may also have been paid salary, bonuses, or a combination of all.

mortgage broker before choosing where to apply.[83] Moreover, prior to 2010, mortgage brokers were free to charge consumers directly for additional origination points or fees, which were generally described to the consumer as compensating for the time and expense of working with the consumer to submit the loan application. This compensation structure was problematic for two reasons. First, the loan originator had an incentive to steer borrowers into less favorable pricing terms. Second, the consumer may have paid origination fees to the loan originator believing that the loan originator was working for the borrower, without knowing that the loan originator was receiving compensation from the creditor as well.

In recent years, compensation structures have changed to reduce, if not eliminate, most problematic incentives. This has been due to several factors: (1) the restrictions on loan originator compensation imposed under the Board's Rules, which took effect in 2010; (2) the enactment of TILA section 129B(c) through the Dodd-Frank Act, which largely codified those restrictions in 2010; and (3) amendments to Regulation Z by the CFPB in 2013. Today, loan originator compensation is primarily determined as a percentage of the loan amount being originated as specifically permitted by TILA. Typical compensation structures might also include adjustments for the number of originations in a certain time period.[84]

C. Bureau Resources and Analysis

Since issuing Regulation Z's Mortgage Loan Originator Rules, the Bureau has published numerous reports and other materials on the mortgage origination market. In 2018, the Bureau

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[83] CFPB, *Consumers' Mortgage Shopping Experience* (Jan. 2015), https://files.consumerfinance.gov/f/201501_cfpb_consumers-mortgage-shopping-experience.pdf, and Fannie Mae, *One-Third of Recent Homebuyers Still Don't 'Shop Around' for Mortgages* (Nov. 2015), https://files.consumerfinance.gov/f/201501_cfpb_consumers-mortgage-shopping-experience.pdf, and Fannie Mae, *One-Third of Recent Homebuyers Still Don't 'Shop Around' for Mortgages* (Nov. 18, 2022), https://www.fanniemae.com/research-and-insights/perspectives/homebuyers-shop-around-mortgages.

[84] Regulation Z's Mortgage Loan Originator Rules outline permissible methods of compensation as: (1) loan originator's overall dollar volume (i.e., total dollar amount of credit extended or total number of transactions originated), delivered to the creditor; (2) long-term performance of the originator's loans; (3) an hourly rate of pay to compensate the originator for the actual number of hours worked; (4) whether the consumer is an existing customer of the creditor or a new customer; (5) a payment that is fixed in advance for every loan the originator arranges for the creditor; (6) the percentage of applications submitted by the loan originator to the creditor that results in consummated transactions; and (7) the quality of the loan originator's loan files (e.g., accuracy and completeness of the loan documentation) submitted to the creditor. Comment 36(d)(1)-2.i.

issued its first annual series of data point articles describing mortgage market activity based on data reported under the Home Mortgage Disclosure Act (HMDA).[85] The annual data point article typically covers mortgage applications and originations, mortgage outcomes by demographic groups and loan types, monthly mortgage trends and activities, and information on the lending institutions that reported lending activities under HMDA. The Bureau has also released several articles concerning the mortgage origination market. These articles have covered various issues, such as consumer finance in rural Appalachia, first-time homebuyers, types of changes that occur during the mortgage origination process, profiles of older adults living in mobile homes, manufactured housing finance, and Asian American and Pacific Islanders in the Mortgage Market.[86]

Through its supervisory and enforcement programs, the Bureau performs examinations of large banks and certain nonbanks for compliance with Federal consumer financial laws and entered into consent orders where noncompliance is observed. Since 2015, the Bureau has, through its publication of *Supervisory Highlights* on its supervisory program and certain litigation-related documents on its enforcement actions, reported noncompliance with aspects of Regulation Z's Mortgage Loan Originator Rules involving: (1) compensation based on a term of a transaction[87] where: (a) loan originators received compensation based, in part, on the interest

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[85] CFPB, *Data Point: 2017 Mortgage Market Activity and Trends* (May 7, 2018), https://files.consumerfinance.gov/f/documents/bcfp_hmda_2017-mortgage-market-activity-trends_report.pdf. HMDA data are used to assist in determining whether financial institutions are serving the housing credit needs of their local communities; facilitate public entities' distribution of funds to local communities to attract private investment; and help identify possible discriminatory lending patterns and enforce antidiscrimination statutes.

[86] CFPB, *Consumer Finances in Rural Appalachia: Data Point* (Sept. 2022), https://files.consumerfinance.gov/f/documents/cfpb_consumer-finances-in-rural-appalachia_report_2022-09.pdf; CFPB, *Market Snapshot: First-time Homebuyers* (Mar. 2020), https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-first-time-homebuyers_report.pdf; CFPB, *How Mortgages Change Before Origination* (Oct. 2020), https://files.consumerfinance.gov/f/documents/cfpb_data-point_how-mortgages-change-before-origination.pdf; CFPB, *Data Spotlight: Profiles of Older Adults Living in Mobile Homes* (May 2022), https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/data-spotlight-profiles-of-older-adults-living-in-mobile-homes/; CFPB, *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data* (May 2021), https://files.consumerfinance.gov/f/documents/cfpb_manufactured-housing-finance-new-insights-hmda_report_2021-05.pdf; CFPB, *Data Point: Asian American and Pacific Islanders in the Mortgage Market: Using the 2020 HMDA Data* (July 2021), https://files.consumerfinance.gov/f/documents/cfpb_aapi-mortgage-market_report_2021-07.pdf.

[87] 12 CFR 1026.36(d)(1)(i).

rates of the loans they closed;[88] and (b) loan originators were paid differently based on product type where the product type contained different terms;[89] (2) failure of a depository institution to establish and maintain required written policies and procedures reasonably designed to monitor compliance with the requirements concerning prohibited payments to loan originators and the prohibitions on steering, qualification, and identification;[90] and (3) failure of a loan originator organization to ensure employees engaged in loan originator activities are properly licensed and registered in accordance with applicable State and Federal requirements.[91]

D. Previous Input to the Bureau

The Bureau has received feedback on Regulation Z's Mortgage Loan Originator Rules through a variety of forums since the Rules were adopted. For example, in 2018, the Bureau published a Request for Information (RFI) on whether, consistent with its statutory authority to prescribe rules pursuant to the Federal consumer financial laws, the Bureau should amend the regulations or exercise the rulemaking authorities that it inherited from certain other Federal

[88] Press Release, CFPB, *CFPB Takes Action Against Castle & Cooke For Steering Consumers Into Costlier Mortgages* (Nov. 7, 2013), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-castle-cooke-for-steering-consumers-into-costlier-mortgages/; Press Release, CFPB, *CFPB Takes Action Against Franklin Loan Corporation for Steering Consumers into Costlier Mortgages* (Nov. 3, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-franklin-loan-corporation-for-steering-consumers-into-costlier-mortgages/; Press Release, CFPB, *CFPB Orders RPM Mortgage to Pay $19 Million for Steering Consumers Into Costlier Mortgages* (June 5, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-rpm-mortgage-to-pay-19-million-for-steering-consumers-into-costlier-mortgages/; Press Release, CFPB, *CFPB Takes Action Against Guarantee Mortgage For Loan Originator Compensation Violations* (June 5, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-guarantee-mortgage-for-loan-originator-compensation-violations/.

[89] CFPB, *Supervisory Highlights, Issue 24, Summer 2021* (June 2021), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf; CFPB, *Supervisory Highlights, Issue 26, Spring 2022* (May 2022), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.

[90] 12 CFR 1026.36(j); CFPB, *Supervisory Highlights, Issue 8, Summer 2015* (June 2015), https://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf.

[91] 12 CFR 1026.36(f); CFPB, *Supervisory Highlights, Issue 9, Fall 2015* (Oct. 2015), https://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf; CFPB, *Supervisory Highlights, Issue 13, Fall 2016* (Oct. 2016), https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf; Press Release, CFPB, *Consumer Financial Protection Bureau Sues 1st Alliance Lending, LLC and Its Principals for Alleged Unlawful Mortgage Lending Practices* (Jan. 15, 2021), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-sues-1st-alliance-lending-llc-and-its-principals-for-alleged-unlawful-mortgage-lending-practices/.

agencies.[92] Approximately 29 of the comments submitted in response to the RFI addressed Regulation Z's Mortgage Loan Originator Rules. Commenters included trade, consumer advocacy, industry, and other groups. The Bureau has also received a rulemaking petition seeking certain revisions to the Rules and other Bureau regulations related to mortgage origination practices.[93]

From these and other sources, stakeholders have provided feedback to the Bureau on many aspects of Regulation Z's Mortgage Loan Originator Rules. Some of the topics mentioned were: (1) whether to permit different loan originator compensation for originating State housing finance authority loans as compared to other loans; (2) whether to permit creditors to decrease a loan originator's compensation due to the loan originator's error or to match competition; and (3) how the Rule provisions apply to loans originated by mortgage brokers and creditors differently. The Bureau also has received feedback that Regulation Z's Mortgage Loan Originator Rules provide important consumer protections that have provided benefits to consumers and the market.

The Bureau's experience suggests there is little overlap, duplication, or conflict between Regulation Z's Mortgage Loan Originator Rules and Federal, State, or other rules.

II. Request for Comment

Consistent with the section 610 review plan, the Bureau asks the public to comment on the impact of Regulation Z's Mortgage Loan Originator Rules on small entities[94] by reviewing the following factors:

(1) The continued need for the Rules based on the stated objectives of applicable statutes and the Rules;

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[92] 83 FR 12881 (Mar. 26, 2018).

[93] CFPB, *Petition for Rulemaking—William Kidwell Amend Existing Mortgage Regulation*, Docket ID CFPB-2022-0027-0001, https://www.regulations.gov/document/CFPB-2022-0027-0001.

[94] For purposes of reviewing the questions for comment, consult the following list of regulatory provisions generally comprising Regulation Z's Mortgage Loan Originator Rules: 12 CFR 1026.25(c)(2), 1026.36(a) and (b), (d) through (j) and accompanying sections in Supplement I to part 1026 of the Official Interpretations.

(2) The complexity of the Rules;

(3) The extent to which the Rules overlap, duplicate or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules;

(4) The degree to which technology, market conditions, or other factors have changed the relevant market since the rule was evaluated, including:

a. How the impacts of the Rules as a whole, and of major components or provisions of the Rules, may differ by origination channel, product type, or other market segment;

b. The current scale of the economic impacts of the Rules as a whole, and of major components or provisions of the Rules, on small entities; and

(5) Other current information relevant to the factors that the Bureau considers in completing a section 610 review under the RFA, as described above.

Where possible, please submit detailed comments, data, and other information to support any submitted positions.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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