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B-324479

March 1, 2013

The Honorable Tim Johnson  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (Bureau), entitled “Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z)” (RIN: 3170-AA13). We received the rule on February 15, 2013. It was published in the *Federal Register* as a final rule; official interpretations on February 15, 2013. 78 Fed. Reg. 11,280.

The final rule implements amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The final rule implements requirements and restrictions imposed by the Dodd-Frank Act concerning loan originator compensation; qualifications of, and registration or licensing of loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single-premium credit insurance. The final rule revises or provides additional commentary on Regulation Z’s restrictions on loan originator compensation, including application of these restrictions to prohibitions on dual compensation and compensation based on a term of a transaction or a proxy for a term of a transaction, and to recordkeeping requirements. The final rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements. This final rule is 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.

In addition to this final rule, the Bureau is adopting several other final rules and issuing one proposal, all relating to mortgage credit to implement requirements of title XIV of the Dodd-Frank Act. The Bureau is also issuing a final rule jointly with other federal agencies to implement requirements for mortgage appraisals in title XIV. According to the Bureau, each of the final rules follows a proposal issued in 2011 by the Board or in 2012 by the Bureau alone or jointly with other federal agencies. Collectively, the Bureau refers to these proposed and final rules as the Title XIV Rulemakings. The Bureau states that the extent of interaction among many of the Title XIV Rulemakings necessitates that many of their provisions take effect together. The Bureau has identified certain rulemakings or selected aspects thereof, however, that do not present significant implementation burdens for industry, including § 1026.36(h) and (i) of this final rule. Accordingly, the Bureau is setting earlier effective dates for these paragraphs and certain other final rules or aspects thereof, as applicable. Therefore, the amendments to § 1026.36(h) and (i) are effective on June 1, 2013. All other provisions of the rule are effective on January 10, 2014.

Enclosed is our assessment of the Bureau's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Bureau complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Lea Mosena  
Attorney, Legal Division  
Consumer Financial Protection Bureau

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
BUREAU OF CONSUMER FINANCIAL PROTECTION  
ENTITLED  
"LOAN ORIGINATOR COMPENSATION REQUIREMENTS  
UNDER THE TRUTH IN LENDING ACT (REGULATION Z)"  
(RIN: 3170-AA13)

(i) Cost-benefit analysis

The Bureau outlined the potential costs and benefits of the final rule to consumers and covered persons related to discount points and origination points or fees, profit-based compensation, and increased requirements for institutions that employ individuals not licensed under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The Bureau states that covered persons will have to incur some costs in reviewing the final rule and adapting their business practices to any new requirements. The Bureau notes that many of the provisions of the final rule do not require significant changes to current practice, since many of the provisions in this final rule are also in the existing rule, and therefore these costs should be minimal for most covered persons. The Bureau has considered whether the final rule would lead to a potential reduction in access to consumer financial products and services. According to the Bureau, firms will not have to incur substantial operational costs nor any potential loss owing to adverse selection among loan originators. As a result, the Bureau does not anticipate any material impact on existing consumer access to mortgage credit. The Bureau, however, does note that its final rule precludes any reduction in credit access that could otherwise occur without its exemption from the statutory prohibition on points and fees. The Bureau believes that its final rule will provide significant benefits to smaller creditors.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau is also subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required. The Bureau did not certify that the proposed rule would have no significant economic impact on a substantial number of small entities. The Bureau, consequently, convened a Small Business Review Panel to obtain advice and

recommendations of representatives of the regulated small entities. Based on the comments received, the Bureau is not certifying that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared the final regulatory flexibility analysis pursuant to section 604 of the RFA.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to the Comptroller General, the Bureau did not include an analysis of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On September 7, 2012, the Bureau published a proposed rule in the *Federal Register* to implement the Dodd-Frank Act requirements, as well as to revise and clarify existing regulations and commentary on loan originator compensation. 77 Fed. Reg. 55,272. The Bureau received 713 comments on the 2012 Loan Originator Compensation Proposal. The comments came from individual consumers, consumer groups, community banks, large banks, large bank holding companies, secondary market participants, credit unions, nonbank servicers, state and national trade associations for financial institutions, local and national community groups, federal and state regulators, academics, and other interested parties.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Bureau's collection of information requirements contained in this rule, and identified as such, were submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA). According to the Bureau, Regulation Z currently contains collections of information approved by OMB, and the Bureau's OMB control number is 3170-0015 (Truth in Lending Act (Regulation Z) 12 C.F.R. § 1026). Further, the PRA (44 U.S.C. § 3507(a), (a)(2) and (a)(3)) requires that a federal agency may not conduct or sponsor a collection of information unless OMB approved the collection under PRA and the OMB control number obtained is displayed. Notwithstanding any other provision of law, no person is required to comply with, or is subject to any penalty for failure to comply with, a collection of information that does not display a currently valid OMB control number (44 U.S.C. § 3512). The Bureau states that, this final rule contains revised information collection requirements that have not been approved by the OMB and, therefore, are not effective until OMB approval is obtained.

## Statutory authorization for the rule

On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other federal agencies, including the Board. According to the Bureau, the term “consumer financial protection function” is defined to include “all authority to prescribe rules or issue orders or guidelines pursuant to any federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.” 12 U.S.C. § 5581(a)(1). TILA is a federal consumer financial law. Dodd-Frank Act section 1002(14), 12 U.S.C. § 5481(14) (defining “federal consumer financial law” to include the “enumerated consumer laws” and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. § 5481(12) (defining “enumerated consumer laws” to include TILA). Accordingly, the Bureau states that it has authority to issue regulations pursuant TILA. The Bureau notes that the final rule was issued on January 20, 2013, in accordance with 12 C.F.R. § 1074.1

### Executive Order No. 12,866 (Regulatory Planning and Review)

In its submission to the Comptroller General, the Bureau did not include an analysis of the Order.

### Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, the Bureau did not include an analysis of the Order.