Supporting Statement for the
Recordkeeping and Disclosure Requirements
in Connection with Regulation DD (Truth in Savings)
(OMB No. 7100-0271) (Docket No. R-1285)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to revise, without extension, the recordkeeping and disclosure requirements of Regulation DD, which implements the Truth in Savings Act (TISA).[1] The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies regulations such as Regulation DD as "required information collections."[2]

On April 30, 2007, a notice of proposed rulemaking was published in the *Federal Register* for public comment (72 FR 21155). The proposed rule would amend Regulation DD by withdrawing the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The comment period expired June 29, 2007. The Federal Reserve received 14 comment letters. On November 9, 2007, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2008 (72 FR 63477).

TISA and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield (APY) earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts.

Information collection pursuant to Regulation DD is triggered by specific events and disclosures must be provided to consumers within the time periods established by the law and regulation. There are no reporting forms associated with Regulation DD. To ease the compliance cost (particularly for small entities), model clauses and sample forms are appended to the regulation. Depository institutions are required to "retain evidence of compliance" for twenty-four months, but the regulation does not specify types of records that must be retained.

The Federal Reserve proposes to amend Regulation DD by withdrawing portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures,

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[?] TISA was enacted in 1991 and is codified at 12 U.S.C. § 4301-13. Regulation DD is located at 12 C.F.R. Part 230.

[2] 44 U.S.C. § 3501 et seq.

consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the Code of Federal Regulations would reduce confusion about the status of the provisions and simplify the regulation. The Federal Reserve also proposes to amend Regulation DD to state that certain disclosures may be provided to a consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act; and that, when an advertisement is accessed by the consumer in electronic form, the disclosures must be provided in electronic form on or with the advertisement.

The Federal Reserve's Regulation DD applies to all depository institutions except credit unions.[3] The Federal Reserve accounts for the paperwork burden associated with Regulation DD only for Federal Reserve-covered institutions.[4] Other federal agencies account for the paperwork burden imposed on the depository institutions for which they have regulatory enforcement authority. The current annual burden is estimated to be 232,433 hours for 1,172 Federal Reserve-covered institutions that are deemed "respondents" for purposes of the Paperwork Reduction Act.

Background and Justification

TISA was contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The purpose of TISA and its implementing regulation is to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield, and other account terms. TISA does not provide exemptions from compliance for small institutions.

Accounts held by unincorporated nonbusiness associations of individuals were covered until October 1994, when the regulation was amended to implement legislation that limited TISA's coverage to accounts held by natural persons.[5] The amendment reduced paperwork requirements and burden on depository institutions.

In September 1998, the Federal Reserve published amendments to Regulation DD to implement statutory amendments that eliminated certain disclosure requirements.[6] The amendments eliminated the requirement that institutions provide disclosures in advance of maturity for automatically renewable (rollover) time accounts with a term of thirty days or less. The amendments also expanded the exemption from certain advertising requirements to signs that are posted on the premises of a depository institution. The legislation also repealed TISA's civil liability provisions, effective September 30, 2001.[7]

[3] Credit unions are covered by a substantially similar rule issued by the National Credit Union Administration.

[4] Federal Reserve-covered institutions are defined by Regulation DD as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

[5] Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L 103-325, 108 Stat. 2160.

[6] 63 FR 52107 (September 29, 1998).

[7] Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. 104-208, 110 Stat. 3009.

The Federal Reserve has used its rulemaking authority under TISA to provide flexibility to institutions to provide electronic disclosures. In September 1999, the Federal Reserve adopted an interim final rule under Regulation DD that allowed depository institutions to deliver periodic statement disclosures electronically with the consumer's consent.[8] At the same time, the Federal Reserve also proposed rules allowing electronic delivery of all Regulation DD disclosures upon a consumer's consent. The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which contains special rules for the use of electronic disclosures in consumer transactions if the consumer affirmatively consents after receiving certain information specified in the statute, became effective in October 2000.[9] The consumer consent provisions in the E-Sign Act did not require the Federal Reserve to adopt implementing regulations.

In March 2001, the Federal Reserve issued an interim final rule, consistent with the requirements of the E-Sign Act that provides for uniform standards for satisfying the timing and delivery requirements of Regulation DD when disclosures are provided electronically.[10] (The 1999 interim rule was withdrawn.) Compliance with the 2001 interim rule is optional.[11] Depository institutions may continue to provide electronic disclosures under their existing policies and practices (in accordance with the E-Sign Act), or they may follow the interim rule until a permanent final rule is issued.

In May 2005, the Federal Reserve published a final rulemaking that, in part, addressed a specific service offered by depository institutions, commonly referred to as "bounced-check protection" or "courtesy overdraft protection."[12] To address concerns about the marketing of overdraft protection to deposit account customers, a revision to the regulation expanded the prohibition against misleading advertisements to cover communications with current customers about existing accounts. Other revisions required additional fee and other disclosures about courtesy overdraft services, including in advertisements. The Federal Reserve also approved amendments of general applicability that require institutions to provide more uniform disclosures about overdraft and returned-item fees.[13]

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[8] 64 FR 49846 (September 14, 1999).
[9] 15 U.S.C. § 7001 et seq.
[10] 66 FR 17795 (April 4, 2001).
[11] 66 FR 41439 (August 8, 2001).
[12] 70 FR 29582 (May 24, 2005).
[13] In addition, the member agencies of the Federal Financial Institutions Examination Council (FFIEC) published (69 FR 31858) proposed guidance to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services. The guidance was issued in final form in February 24, 2005, 70 FR 9127.

Description of Information Collection

TISA and Regulation DD cover accounts held by individuals primarily for personal, family, or household purposes. The recordkeeping and disclosure requirements associated with Regulation DD are described below.

Account Disclosures (Section 230.4)

Depository institutions are required to provide account disclosures containing rate and fee information to a consumer upon request. Account disclosures must also be provided prior to opening an account or before services are provided, whichever is earlier. The purpose of the disclosure requirement is to provide account holders and prospective account holders with the type and amount of any fees that may be imposed, including, ATM withdrawals, or other electronic fund transfers; the interest rate and the APY that will be paid on an account; and other key terms. Institutions are required to specify–in the account-opening disclosures provided under the Truth in Savings Act–the categories of transactions for which an overdraft fee may be imposed.

Subsequent Notices (Section 230.5):

Change-in-terms (Section 230.5(a)). Depository institutions are required to provide thirty days' notice of any change that may reduce the APY or adversely affect consumers, such as a change in fees. Certain types of events such as changes in the interest rate and APY for variable rate accounts are exempt from this requirement.

Prematurity (Renewal) Notice (Sections 230.5(b),(c)). Depository institutions are required to provide prematurity notices for certain time accounts. The timing and content requirement of the notice varies depending on the term of a time deposit and whether it renews automatically:

- For automatically renewable time accounts with a term less than or equal to one month, no advance notice is required.
- Advance notices for automatically renewable time accounts with a maturity longer than one month but less than or equal to one year may be sent either thirty days before maturity or, as an alternative, twenty calendar days before the end of a grace period, so long as the grace period is at least five days. The alternative timing rule was adopted to allow flexibility for institutions to maintain any existing practice to send notices ten to fifteen days prior to maturity. The notice may contain the disclosures required when the account is opened or, as an alternative, information on the interest rate and APY for the new account, the maturity date for the existing and new accounts, and any changes in terms.
- For automatically renewable time accounts with terms longer than one year, institutions must provide disclosures required at account-opening. The timing rules for these accounts longer than one year are the same as for accounts with maturities longer than one month but less than or equal to one year.

For nonrenewable time accounts with a maturity of less than or equal to one year, no notice is required. If the maturity is longer than one year, the notice must provide information on the maturity date, and whether or not interest will be paid after maturity.

Periodic Statement Disclosure (Section 230.6)

Neither the statute nor regulation mandates that depository institutions provide periodic statements. If an institution chooses to provide periodic statements, however, the statements must contain specific information: the total number of days in, or the beginning and ending dates of, the statement period; the dollar amount of interest earned and APY earned; fees imposed on the account, itemized by type and dollar amount. Institutions that promote the payment of overdrafts in an advertisement must separately disclose on their periodic statement, the total amount of fees or charges imposed on the deposit account for paying overdrafts and the total amount of fees charged for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for any account to which the advertisement applies.

Advertising (Section 230.8)

The advertising rules apply to both depository institutions and deposit brokers. The purpose of the advertising rules is to provide potential shoppers with uniform and accurate information that they can use in deciding among various deposit accounts.

To reduce consumer confusion about the nature of the overdraft service and how it differs from a traditional line of credit, institutions that market automated overdraft payment services that are not covered by TILA would have to include in their advertisements about the service: the fee for the payment of each overdraft item, the types of transactions covered, the time period consumers have to repay or cover any overdraft, and the circumstances under which the institution would not pay an overdraft. To aid consumer understanding with traditional lines of credit, institutions that promote the payment of overdrafts are required to include certain disclosures in their advertisements about the service: the applicable fees or charges, the categories of transactions covered, the time period consumers have to repay or cover any overdraft, and the circumstances under which the institution would not pay an overdraft.

Proposed Revisions

General Disclosure Requirements (Section 230.3)

Section 230.3(a) would be revised to provide that the disclosures required by §§ 230.4(a)(2) (disclosures provided upon request) and 230.8 (advertising) may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act.

Sensitive Questions

This information collection contains no questions of a sensitive nature, as defined by OMB guidelines.

Consultation Outside the Agency

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Time Schedule for Information Collection

Information collection pursuant to Regulation DD is triggered by specific events, and disclosures must be provided to consumers within the time periods established by the law and regulation. There is no reporting form associated with the requirements of Regulation DD; disclosures pertaining to a particular transaction or consumer account are not publicly available. Disclosures of an institution's account terms that appear in advertisements are available to the public.

Legal Status

The Board's Legal Division has determined that section 269 of the Truth in Savings Act (12 U.S.C. § 4308) authorizes the Federal Reserve to issue regulations to carry out the provisions of the Act. The information collections are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises.

Estimate of Respondent Burden

The general account disclosures (section 230.4) are in standardized, machine-generated form and do not substantively change from one individual account to another; thus, the cost to the public is small. Subsequent notices (section 230.5) and periodic statements (section 230.6) are machine-generated reports of information that for the most part would be captured by the institution and disclosed to the consumer for business purposes; the marginal cost of complying with these regulations is considered to be small. The cost of complying with the advertising rules (section 230.8) is also considered to be small. No paperwork burden is associated with the requirement in Regulation DD that depository institutions "retain evidence of compliance" for a minimum of two years after the date disclosures are required to be made (section 230.9). The regulation does not specify the kind of records that must be retained for this purpose.

The estimated total annual burden for this information collection of 232,433 hours arises exclusively from the disclosures required under the regulation and is shown in the table below. This represents less than 5 percent of the Federal Reserve's total paperwork burden. As mentioned in the proposed rule the Federal Reserve requested specific comment on whether the revisions would change the burden on respondents. No comments specifically addressing the burden estimate were received.

	Number of respondents	*Estimated annual frequency*	*Average hours per response*	*Estimated annual burden hours*
Account disclosures (230.4)	1,172	500	1.5 mins	14,650
Subsequent disclosures:				
Change in terms (230.5(a))	1,172	1,130	1 minute	22,117
Prematurity (Renewal) notices (230.5(b)(c))	1,172	1,015	1 minute	19,866
Periodic statement disclosure (230.6)	1,172	12	8 hours	112,512
Advertising (230.8)	1,172	12	30 mins	7,032
One-time periodic and account-opening disclosure (230.4 & 230.6)	1,172	1	8 hours	9,376
One-time advertising update (230.8)	1,172	1	40 hours	46,880
total				232,433

The total cost to the public is estimated to be $14,329,467.[14]

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

Financial Industry Burden Averages

[14] Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ $25, 45% - Managerial or Technical @ $55, 15% - Senior Management @ $100, and 10% - Legal Counsel @ $144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.

The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. The total estimated annual burden for all financial institutions, including Federal Reserve regulated institutions, subject to Regulation DD would be approximately 2,901,205 hours, using the same burden methodology as above. All depository institutions, of which there are approximately 19,300, potentially are affected by this collection of information, and thus are respondents for purposes of the PRA. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.