

**Supporting Statement for the
Recordkeeping and Disclosure Requirements of
Regulation Z (Truth in Lending)
(Reg Z; OMB No. 7100-0199) (Docket No. R-1305)**

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 extending, the current recordkeeping and disclosure requirements of Regulation Z, which implements the Truth in Lending Act (TILA)¹ and the Home Ownership and Equity Protection Act (HOEPA). The Paperwork Reduction Act (PRA) classifies these requirements as an information collection and the PRA requires the Federal Reserve to renew these requirements every three years.

On January 9, 2008, a notice of proposed rulemaking was published in the *Federal Register* for public comment. The goals of the amendments are to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership; ensure that advertisements for mortgage loans provide accurate and balanced information and do not contain misleading or deceptive representations; and provide consumers transaction specific disclosures early enough to use while shopping for a mortgage. The comment period expired April 8, 2008. The Federal Reserve received over 4,500 comment letters.

On July 30, 2008, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2009 (73 FR 44522). A single exception is the escrow requirement which will be phased in during 2010. Action on the proposed requirement pertaining to yield-spread premiums was removed. During the intervening period, the Federal Reserve engaged in consumer testing that cast significant doubt on the effectiveness of the proposed requirement. As part of its ongoing review of closed-end loan rules under Regulation Z, however, the Board will consider alternative approaches.

TILA and Regulation Z ensure adequate disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. The regulation also requires specific types of disclosures for credit and charge card accounts, and home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.

¹ The TILA was enacted in 1968 and substantially revised in 1980 by the Truth in Lending Simplification and Reform Act. TILA is codified at 15 U.S.C. 1601 et seq. Regulation Z is located at 12 CFR Part 226.

The information collection pursuant to Regulation Z is triggered by specific events. There are no required reporting forms associated with Regulation Z. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation. Creditors are required to “retain evidence of compliance” for twenty-four months (subpart D, section 226.25), but the regulation does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks (SMBs) and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are “respondents” under the PRA.² Other federal agencies account for the paperwork burden on other creditors. The current annual burden for 1,172 respondents is estimated to be 552,398 hours. The Federal Reserve estimates the proposed rule would impose a one-time increase in the estimated total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 46,880 hours, from 552,398 to 599,278 hours.

Background and Justification

TILA and Regulation Z require creditors to disclose certain credit costs and terms to consumers, using a specified format and terminology, at or before the time consumers enter into a consumer credit transaction and when the availability of consumer credit on particular terms is advertised. The purpose of the disclosures is to promote the informed use of consumer credit.

Although TILA does not specifically authorize exemptions for small business, Regulation Z contains several provisions designed to minimize burdens on these entities. The definition of creditor, for example, is limited to persons who, in the preceding calendar year, extended credit more than twenty-five times or extended credit secured by a dwelling more than five times.

In 1994, Congress enacted HOEPA as an amendment to TILA, to address abusive practices involving certain home-secured loans with high rates or high fees.³ The Board also added to a disclosure required three days before the closing of a HOEPA loan a statement of the total amount of the borrower’s obligation and whether optional credit insurance or debt-cancellation coverage is included in that amount. Regulation Z Model Form H-16 illustrates this revised disclosure, which became mandatory on October 1, 2002.

In November 2007, the Board published a final rulemaking (72 FR 63462) that amended Regulation Z to address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). This rule provides that 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

² Appendix I – Federal Enforcement Agencies – of Regulation Z defines the Federal Reserve-regulated institutions 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.

³ 15 U.S.C. 1601 *et seq.*

an advertisement is accessed by the consumer in electronic form, the disclosures must be provided in electronic form on or with the advertisement.

Description of Information Collection

TILA and Regulation Z distinguish between two types of credit, with the specific disclosure requirements depending on the type of credit involved. Subpart B of the regulation prescribes disclosures for open-end credit, which includes most revolving credit lines, credit card accounts, home-equity lines of credit and overdraft lines of credit tied to checking accounts. Subpart C of the regulation prescribes the disclosures for closed-end credit. This category of credit refers generally to credit extended in a fixed amount for a specified period, typified by mortgages, installment loans, and credit sales. Subpart E of the regulation prescribes special disclosures for certain home mortgage transactions that carry rates or fees above a specified threshold and for reverse mortgages. The disclosure requirements associated with Regulation Z are described below. The frequency of response varies according to the level of credit activity by a creditor.

Open-end Credit Disclosures (Subpart B)

No other federal law mandates these disclosures and procedures for responding to error allegations, although some states may have similar requirements.

Initial and Change in Term Disclosures (Sections 226.6 and 226.9(c)) - Creditors that offer open-end credit are required to inform consumers of costs and terms before they use the accounts and in general to inform them of certain subsequent changes in the terms of the accounts. Initial information must include the finance charge and other charges, the annual percentage rate (APR), a description of how balances (on which a finance charge is based) will be calculated, and any collateral that will secure repayment.

If the creditor changes any term initially disclosed, or increases the minimum periodic payment, a written change-in-term notice generally must be provided to the consumer at least fifteen days prior to the effective date of the change. Special rules and restrictions govern changes in the terms of home-equity plans.

Periodic Statements (Sections 226.7) - A written statement of activity on open-end accounts must be provided each billing cycle (typically monthly). The statement must be provided for each account that has a debit or credit balance of more than \$1 or on which a finance charge is imposed, and it must include a description of activity on the account, opening and closing balances, finance charges imposed, and payment information.

Error Resolution Rules (Sections 226.13) - Creditors must notify consumers about their rights and responsibilities regarding billing problems. Creditors may provide either a complete statement of billing rights each year, or a summary on each periodic statement. The paperwork burden for the summary is included in the estimated burden for periodic statements.

When a consumer alleges a billing error, the creditor must provide an acknowledgment, within thirty days of receipt, that the creditor received the consumer's error notice, and must report on the results of its investigation within ninety days. If a billing error did not occur, the

creditor must provide an explanation as to why the creditor believes an error did not occur and provide documentary evidence to the consumer upon request. The creditor must also give notice of the portion of the disputed amount and related finance or other charges that the consumer still owes and notice of when payment is due.

Credit and Charge Cards (Sections 226.5(a)) - Generally, card issuers must provide additional disclosures with solicitations, when an annual fee is to be charged, and when the issuer changes its credit insurance carrier.

Solicitations and applications. When offering cards to consumers by direct mail solicitation, card issuers must disclose in a highly-structured table key of terms of the account, such as the APR, information about variable rates, and fees such as annual fees, minimum finance charges, and transactions fees for purchases. Similar disclosure rules apply in telephone solicitations, and for “take-one” and magazine or catalog applications. Special rules apply for charge cards.

Annual fee. TILA also requires card issuers that charge an annual fee to notify a consumer at least thirty days before payment of the fee is due. The notice must include basic cost information for continued use of the card and how the consumer may close the account and avoid paying any fee.

Changes to insurance carriers. Card issuers that change credit insurance carriers must provide an advance notice to cardholders if increased cost or substantially decreased coverage would result from the switch in carriers. The notice must inform consumers about their right to cancel the insurance.

Home-Equity Plans (Sections 226.5(b)) - Creditors offering home-equity lines of credit must provide additional disclosures at application, when the credit plan is opened, and when consumers’ use of the plan is restricted.

Applications. Lenders must provide, on or with applications for home-equity plans, generic disclosures about the plan, including the possibility of negative amortization, draw requirements, and the method of determining the minimum periodic payment. Additional disclosures about variable-rate plans, including information about interest rate caps and an historical example showing what the APR and payments would have been for the preceding 15 years.

Account opening. Some of the information given with the application must be repeated when the consumer opens the account. The paperwork burden associated with this second round of disclosures is considered negligible, since it involves disclosures that were previously made to the consumer.

Restricting use of the plan. A creditor may prohibit additional credit extensions or reduce the credit limit in certain instances, such as if there is a drop in the value of the loan

security. However, in these instances, the creditor must give the consumer written notice not later than three business days after the action takes effect, explaining why the action was taken.

Closed-end Credit Disclosures (Subpart C, Section 226.17)

The requirements of Subpart C apply to any creditor that extends consumer credit (unless over \$25,000 and not secured by a dwelling) if the credit is payable in more than four installments or is subject to a finance charge, and is not open-end credit. The required disclosures include credit terms such as the APR and finance charge, which reflect the total credit cost in percentage and dollar terms, respectively. Key information is highlighted for consumers through the use of certain terminology and a specific format.

For certain variable-rate mortgages, generic disclosures similar to those required for home-equity lines of credit must be provided at application. In addition, creditors must send periodic statements when payments change or at least annually if rates change without changes to payment amounts.

Special Disclosures (Subpart E)

Certain types of mortgage products trigger special disclosures, such as reverse and high-cost mortgages; the requirements have a negligible effect on the paperwork burden for SMBs.

Reverse Mortgages. Creditors offering “reverse mortgages” must provide rate disclosures and a notice to consumers at least three days before loan consummation or before the first transaction in an open-end plan. A reverse mortgage transaction is a loan secured by the equity in a home. Disbursements are made to homeowners until the homeowner dies, moves permanently, or sells the home. The creditor relies on the home’s future value for repayment. Creditors must disclose the projected total cost of credit for specified loan periods (short-term, life-expectancy, or long-term). Creditors must also furnish a notice to consumers that receiving disclosures or applying for the loan does not obligate the consumer to complete the transaction.

Home Ownership and Equity Protection Act (HOEPA) Mortgages. Creditors offering mortgages with rates or fees above thresholds outlined in the HOEPA must provide cost disclosures and a notice at least three days before consummation. The cost disclosures include the APR, regular payment amount, the total amount borrowed and whether the total amount borrowed includes the cost of optional insurance. A notice warns consumers about losing their home and reminds consumers that they are not obligated to complete the transaction. In addition, if the creditor changes any terms that are to be reflected on the disclosures, the creditor must generally provide the consumer with new disclosures and allow the consumer another three days to consider the transaction before consummation.

Advertising Rules (Subpart B, Section 226.16) (Subpart C, Section 226.24)

These requirements apply to all persons who promote the availability of open-end or closed-end credit through commercial messages in any form, including print or electronic media, direct mailings, and displays. With some variations, Subparts B (for open-end credit) and C (for closed-end credit) both require advertisers to include certain basic credit information if the advertisement refers to specified credit terms or costs. The purpose of the advertising rules is to provide potential credit shoppers with accurate information that they can use in deciding among various credit sources.

The frequency of response varies according to the level of credit advertising by a creditor. No other federal law requires advertisers of credit to include these specific credit terms and costs, although some states may have similar requirements.

Proposed Revision

Advertising Rules (Subpart B, Section 226.16) (Subpart C, Section 226.24) – The proposed revisions to Sec. 226.16 and 226.24 require that advertisements provide accurate and balanced information in a clear and conspicuous manner. Additional proposed revisions to Sec. 226.24 would prohibit advertisements that are deceptive. The proposed changes to the advertising provisions would amend the open-end home-equity plan advertising rules in Sec. 226.16 and amend the closed-end credit advertising rules in Sec. 226.24. The two most significant changes in Sec. 226.16 relate to the clear and conspicuous standard and the advertisement of introductory terms in home-equity plans. The three most significant changes in Sec. 226.24 relate to strengthening the clear and conspicuous standard for advertising disclosures, regulating the disclosure of rates and payments in advertisements to ensure that low introductory or teaser rates or payments are not given undue emphasis, and prohibiting certain acts or practices in advertisements that the Federal Reserve finds inconsistent with the standards set forth in TILA Section 129(1)(2).

Time Schedule for Information Collection

Information collection pursuant to these recordkeeping and disclosure requirements is event-generated and must be provided to the borrower within the time periods established by the law and regulation as discussed above. Creditors must keep evidence of compliance for twenty-four months.

Consultation Outside of the Agency

On January 9, 2008, a notice of proposed rulemaking was published in the *Federal Register* for public comment. The comment period expired April 8, 2008. The Federal Reserve received over 4,500 comment letters. On July 30, 2008, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by October 1, 2009 (73 FR 44522).

Sensitive Questions

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

Legal Status

The Board's Legal Division has confirmed that title I of the Consumer Credit Protection Act authorizes the Board to issue regulations to carry out the provisions of that Act. 15 USC 1601, 1604(a). The information collections are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction- or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take-one applications are available to the public.

Estimate of Respondent Burden⁴

The current total annual burden for the disclosure requirements of this information collection is estimated to be 552,398 hours, as shown in the table below. The table provides the estimated annual burden for the 1,172 creditors to which Regulation Z applies. The current estimated total annual burden represents about 12.5 percent of total Federal Reserve System burden.

No paperwork burden is deemed to be associated with the recordkeeping requirement of Regulation Z (subpart D, section 226.25) because the regulation does not specify records to be retained as evidence of compliance. Regulation Z permits institutions to provide credit and charge card renewal and insurance notices on or with periodic statements. Accordingly, the burden associated with these disclosures is not separately identified but incorporated in the burden estimate for periodic statements.

Under the proposed rule the Federal Reserve estimates that 1,172 respondents regulated by the Federal Reserve would take, on average, 40 hours (one business week) to revise and update their advertising materials to comply with the proposed disclosure requirements in Sec. 226.16 and 226.24. These one-time revisions would increase the burden by 46,880 hours, from 552,398 to 599,278 hours. The proposed estimated total annual burden continues to be about 12.5 percent of total Federal Reserve System burden.

⁴ The burden estimate for this rulemaking does not include the burden addressing changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z as announced in a separate proposed rulemaking (Docket No. R-1286)

Current Burden				
	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<i>Subpart B Open-end Credit:</i>				
<i>Section 226.6</i>				
Initial disclosures	884	1,150	1.5 minutes	25,415
<i>Section 226.9(c)</i>				
Change in terms disclosures	884	2,500	1 minute	36,907
<i>Section 226.7</i>				
Periodic Statements	1,172	12	8 hours	112,512
<i>Section 226.13</i>				
<u>Error resolution:</u>				
Credit cards	279	145	30 minutes	20,228
Other Open-end Credit	1,172	2	30 minutes	1,172
<i>Section 226.5(a)</i>				
<u>Credit and Charge Cards:</u>				
Applications and Solicitations	279	12	8 hours	26,784
<i>Section 226.5(b)</i>				
<u>Home-Equity Plans:</u>				
Applications disclosure	632	790	1.5 minutes	12,482
Restrictions disclosure	632	10	3 minutes	316
<i>Subpart C</i>				
<i>Section 226.17</i>				
Closed-end Credit Disclosures	1,172	2,472	6.5 minutes	313,765
<i>Subpart E</i>				
Pre-closing disclosure	30	250	3 minutes	375
<i>Subpart B Section 226.16 & Subpart C Section 226.14</i>				
Advertising Rules	1,172	5	25 minutes	2,442
<i>Current total</i>				552,398

Proposed Burden				
	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<i>Subpart B Open-end Credit:</i>				
<i>Section 226.6</i>				
Initial disclosures	884	1,150	1.5 minutes	25,415
<i>Section 226.9(c)</i>				
Change in terms disclosures	884	2,500	1 minute	36,907

<i>Section 226.7</i>				
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Closed-end Credit Disclosures	1,172	2,472	6.5 minutes	313,765
<i>Subpart E</i>				
Pre-closing disclosure	30	250	3 minutes	375
<i>Subpart B Section 226.16 &</i>				
<i>Subpart C Section 226.14</i>				
Advertising Rules	1,172	5	25 minutes	2,442
One-time change	1,172	1	40 hours	46,880
<i>Proposed total</i>				599,278
<i>Total change</i>				+46,880

With the proposed revisions, the total estimated annual cost to the public would increase from \$34,055,337⁵ to \$36,945,489.

⁵ 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.

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

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.⁶ They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions including Federal Reserve-regulated institutions, subject to Regulation Z would be approximately 12,324,037 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, such as retailers, finance companies, mortgage bankers, and 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 proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 1,389,600 hours to 13,713,637 hours.

⁶ Appendix I – Federal Enforcement Agencies – of Regulation Z lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, Farm Credit Administration, and Federal Trade Commission.