

**Supporting Statement for the
Recordkeeping and Disclosure Requirements
in Connection with Regulation DD (Truth in Savings)
(OMB No. 7100-0271) (Docket No. R-1315)**

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 May 19, 2008, a notice of proposed rulemaking was published in the *Federal Register* for public comment (73 FR 28739). The proposed amendments would set forth content and timing requirements for a notice to consumers about any right to opt out of an institution’s overdraft service. Requirements for disclosing overdraft fees on periodic statements would be extended to apply to all institutions and not solely to institutions that promote the payment of overdrafts. In addition, the proposed amendments would require institutions that provide balance information in response to a balance inquiry by the consumer, to only include the consumer’s own funds, and not any funds added through the institution’s overdraft service. The comment period expired July 18, 2008.

The Federal Reserve received over 600 comments from consumers, consumer advocates, federal and state regulators and officials, large financial institutions, credit unions, community banks, industry trade associations, members of Congress, core systems providers, and vendors of overdraft services. On January 29, 2009, a notice of final rulemaking was published in the *Federal Register* adopting the amendments regarding overdraft fee disclosure and balance disclosure, with mandatory compliance by January 1, 2010 (74 FR 5584). The proposed amendment regarding notice about a consumer’s right to opt out of an institution’s overdraft service was withdrawn. Instead, the Federal Reserve separately proposed to incorporate this notice requirement into Regulation E (7100-0200).³

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

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² 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.*

³ January 29, 2009 (74 FR 5212)

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's Regulation DD applies to all depository institutions except credit unions.⁴ The Federal Reserve accounts for the paperwork burden associated with Regulation DD only for Federal Reserve-covered institutions.⁵ Other federal agencies account for the paperwork burden imposed on the depository institutions for which they have regulatory enforcement authority. The current total annual burden is estimated to be 170,984 hours for 1,138⁶ Federal Reserve-covered institutions that are deemed “respondents” for purposes of the Paperwork Reduction Act.

The Federal Reserve estimates the proposed revisions would impose a one-time increase in the estimated total annual burden under Regulation DD for all respondents regulated by the Federal Reserve by 18,208 hours. The proposed total annual burden is estimated to be 189,192 hours.

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. The act requires depository institutions to disclose key terms for deposit accounts at account opening, upon request, when changes in terms occur, and in periodic statements.⁷ It also includes rules about advertising for deposit accounts. TISA does not provide exemptions from compliance for small institutions.⁸

⁴ Credit unions are covered by a substantially similar rule issued by the National Credit Union Administration.

⁵ 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.

⁶ The number of Federal Reserve-supervised respondents was obtained from numbers published in the Board of Governors of the Federal Reserve System 94th Annual Report 2007: 878 State member banks, 258 Branches & agencies of foreign banks, and 2 Commercial lending companies.

⁷ Consumer accounts held by unincorporated 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. The amendment reduced paperwork requirements and burden on depository institutions.

⁸ In September 1998, the Federal Reserve published revisions to Regulation DD to implement statutory amendments made by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) of 1996, which, among other things, eliminated certain disclosure requirements with respect to automatically renewable time accounts with a term of thirty days or less. 63 FR 52107 (September 29, 1998). See also Economic Growth and Regulatory Paperwork

In May 2005, the Board amended Regulation DD, in part, to address a specific service offered by depository institutions, commonly referred to as "bounced-check protection" or "courtesy overdraft protection."⁹ The Board also expanded the regulation's scope to address concerns about the marketing of overdraft protection to deposit account customers. Other revisions required additional fee and other disclosures about courtesy overdraft protection services, including in advertisements. The Board also approved amendments of general applicability that require institutions to provide more uniform disclosures about overdraft and returned-item fees.

The Board has also used its rulemaking authority under TISA to provide institutions flexibility to provide disclosures electronically under certain circumstances. In November 2007, the Board published a final rulemaking (72 FR 63477) that amended Regulation DD 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 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

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.

Reduction Act of 1996, Pub. L. 104-208, 110 Stat. 3009. EGRPRA also repealed TISA's civil liability provisions, effective September 30, 2001.

⁹ 70 FR 29582 (May 24, 2005).

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

Additional disclosure requirements regarding overdraft services (Section 230.11(a) and Disclosure of account balances (Section 230.11(c))

Although periodic statements are not required under TISA, institutions that do provide such statements are required to disclose fees or charges imposed on the account during the statement period. See § 230.6(a)(3). Section 230.11(a) further requires institutions that promote the payment of overdrafts in an advertisement to provide aggregate dollar amount totals for overdraft fees and for returned item fees, both for the statement period as well as for the calendar year to date. Under the proposed rule, § 230.11(a) would be amended to expand the scope of this disclosure requirement to apply to all institutions whether or not they promote the payment of overdrafts. To facilitate compliance, the proposed rule includes Sample B-11 which illustrates how institutions may provide the aggregate cost information on their periodic statements.

To facilitate responsible use of overdraft services and ensure that consumers receive accurate information about their account balances, the Federal Reserve is proposing additional restrictions on account balances that may be disclosed in response to a consumer inquiry. Specifically, to avoid consumer confusion with respect to balances disclosed in response to an inquiry, proposed § 230.11(c) prohibits institutions from including in the consumer's disclosed balance any funds the institution may provide to cover an overdraft item. The proposed provision is intended to apply to any automated system that is programmed by an institution to provide balance information. The proposed rule would not apply to consumer-initiated and face-to-face discussions due to concerns about the compliance burden associated with monitoring individual conversations and responses. Thus, under proposed § 230.11(c), institutions must

disclose a single account balance that solely includes the consumer's own funds, and excludes any additional amount that the institution may provide to cover an overdraft.

Sensitive Questions

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

Consultation Outside the Agency

On May 19, 2008, a notice of proposed rulemaking was published in the *Federal Register* for public comment (73 FR 28739). The comment period expired July 18, 2008. On January 29, 2009, a notice of final rulemaking was published in the *Federal Register* adopting the amendments regarding overdraft fee disclosure and balance disclosure, with mandatory compliance by January 1, 2010 (74 FR 5584).

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 current estimated total annual burden for this information collection is 170,984 hours for Federal Reserve-supervised institutions. This estimated burden arises exclusively from the disclosures required under the regulation and is shown in the table below.

<i>Current Burden</i>				
	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Average time per response</i>	<i>Estimated annual burden hours</i>
Account disclosures (230.4)	1,138	500	1.5 mins	14,225
<i>Subsequent Notices (230.5)</i>				
Change in terms (230.5(a))	1,138	1,130	1 min	21,432
Prematurity (Renewal) notices (230.5(b) and (c))	1,138	1,015	1 min	19,251
Periodic statement disclosure (230.6)	1,138	12	8 hours	109,248
Advertising (230.8)	1,138	12	30 mins	<u>6,828</u>
<i>Total</i>				170,984

The Federal Reserve estimates that 1,138 respondents regulated by the Board would take, on average, 16 hours (two business days) to re-program and update their systems to comply with the proposed disclosure requirements. These requirements include disclosure of total fees on periodic statements (§ 230.11(a)), and disclosure of account balances (§ 230.11(c)). The Federal Reserve estimates the total annual one-time burden to be 18,208 hours and believes that, on a continuing basis, there would be no increase in burden as the proposed disclosures would be sufficiently accounted for once incorporated into the current account disclosures (§ 230.4) and periodic statement disclosure (§ 230.6). To ease the compliance cost a model clause, B-10 aggregate overdraft and returned item fees sample form (§ 230.11), is proposed in Appendix B. The current total annual burden is estimated to be 170,984 hours for 1,138 Federal Reserve regulated institutions. The proposed total annual burden is estimated to be 189,192 hours, an increase of 18,208 hours. This represents less than 4 percent of the Federal Reserve's total paperwork burden.

Proposed Burden				
	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Average time per response</i>	<i>Estimated annual burden hours</i>
Account disclosures (230.4)	1,138	500	1.5 mins	14,225
<u><i>Subsequent Notices (230.5)</i></u>				
Change in terms (230.5(a))	1,138	1,130	1 min	21,432
Prematurity (Renewal) notices (230.5(b) and (c))	1,138	1,015	1 min	19,251
Periodic statement disclosure (230.6)	1,138	12	8 hours	109,248
Advertising (230.8)	1,138	12	30 mins	6,828
One-time system update (R-1315) (230.11(a) and 230.11(c))	1,138	1	16 hours	<u>18,208</u>
				<i>Proposed total</i>
				189,192
				<i>Total change</i>
				18,208

With the proposed revisions, the total estimated annual cost to the public would increase from \$10,541,164 to \$11,663,687.¹⁰

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 agencies¹¹ 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. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions subject to Regulation DD, including Federal Reserve supervised institutions, would be approximately 2,584,275 hours. The proposed

¹⁰ 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% Technical support/analyst @ \$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.

¹¹ Administrative enforcement - Section 270 of the "Truth in Savings Act of 1991" (the act) contains the provisions relating to administrative sanctions for failure to comply with the requirements of the act and this part. Compliance is enforced by the agencies listed in that section.

amendments would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation DD by 275,200 hours to 2,859,475 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, including depository institutions (of which there are approximately 17,200), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.