

SUPPORTING STATEMENT
ACCOUNT BASED DISCLOSURES IN CONNECTION WITH
FEDERAL RESERVE REGULATIONS E, CC AND DD
(OMB No. 3064-0084)

INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC) is requesting OMB approval to renew its 3064-0084 information collection associated with Regulations E, CC, and DD issued by the Board of Governors of the Federal Reserve System (FRB). Although the FRB issues these regulations, each bank regulator calculates the burden for the institutions it supervises. The FDIC's collection will expire on November 30, 2011. _____

A. JUSTIFICATION

1. Circumstances and Need

The FDIC's OMB approved collection provides for the application of the information collection requirements of three FRB rules to state nonmember banks. The three rules are:

- Regulation E ("Electronic Fund Transfers," 12 C.F.R. Part 205);
- Regulation CC ("Availability of Funds," 12 C.F.R. Part 229); and
- Regulation DD ("Truth in Savings," 12 C.F.R. Part 230).

Regulation E implements the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 *et seq.*, and is authorized by 15 U.S.C. § 1693b. Regulation CC implements the Expedited Funds Availability Act, 12 U.S.C. §§ 4001 *et seq.*, and is authorized by 12 U.S.C. §§ 4008 and 5014. Regulation DD implements the Truth in Savings Act, 12 U.S.C. §§ 4301 *et seq.*, and is authorized by 12 U.S.C. § 4308(a). For all three regulations, the FDIC has enforcement responsibility for state nonmember banks (Regulation E, 15 U.S.C. § 1693o; Regulation CC, 12 U.S.C. § 4009; and Regulation DD, 12 U.S.C. § 4309).

2. Use of Information Collected

Generally, the Regulation E disclosures are designed to ensure consumers receive adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to them so that they can make informed decisions. Institutions offering EFT services must disclose to consumers certain information, including: initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures.

Like Regulation E, Regulation CC has consumer protection disclosure requirements. Specifically, Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The

disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. Depository institutions must also provide an awareness disclosure regarding substitute checks. The regulation also requires notice to the depository bank and to a customer of nonpayment of a check.

Regulation DD also has similar consumer protection disclosure requirements that are intended to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield, and other account terms. Regulation DD requires 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. It also contains rules about advertising deposit accounts.

Although the FRB regulations require institutions to retain evidence of compliance with the disclosure requirements, the regulations do not specify the types of records that must be retained.

3. Use of Technology to Reduce Burden

The information collections in Regulations E, CC and DD are primarily third party disclosures. Institutions may provide electronic disclosures consistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. §§ 7001 *et seq.*, 12 C.F.R. § 205.17 and 12 C.F.R. § 230.10.

4. Efforts to Identify Duplication

Regulations E, CC and DD require account related disclosures when specified events occur and the disclosures' content do not overlap. If institutions provide periodic statements concerning accounts, Regulation E and CC require certain disclosures, of different content, to be made on them.

5. Minimizing the Burden on Small Banks

Generally, the relevant statutes require the disclosures to be made notwithstanding the size of the institution. Although the Electronic Fund Transfer Act does not exempt small institutions, it authorizes the FRB to modify certain requirements to ease compliance burdens for small institutions. The FRB has exempted from the requirements of the act preauthorized transfers to or from accounts at financial institutions with assets of \$100 million or less. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those other services.

6. Consequence of Less Frequent Collections

The disclosures are event based and may not be made less frequently consistent with the underlying regulation.

7. Special Circumstances

None.

8. Consultation with Persons Outside the FDIC

A “first” Federal Register notice seeking comment was published on August 22, 2011 (76 Fed. Reg. 52326). No comments were received.

9. Payment or Gift to Respondents

None.

10. Confidentiality

Since no information is collected, no issue of confidentiality arises. The disclosure of information to consumers with regard to the availability of funds is available to the public.

11. Information of a Sensitive Nature

No questions of a sensitive nature are included in this collection.

12. Estimate of Annual Burden

The current burden for state nonmember banks associated with Regulation E is as follows. Since the FDIC’s last submission to OMB regarding Regulation E, the Federal Reserve Board made certain amendments to Regulation E that have affected the burden on state nonmember banks as described below:

One-time change to Disclosures at ATMs (section 16c)). This disclosure was revised to explicitly clarify that ATM operators may disclose in all cases that a fee will be imposed, or in the alternative, disclose that a fee may be imposed on consumers initiating an EFT or a balance inquiry if there are circumstances under which some consumers would not be charged for such services. The FDIC estimates that state nonmember banks will require, on average, one business day (eight hours) to reprogram and update systems to include the new disclosure. Therefore, the one-time burden is estimated as follows: 4,632 respondents x 8 hours = 37,056.

One-time change to Transaction Disclosures (receipts at electronic terminals; periodic statements (Section 205.9)). The FRB amended 205.9 to exempt EFTs of \$15 or less from the requirement that financial institutions make a terminal receipt available

at the time of the transaction, estimating a one-time reprogramming burden of eight hours for institutions wishing to make use of the exception. The FDIC estimates that, at most, 100 state nonmember banks will program their ATMs in this manner. The one-time burden, therefore, is estimated as follows: 100 respondents x 8 hours = 800 hours.

New Overdraft Disclosures (section 205.17). The FRB amended Regulation E to add a new section 205.17 to regarding requirements for overdraft services. This new section prohibits financial institutions from charging consumers fees for paying overdrafts on automated teller machine (ATM) and one-time debit card transactions, unless a consumer consents (opts in) to the overdraft service for those types of transactions. Before opting in, the consumer must be provided a notice that explains the financial institution’s overdraft services, including the fees associated with the service, and the consumer’s choices. The FRB has provided a model opt-in notice for this purpose.

New Gift Card Disclosures (section 205.20). The FRB amended Regulation E to add a new section 205.20 regarding requirements for gift cards and certain other prepaid cards and gift certificates, including requiring new disclosures regarding terms such as expiration dates and fees. These disclosures must be “clear and conspicuous,” in contrast to the “clear and readily understandable” standard that generally applies under Regulation E.

Regulation E 12 C.F.R. Part 205	Number of respondents	Annual frequency¹	Response time	Annual burden hours
<u>Initial disclosures</u>				
General (205.7(b))	4,632	83	1.5 minutes	9,611
Payroll cards (205.18(c)(1))	5	5,000	1.5 minutes	625
Change-in-terms (205.8(a))	4,632	113	1 minute	8,724
<u>Transaction disclosures</u> (sections 205.9(a) and § 205.10)				0 ²
<u>Periodic statements</u> (section 205.9(b))				0 ³
<u>Error resolution rules</u>				
General (205.8(b) and 205.11)	4,632	3	30 minutes	6,948
Payroll cards (205.18)	5	8	30 minutes	20
<u>Overdraft opt-in disclosures</u> (205.17,				

1 The annual frequency estimates are based on FRB estimates that have been adjusted, where appropriate, to reflect that FDIC regulated institutions have, on average, approximately one-third as many accounts as FRB regulated institutions.

2 Consistent with the FRB analysis, no burden is associated with this requirement because the disclosures are machine generated and no institution employee is involved.

3 Consistent with the FRB analysis, the burden associated with this requirement is accounted for in the estimate of the paperwork burden associated with Regulation DD because EFT periodic statements are typically included with monthly checking and savings account statements.

FRB r-1343) Revise and update initial disclosures (§205.17(c)(1)) for new customers	4170	1	16 hours	66,720
Prepare and send new opt-in notices to existing customers (205.17(c)(2))	4170	1	16 hours	66,720
Consumer response	30,050,000	1	5 minutes	2,504,167
<u>Gift card/gift certificate</u> (section 205.20, FRB R-1377)				
Exclusion policies & procedures (205.20(b)(2)) one-time	10	1	40 hours	400
Exclusion policies & procedures (205.20(b)(2)) ongoing	10	1	8 hours	80
Policy & procedures (205.20(e)(1)) one-time	10	1	40 hours	400
Policy & procedures (205.20(e)(1)) ongoing	10	1	8 hours	80
One-time systems change to implement disclosure update (205.20(e)(3))	10	1	40 hours	400
Subtotal Regulation E				2,664,895

[Bank acting as merchant or payee (Sections 205.3(a) and (b)(2)). At this time, the FDIC does not believe that any state nonmember banks are engaged in electronic check conversion transactions as a merchant or payee and no burden is being estimated for this part of the FRB rule.]

The burden estimate for the Regulation CC part of the collection is as follows.

Regulation CC 12 C.F.R. Part 229 ⁴	Number of respondents	Annual frequency	Response time	Annual burden hours
Specific availability policy disclosure (initial notice, upon request, upon change in policy) sections 229.16, 229.17 and 229.18(d)	4,632	140	1 minute	10,808
Case-by-case hold notice Section 229.16(c)	4,632	717	3 minutes	166,057

⁴ The Regulation CC information requirements include previous FRB changes to 12 C.F.R. Part 229 to implement the Check 21 Act.

Notice of exceptions to hold policy section 229.13(g)	4,632	247	3 minutes	57,205
Notice posted where consumers make deposits (including at ATMs) ⁵ sections 229.18(b) and 229.18(c)	4,632	1	15 minutes	1,158
Notice of changes in policy section 229.18(e)	20	1	20 hours	400
Annual notice of new ATMs section 229.18(e)	4,632	1	5 hours	23,160
Notice of nonpayment section 229.33(a) and (d) ⁶ <ul style="list-style-type: none"> • notice to depository bank 	4,632	2,211	1 minute	170,689
Response to consumer's recredit claim (validation, denial, reversal) section 229.54(e)	4,632	12	15 minutes	13,896
Bank's claim against an indemnifying bank section 229.55	4,632	5	15 minutes	5,790
Consumer awareness disclosure section 229.57	4,632	170	1 minute	13,124
Regulation CC consumer burden				
Expedited recredit claim notice section 229.54(a) and (b)(2)	4,632	8	15 minutes	9,264
Subtotal Regulation CC				471,551

The burden estimate for the Regulation DD part of the collection is as follows.

New Overdraft Disclosures. The FRB amended Regulation DD to require disclosure of aggregate overdraft fees on periodic statements by all depository institutions (not solely

⁵ Notice on preprinted deposit slips section 229.18(a). The preprinted deposit slip notice must inform the customer that deposits may not be available for immediate withdrawal. Consistent with the FRB's analysis, the FDIC considers this burden negligible.

⁶ If the depository bank receives a returned check or notice of nonpayment, regardless of the amount, it must send notice to its customer. Consistent with the FRB's analysis, this requirement is considered not to cause the bank additional burden because, were the requirement not to exist, banks presumably would nonetheless provide a similar notification to customers in the usual and customary course of their business.

institutions that promote the payment of overdrafts).

Regulation DD 12 C.F.R. Part 230	Number of respondents	Annual frequency	Response time	Annual burden hours
Account disclosures (upon request and new accounts) (section 230.4)	4,632	170	1.5 minutes	19,686
Subsequent notices (section 230.5)				
• Change in terms	4,632	380	1 minute	29,336
• Prematurity (renewal) notices	4,632	340	1 minute	26,248
Disclosures on periodic statements (section 230.6)	4,632	12	4 hours	222,336
Advertising (section 230.8)	4,632	12	30 minutes	27,792
Subtotal Regulation DD				325,398

Old Burden

29,404 (Regulation E)
41,536 (Regulation E – one-time ATM disclosure burden)
800 (Regulation E – one-time transaction disclosure burden)
528,513 (Regulation CC)
302,434 (Regulation DD)
902,687 total estimated burden hours

New Burden

2,664,895 (Regulation E)⁷
471,551 (Regulation CC)
325,398 (Regulation DD)
3,461,844 total estimated burden hours

Estimated annual cost to FDIC-supervised institutions (at \$20 hourly cost).

3,211,760 (Regulation E)
9,431,020 (Regulation CC)
6,507,960 (Regulation DD)

⁷The new burden for Regulation E reflects an adjustment of -3056 for a decreased number of respondents; a change of -420 hours to correct a previous agency error of including burden for periodic payroll card disclosures; a program change of -42,336 hours, reflecting removal of hours included in 2008 burden estimates for one-time systems changes to incorporate ATM and transaction disclosures; and a program change of +2,638,967 hours for recent revisions to the regulation related to overdraft and gift card disclosures.

\$19,150,740 total annual cost to FDIC-supervised institutions

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13. Capital, Start-up, Operating and Maintenance Costs

None.

14. Estimates of Annualized Cost to the Federal Government

Since the FDIC does not collect any information, the cost to the FDIC is negligible.

15. Reason for Change in Burden

The previous total burden for Regulation E was 71,740 hours. The new burden reflects an adjustment of -3,056 hours due to a decrease in the number of respondents, a change of -420 hours to correct a previous agency error of including burden for periodic payroll card disclosures, a change of -42,336 hours to remove one-time burden for systems changes in 2008 to incorporate new ATM and transaction disclosures, and a program change of +2,638,967 hours to reflect FRB revisions to Regulation E since the FDIC's last renewal in 2008.

The burden adjustment of -56,962 hours for Regulation CC is due to a reduction in the number of FDIC supervised institutions (from 5192 to 4632). The burden change of +22,964 for Regulation DD is due to an adjustment of -44,524 hours resulting from a decrease in the number of FDIC-supervised institutions and a program change of +67,488 hours arising from an FRB change to periodic statement disclosures (section 230.6).

16. Publication

There is no publication of the information.

17. Display of Expiration Date

Not applicable to these disclosures.

18. Exceptions to Certification

None.

B. STATISTICAL METHODS

Not applicable.

