

**BUREAU OF CONSUMER FINANCIAL PROTECTION
PAPERWORK REDUCTION ACT SUBMISSION
INFORMATION COLLECTION REQUEST**

**SUPPORTING STATEMENT PART A
TRUTH IN LENDING ACT (REGULATION Z) 12 CFR 1026
(OMB CONTROL NUMBER: 3170-00XX)
RIN#3170-AA22**

The Bureau of Consumer Financial Protection (Bureau or CFPB) is dividing certain proposals to amend the Bureau's Regulations Z into separate Information Collection Requests (ICRs) in the Office of Management and Budget (OMB) system (accessible at www.reginfo.gov) to ease the public's ability to view and understand the individual proposals. Subsequent to the finalization of the rules, the CFPB anticipates that it will recombine the portions of Regulations Z that are broken out in the reginfo.gov system into the existing control numbers for Regulations Z. CFPB respondents should continue to use the - 3170-0015 control number for Regulation Z throughout this time.

OMB TERMS OF CLEARANCE: Not applicable. This is a request for a new OMB control number

ABSTRACT: The Bureau is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act (EFTA); Regulation Z, which implements the Truth in Lending Act (TILA); and the official interpretation to the regulations. The proposal would create comprehensive consumer protection for prepaid financial products. It would expressly bring such products under the ambit of Regulation E as prepaid accounts and create new provisions specific to these accounts. The proposal would also include in Regulation E those prepaid accounts that share key characteristics, including cards, codes, or other devices capable of being loaded with funds and usable at a wide variety of unaffiliated merchants or for person-to-person transfers. The proposal would further modify certain Regulation E provisions to address how such accounts are marketed by financial institutions and used by consumers. These proposed modifications would establish disclosure requirements specific to prepaid accounts that would require financial institutions to provide certain disclosures to consumers prior to and after the acquisition of a prepaid account. The proposal also includes an option for an alternative to Regulation E's periodic statement requirement that would permit prepaid product providers to make available certain methods for access to account information for free in lieu of sending periodic statements. Additionally, it would apply Regulation E's limited liability and error resolution provisions to prepaid accounts, with certain modifications. Moreover, the proposal would also contain amendments to Regulations Z and E to regulate prepaid accounts with overdraft services or other credit features. Finally, the proposal would require prepaid account issuers to provide the Bureau with terms and conditions for prepaid accounts, which the Bureau would post on its website. Relatedly, issuers would also be required to post the terms and conditions on their own websites. To accommodate these changes, the Bureau is also proposing to make corresponding changes to various provisions in Regulations Z and E.

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. 1601(a). Creditors are subject to disclosure and other requirements that apply to open-end credit (*e.g.*, revolving credit or credit lines) and closed-end credit (*e.g.*, installment financing). TILA imposes disclosure requirements on all types of creditors in connection with consumer credit, including mortgage companies, finance companies, retailers, and credit card issuers, to ensure that consumers are fully apprised of the terms of financing prior to consummation of the transaction and, in some instances, during the loan term. It also imposes advertising disclosure requirements on advertisers of consumer credit. TILA also establishes billing error resolution procedures for open-end credit and limits consumer liability for the unauthorized use of credit cards.

The Bureau promulgated Regulation Z to implement TILA, as required by the statute. The CFPB enforces TILA as to certain creditors and advertisers. TILA also contains a private right of action for consumers.

Recordkeeping

Section 1026.25(a) of Regulation Z requires creditors to retain evidence of compliance with the regulation (other than the advertising requirements and certain requirements for mortgage loans) for two years after the date disclosures are required to be made or other action is required to be taken. Regulation Z also provides that the FTC (and other administrative agencies responsible for enforcing TILA) may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under TILA. The recordkeeping requirement ensures that records that might contain evidence of violations of TILA remain available to the FTC and other agencies, as well as to private litigants.

Disclosure

The disclosures required by Regulation Z are derived from statutory provisions under TILA. *See e.g.*, 12 CFR 1026.9(e)-(f), and .60, 15 U.S.C. 1637(c)-(g); 12 CFR 1026.40, 15 U.S.C. 1637a and 1647; 12 CFR 1026.6, 15 U.S.C. 1637(a); 12 CFR 1026.7, 15 U.S.C. 1637(b) (various open-end disclosures); 12 CFR 1026.18, 15 U.S.C. 1638; 12 CFR 1026.33, 15 U.S.C. 1648 (various closed-end credit and reverse mortgage disclosures); 12 CFR 1026.32 and 1026.34, 15 U.S.C. 1639 (various high-cost mortgage loan disclosures).

Regulation Z includes model forms and clauses that can be used to comply with the written disclosure (non-advertising) requirements of TILA and Regulation Z. *See, e.g.*, Appendices D-H and K-L to Regulation Z. Correct use of these model forms and clauses insulates creditors from liability under TILA and Regulation Z. *See* Official Commentary to Regulation Z (Commentary), comment app. G and H-1.

The Bureau is proposing changes to Regulation Z so that prepaid account issuers that offer overdraft services or other credit features in connection with such accounts and charge a fee for the service (such as interest, transaction fees, annual fees, or other participation fees) generally would be

subject to Regulation Z's credit card rules and disclosure requirements for open-end (not home-secured) consumer credit plans. In addition, the Bureau proposes to revise Regulation Z so that Regulation Z's credit card rules would apply to such features that are linked to prepaid accounts. The proposal would also require that an issuer must obtain consumer consent before adding overdraft services and credit features to a prepaid account and would prohibit the issuer from adding such features until at least 30 calendar days after a prepaid account has been registered. Moreover, the proposal would amend Regulation Z as it pertains to credit on prepaid accounts to provide that a consumer would have 21 days to repay the debt the consumer incurred in connection with using the overdraft service or credit feature. In most cases, the proposal would also prevent an issuer from immediately taking incoming payments to a prepaid account such as cash loads or direct deposits to repay and replenish the credit line.

2. Use of the Information

Consumers rely on the disclosures required by TILA and Regulation Z to shop among options and to facilitate informed credit decision making. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of financing offered. Also, without the special billing error information, consumers would be unable to detect and correct errors or fraudulent charges on their open-end credit accounts. Additionally, enforcement agencies and private litigants need the information in these disclosures to enforce TILA and Regulation Z. *See* 15 U.S.C. 1607, 1640.

3. Use of Information Technology

Regulation Z contains rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation Z, within the context of the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001(c) *et seq.* 12 CFR 1026.5(a)(1)(iii), 1026.17(a)(1). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act (GPEA), Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504, note. ESIGN and GPEA serve to reduce businesses' compliance burden related to federal requirements, including Regulation Z, by enabling businesses to use more efficient electronic media for disclosures and compliance.

Regulation Z also permits creditors to retain records on - any -method that reproduces records accurately, including computer programs. Creditors need only retain enough information to reconstruct the required disclosure or other records. Comment 25(a)-2.

4. Efforts to Identify Duplication

The recordkeeping requirement of Regulation Z preserves the information used by the creditor in making disclosures (and underlying calculations) of the terms of consumer credit and other required actions. The creditor is the only source of this information. No other federal law mandates these disclosures and other required actions. No state law known to the CFPB imposes these requirements,

although some states may have other rules applicable to consumer credit transactions.

Similarly, the disclosures required by TILA and Regulation Z are not otherwise available. Although some credit cost information is contained in contractual documents, the information is not standardized. As a result, consumers cannot use it efficiently to shop or to appreciate fully the credit terms they are considering. The creditor (and/or advertiser) is the only source of this information. No other federal law mandates these disclosures. State laws do not duplicate these requirements, although some states may have other rules applicable to consumer credit transactions. There may, however, be issuers under Regulation Z that are also issuers under Regulation E that would be required to submit account agreements to the Bureau twice, once pursuant to 12 CFR 1005.19(b) and also pursuant to 12 CFR 1026.58(c). The Bureau has not yet developed submission methods for prepaid account agreements. The Bureau will make efforts to streamline and harmonize submission requirements to avoid duplication, if possible. The Bureau solicited comment on duplicate submission in the proposal and expects to revisit this issue in its final rule.

5. Efforts to Minimize Burdens on Small Entities

TILA and Regulation Z recordkeeping and disclosure requirements are imposed on all creditors. The recordkeeping requirement is mandated by Regulation Z. The disclosure requirements are mandated jointly by TILA and Regulation Z.

Most lenders today use some degree of computerization in their business, and Regulation Z permits businesses to rely on computer support, among other alternatives, to meet their recordkeeping and disclosure requirements. This flexibility yields reduced recordkeeping and disclosure costs. (See #3 above) Moreover, as noted previously, Regulation Z provides model forms and clauses that may be used in compliance with its requirements. Correct use of these forms and clauses insulates a creditor from liability as to proper format.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

As noted, the disclosure requirements are needed to facilitate comparison cost shopping and to spur informed credit decision making. Without these requirements, consumers would not have access to this critical information. Their right to sue under TILA would be undermined, and enforcement agencies could not fulfill their mandate to enforce TILA.

7. Circumstances Requiring Special Information Collection

The collections of information in Regulation Z are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

In accordance with 5 CFR 1320.11, the Bureau has published a notice of proposed rulemaking in the *Federal Register* inviting the public to comment on the information collection requirements contained

in the proposed rule. Comments received in response to the notice of proposed rulemaking will be addressed in the preamble to the final rule.

9. Payments or Gifts to Respondents

Not applicable.

10. Assurances of Confidentiality

The disclosures also contain private financial information about persons who use consumer credit that is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may also constitute confidential customer lists. Any of these records provided to the CFPB would be covered by the protections of the CFPB’s rules on Disclosure of Records and Information, 12 CFR Part 1070, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

11. Justification for Sensitive Questions

Not applicable.

12. Estimated Burden of Information Collection

Total Hours: 3,013

Total Associated Labor Costs: \$91,165

Using the Bureau’s burden estimation methodology discussed below, the estimated burden for two non-depository institutions subject to the proposal would be one-time burden of 384 hours and ongoing burden of 5,641 hours. The Bureau allocates to itself half of both these burden estimates (192 hours and 2,821 hours, respectively, for a total of 3,013 hours) and half to the FTC. The Bureau calculated labor costs by applying the average hourly cost figure used in the Bureau’s other supporting statements for Regulation Z (\$30.26) to the burden hours described above.

CFPB’s Burden, By Information Collection:

One-Time Burden

CFR	Information Collection Requirement	No. of Respondents	Annual Responses	Average Response Time (hours)	Total One-Time Burden (hours)	CFPB One-Time Burden (hours)

1026.6(b)	Account opening disclosures	2	1	8	16	8
1026.7(b)	Periodic statements	2	1	80	160	80
1026.9	Change in terms	2	1	8	16	8
1026.13	Error resolution	2	1	8	16	8
1026.16	Advertising	2	1	40	80	40
1026.58	Internet posting of credit card agreements	2	1	40	80	40
1026.60(a)(2)	Application and solicitation disclosures	2	1	8	16	8

Total CFPB One-Time Burden: 192 hours¹

Ongoing Burden

CFR	Information Collection Requirement	No. of Respondents	Annual Responses	Average Response Time (minutes)	Total Ongoing Burden (hours)	CFPB Ongoing Burden (hours)
1026.6(b)	Account opening disclosures	2	102,500	0.25	854.17	427.08
1026.7(b)	Periodic statements	2	1,230,000	0.0625	2,562.50	1281.25
1026.9	Change in terms	2	102,500	0.125	427.08	213.54
1026.13	Error resolution	2	1,538	30	1,537.50	768.75
1026.16	Advertising	2	5	25	4.17	2.08
1026.58	Internet posting of credit card agreements	2	4	480	64.00	32.00
1026.60(a)(2)	Application and solicitation disclosures	2	12	480	192.00	96.00

Total CFPB Ongoing Burden: 2,821 hours

For the proposed requirements under Regulation Z, the Bureau understands that approximately 205,000 consumers currently have a form of overdraft protection on their GPR and payroll cards.² The

¹ Individual entries may not sum to the one-time burden total due to rounding. Similarly, individual entries for the ongoing burden may not sum to the total due to rounding.

² The Bureau is aware of two providers of overdraft services or credit features on prepaid accounts and believes that NetSpend is the only significant provider. NetSpend is an operating segment of TSY, Inc., for which the 10-Q report for the quarter ending June 20, 2014 states that NetSpend has approximately 3.4 million active cards; [See Total Sys. Serv. Inc., Form 10-Q](#).

Bureau's PRA estimation methodology assumes that the same number would use a credit feature if the proposed rule were finalized.³ Further, the methodology generally assumes that the per-respondent and per-transaction burdens would be consistent with those currently reported for credit card accounts in Regulation Z.

Under the proposed rule, if adopted, the Bureau anticipates that most overdraft services and credit features offered in connection with a prepaid account, including where extensions of credit are only permitted to be deposited into particular prepaid accounts specified by the creditor, would meet the definition of "open-end credit."⁴ In addition, under the proposal, a prepaid account that accesses such an overdraft service or credit plan generally would be a "credit card" under Regulation Z. Under the proposal, the overdraft services or other credit card plans described above would be governed by subparts A, B, D and G of Regulation Z.⁵ Pursuant to Regulation Z, persons offering such plans would be required to comply with the requirements governing information collections. These requirements are as follows.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required to inform consumers of costs and terms before they use the plan and in general to inform them of certain subsequent changes in the terms of the plan. Initial information would need to include certain finance charges and other charges imposed as part of the credit plan, annual percentage rates (APRs) applicable to the plan, a description of how balances on which a finance charge is based would be calculated, and any collateral that would secure repayment. If the card issuer makes a significant change in account terms, a creditor generally must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account.

available at <http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm>. In a recent news article, NetSpend reported that only about six percent of its customers regularly use overdraft. See Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit*, Wall Street J. (Sept. 5, 2012), <http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602>. Assuming each NetSpend customer has overdraft protection on only one account, there are 204,000 prepaid accounts with overdraft protection. No data is available for the second provider, Insight Card Services. The Bureau believes, based on industry data, that the median provider of prepaid accounts likely has about 10,000 customers. Assuming 10% have an overdraft service or credit feature on one prepaid account gives an additional 1,000 accounts with overdraft protection.

³ Current data on the size of the market for credit features on prepaid accounts has limited usefulness in predicting the size of the market if the proposal is finalized, since both eligibility criteria and credit features may change as a result. See the previous discussions in this preamble.

⁴ This would apply if the creditor establishes a program where the creditor extends consumer credit under a plan where the creditor reasonably contemplates repeated transactions, may impose finance charges from time to time on an outstanding unpaid balance for credit, and amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

⁵ Transactions that are authorized on a prepaid account when the consumer has insufficient or unavailable funds at the time of authorization as well as transactions that are paid from a prepaid account when the consumer has insufficient or unavailable funds at the time of payment would generally be considered to be credit under Regulation Z. However, under the proposal, Regulation Z would not apply to overdraft services or other credit plans that are accessed by a prepaid card if the prepaid card only accesses credit that is not subject to any finance charge described in 12 CFR 1026.4 or a fee described in 12 CFR 1026.4(c) and is not payable by written agreement in more than four installments.

The Bureau also assumes that for these accounts, the number of account opening disclosures equals the number of accounts in any year.⁶

Card issuers would be required to provide a written statement of activity for each billing cycle. The statement would have to be provided for each account that has a balance of more than \$1 or on which a finance charge is imposed, and it would have to include a description of activity on the account, opening and closing balances, interest charges and fees imposed, and payment information. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 80 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account.

Card issuers would be required to notify consumers about their rights and responsibilities regarding billing problems. Card issuers would have to provide either a complete statement of billing rights each year or a summary on each periodic statement. If a consumer alleged a billing error, the card issuer would need to provide an acknowledgment, within thirty days of receipt, that the card issuer received the consumer's error notice and would need to report on the results of its investigation within two complete billing cycles (but no later than ninety days). If a billing error did not occur, the card issuer would need to provide an explanation as to why the card issuer believed an error did not occur and provide documentary evidence to the consumer upon request. The card issuer would also have to give notice of the portion of the disputed amount and related finance or other charges that the consumer still owed and notice of when payment was due. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau further assumes, based on discussions with industry, that in any year 1.5 percent of customers will assert errors that require significant time from customer service representatives.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required, when advertising their product, to include certain basic credit information if the advertisement refers to specified credit terms or costs. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required to send the Bureau copies of the overdraft service or program agreement. The Bureau estimates each issuer would take on average 40 hours one-time to upload agreements and then 8 hours each quarter on an ongoing basis.

Finally, persons offering a credit feature in connection with a prepaid account would also need to provide additional disclosures on or with solicitations and applications to open the credit feature. Such persons would need to disclose key terms of the account, such as APRs, information about variable rates, and fees such as annual fees, minimum finance charges, and transaction fees for purchases. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.⁷

⁶ In one recent analysis, the median life span for GPR cards with occasional reloads was 330 days and 570 days for GPR cards with periodic non-government direct deposit. See Fumiko Hayashi and Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks*, Federal Reserve Bank of Kansas City, February 2014, at 47.

⁷ The recordkeeping requirement in § 1026.25 does not specify the kind of records that must be retained, so for purposes of PRA the paperwork burden is minimal.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

As suggested by OMB, our Federal Register notice dated January 19, 2012, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from individuals on this subject. As a result, estimates of these cost burdens are not available at this time.

14. Estimated Cost to the Federal Government

The Bureau is proposing that persons offering overdraft services or other credit features in connection with a prepaid account would be required to send the Bureau copies of the overdraft service or credit feature program agreement. The Bureau would incur costs in processing and reviewing any overdraft service or credit feature program agreements that persons offering such a service would send in compliance with the proposal.

15. Program Changes or Adjustments

Summary of Burden Changes

	Annual Responses	Burden Hours	Cost Burden (O & M)
Total Annual Burden Requested	2,873,131	3,013	0
Current OMB Inventory	N/A	N/A	0
Difference (+/-)	+2,873,131	+3013	0
Program Change	2,873,131	3,013	0
Discretionary			
Due to New Statute	0	0	0
Violation	0	0	0
Adjustment	0	0	0

The Bureau is requesting a program change of 3,013 hours This change in burden results from the proposed amendments to 12 CFR Part 1026 (“Regulation Z”).

This is a request for a new OMB control number that adds information collections to Regulation Z but does not alter any existing collections. The new collections will require 2,873,131 responses and add 3013, hours of burden

16. Plans for Tabulation, Statistical Analysis, and Publication

Not applicable.

17. Display of Expiration Date

The OMB number will be displayed in the PRA section of the notice of final rulemaking and in the codified version of the Code of Federal Regulations. Further, the OMB control number and expiration date will be displayed on OMB's public PRA docket at www.reginfo.gov.

18. Exceptions to the Certification Requirement

The Bureau certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3) and is not seeking an exemption to these certification requirements.