

Federal Trade Commission
Supporting Statement for Information Collection
Provisions of Regulation Z
(Truth in Lending Act)
12 C.F.R. 226; 12 C.F.R. 1026
(OMB Control Number: 3084-0088)

1. Necessity for Collecting the Information

The Truth in Lending Act (“TILA”), 15 U.S.C. 1601 *et seq.*, was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Creditors and others are subject to calculation and disclosure requirements that apply to open-end credit (*e.g.*, revolving credit or credit lines) and closed-end credit (*e.g.*, installment financing) up to \$54,600 plus an annual adjustment (except for private education loans and credit secured by real property, which are covered regardless of dollar amount). The change in coverage based on the dollar amount was made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. 111-203, 124 Stat 1376 (2010).

The TILA imposes disclosure requirements on all types of creditors in connection with consumer credit, including mortgage companies, finance companies, retailers, credit card issuers, and private education loan companies, to ensure that consumers are fully apprised of the terms of financing, generally prior to consummation of the transaction or, in some instances, earlier in time and, in other instances, during the loan term. It also imposes advertising disclosure requirements on advertisers of consumer credit. It also requires acquirers of mortgage loans to disclose the change in the ownership of the loan to the borrower, and requires creditors and others to report appraiser misconduct to state licensing authorities. The TILA requires institutions of higher education to disclose their agreements regarding the marketing of credit cards and requires credit card issuers to annually submit reports of credit card agreements. The TILA also requires credit card issuers to post credit card agreements on their web sites. The TILA also establishes billing error resolution procedures and limits consumer liability for the unauthorized use of credit cards. It also requires credit card issuers to establish written policies and procedures to ensure that an administrator of an estate of a deceased account holder can ascertain the amount of an account balance in a timely fashion. An amendment to the TILA, the Home Ownership and Equity Protection Act (“HOEPA”), imposes, among other things, various disclosure and other requirements on creditors offering certain high-rate, high-fee mortgage loans to consumers; various requirements now also apply to certain higher priced mortgages.

Subject to the discussion below, the Federal Trade Commission (“FTC” or “Commission”) enforces the TILA as to all creditors and others and advertisers except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another federal agency. The TILA also contains a private right of action with a one-year statute of limitations for consumers; for certain mortgage actions, TILA now provides a three-year statute of limitations.

The Board of Governors of the Federal Reserve System (“FRB”) promulgated the original Regulation Z (12 C.F.R. Part 226) to implement the TILA, as required by the statute. Under the Dodd-Frank Act, however, almost all rulemaking authority for the TILA transferred from the FRB to the Consumer Financial Protection Bureau (“CFPB”) on July 21, 2011 (“transfer date”). Although the Dodd-

Frank Act transferred most rulemaking authority under TILA to the CFPB, the FRB retained rulemaking authority for certain motor vehicle dealers.¹ The CFPB’s regulations for entities under its jurisdiction for Regulation Z appear in 12 C.F.R. Part 1026.²

As a result of the Dodd-Frank Act, the FTC and the CFPB now share the authority to enforce Regulation Z for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers. The FTC generally has sole authority to enforce Regulation Z regarding motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.³

Recordkeeping

Sections 226.25(a)/1026.25(a) of Regulation Z requires creditors to retain evidence of compliance with the regulation (other than the advertising requirements) 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 the TILA) may require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under the TILA. The recordkeeping requirement ensures that records that might contain evidence of violations of the 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 the TILA. *See e.g.*, 12 C.F.R. 226.5a, 12 C.F.R. 1026.6(a), 15 U.S.C. 1637(c)-(g); 12 C.F.R. 226.5b, 12 C.F.R. 1026.40, 15 U.S.C. 1637a and 1647; 12 C.F.R. 226.6, 12 C.F.R. 1026.6, 15 U.S.C. 1637(a); 12 C.F.R. 226.7, 12 C.F.R. 1026.7, 15 U.S.C. 1637(b) (various open-end disclosures); 12 C.F.R. 226.11(c); 12 C.F.R. 1026.11(c); 15 U.S.C. 1651 (timely settlement of estate of deceased obligors); 12 C.F.R. 226.18, 12 C.F.R. 1026.18, 15 U.S.C. 1638; 12 C.F.R. 226.33, 12 C.F.R. 1026.33, 15 U.S.C. 1648 (various closed-end credit and reverse mortgage disclosures);⁴ 12 C.F.R. 226.32 and 226.34, 12 C.F.R. 1026.32 and 1026.34, 15 U.S.C. 1639 (various high-rate, high-fee closed-end credit disclosures); 12 C.F.R. 1026.36

¹ Generally, these are dealers “predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” *See* Dodd-Frank Act, § 1029(a), -(c).

² Because both the FRB and CFPB have certain rulemaking authority under Regulation Z – as discussed further below – citations to both aspects of the regulation are included in this document. Hence, 12 C.F.R. 226 refers to the FRB-issued Regulation Z; 12 C.F.R. 1026 refers to the CFPB-issued Regulation Z. Generally, these two aspects of Regulation Z are similar in many respects, other than citations. However, the CFPB-issued Regulation Z includes certain mortgage and other requirements mandated by the Dodd-Frank Act and various other statutory changes; the FRB-issued Regulation Z does not.

³ *See* Dodd-Frank Act, § 1029(a), -(c).

⁴ Integrated mortgage disclosures for certain closed-end mortgage loans are also required. *See, e.g.*, 12 C.F.R. 1026.19(e)-(f), based on the Dodd-Frank Act, §§ 1032(f), 1098, and 1100A. These requirements (included in the burden estimates below) are slated to become effective Aug. 1, 2015. *See* CFPB, Final Rule, Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 79,730 (Dec. 31, 2013).

and 1026.41, 15 U.S.C. 1638(f), 1638a, 1639f, 1639g (mortgage servicing); 12 C.F.R. 226.39; 12 C.F.R. 1026.39; 15 U.S.C. 1641(g) (disclosure of change in mortgage loan ownership); 12 C.F.R. 226.42(g); 12 C.F.R. 1026.42(g); 15 U.S.C. 1639e (appraisal independence requirements); 12 C.F.R. 1026.36, 15 U.S.C. 1639b (loan originator requirements); 12 C.F.R. 1026.36, 15 U.S.C. 1639b(a)(2) (ability to pay requirements); 12 C.F.R. 226.57(b); 12 C.F.R. 1026.57(b); 15 USC 1650(f) (disclosure of credit card marketing agreements by institutions of higher education); 12 C.F.R. 226.57(d); 12 C.F.R. 1026.57(d); 15 U.S.C. 1637(r)(2) (annual reporting by credit card issuers of agreements with institutions of higher education and others);⁵ 12 C.F.R. 226.58; 12 C.F.R. 1026.58; 15 U.S.C. 1632(d)(1) (internet posting of credit card agreements).

The FRB and CFPB have issued model forms and clauses that can be used to comply with the written disclosure (non-advertising) requirements of the TILA and Regulation Z. *See, e.g.*, Appendices D-H and K-L 12 to C.F.R. Part 226; Appendices D-H and K-L to 12 C.F.R. Part 1026. Correct use of these model forms and clauses insulates creditors from liability under the TILA and Regulation Z. *See* FRB Official Staff Commentary to Regulation Z (“FRB Commentary”), Appendixes G and H, Comment 1; 12 C.F.R. 226, Appendixes G and H, Supp. 1; CFPB Official Staff Commentary to Regulation Z (“CFPB Commentary”), Appendixes G and H, Comment 1; 12 C.F.R. 226, Appendixes G and H, Supp. 1.

2. Use of the Information

The FTC, other agencies, and private litigants use the records to ascertain whether accurate and complete disclosures of the cost of credit have been provided to consumers prior to consummation of the credit obligation and, in some instances, during the loan term. The information is also used to determine whether other actions required under the TILA, including complying with billing error resolution procedures and limitation of consumer liability for unauthorized use of credit, have been met. The information retained provides the primary evidence of law violations in TILA enforcement actions brought by the FTC. Without the Regulation Z recordkeeping requirement, the FTC’s ability to enforce the TILA would be significantly impaired.

As noted above, consumers rely on the disclosures required by the TILA and Regulation Z to comparison credit shop 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 and other credit card provisions, such as limitation of consumer liability for unauthorized use of credit, consumers would be unable to detect and correct errors on their credit card accounts and fraudulent charges. The FTC and private litigants need the information in these disclosures and other requirements to enforce the TILA and Regulation Z. *See* 15 U.S.C. 1607, 1640.

3. Consideration of the Use of Improved Information Technology

⁵ The CFPB has temporarily suspended card issuers’ obligations to submit credit card agreements to the CFPB for one year, while it develops a more streamlined and automated electronic submission system. The requirements to post current agreements on card issuers’ own Web sites, however, are unaffected. This temporary change does not change collections of information for PRA purposes. *See* CFPB, Final Rule, Submission of Credit Card Agreements Under the Truth in Lending Act (Regulation Z), 80 Fed. Reg. 21,153, 21,157-58 (Apr. 17, 2015).

The FRB and CFPB have issued 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 *et seq.*; and Sections 226.5(a)/1026.5(a) and 226.17(a)/1026.17(a) of Regulation Z. 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”), 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 utilize more efficient electronic media for disclosures and compliance.

Regulation Z also permits creditors to retain records on microfilm or microfiche or any other method that reproduces records accurately, including computer programs. Creditors need only retain enough information to reconstruct the required disclosure or other records. Section 226.25(a)-2 of the FRB Commentary, 12 C.F.R. 226.25(a)-2; Section 1026.25(a)-2 of the CFPB Commentary, 12 C.F.R. 1026.25(a)-2.

4. Efforts to Identify Duplication/Availability of Similar Information

The recordkeeping requirement of Regulation Z preserves the information utilized 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 (in a fully duplicative manner) and other required actions.⁶ No state law known to staff imposes these requirements, although some states may have other rules applicable to consumer credit transactions.

Similarly, the disclosures required by the 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 comparison shop or to fully appreciate the credit terms. 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

⁶ The TILA requirement to provide applicants with copies of written appraisals for certain higher-priced mortgage loans, 15 U.S.C. 1639h, in part overlaps with the ECOA requirement to provide applicants with copies of written appraisals. The Dodd-Frank Act amended both ECOA and TILA to add the appraisal rules that overlap only in part. For example, the TILA appraisal rule applies to those loans that meet all of the following conditions: (1) any lien; (2) involving consumer transactions; and (3) that are higher-priced mortgage loans (HPMLs) (a type of closed-end credit) under TILA and not exempt under those rules (such as bridge loans, reverse mortgages, loans for \$25,000 or less as indexed each year for inflation, and any mortgage that constitutes a qualified mortgage under TILA or that meets rules on qualified mortgages issued by the U.S. Dept. of Housing and Urban Development, U.S. Dept. of Agriculture, or U.S. Dept. of Veterans Affairs). The ECOA appraisal rule applies to those transactions that meet all of the following conditions: (1) first liens; (2) involving business or consumer transactions; and (3) that are open-end or closed-end mortgages. However, where duplicative requirements apply (*e.g.*, for consumer credit that involves first lien, closed-end HPMLs that are also non-exempt under the TILA appraisal rules), creditors can provide one appraisal, based upon the applicable rules. *See* CFPB, TILA Higher-Priced Mortgage Loans (HPML) Appraisal Rule, Small Entity Compliance Guide (Jan. 13, 2014), and CFPB, Equal Credit Opportunity Act (ECOA) Valuations Rule, Small Entity Compliance Guide (Jan. 13, 2014). This approach ensures that applicants will receive a copy of the required appraisal, and it also limits burden to creditors.

other rules applicable to consumer credit transactions.

5. Efforts to Minimize Burdens on Small Businesses

The TILA and Regulation Z recordkeeping and disclosure requirements are imposed (in most instances) on creditors. The recordkeeping requirement is mandated by Regulation Z. The disclosure requirements are mandated jointly by the TILA and Regulation Z. As previously noted, the FTC's role in this area is limited to enforcement, because the TILA vested rulemaking authority in the FRB and CFPB.

Additionally, as noted above, 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 Conducting Collection Less Frequently

The current record retention period of two years in most instances, with three years for loan originator requirements and certain ability to pay requirements and, as slated to commence Aug. 1, 2015, three years for integrated mortgage requirements and five years for integrated mortgage requirements concerning completed closing disclosures,⁷ supports the general one-year statute of limitations and the three-year statute of limitations (for loan originator, ability to pay, and high cost mortgages) for private actions. In addition, because consumers can assert violations of TILA in an action to collect the debt that was brought more than one year after the violation, as a matter of defense by recoupment or set-off in that action unless prohibited by state law, the three-year and five-year recordkeeping requirements support the consumer's ability to assert violations over a longer period. The retention periods also support the FTC's (and other administrative agencies') need for sufficient time to bring enforcement actions regarding credit transactions. If the retention period were shortened, consumers who sue under the TILA or who seek to raise violations by recoupment or set-off in collection actions, and the administrative agencies, might find that records needed to prove violations of the TILA no longer exist.

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 the TILA would be undermined, and the FTC (and other administrative agencies) could not fulfill their mandate to enforce the TILA.

7. Circumstances Requiring Collection Inconsistent with Guidelines

Regulation Z's recordkeeping and disclosure requirements are generally consistent with the applicable guidelines in 5 C.F.R. 1320.5(d)(2). While Regulation Z has lengthened retention periods for integrated mortgage disclosures, the longer periods derive from Regulation X, which implements the Real Estate Settlement Procedures Act ("RESPA"). When the CFPB merged certain mortgage disclosures required by TILA and RESPA into integrated mortgage disclosures, as required by the Dodd-Frank Act, it applied the Regulation X extended retention period to the new record retention requirements.⁸ Thus, the requirement to retain for three years many aspects of integrated mortgage disclosures, and for five years integrated mortgage disclosures related to completed closing disclosures, derives from previously existing

⁷ See *supra* note 4.

⁸ The five-year recordkeeping requirement under Regulation X became effective in 1992. See 57 Fed. Reg. 49,600, 49,607 (Nov. 2, 1992).

periods under Regulation X.⁹ The documents to be retained serve as both the record of all fees associated with the transaction and as part of the official disbursement record. In addition, the lengthened recordkeeping requirement ensures that there will be an available record for use regarding state and local real property laws that may depend on the information being available for five years.¹⁰

8. Consultation Outside the Agency

The recordkeeping and disclosure requirements of Regulation Z were issued by the FRB and CFPB. Before the regulation was initially issued and prior to each amendment, the amendments were published for public comment in the Federal Register.

More recently, the Commission sought public comment in connection with its latest PRA clearance request for these regulations, in accordance with 5 C.F.R. 1320.8(d). *See* 80 Fed. Reg. 17,749 (April 2, 2015). The Commission received a comment from the National Automobile Dealers Association (“NADA”) pertaining to regulatory burden affecting Regulation Z. The comment repeats many of the points NADA made in its comments submitted in 2012 when the FTC last sought renewed OMB clearance regarding the FTC’s enforcement oversight of the recordkeeping and disclosure provisions of these regulations issued by the FRB and CFPB.¹¹

As before, NADA asserts that the FTC’s burden estimates greatly underestimate its members’¹² regulatory burdens under these rules, particularly those under Regulation Z. Despite the FTC’s prior and continuing explanation in its Federal Register Notices regarding the terms “setup,” “monitoring,” and “transaction-related,” NADA has misinterpreted FTC estimates of *disclosure time per transaction* as the estimated time the FTC accords to *monitoring to review compliance*.¹³ Rather, FTC estimates of “monitoring” burden address covered entities’ time and costs to review changes to regulatory requirements, make necessary revisions to compliance systems and procedures, and to monitor the ongoing operation of systems and procedures *to ensure continued compliance*. “Transaction-related” burden, by contrast, refers to the *disclosure time and cost per individual transaction*, thus, generally, of much lesser magnitude than “monitoring” (or “setup”) burden. And, as stated in the FTC’s April 27, 2012 Federal Register Notice – and as still applicable here – the population of affected motor vehicle dealers is one component of a much larger universe of such entities.¹⁴ Regulation Z covers not only NADA’s membership of franchised car

⁹ *See, e.g.*, 78 Fed. Reg. at 79,902-3, *supra* note 4.

¹⁰ *See* 78 Fed. Reg. at 79,902, *supra* note 4.

¹¹ NADA’s 2015 comment and related 2012 comment are available at <https://www.ftc.gov/policy/public-comments/2015/06/01/comment-00003>. The remaining (two) commenters’ submissions were not relevant to the statutes and regulations at issue.

¹² NADA states that it represents approximately 16,000 new car and truck dealers, both domestic and import, with over 32,500 separate franchises. *Id.*

¹³ In NADA’s 2015 comment, it misread the 60 seconds estimate the FTC accorded to disclosure time per credit advertisement, as the time the FTC estimated for dealer monitoring of advertisements for compliance under Regulation Z. In actuality, the FTC estimate for the latter monitoring category, and as reappearing in the Regulation Z disclosure hour tables in this Notice, is 30 minutes for closed-end credit advertising.

¹⁴ *See* 77 Fed. Reg. 25,170, 25,174.

and truck dealers, but also independent motor vehicle dealers and non-motor vehicle dealers. Still more significant, NADA's constituency comprises a small proportion of the overall affected population under Regulation Z.

NADA additionally asserts in its 2015 comment that “daily compliance burdens at a dealership often must be handled by managerial, not clerical staff.”¹⁵ NADA also asserts that “[m]any dealers are small businesses that do not benefit from sophisticated records retention or computer systems, and cannot leverage robust compliance structures. Even larger dealer groups often do not have the economy of scale necessary to justify in-house legal counsel, compliance staff, or other expert or technical resources. As a result, they rely heavily on outside counsel, consultants, and computer and other experts to help them to comply with their regulatory obligations – and pay the concomitant fees associated with those third party services.”

It is not practicable to make projections about and provide estimates regarding the additional or alternative use of such outside sources to maintain regulatory compliance (neither has NADA attempted to do so in its comment). Moreover, in FTC staff's view, to make adjustments to its burden estimates for Regulation Z, tied to a subpopulation that is small in relation to the overall affected population, would unduly skew the estimates for Regulation Z. This regulation applies to a wide variety of entities and transactions. Some entities provide disclosures in the ordinary course of business – which is not included in PRA burden;¹⁶ others have minimal setup burden and few transactions covered by the requirements, while other entities may have more setup and transaction-related burden. The FTC's estimates reflect these complex considerations. Moreover, based on the FTC's administrative experience in this enforcement area, some dealers use the same or similar advertisements for many of their franchises or locations– an approach that can facilitate compliance by limiting the number of applicable advertisements for which disclosures are provided, and hence, costs.

In addition, NADA's comment states that, for Regulation Z, the estimate that assumed an average of two advertising transactions per respondent for credit is not adequate, and that dealers advertise hundreds, if not thousands, of vehicles per year with many ads being subject to Regulation Z. However, the FTC's estimates of transaction time and volume are intended as averages. For Regulation Z, given the highly diverse entities and types of transactions covered, some respondents may have more covered ads, and others may have fewer (if any). Moreover, the number of vehicles advertised is not the issue for compliance with the Regulation Z requirements; rather, the question is whether specific terms used in the advertisements trigger the disclosure responsibilities of this regulation.¹⁷ Some entities' advertisements may not include terms that are covered by these requirements at all, or they may be subject to exceptions

¹⁵ However, the only apportioning in the FTC's estimates to clerical staff was for recordkeeping. The remaining attributions, for disclosure, are to managerial and skilled technical staff.

¹⁶ PRA “burden” does not include “time, effort, and financial resources” expended in the ordinary course of business, regardless of any regulatory requirement. See 5 CFR 1320.3(b)(2).

¹⁷ Further, to facilitate compliance, Regulation Z permits the use of illustrative transactions to make the necessary disclosures. That is, where a range of terms is possible or offered, the ad may use examples of typical transactions and include the required disclosures, rather than stating a wide list of transactions and terms for multiple vehicles. See 12 CFR 1026.24(d)(2)-5, Supp. 1, and 12 CFR 226.24(d)(2)-5, Supp. 1, CFPB and FRB Regulation Z Official Staff Commentaries.

such that disclosures are inapplicable.¹⁸

Finally, we note that the report developed for NADA and attached to NADA's comment by the Center for Automotive Research ("CAR Report") addresses the impact on franchised automobile dealerships related to many federal statutes, regulations, and requirements. NADA stated these requirements cover diverse issues but that certain regulations, including Regulation Z, still "represent a material portion of dealers' regulatory obligations." *See, e.g.*, NADA comment, CAR Report at 2, 3, 19-34. However, NADA's specific points refer to a generalized concern about regulatory burden for automobile dealers. Because franchised automobile dealers are a component of a broad, highly diverse population of credit entities and transactions, we believe that the estimates for Regulation Z remains reasonable, bearing in mind the complexity of this assessment for such a wide-ranging group.

For the above-noted reasons, the FTC has retained its prior analysis and estimates regarding this regulation. Consistent with 5 C.F.R. 1320.12(c), the FTC is again seeking public comment contemporaneously with this submission.

9. Payments or Gifts to Respondents

Not applicable.

10 & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

The required recordkeeping and 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 FTC would be covered by the protections of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f) and 57b-2, by Section 4.10 of the Commission's Rules of Practice, 16 C.F.R. 4.10, and by the applicable exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

12. Estimated Hours and Labor Cost Burden

Estimated Hours Burden: 13,697,302 hours (688,850 recordkeeping hours: 613,650 + 75,200 carve-out for motor vehicles + 13,008,452 disclosure hours: 11,964,361 + 1,044,091 carve-out for motor vehicles)

The following discussion and tables present FTC estimates under the PRA of recordkeeping and disclosure average time and labor costs, excluding that which the FTC believes entities incur customarily in the ordinary course of business¹⁹ and information compiled and produced in response to FTC law enforcement investigations or prosecutions.²⁰

¹⁸ For example, some advertisements may promote sale prices rather than credit terms, and are not subject to Regulation Z. Other ads generally may promote the availability of financing without specific terms, such as "welcome college graduates and military." Some ads may offer terms that do not trigger advertising responsibilities under Regulation Z, such as "take years to repay." Still other ads may include terms that are subject to exceptions under Regulation Z, and disclosures would not be required, such as "no downpayment required."

¹⁹ *See supra* note 16 and accompanying text.

²⁰ *See* 5 CFR 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or

Because of their shared enforcement jurisdiction for Regulation Z, the CFPB and the FTC have divided the FTC's previously-cleared PRA burden between them,²¹ except that the FTC wholly assumed the part of that burden associated with motor vehicle dealers (for brevity, referred to in the burden summaries below as a "carve-out").²² The division of PRA burden hours not attributable to motor vehicle dealers is reflected in the CFPB's PRA clearance requests to OMB.²³ The FTC's burden estimates below reflect both the shared enforcement jurisdiction and the FTC's separate accounting under the PRA for its jurisdiction to enforce Regulation Z for motor vehicle dealers.

Recordkeeping

FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 530,080 entities subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per entity, with .25 additional hours per entity for 5,000 entities (ability to pay), and 5 additional hours per entity for 5,000 entities (loan originators).

Disclosure

Regulation Z disclosure requirements pertain to open-end and closed-end credit. It applies to various types of entities, including mortgage companies; finance companies; auto dealerships; private

"during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities").

FTC enforcement initiatives are based on diverse statutory and regulatory requirements. Some actions are brought in partnership with other federal and state agencies and encompass matters enforced by those agencies, not solely issues related to Regulations Z. Further, even where Regulation Z matters also are involved in FTC actions, or are in the broader initiative or enforcement sweep of automobile actions, the actions frequently include charges of unfair and/or deceptive practices under Section 5 of the FTC Act, 15 U.S.C. 45(a), and/or may involve warranty violations under the Magnuson Moss Warranty Act, 15 U.S.C. 2301-2312, and other issues not pertinent to this PRA submission. *See, e.g.*, FTC, Press Release, *FTC, Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing*, Mar. 26, 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown>. The FTC also frequently issues business "blog" guidance with its enforcement initiatives to guide and facilitate compliance. *See, e.g.*, Lesley Fair, *Operation Ruse Control: Six tips if cars are up your alley*, FTC BUSINESS CENTER BLOG (Mar. 26, 2015), available at <https://www.ftc.gov/news-events/blogs/business-blog/2015/03/operation-ruse-control-6-tips-if-cars-are-your-alley>; Lesley Fair, "Advertise auto promotions car-fully," FTC BUSINESS CENTER BLOG (Dec. 23, 2014), available at <https://www.ftc.gov/news-events/blogs/business-blog/2014/12/advertise-auto-promotions-car-fully>.

²¹ The CFPB also factors into its burden estimates respondents over which it has jurisdiction but the FTC does not.

²² This includes dealers specified by the Dodd-Frank Act under § 1029 (a), but as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offer is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's "carve-out" for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

²³ OMB Control Number 3170-0015 (Regulation Z).

education loan companies; merchants who extend credit for goods or services, credit advertisers; acquirers of mortgages; and others. New requirements have been established in the mortgage area, including for high cost mortgages, higher-priced mortgage loans,²⁴ ability to pay of mortgage consumers, mortgage servicing, loan originators, and certain integrated mortgage disclosures. Below is staff's best estimate of burden applicable to this very spectrum of covered entities.

Regulation Z: Disclosures – Burden Hours

Disclosures ¹	----- Setup/Monitoring -----			----- Transaction-related -----			
	Respondents	Average Burden per Respondent ² (hours)	Total Setup/Monitoring Burden (hours)	Number of Transactions	Average Burden per Transaction ³ (minutes)	Total Transaction Burden (hours)	Total Burden (hours)
Open-end credit:							
Initial terms	45,000	.75	33,750	20,000,000	.375	125,000	158,750
Rescission notices ⁴	1,500	.5	750	8,000	.25	33	783
Subsequent disclosures	10,000	.75	7,500	62,500,000	.188	195,833	203,333
Periodic statements	45,000	.75	33,750	1,750,000,000	.0938	2,735,833	2,769,583
Error resolution	45,000	.75	33,750	4,000,000	6	400,000	433,750
Credit and charge card accounts	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Settlement of estate debts	45,000	.75	33,750	1,000,000	.375	6,250	40,000
Special credit card requirements	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Home equity lines of credit ⁵	1,500	.5	750	10,000	.25	42	792
Home equity lines of credit-high cost mortgages ⁶	500	2	1,000	5,000	2	167	1,167
College student credit card marketing – ed. institutions	2,500	.5	1,250	250,000	.25	1,042	2,292
College student credit card marketing – card issuer reports	300	.75	225	18,000	.75	225	450
Posting and reporting of credit card agreements	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Advertising	100,000	.75	75,000	300,000	.75	3,750	78,750
Sale, transfer, or assignment of mortgages ⁷	1,500	.5	750	1,750,000	.25	7,292	8,042
Appraiser misconduct reporting	625,000	.75	468,750	12,500,000	.375	78,125	546,875
Mortgage servicing ⁸	2,500	.5	1,250	500,000	.5	4,167	5,417
Loan originators ⁹	2,500	2	5,000	25,000	5	2,083	7,083
Closed-end credit:							
Credit disclosures ¹⁰	380,080	.75	285,060	163,054,320	2.25	6,114,537	6,399,597
Rescission notices ¹¹	5,000	.5	2,500	7,500,000	1	125,000	127,500
Redisclosures	200,000	.5	100,000	1,000,000	2.25	37,500	137,500
Integrated mortgage disclosures ¹²	5,000	10	50,000	15,000,000	3.5	875,000	925,000
Variable rate mortgages ¹³	5,000	1	5,000	500,000	1.75	14,583	19,583
High cost mortgages ¹⁴	3,000	1	3,000	75,000	2	2,500	5,500
Higher priced mortgages ¹⁵	3,000	1	3,000	25,000	2	833	3,833
Reverse mortgages ¹⁶	7,500	.5	3,750	35,000	1	583	4,333
Advertising ¹⁷	248,360	.5	124,180	2,483,600	1	41,393	165,573
Private education loans	100	.5	50	50,000	1.5	1,250	1,300

²⁴ While Regulation Z also requires the creditor to provide a short written disclosure regarding the appraisal process for higher-priced mortgage loans, the disclosure is now provided by the CFPB, and may be classified as a label supplied by the Federal government. As a result, it is not a “collection of information” for PRA purposes; it is not, therefore, included in burden estimates below. See 5 CFR 1320.3(c)(2), and CFPB, Final Rule, Appraisals for Higher-Priced Mortgage Loans, 78 FR 10,368, 10,430 (Feb. 13, 2013), and Supplemental Final Rule, Appraisals for Higher-Priced Mortgage Loans, 78 FR 78,520, 78,575 (Dec. 26, 2013).

Sale, transfer, or assignment of mortgages	100,000	.5	50,000	5,000,000	.25	20,833	70,833
Ability to pay/qualified mortgage ¹⁸	5,000	.75	3,750	0	0	0	3,750
Appraiser misconduct reporting	625,000	.75	468,750	12,500,000	.375	78,125	546,875
Mortgage servicing ¹⁹	5,000	1	5,000	1,000,000	2.25	37,500	42,500
Loan originators ²⁰	2,500	2	5,000	25,000	5	2,083	7,083
Total open-end credit							4,547,692
Total closed-end credit							8,460,760
Total credit							13,008,452

¹ Regulation Z requires disclosures for closed-end and open-end credit. TILA and Regulation Z now cover credit up to \$54,600 plus an annual adjustment (except that real estate credit and private education loans are covered regardless of amount), generally causing an increase in transactions. In some instances noted below, market changes have reduced estimated PRA burden. In other instances noted below, changes to Regulation Z have increased estimated PRA burden. The overall effect of these competing factors, combined with the FTC sharing with the CFPB estimated PRA burden (for all but motor vehicle dealers) yields a net increase from the FTC's prior reported estimate for open-end credit and for closed-end credit.

² Burden per respondent in some categories has increased compared to prior FTC estimates, due to changes in rules.

³ Burden per transaction in some categories has increased compared to prior FTC estimates, due to changes in rules.

⁴ Respondents for mortgages involving rescission have decreased, as have transactions.

⁵ Respondents for home equity lines of credit have decreased, as have transactions.

⁶ Regulation Z high cost mortgage rules now cover certain open-end mortgages, and a new counseling rule also applies.

⁷ Respondents for sale, transfer or assignment of mortgages have decreased.

⁸ Regulation Z has expanded various mortgage servicing requirements for prompt crediting and payoff responses.

⁹ Regulation Z includes new loan originator compensation requirements.

¹⁰ Respondents for credit disclosures have decreased, as have transactions.

¹¹ Respondents for mortgages involving rescission have decreased.

¹² Regulation Z now has integrated mortgage disclosure requirements for loan estimates and loan closing documents, with other requirements.

¹³ Respondents for variable rate mortgages have decreased but Regulation Z has expanded mortgage disclosure requirements affecting subsequent disclosures, increasing burden.

¹⁴ Regulation Z high rate/high fee mortgages are now called "high cost" mortgages. Respondents in high cost mortgages have decreased, but the rules cover more types of mortgages and include a counseling requirement, increasing burden. However, these types of transactions have decreased, reducing total burden.

¹⁵ Respondents for higher priced mortgages have decreased. However, Regulation Z now has certain appraisal requirements for higher-priced mortgages, increasing burden. However, these types of transactions have decreased, reducing total burden.

¹⁶ Reverse mortgage respondents and transactions have decreased.

¹⁷ Advertising respondents have increased, as have transactions, causing an increased total burden.

¹⁸ Regulation Z now includes ability to pay rules that affect setup costs.

¹⁹ Regulation Z has expanded various mortgage servicing requirements for prompt crediting and payoff responses. It also requires periodic statements (or a coupon book, for fixed-rate mortgages).

²⁰ Regulation Z includes new loan originator compensation requirements.

Associated labor costs: \$566,996,336 (\$13,432,575 recordkeeping costs: \$11,966,175 + \$1,466,400 carve-out for motor vehicles + \$553,563,761 disclosure costs: \$508,250,213 + \$45,313,548 carve-out)

Staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below (\$56 for managerial or professional time, \$42 for skilled technical time, and \$17 for clerical time) are averages drawn from Bureau of Labor Statistics data.²⁵

Recordkeeping

²⁵ These inputs are based broadly on mean hourly data found within the "Bureau of Labor Statistics, Economic News Release," March 25, 2015, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014." <http://www.bls.gov/news.release/ocwage.t01.htm>.

For the 688,850 recordkeeping hours, staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is \$13,432,575.

Disclosure

For each notice or information item listed, staff estimates that 10 percent of the burden hours require managerial or professional time and 90 percent require skilled technical time. As shown below, the total disclosure cost is \$553,563,761.

Regulation Z: Recordkeeping and Disclosures – Cost

Required Task	-----Managerial-----		-----Skilled Technical-----		-----Clerical-----		Total Cost (\$)
	Time (hours)	Cost (\$56/hr.)	Time (hours)	Cost (\$42/hr.)	Time (hours)	Cost (\$17/hr.)	
Recordkeeping	0	0	68,885	2,893,170	619,965	10,539,405	\$13,432,575
Open-end credit Disclosures:							
Initial terms	15,875	\$889,000	142,875	\$6,000,750	0	\$0	\$6,889,750
Rescission notices	78	\$4,368	705	\$29,610	0	\$0	\$33,978
Subsequent disclosures	20,333	\$1,138,648	183,000	\$7,686,000	0	\$0	\$8,824,648
Periodic statements	276,958	\$15,509,648	2,492,625	\$104,690,250	0	\$0	\$120,199,898
Error resolution	43,375	\$2,429,000	390,375	\$16,395,750	0	\$0	\$18,824,750
Credit and charge card accounts	9,688	\$474,712	87,187	\$2,615,610	0	\$0	\$3,090,322
Settlement of estate debts	4,000	\$196,000	36,000	\$1,080,000	0	\$0	\$1,276,000
Special credit card requirements	9,688	\$474,712	87,187	\$2,615,610	0	\$0	\$3,090,322
Home equity lines of credit	458	\$22,442	4,126	\$123,780	0	\$0	\$146,222
Home equity lines of credit –high cost mortgages	117	\$6,552	1,050	\$44,100	0	\$0	\$50,662
College student credit card marketing – ed institutions	229	\$11,221	2,063	\$61,890	0	\$0	\$73,111
College student credit card marketing – card issuer reports	45	\$2,205	405	\$12,150	0	\$0	\$14,355
Posting and reporting of credit card agreements	9,688	\$474,712	87,187	\$2,615,610	0	\$0	\$3,090,322
Advertising	7,875	\$385,875	70,875	\$2,126,250	0	\$0	\$2,512,125
Sale, transfer, or assignment of mortgages	823	\$40,327	7,407	\$222,210	0	\$0	\$262,537
Appraiser misconduct reporting	54,687	\$2,679,663	492,188	\$14,765,640	0	\$0	\$17,445,303
Mortgage servicing	542	\$30,352	4,875	\$204,750	0	\$0	\$235,102
Loan originators	708	\$39,648	6,375	\$267,750	0	\$0	\$307,398
Total open-end credit							\$186,366,805
Closed-end credit Disclosures:							
Credit disclosures	639,960	\$35,837,760	5,759,637	\$241,904,754	0	\$0	\$277,742,514
Rescission notices	12,750	\$714,000	114,750	\$4,819,500	0	\$0	\$5,533,500
Redislosures	13,750	\$770,000	123,750	\$5,197,500	0	\$0	\$5,967,500
Integrated mortgage disclosures	92,500	\$5,180,000	832,500	\$34,965,000	0	\$0	\$40,145,000
Variable rate mortgages	1,958	\$109,648	17,625	\$740,250	0	\$0	\$849,898
High cost mortgages	550	\$30,800	4,950	\$207,900	0	\$0	\$238,700
Higher priced mortgages	383	\$21,448	3,450	\$144,900	0	\$0	\$166,348
Reverse mortgages	433	\$24,248	3,900	\$163,800	0	\$0	\$188,048
Advertising	16,557	\$927,192	149,016	\$6,258,672	0	\$0	\$7,185,864
Private education loans	130	\$7,280	1,170	\$49,140	0	\$0	\$56,420
Sale, transfer, or assignment of mortgages	7,083	\$396,648	63,750	\$2,677,500	0	\$0	\$3,074,148
Ability to pay/qualified mortgage	375	\$21,000	3,375	\$141,750	0	\$0	\$162,750
Appraiser misconduct reporting	54,687	\$3,062,472	492,188	\$20,671,896	0	\$0	\$23,734,368
Mortgage servicing	4,250	\$238,000	38,250	\$1,606,500	0	\$0	\$1,844,500
Loan originators	708	\$39,648	6,375	\$267,750	0	\$0	\$307,398
Total closed-end credit							\$367,196,956
Total Disclosures							\$553,563,761
Total Recordkeeping and Disclosures							\$566,996,336

13. Estimated Capital and Other Non-Labor Costs

The applicable requirements impose minimal start-up costs, as creditors and/or advertisers generally have or obtain necessary equipment for other business purposes. For the same reason, staff believes that the cost of printing and copying to comply with Regulation Z is minimal. Staff anticipates that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates. This training, however, would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with collecting information to comply with Regulation Z.

14. Estimated Cost to Federal Government

The FRB and CFPB issued the recordkeeping requirement of Regulation Z, so there is no cost to the FTC for that purpose. Enforcement of the recordkeeping requirements of Regulation Z is incidental to overall enforcement of the TILA. Staff estimates that enforcing the recordkeeping requirement will cost the FTC Bureau of Consumer Protection approximately \$162,603, which is a representative year's cost of enforcing Regulation Z's requirements during the three-year clearance period sought. This estimate is based on the assumption that one attorney work year will be expended. Clerical and other support services are included in this estimate.

The FRB and CFPB issued the disclosure requirements of Regulation Z, so there is no cost to the FTC for that purpose. Regarding enforcement of the disclosure requirements, staff estimates that the cost to the FTC Bureau of Consumer Protection of administering all TILA requirements will approximate \$1.46 million. This estimate is based on the assumption that nine full attorney work years will be expended to enforce various aspects of these rules. Clerical and other support services are also included in this estimate.

15. Program Changes or Adjustments

FTC staff has adjusted upward the prior overall burden estimate by 1,033,929 hours (from 12,663,373 to 13,697,302). This reflects the continued burden splitting noted above regarding shared enforcement authority with the CFPB, albeit offset by countervailing increases due to the breadth of amendments to Regulation Z and their impact on recordkeeping and disclosure through expanded coverage and more complex transactions. In turn, associated labor costs have risen as applied to the increased estimate of burden hours, paired with updated mean hourly wages.

16. Publishing Results of the Collection of Information

Not applicable.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certifications for PRA Submissions

Not applicable.