

**Supporting Statement for the
Recordkeeping and Disclosure Requirements associated with
Regulation Z (Truth in Lending) and
Regulation AA (Unfair or Deceptive Acts or Practices)
(OMB No. 7100-0199)
Higher Education Opportunity Act (Docket No. R-1353)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the current recordkeeping and disclosure requirements of Regulation Z (Truth in Lending Act),¹ Home Ownership and Equity Protection Act (HOEPA), and Regulation AA (Unfair or Deceptive Acts or Practices). The Paperwork Reduction Act (PRA) classifies these requirements as an information collection and the PRA requires the Federal Reserve to renew these requirements every three years.

On March 24, 2009, a notice of proposed rulemaking was published in the *Federal Register* for public comment (74 FR 12464). The Federal Reserve proposes to revise Regulation Z following the passage of the Higher Education Opportunity Act (HEOA). Title X of the HEOA amends the TILA by adding disclosure and timing requirements that apply to private educational lenders making private education loans, which are defined as loans made expressly for postsecondary educational expenses. The HEOA's definition of private education loan excludes open-end credit, real estate-secured loans, and loans made, insured, or guaranteed by the federal government under title IV of the Higher Education Act of 1965 (20 USC 1070 *et seq.*). The HEOA also amends TILA by adding limitations on certain practices by private educational lenders, including limitations on co-branding in the marketing of private student loans. The comment period expires May 26, 2009.

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

The information collection pursuant to Regulation Z is triggered by specific events. There are no required reporting forms associated with Regulation Z. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides

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

model forms, which are appended to the regulation. Creditors are required to “retain evidence of compliance” for twenty-four months (subpart D, section 226.25), but the regulation does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks (SMBs) and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are “respondents” under the PRA.² Other federal agencies account for the paperwork burden on other creditors. The current annual burden for 1,138 respondents³ is estimated to be 688,607 hours.

The proposed rule would impose a one-time increase in the annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 45,440 hours, from 688,607 to 734,047 hours. In addition, the Federal Reserve estimates that, on a continuing basis, the proposed requirements would increase the annual burden by 231,474 hours from 688,607 to 920,081 hours. The total annual burden would increase by 276,914 hours, from 688,607 to 965,521 hours.

Background and Justification

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

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

In 1994, Congress enacted HOEPA as an amendment to TILA, to address abusive practices involving certain home-secured loans with high rates or high fees.⁴ The Board also added to a disclosure required three days before the closing of a HOEPA loan a statement of the total amount of the borrower’s obligation and whether optional credit insurance or debt-cancellation coverage is included in that amount. Regulation Z Model Form H-16 illustrates this revised disclosure, which became mandatory on October 1, 2002.

In November 2007, the Board published a final rulemaking (72 FR 63462) that amended Regulation Z to address the timing and delivery of electronic disclosures, consistent with the

² Appendix I – Federal Enforcement Agencies – of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

³ 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.

⁴ 15 U.S.C. 1601 *et seq.*

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.

In July 2008, the Board published a final rulemaking (72 FR 44522) that amended Regulation Z. The goals of the amendments are to protect consumers in the mortgage market from unfair, abusive, or deceptive lending and servicing practices while preserving responsible lending and sustainable homeownership; ensure that advertisements for mortgage loans provide accurate and balanced information and do not contain misleading or deceptive representations; and provide consumers transaction specific disclosures early enough to use while shopping for a mortgage. The final rulemaking takes effect on October 1, 2009, with the single exception of the escrow requirement, which may be phased in during 2010 to allow lenders to establish new systems as needed.

On January 29, 2009, a notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance July 1, 2010 (74 FR 5244). Except as otherwise noted, the changes apply solely to open-end credit. Disclosures accompanying credit card applications and solicitations must highlight fees and reasons penalty rates might be applied, such as for paying late. Creditors are required to summarize key terms at account opening and when terms are changed. Specific fees are identified that must be disclosed to consumers in writing before an account is opened, and creditors are given flexibility regarding how and when to disclose other fees imposed as part of the open-end plan. Costs for interest and fees are separately identified for the cycle and year to date. A creditor is required to give 45 days' advance notice prior to certain changes in terms and before the rate applicable to a consumer's account is increased as a penalty. Rules of general applicability such as the definition of open-end credit, dispute resolution procedures, and payment processing limitations apply to all open-end plans, including home-equity lines of credit. Rules regarding the disclosure of debt cancellation and debt suspension agreements are revised for both closed-end and open-end credit transactions. Loans taken against employer-sponsored retirement plans are exempt from TILA coverage. In addition, the Federal Reserve revised and renamed the recordkeeping and disclosure requirements of Regulation Z, by adding the disclosure requirements in Section 227.14(b) of Regulation AA. Section 227.14 requires that a clear and conspicuous disclosure statement be given in writing to the cosigner of a loan prior to becoming obligated.

Description of Information Collection

TILA and Regulation Z distinguish between two types of credit, with the specific disclosure requirements depending on the type of credit involved. Subpart B of the regulation prescribes disclosures for open-end credit, which includes most revolving credit lines, credit card accounts, home-equity lines of credit and overdraft lines of credit tied to checking accounts. Subpart C of the regulation prescribes the disclosures for closed-end credit. This category of credit refers generally to credit extended in a fixed amount for a specified period, typified by mortgages, installment loans, and credit sales. Subpart E of the regulation prescribes special

disclosures for certain home mortgage transactions that carry rates or fees above a specified threshold and for reverse mortgages. The disclosure requirements associated with Regulation Z are described below. The frequency of response varies according to the level of credit activity by a creditor.

Open-end Credit Disclosures (Subpart B)

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

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

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

Unfair or deceptive practices involving cosigners (Reg AA, Section 227.14) - A clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement shall be substantially similar to the following statement and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The bank can collect this debt from you without first trying to collect from the borrower. The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

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

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

When a consumer alleges a billing error, the creditor must provide an acknowledgment, within thirty days of receipt, that the creditor received the consumer's error notice, and must report on the results of its investigation within ninety days. If a billing error did not occur, the creditor must provide an explanation as to why the creditor believes an error did not occur and provide documentary evidence to the consumer upon request. The creditor must also give notice of the portion of the disputed amount and related finance or other charges that the consumer still owes and notice of when payment is due.

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

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

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

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

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

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

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

Restricting use of the plan. A creditor may prohibit additional credit extensions or reduce the credit limit in certain instances, such as if there is a drop in the value of the loan security. However, in these instances, the creditor must give the consumer written notice not later than three business days after the action takes effect, explaining why the action was taken.

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

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

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

Special Disclosures (Subpart E)

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

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

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

must generally provide the consumer with new disclosures and allow the consumer another three days to consider the transaction before consummation.

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

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

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

HEOA Proposed Amendments

The proposed amendments to Regulation Z would add the following new disclosures⁵ for private education loans, which must be given at different times in the loan origination process:

- **Application or Solicitation Disclosures (Section 226.38(a))** – Specifies the information that a private educational lender must disclose to a consumer in any application for a private education loan or any solicitation for a private education loan that does not require an application. The Federal Reserve interprets the term “in” as used in § 226.38(a) to mean that the disclosures may be included either on the same document as the application or solicitation or on a separate document, as long as the private educational lender provides the required disclosures to the consumer at the same time as the application and solicitation documents.
- **Approval Disclosures (Section 226.38(b))** – Specifies the information that a private educational lender must disclose to a consumer at the time that the lender approves a private education loan for a consumer. Under the proposal, a private educational lender would be considered to have approved a loan when it has made a final determination to offer credit to a consumer on specified terms. A private educational lender would not be required to provide the approval disclosures if the lender has only conditionally approved a loan but requires further information from the consumer or the relevant covered educational institution before granting final approval. The private educational lender would have to provide to the consumer the approval disclosures at the same time that the private educational lender provides to the consumer any notice that the loan has been approved. The disclosures may be provided in the same document on which notice of the approval is communicated or on a separate document, as long as the private educational lender provides the disclosures to the consumer at the same time as the notice of approval.

⁵ The Federal Reserve provides model forms for each of the three new disclosures: Appendix H-17 for the application or solicitation disclosures required in § 226.38(a), Appendix H-18 for the approval disclosures required in § 226.38(b), and Appendix H-19 for the final disclosures required in § 226.38(c).

- **Final Disclosures (Section 226.38(c))** – Requires the private educational lender to disclose to the consumer a third and final set of information after the consumer accepts the loan for which the consumer has been approved pursuant to § 226.38(b), and at least three business days before the loan funds are disbursed. Proposed § 226.38(c) implements TILA § 128(e)(4), which requires the private educational lender to provide this final set of information contemporaneously with consummation. As discussed further under § 226.38(c)(5), TILA §128(e)(7) gives the consumer the right to cancel the loan within three business days of the date on which the loan is consummated. No loan funds may be disbursed during this three-business-day period.

Time Schedule for Information Collection

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

Consultation Outside of the Agency and Discussion of Comments

On March 24, 2009, a notice of proposed rulemaking was published in the *Federal Register* for public comment (74 FR 12464). The comment period expires May 24, 2009.

Sensitive Questions

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

Legal Status

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

Estimate of Respondent Burden⁶

The current total annual burden for the disclosure requirements of this information collection is estimated to be 585,044 hours, as shown in the following table. The table provides the estimated annual burden for the 1,138 creditors to which Regulations Z and AA apply. The

⁶ The burden estimate for this rulemaking does not include the burden addressing changes to disclosures, governed by Regulation Z, as announced in a proposed rulemaking December 10, 2008 (73 FR 74989) (Docket No. R-1340).

current estimated total annual burden represents about 14.9 percent of total Federal Reserve System burden.

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

The Federal Reserve estimates that 1,136 respondents⁷ regulated by the Federal Reserve would take, on average, 40 hours (one business week) to update their systems to comply with the proposed disclosure requirements in Sections 226.38(a), 226.38(b), and 226.38(c). This one-time revision would increase the burden by 45,440 hours. In addition, the Federal Reserve estimates that, on a continuing basis, these respondents would take on average 1 hour (monthly) to comply with the proposed disclosure requirement in Section 226.38(a) and, on average, 8 hours (monthly) to comply with the proposed disclosure requirements in Sections 226.38(b) and 226.38(c) and estimates the annual burden to be 231,474 hours. The total annual burden would increase by 276,914 hours, from 688,607 to 965,521 hours.

⁷ The 1,136 Federal Reserve-supervised respondents were obtained from numbers published in the Board of Governors of the Federal Reserve System 94th Annual Report 2007: 878 State member banks and 258 Branches & agencies of foreign banks. The 2 Commercial lending companies were excluded from these estimates.

	Current Burden			
	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<i>Subpart B Open-end Credit:</i>				
<i>Section 226.6</i>				
Initial disclosures	878	1,150	1.5 minutes	25,243
One-time change (R-1286)	1,138	1	8 hours	9,104
<i>Reg AA Section 227.14(b)</i>				
Cosigner disclosure (R-1286)	878	1,150	1 minute	16,828
<i>Section 226.9(c)</i>				
Change-in-terms disclosures				
Continuing basis	878	3,750	1 minute	54,875
One-time change (R-1286)	1,138	1	8 hours	9,104
<i>Section 226.7</i>				
Periodic Statements	1,138	12	8 hours	109,248
One-time change (R-1286)	1,138	1	40 hours	45,520
<i>Section 226.13</i>				
<u>Error resolution:</u>				
Credit cards	226	145	30 minutes	16,385
Other Open-end Credit	1,138	2	30 minutes	1,138
<i>Section 226.5(a)</i>				
<u>Credit and Charge Cards:</u>				
Applications and Solicitations	226	12	8 hours	21,696
One-time change (R-1286)	226	1	8 hours	1,808
<i>Section 226.5(b)</i>				
<u>Home-Equity Plans:</u>				
Applications disclosure	767	790	1.5 minutes	15,148
Restrictions disclosure	767	10	3 minutes	384
<i>Subpart C</i>				
<i>Section 226.17</i>				
Closed-end Credit Disclosures	1,138	2,472	6.5 minutes	304,756
<i>Subpart E</i>				
Pre-closing disclosure	30	250	3 minutes	375
<i>Subpart B Section 226.16</i>				
<i>Subpart C Section 226.24</i>				
Advertising Rules	1,138	5	25 minutes	2,371
One-time change (R-1305)	1,138	1	40 hours	45,520
One-time change (R-1286)	1,138	1	8 hours	9,104
<i>Total</i>				688,607

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

Financial Industry Burden Averages

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.⁹ They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total current estimated annual burden for all financial institutions subject to Regulation Z, including Federal Reserve-supervised institutions, would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 688,000 hours to 14,256,725 hours. On a continuing basis the estimated total annual burden would increase by 3,508,800 hours from 13,568,725 to 17,077,525 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 card issuers, retailers, and 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.

each occupational group are averages using data from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2007. <http://www.bls.gov/news.release/ocwage.nr0.htm> Occupations are defined using the BLS Occupational Classification System. <http://www.bls.gov/soc/>

⁹ Appendix I to Part 226 – Federal Enforcement Agencies of Regulation Z lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, Farm Credit Administration, and Federal Trade Commission.