

**Supporting Statement for  
OMB Control No. 1557-0230  
Fair Credit Reporting Affiliate Marketing Regulations**

The Office of the Comptroller of the Currency (OCC), in conjunction with the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (together, the Agencies), issued a proposed rule on July 15, 2004 (69 FR 42502) and a final rule on November 7, 2007 (72 FR 62910) to implement section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the Fair Credit Reporting Act (FCRA). In general, the rules prohibit a person from using information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity to opt out of the making of such solicitations. The information collections in the rule involve the notice and consumer opt out provisions. This OMB submission covers revisions to the burden estimates currently approved and a request for a three-year renewal for the entire collection.

A. Justification:

1. Circumstances that make the collection necessary:

Section 214 of the FACT Act, which adds new section 624 to the FCRA, generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to the consumer, unless the consumer is given notice and an opportunity and simple method to opt out of making such solicitations. Section 214 also requires the Agencies, the Securities and Exchange Commission (SEC), and the Federal Trade Commission (FTC), in consultation and coordination with each other, to issue regulations implementing section 214 that, to the extent possible, are consistent and comparable.

2. Use of the information:

Financial institutions will use the required notices to inform consumers about their rights under section 214 of the FACT Act. Consumers will use the notices to decide if they want to receive solicitations for marketing purposes or opt out. Financial institutions will use the consumers' opt out responses to determine the permissibility of making a solicitation for marketing purposes to consumers. The responses will be used by financial institutions to comply with section 214.

3. Consideration of the use of improved technology:

National banks may adopt any existing technology relevant to producing the notice, obtaining the consumer opt out determination, and maintaining records of the notice and opt out determination.

4. Efforts to duplication:

There is no duplication. This collection is unique in that it involves a notice specific to section 214 of the FACT Act and each involved consumer needs to make one decision at five year intervals, or longer.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

The OCC has determined that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule imposes on financial institutions, regardless of size, only the minimum burden necessary for compliance with the FACT Act.

6. Consequences to the Federal program if the collection were conducted less frequently:

Less frequent collection would not comply with the requirements of section 214 of the FACT Act.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

Not applicable.

8. Efforts to consult with persons outside the agency:

The NPRM and final rule were published for notice and comment under the PRA. (69 FR 42502 (July 15, 2004) and 72 FR 62910 (November 7, 2007)). No comments were received on the information collection requirements contained in the NPRM.

A 60-day PRA notice was published on June 18, 2007 (72 FR 33505) to begin the process for requesting a three-year extension from OMB. One comment was received from a law firm. The commenter thought that it was inappropriate to extend approval of the collection when the rule had not been finalized. The commenter also contrasted the burden estimates of the Agencies and those of the FTC. The Agencies are now finalizing the rule and seeking an extension of approval of the collection. The types of entities regulated by the Agencies are different than those that are regulated by the FTC. Thus, the Agencies and the FTC have historically used different burden estimates.

The final rule published on November 7, 2007 contains both revised burden estimates and notice of the Agencies' request to OMB for a three-year extension of clearance.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

No assurance of confidentiality is made.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

The OCC estimates that it will take persons approximately 18 hours to prepare and distribute the initial notice and opt out to consumers and conduct employee training. For those consumers that choose to opt out of having their information shared with an affiliate, it will take approximately 5 minutes to respond to the notice. Financial institutions that do not provide for a permanent opt out time period must notify consumers of the upcoming expiration of such time period before making solicitations for marketing purposes to them, where required by the final rule and section 214 of the FACT Act.

Number of respondents: 770 National banks and 916,895 Consumers.

Total number of responses: 917,665

Burden hours per response: 18 hours to prepare and distribute notice to consumers, and employee training; 5 minutes for consumer response to opt out notice.

Total burden hours: 90,265

The OCC estimates the cost of the hour burden to respondents as follows:

Clerical:	90% x 90,265 x \$25 /hr	= \$2,030,962.50
Managerial/Technical:	9% x 90,265 x \$60/hr	= \$ 487,431.00
Senior Management/Professional:	1% x 90,265 x \$100 /hr	= \$ 90,265.00
<b>Total:</b>		<b>\$2,608,658.50</b>

13. Estimates of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes in burden:

Former burden:

Total Respondents: 998,740

Total Responses: 998,740

Total Burden Hours: 121,122

Current Burden:

Total Respondents: 917,665

Total Responses: 917,665

Total Burden Hours: 90,265

Difference:

Total Respondents: - 81,075

Total Responses: - 81,075

Total Burden Hours: - 30,857

16. Information regarding collections whose results are planned to be published for statistical use:

Not applicable.

17. Request to not display expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods:

Not applicable.