

**Supporting Statement for
Information Collection Provisions of the
Survey of Information Sharing Practices with Affiliates
(OMB Control # 3084-NEW)**

(1) & (2) Necessity for and Use of the Information Collected

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act), Pub. L. No. 108-159, required the Federal Trade Commission (“FTC” or “Commission”), along with the Federal banking agencies and the National Credit Union Administration (collectively, with the FTC, “the Agencies”), to jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates. The Agencies are required to identify: (i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information; (ii) the types of information shared by such entities; (iii) the number of choices provided to consumers regarding the control of such sharing, and the degree and manner in which consumers exercise such choices, if at all; and (iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes – (a) that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or (b) of general publication of such information.

The statute also requires the Agencies to examine the information sharing practices that financial institutions and other creditors or users of consumer reports and their affiliates employ to make underwriting decisions or credit evaluations of consumers. The Commission will send a survey questionnaire (“survey”) to 20 businesses to gather the necessary information for the instant study. The Agencies jointly must submit a report to the Congress (“Report”) on the results of the initial study together with any recommendations for legislative or regulatory action. After the initial report, the Agencies jointly must submit follow-up reports to the Congress, at least once every three years.

(3) Consideration of the Use of Information Technology to Reduce Burden

Nothing in the Act or the survey prohibits regulated entities from using the least burdensome information technology to respond to the information collection. Consistent with the aims of the Government Paperwork Elimination Act, Title XVII, P.L. 105-277, the FTC will allow the submission of information through electronic means. In addition, FTC staff will use database software to compile information and thereby facilitate their review and analysis.

(4) Efforts to Identify Duplication

The information gathered for the study does not duplicate any other information collection requirements imposed on persons under the Commission’s jurisdiction.

(5) Efforts to Minimize Burden on Small Organizations

The Commission does not anticipate that the information collection conducted for the study will have a significant economic impact on small entities. None of the 20 respondents to the Commission's survey are small businesses.

(6) Consequences of Conducting the Collection Less Frequently

Less frequent collection would violate the express statutory language of the Act. Specifically, the Act's requirement that the Commission collect certain specified information and report to Congress every three years does not permit less frequent collection. FACT Act § 214(e).

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collection of information in the survey is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Public Comments/Consultation Outside the Agency

On August 31, 2006, the Agencies issued for public comment a proposal to conduct the survey.¹ We received and considered comments from entities that may be sent the information collection. A discussion of those comments and the actions taken to address those comments follows.

Survey Methodology

One commenter stated that the initial *Federal Register* notice did not include sufficient information on the survey methodology to enable the public to comment. Specifically, the commenter requested that the Agencies describe the methods they would use to conduct the survey and the methods they would use to analyze the results. Each Agency will conduct a non-statistical, qualitative survey of a limited number of regulated entities under its supervision.

Commenters also sought clarification as to: (i) which institution or affiliate in an organization would be asked to respond to the survey; and (ii) whether that respondent would be asked to provide information regarding not only the sharing of information with, but also the receipt of information from, its affiliates.

The Agencies' second *Federal Register* notice explains that respondents will not be asked to provide data regarding information sharing practices on a combined basis for it, its affiliates, and its corporate parent; rather the survey will ask only about sharing for that particular

¹ 71 Fed. Reg. 51,888.

respondent. The notice adds that the survey will focus on a respondent's practices and will ask a respondent to provide information not only about its sharing of information with its affiliates, but also about its receipt of information from its affiliates.

Survey information

Some commenters stated that the Survey should include definitions and instructions. The commenters also noted that the draft Survey assumes that an organization has only one policy on information sharing practices with all affiliates, when in fact such practices might vary by affiliate, by product, or by state. For example, one commenter noted that the draft did not take into account numerous variations in affiliate sharing practices within a single firm and, as a result, in many cases, the response options provided were inapplicable, inaccurate, or incomplete.

One commenter suggested the Survey include definitions of important terms, such as affiliate, consumer, customer, personally identifiable transaction or experience information, and purposes related to employment or hiring, because some of these are terms of art with which Survey respondents will be unfamiliar.

In many cases where commenters specified the need for specific definitions or instructions, the Agencies have incorporated such suggestions. Additional space will be provided on the Survey instrument for supplemental responses, such as information on varying practices by affiliate or state.

A commenter noted that questions do not specify the time frame to be used for completing the Survey, and asked if the Agencies intend to capture a snapshot. The instructions will be specific and direct respondents to provide information on their current information sharing practices with affiliates.

Some commenters suggested collecting additional information, such as information to determine whether the perceived risks of information sharing (for example, increased level of identity theft) in fact exist. Commenters noted that the Survey should focus on the underlying purpose for affiliate sharing practices. One commenter suggested the primary purpose for which companies share information with affiliates is to provide benefits to consumers, including providing them with an array of products and services at as low a cost as possible. In general, the Agencies will limit the Survey to the information that Section 214(e) of the FACT Act requires to be included in the Report. For that reason, the Agencies do not plan to collect other information, such as data regarding the benefits, or perceived risks of information sharing with affiliates.

Confidential and Voluntary Status

_____ Commenters indicated that the Agencies should guarantee confidential treatment to respondents, in all cases and not merely provide it on a case-by-case basis, in order to encourage

voluntary and informative responses. In addition, some commenters noted that certain requested survey information is proprietary (e.g., the percentage of customers that opt out and the use of shared information for underwriting) and thus should receive confidential treatment. Finally, some commenters asked that the FTC conduct a voluntary survey instead of using its compulsory authority to gather information.

In cases where questions of confidentiality arise, as mentioned in the initial notice, the Agencies will grant confidential treatment on a case-by-case under applicable Federal law. Responses to survey questions that institutions are already required to publicly disclose would not be protected from disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). However, it is possible that some information collected on this survey may be exempt from disclosure. To the extent an institution can establish the potential for substantial competitive harm, those responses would be protected by FOIA Exemption 4, 5 U.S.C. § 552(b)(4) (exempting from disclosure “trade secrets and commercial or financial information obtained from a person and privileged and confidential”). Further, Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act, 15 U.S.C. § 46(b).

If the Commission determines that the information does not constitute trade secrets or confidential commercial or financial information under FTC Act Section 6(f), a respondent who designates a submission as confidential is entitled to 10 days’ advance notice of any anticipated public disclosure by the Commission under Section 21(c) of the FTC Act, 15 U.S.C. § 57b-2(c). The FTC Act and the Commission’s rules authorize disclosure in limited circumstances (e.g., official requests by Congress, requests from other agencies for law enforcement purposes, or administrative or judicial proceedings). Even in those limited contexts, however, the Commission’s rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. See 15 U.S.C. § 57b-2; 16 C.F.R. §§ 4.9-4.11.

In the case of surveys administered by the financial regulatory agencies, the Agencies believe that such supervisory relationships will help to facilitate a high level of voluntary responses. In contrast, the FTC does not have the same type of supervisory relationship with its regulated entities; therefore, the Commission may use compulsory authority to obtain information that will be necessary for it to prepare its portion of the Report should any entities choose not to participate voluntarily.

Burden estimates

Commenters indicated that a respondent would likely need more time than the 10 hours estimated by the Agencies to collect and organize information to produce responses, in part due to items in the proposal that they believed were unclear. Commenters expressed concern that the time necessary to respond to the survey would exceed the Agencies’ estimates if the answers to the survey were to be based on an organization’s historical information sharing practices or the

information sharing practices for multiple entities that exist throughout a complex organization.

The Agencies believe that the survey instructions, with the clarifications described above, will focus the responses such that the burden estimate of 10 hours should be sufficient. For example, the survey will ask only for information regarding current information sharing practices and will ask only for a respondent entity's own information sharing practices, not those of its affiliates and parent organization.

Pre-survey testing

Commenters recommended that the Agencies consult institutions for their suggestions on re-crafting the questions to capture a more meaningful representation of affiliate sharing practices and to reduce burden on respondents. In response to these comments, the Board, on behalf of the other agencies, conducted testing (through telephone interviews) with three financial institutions. In general, the test institutions indicated that the draft Survey would not cause undue burden on respondents. In addition, the test institutions provided feedback on the format, instructions, and content of the Survey. In response to this feedback, the Agencies have modified the final Survey instrument and instructions.

(9) Payments and Gifts to Respondents

Not applicable.

(10) Assurances of Confidentiality

Confidentiality will be determined on a case-by-case basis. Confidentiality for respondents to the survey under the Commission's jurisdiction will be protected in accordance with the FTC Act, 15 U.S.C. 41 et seq., and the Commission's Rules of Practice.

(11) Matters of a Sensitive Nature

See discussion under the sub-heading "Confidential and Voluntary Status" in #8 above.

(12) Estimated Annual Hours and Labor Cost Burden

Estimated total annual hours burden: 200 hours

Each respondent will complete a written survey. In order to complete the survey, the individual completing the form for the respondent will most likely need to consult staff in other parts of the organization and obtain data from record-keeping systems. Based on the Agencies' expertise and experience, we estimate the consultations and the collection of data will take between four and eight hours per respondent. We estimate it will then take less than two hours for each respondent to fill out the survey. The Agencies believe that the survey instructions will

focus the responses such that the burden estimated maximum of 10 hours is reasonable. For example, the instructions explain that the survey asks only for information regarding current information sharing practices and only for a respondent's own information sharing practices, not those of its affiliates and parent organization. Based on the methodology proposed, the total burden imposed by the Commission's portion of the information collection, will be no more than 200 hours.

Estimated labor costs: \$101,000, rounded

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Total cost was estimated using the following formula: (% of staff time) x (hourly rate per appropriate labor category) x (annual burden hours for all 20 respondents), adding together the labor cost for all labor categories.

The following allocation of employee hours was used: 25% office and administrative support at \$15.21 per hour, 40% general and operations managers at \$43.52 per hour, 25% senior management at \$95.66 per hour, and 10% lawyers at \$54.35 per hour. Based on the Bureau of Labor Statistics data for 2006² (most recent available whole-year information), the labor costs for the employees that will respond to the survey is \$505.61 per respondent, or \$101,000, rounded, for all 20 respondents.

(13) Capital and Other Non-labor Costs

The Commission does not believe that the information collection will involve any capital or non-labor costs.

(14) Estimated Cost to the Federal Government

Staff estimates that the fiscal year cost to the FTC Bureaus of Economics and Consumer Protection of collecting the information, reviewing and aggregating the information collected, and drafting the report to Congress will be approximately \$178,447.50 per year. This estimate is based on the assumption that 1.25 professional full-time equivalents will be expended. Clerical and other support services are also included in this estimate.

(15) Program Changes or Adjustments

Not applicable. This is a new information collection.

² See "National Compensation Survey: Occupational Wages in the United States, June 2006," Table 2, <http://www.stats.bls.gov/ncs/ocs/sp/ncbl0910.pdf>.

(16) Statistical Use of Information/Publication of results

The Commission and Agencies must submit jointly a report to the Congress on the results of the initial study together with any recommendations for legislative or regulatory action. After the initial report, the Commission and Agencies jointly must submit follow-up reports to the Congress, at least once every three years. There are no plans to publish any information for statistical use.

(17) Non-Display of the Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to the “Certification for Paperwork Reduction Act Submissions”

Not applicable.