

**Supporting Statement for
OMB Control Number 1550-0NEW
Survey of Information Sharing Practices with Affiliates**

A. Justification

1. Circumstances that make the collection necessary:

The Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, and the National Credit Union Administration, (Agencies), are required jointly to submit a report to the Congress together with any recommendations for legislative or regulatory action, pursuant to Section 214(e) of the Fair and Accurate Transactions Act of 2003 (“FACT Act” or the “Act”) Pub. L. 108-159, 117 Stat. 1952. The Agencies will gather information by means of a Survey to be completed by financial institutions and other persons that are creditors or users of consumer reports. The Agencies will use the Survey responses to prepare a report to Congress on the information sharing practices by financial institutions, creditors, or users of consumer reports with their affiliates.

2. Use of the information:

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.

The OTS, and the other Agencies, will use information obtained from the Survey responses to prepare the first triennial report to Congress as required by Section 214(e) of the FACT Act.

3. Consideration of the use of improved information technology:

The OTS plans to use a Web-based application for data collection. National banks may adopt any existing technology relevant for producing the information.

4. Efforts to identify duplication:

There is no duplication. The information is not available from any other source.

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

This collection of information will not have a significant impact on a substantial number of small entities.

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

The Agencies would be unable to prepare the report required by statute.

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

Not applicable. This collection will be conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency:

On August 31, 2006, the Agencies published a notice in the Federal Register (71 FR 51888) requesting public comment for 60 days on the proposed information collection. The comment period expired on October 30, 2006. The Agencies received five comment letters from four trade associations and one individual.

Comment Summary:

The accuracy of the Agencies' estimates of the burden of the information collections

One trade association commenter stated that the collection and organization of information to produce responses to the draft Survey would be quite extensive. The trade association's members estimate that the time needed to complete the Survey would range from 2 to 120 hours. They also said that clarification of terms may help to reduce the workload, but they would still have to consult numerous personnel across a diversified organization. The commenter stated that the subsequent collation of information to ensure meaningful results would consume far more time than estimated in the notice.

Ways to enhance the quality, utility, and clarity of the information to be collected

General

Another commenter recommended that the Agencies consult institutions for their suggestions on re-crafting the questions to capture a more meaningful representation of affiliate sharing practices. One trade association stated that ambiguous terminology renders the Survey questions "susceptible to different interpretations...the Survey is not designed such that responses will necessarily reveal instances in which parties have attributed different meanings to an ambiguous term." They believe that this weakness would call into question the accuracy of the data collected and the utility of the resulting conclusions.

One of the commenters said that important modifications and clarifications are necessary. This commenter believes that the draft Survey posted by the Board does not take into account numerous variations in affiliate sharing practices within a single holding company and that, as a result, in many cases the response options are inapplicable, inaccurate, or incomplete. The commenter believes that the results will not accurately capture actual practices. The commenter suggested that the Agencies meet with banks to discuss how to devise a more manageable Survey that would be less time-consuming to complete and produce more accurate results.

One commenter stated that, as drafted, the Survey assumes that practices are consistent for each affiliate cross the holding company, for each product, and in each state and that this does not reflect actual practices. Individual state laws may necessitate significant exceptions to a general affiliate sharing practice. One commenter stated that there may be variations in practices based on particular customers' contracts, depending on when and by whom the customer was acquired.

Define terms

One commenter stated that the lack of definitions renders the Survey confusing, which will inhibit participation.

Another commenter mentioned that the Survey should include definitions of important terms, including "affiliate," "consumer," "customer," "personally identifiable transaction or experience information," and "purposes related to employment or hiring." Some of these are terms of art with which those responsible for completing the Survey would be unfamiliar. One commenter provided the following example: the draft questions referred to "consumer information," which is different from customer information, both by common usage and based on various statutes. As a matter of practice, in some cases, "consumer" information might be shared for employment purposes, but "customer" information would not. The commenter asserted that respondents would be confused about how to respond. One commenter requested definitions for certain terms, including "sharing," "we," and "general publication." One commenter suggested that additional definitions would help focus responses, specifically definitions of "customer," "consumer," and "affiliate."

One commenter stated that it is unclear what "personally identifiable transaction or experience" means in the context of employment or hiring information – for example, the scope of the phrase "for purposes related to employment."

A commenter also noted that the draft Survey posted by the Board does not distinguish between "consumers" and "customers" in many of the questions.

Use commonly understood definitions for words that are not terms of art

One commenter stated that an item for "general publication" suggests that it is publicly available or made readily available to anyone seeking to obtain or purchase it. The commenter does not believe that marketing lists, fraud detection lists, or anti-money laundering lists are materials that are a matter of "general publication." These lists are not generally available, and certainly not for "publication" as that term is commonly understood.

One commenter believed that the Survey should clarify that the questions in the Survey assume compliance with laws (*i.e.*, the Fair Credit Reporting Act, Gramm-Leach-Bliley Act, state laws, etc.).

Ways to minimize the burden of information collections

One commenter suggested that the Agencies meet with banks to discuss how to devise a more manageable, less time-consuming Survey. They also indicated that the responses should include the common practice of sharing information with affiliates for customer service purposes. Many banks allow customers to use a single phone number or Web site in order to access all the customers' accounts across the organization.

Specific data the Agencies should collect to prepare the report and the terminology that will best describe the data to be collected

One commenter stated that the draft Survey should focus on the underlying purpose for affiliate sharing practices. The commenter believes that 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 the lowest possible cost. The comment letter provided an example of a bank with numerous affiliates having a single affiliate responsible for the data processing for the bank and its affiliates. The net result of using a data processing affiliate in this manner could be lower operating costs for each affiliated institution, savings which could then be passed along to consumers as lower prices.

The extent to which banks currently track and are able to report on the method used by consumers to opt-out of affiliate information sharing

The members of one trade association expressed concern that retrieving the source of opt-outs may not be possible and that different methods may be used by different businesses and affiliates within the same holding company. The Survey does not appear to accommodate this very common situation.

Question 11 of the Board's draft Survey asked respondents to estimate the percentage of all consumers that exercise their opt-out choices through each of the various methods. A commenter indicated that there should also be an option to indicate that the institution does not track the percentage of all consumers that exercise their opt-out choices through the various opt-out methods.

Information related to recordkeeping practices or other aspects of the data specification and Survey development process

One commenter recommended that the Agencies consult institutions for their suggestions on re-crafting the questions to capture a more meaningful representation of affiliate sharing practices.

General Comments

- The questions, as phrased in the Survey, will produce results that may not be useful.
- Questions do not specify the time frame to be used in answering.
- Absent from the notice is any indication that the many benefits of information sharing will be part of the Survey.

Clarify Respondent Perspective

- The perspective that one should employ in completing the Survey should be made clear, specifically to help respondents to know whether the Survey is to be completed by a single affiliate, a business line, or whether it should cover the practices of an entire commonly controlled group of companies.
- Organizations will need instructions as to how affiliates are supposed to complete the Survey in a variety of circumstances – if the affiliate responder is a “sharer,” whether the “consumer” is its own customer or is receiving information in a servicing capacity.

Process and voluntary participation

- The Agencies have not described how they will select potential respondents to the draft Survey. It is not clear how the Agencies would weight responses from companies of various sizes.
- One commenter commended the bank, thrift, and credit union regulatory agencies for assuring the financial institutions they regulate that participation in the Survey will be voluntary.

Confidentiality

- One commenter expressed concern regarding the confidentiality of responses, especially pertaining to opt-outs and believes that the Agencies should state the presumption that the individual draft Survey responses represent the respondents’ confidential trade information and protect them accordingly.
- One commenter stated that ensuring confidentiality and providing aggregated Survey data to Congress will further the stated purpose of the Survey by encouraging candid and voluntary participation to the greatest extent possible.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

In cases where questions of confidentiality arise, the Agencies will grant confidential treatment on a case-by-case basis 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 the 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 or confidential”). In the event of a FOIA request for information, an Agency may claim Exemption 4 or other

protections to the extent legally permissible as a basis for withholding the information.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

30 respondents @ 1 response = 30 responses

30 responses @ 10 burden hours = 300 burden hours

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

Compliance Officer	75% x 300	=	225 @ \$110	=	\$ 24,750
Legal Counsel:	25% x 300	=	75 @ \$165	=	<u>\$ 12,375</u>
Total:				=	\$ 37,125

13. Estimates of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Change in burden:

OTS is citing an increase in burden of 300 hours as a program change due to the fact that this is a new collection.

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

The OCC has no plans to publish the data for statistical purposes.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods

Not applicable.