

SUPPORTING STATEMENT

Survey of Information Sharing Practices with Affiliates (OMB No. 3064-NEW)

INTRODUCTION

The FDIC is requesting OMB approval to conduct a qualitative study of the information sharing practices of insured state nonmember banks. The same study will also be administered by the Office of the Comptroller of the Currency (OCC), the Federal Reserve System (FRB), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC) to regulated entities under their respective supervision. The FDIC, OCC, FRB, OTS, NCUA, and FTC (collectively, the “Agencies”) will separately summarize the results of their studies in a joint Report to Congress on the information sharing practices of financial institutions, creditors, or other users of consumer reports with their affiliates as mandated by section 214(e) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

A. JUSTIFICATION

1. Circumstances and Need

The FACT Act was signed into law on December 4, 2003 (Pub. L. 108-159, 117 Stat. 1952). The FACT Act amends the Fair Credit Reporting Act, 15 U.S.C. 1681-1681x., to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, to allow consumers to exercise greater control regarding the type and amount of solicitations they receive, to restrict the use and disclosure of sensitive medical information, to bolster efforts to improve financial literacy among consumers, and to promote uniform national standards in key areas of regulation regarding consumer report information. Section 214(e) of the FACT Act directs the Federal banking agencies, the NCUA, and the FTC 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. Section 214(e) specifically directs the Agencies to identify (1) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information; (2) the types of information shared by such entities with their affiliates; (3) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and (4) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes that are related to employment or hiring, or of general publication of such information. Section 214(e) further directs the Agencies to examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

In addition to directing that the Agencies conduct regular studies of information sharing practices, section 214(e) mandates that the Agencies jointly submit to Congress a report on the results of the initial study and submit follow-up reports no less frequently than once every three years following the date of the initial report.

2. Use of Information Collected

The FDIC and the other Agencies intend to use information collected pursuant to responses to a written questionnaire completed by financial institutions and other persons who are creditors or users of consumer reports to prepare the initial Report to the Congress required by Section 214(e) of the FACT Act on the information sharing practices by financial institutions, creditors, or users of consumer reports with their affiliates.

3. Use of Technology to Reduce Burden

To minimize burden on respondents, FDIC may use automated data collection techniques wherever possible.

4. Efforts to Identify Duplication

The information collection is a snapshot of, and directs institutions with affiliates to provide, information on their current information sharing practices with affiliates. This information is not readily available.

5. Minimizing the Burden on Small Banks

The collection will apply to only a small sample of FDIC-supervised institutions with affiliates, regardless of size. The FDIC and the other Agencies have limited the survey to the information that Section 214(e) of the FACT Act requires to be included in the report to Congress. Moreover, responding to the FDIC's survey is voluntary and requests only information on respondent practices and not the practices of affiliates or parent companies.

6. Consequences of Less Frequent Collection

The collection will occur only as necessary to issue a report to Congress consistent with the statutory reporting requirement imposed on the agencies.

7. Special Circumstances

None.

8. Consultation with Persons Outside the FDIC

Pursuant to the PRA, the Agencies published a “first” *Federal Register* notice on August 31, 2006 (71 FR 51888). A “second” *Federal Register* notice, advising the public that the collection has been submitted to OMB for review, was published by the Agencies on November 00, 2007 (72 FR 00000). In response to the first notice, the Agencies received five comments, each of which was discussed by the Agencies in the second *Federal Register* notice, with commenters addressing study methodology, study definitions and instructions, the voluntary status of the study, the Agencies proposed treatment of confidential information, burden estimates, and pre-survey testing. More specifically, one commenter requested that the Agencies describe the methods they would use to conduct the study and the methods they would use to analyze the results. The FDIC and other Agencies will conduct a non-statistical, qualitative study of a limited number of regulated entities under its supervision. The FDIC estimates that there will be 100 respondents to its study instrument.

Commenters also requested clarification as to which institution or affiliate in an organization would be asked to respond to the study and 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. 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 study will ask only about sharing for that particular respondent. The study will focus on a respondent’s general 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.

Some commenters stated that the study should include instructions and definitions of important terms, as certain terms used in the study instrument are terms of art which those completing the instrument will be unfamiliar. In many cases where commenters specified the need for definitions and instructions, definitions and instructions have been incorporated into the study instrument. Commenters also noted that the study assumes that an organization has only one policy on information sharing practices with all affiliates, when in fact such practices may vary by affiliate, by product or by state. Additional space will be provided on the study instrument for supplemental responses, such as information on varying practices by affiliate or state. One commenter noted that questions did not specify the time frame to be used for completing the study, and asked if the Agencies intended to capture a snapshot. The study instrument’s 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 (such as, for example, identity theft) in fact exist. Commenters noted that the study 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 FDIC and the other Agencies will limit the study to the information that Section 214(e) of the FACT Act requires to be included in the Report. The FDIC does not plan to collect other information, such as data regarding the benefits, or perceived risks of information sharing with affiliates.

Commenters indicated that the Agencies should guarantee confidential treatment to respondents in all cases, and not on a case by case basis. Additionally, some commenters noted that certain requested survey information is proprietary and thus should receive confidential treatment, such as the percentage of customers that opt out and the use of shared information for underwriting. Where questions of confidentiality arise, the FDIC will grant confidential treatment on a case-by-case basis under applicable Federal law. Responding to the FDIC's Study will be voluntary.

Commenters indicated that a respondent would likely need significantly more time than 10 hours to collect and organize information to produce responses to the study, in part due to items in the study instrument they felt were unclear. Commenters were particularly concerned that the time needed to respond to the study would exceed the Agencies estimates if the answers to the study were to be based on an organization's historical information sharing practices or the information sharing practices for multiple entities and/or multiple lines of business that exist throughout a complex organization. The FDIC believes that the final study instructions, with expanded definitions and clarification that respondents should only report on current and not historical practices, will focus the responses so that the burden estimate of 10 hours per institution is reasonable.

To refine the study, minimize burden, and improve the utility of the results, the FRB, on behalf of the Agencies, conducted a pilot test of the study instrument on three financial institutions. In general, the test institutions indicated that the draft study instrument would not cause undue burden on respondents. The pilot institutions provided valuable feedback on the survey format, instructions, and content, which the Agencies incorporated into the final study instrument.

9. Payment or Gift to Respondents

There will be no payment or gift to respondents.

10. Confidentiality

A joint Report to Congress by the FDIC and the other Agencies is planned using aggregated data from respondents. The report will not include names of respondents. In cases where questions of confidentiality arise, as mentioned in the initial notice, the Agencies will grant confidential treatment on a case-by-case basis under applicable Federal law. No individual bank information will be made

available outside of the FDIC except to the extent that disclosure is required under the Freedom of Information Act.

11. Information of a Sensitive Nature

The study seeks only to determine the information sharing practices of financial institutions, creditors, or other users of consumer reports with their affiliates and does not include any questions of a sensitive nature.

12. Estimate of Annual Burden

The Agencies are required to conduct periodic studies and submit reports to Congress at least once every three years. The estimate of hour burden for each administration of the survey is as follows:

Number of Respondents: 100
Burden per Respondent: 10 hours
Total Burden: $100 \times 10 = 1,000$ hours.

Estimate of annualized cost to respondents: \$66,900.
Total cost to the public was estimated using the following formula.
Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate:

- (1) 20% - Clerical @ \$25 = \$5,000
- (2) 50% - Managerial or Technical @ \$55 = \$27,500
- (3) 20% - Senior Management @ \$100 = \$20,000, and
- (4) 10% - Legal Counsel @ \$144 = \$14,400.

13. Capital, Start-up, and Operating Costs

None.

14. Estimates of Annualized Cost to the Federal Government

None.

15. Reason for Change in Burden

This is a new collection. Therefore the entire burden increase of 1,000 hours associated with this request is a program change.

16. Publication

Where possible, it is the intent of the FDIC to aggregate data from respondents for publication in the report to the Congress. The report to be published will not include names of, or otherwise identify, individual respondents. The Study will be a non-statistical, qualitative study of a limited number of regulated entities under the FDIC's supervision. The FDIC estimates the number of respondents to be 100. The FDIC expects the beginning and end dates for the collection of information to be February – through April 2008. The FDIC anticipates that the joint Report would be completed in August 2008, and that publication to Congress would occur in September 2008.

17. Exceptions to Expiration Date Display

None.

18. Exceptions to Certification

None.

Attachments

1. Draft study instrument
2. "First" Federal Register notice; "second" Federal Register notice.
3. Section 214(e) of the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-59, 117 Stat. 1952.