

**Supporting Statement for the
Disclosure Requirements and Recordkeeping Associated with
Regulation V (Fair Credit Reporting) (OMB No. 7100-0308)
(Identity Theft Red Flags and Address Discrepancies - Docket No. R-1255)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), revised, without extension, the disclosure requirements associated with Regulation V, which implements the Fair Credit Reporting Act (FCRA) (OMB No. 7100-0308).¹ The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies disclosure and recordkeeping requirements of a regulation as “required information collections.”²

Regulation V requires financial institutions that (1) extend credit and regularly and in the ordinary course of business furnish information to a nationwide consumer reporting agency (CRA) and (2) furnish negative information to a CRA regarding credit extended to a customer must provide a clear and conspicuous notice to the customer, in writing, about furnishing this negative information.³ In addition, under the affiliate marketing provision⁴ of Regulation V, financial institutions are prohibited from using certain information received from an affiliate to make a solicitation to a consumer unless the consumer is given notice and a reasonable opportunity to opt out of such solicitations, and the consumer does not opt out.

On July 18, 2006, the Federal Reserve published a joint⁵ notice of proposed rulemaking (71 FR 40786) to implement the provisions in sections 114 and 315 (Red Flags) of the Fair and Accurate Credit Transactions Act (FACT Act) of 2003, which amends the FCRA. Section 114 requires each financial institution to develop and implement a written identity theft prevention program to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. Section 114 also requires credit and debit card issuers, under certain circumstances, to assess the validity of notifications of changes of address. Section 315 provides guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a consumer reporting agency sends the user a notice of address discrepancy. The comment period for this notice expired on September 18, 2006. The Federal Reserve received fifty four comment letters from industry groups and consumers. On November 9, 2007, a joint notice of final rulemaking was published in the *Federal Register* adopting the amendments, with mandatory compliance by November 1, 2008 (72 FR 63718).

The current annual paperwork burden for furnishing these disclosures is estimated to be 107,840 hours. Under the final rule, to implement the Red Flags provisions, the revisions are estimated to increase the annual burden to 155,892 hours.

1 FCRA was enacted in 1970 and is codified at 15 U.S.C. § 1681 et seq. Regulation V is located at 12 C.F.R. Part 222. 244 U.S.C. § 3501 et seq.

3 Section 217 of the FACT Act defines the term “negative information” to mean information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

4 Affiliate Marketing Opt-out Notice Requirements (Section 214)

5 Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Treasury; National Credit Union Administration (NCUA), and Federal Trade Commission (FTC)

Background and Justification

On December 4, 2003, the President signed into law the FACT Act. In general, the FACT Act enhanced the ability of consumers to combat identity theft, increased the accuracy of consumer reports, and allowed consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricted the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, the FACT Act created a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy programs, education programs, grants, and materials of the Federal Government. Lastly, to promote increasingly efficient national credit markets, the FACT Act established uniform national standards in key areas of regulation.

On June 15, 2004, the Federal Reserve published a final rule (69 FR 33281) adopting model forms that all financial institutions may use to comply with the notice requirement under section 217.⁶ Because a financial institution is allowed to send the notice relating to furnishing negative information prior to, or within thirty days after, it furnishes negative information, the model forms contain alternative language that a financial institution may use, depending on whether the notice is provided prior to, or after, furnishing negative information. The provisions in section 217 were effective December 1, 2004.⁷

On November 7, 2007, the Federal Reserve published a joint⁸ notice of final rulemaking (72 FR 62910) to implement the affiliate marketing provisions in section 214 of the FACT Act. The regulation generally prohibits 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 and simple method to opt out of the making of such solicitations. Compliance with the provisions in section 214 is mandatory effective October 1, 2008.

Description of Information Collection

Notice to Consumer Reporting Agency (Section 217)⁹

⁶ Under section 217, the term “financial institution” is defined broadly to have the same meaning as in the privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLB Act), which defines financial institution to mean “any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956,” whether or not affiliated with a bank. 15 U.S.C. 6809(3). Thus, the term “financial institution” includes not only institutions regulated by the Federal Reserve and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information. 16 CFR 313.3(k) (65 FR 33646 and 33655, May 24, 2000).

Federal Reserve-covered institutions are defined by Regulation V as: banks that are members of the Federal Reserve System (other than national 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, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq., and 611 et seq.), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies). 769 FR 6526 (February 11, 2004).

⁸ OCC, FDIC, OTS, and NCUA

⁹ (12 CFR, Part 222, appendix B)

A financial institution generally may provide the notice about furnishing negative information on or with any notice of default, any billing statement, or any other materials provided to the customer, so long as the notice is clear and conspicuous. After providing such notice, the financial institution may submit additional negative information to a CRA described in section 603(p) of the FACT Act, with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. Section 217 specifically provides, however, that the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)).¹⁰

Section 217 also provides certain safe harbors for institutions concerning their efforts to comply with the notice requirement. A financial institution is deemed to be in compliance with the notice requirement if it uses the Federal Reserve's model form, or uses the model form and rearranges its format. In addition, section 217 provides that a financial institution is not liable for failure to perform the duties required by this section if, at the time of the failure, the institution maintained reasonable policies and procedures to comply with the section or the institution reasonably believed that the institution was prohibited by law from contacting the customer.

Affiliate Marketing Opt-out Notice Requirements (Section 214)¹¹

Specifically, affiliate marketing opt-out notice requirements provides that when a company communicates certain information about the consumer eligibility information to an affiliate, the affiliate may not use that information to make solicitations for marketing purposes to the consumer unless the consumer is given a notice and an opportunity to opt-out of that use of the information and the consumer does not opt-out. In general contents of opt-out notice must be clear, conspicuous, and concise, and must accurately disclose the name of the affiliate(s) providing the notice.

The notice must be provided by an affiliate that has or has previously had a pre-existing business relationship with the consumer; or as part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

The election of a consumer to opt out must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period of more than five years may be established, including an opt-out period that does not expire unless revoked by the consumer. A consumer may opt out at any time.

New Red Flags Provisions¹²

Identity Theft Red Flags (Section 114)

¹⁰ The collection of information under Regulation Z is assigned OMB No. 7100-0199 for purposes of the PRA.

¹¹ (12 CFR, Parts: 222.21– 222.27)

¹² (12CFR, Parts: 222.82, 222.90, and 222.91)

Section 114 requires each financial institution to (1) create an Identity Theft Prevention Program (Program); (2) report to the board of directors, a committee thereof or senior management, at least annually, on compliance with the regulation; and (3) train staff to implement the Program. In addition, the final rule requires each credit and debit card issuer (card issuer) to establish policies and procedures to (1) assess the validity of a change of address notification before honoring a request for an additional or replacement card received during at least the first 30 days after it receives the notification and (2) notify the cardholder in writing, electronically, or orally, or use another means of assessing the validity of the change of address.

Address Discrepancies (Section 315)

Section 315 requires each user of consumer reports to (1) develop reasonable policies and procedures it employs when it receives a notice of address discrepancy from a CRA and (2) to furnish an address the user reasonably confirmed is accurate to the CRA from which it receives a notice of address discrepancy.

Time Schedule for Information Collection

The notice requirement in Section 217 specifies that an institution must provide the required notice to the customer prior to, or no later than thirty days after, furnishing the negative information to a nationwide CRA. After providing the notice, the institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. If a financial institution has provided a customer with a notice prior to the furnishing of negative information, the institution is not required to furnish negative information about the customer to a nationwide CRA.

The notice requirement in Section 214 specifies that an institution must not use eligibility information about a consumer that it receives from an affiliate to make a solicitation to the consumer about the bank's products or services, unless the consumer is provided a reasonable opportunity to opt out. The consumer is given thirty days from the date the notice is sent to elect to opt out by any reasonable means.

Consultation Outside the Agency

The Federal Reserve, OCC, FDIC, OTS, NCUA, and FTC collaborated in this rulemaking. On July 18, 2006, the Federal Reserve published a joint notice of proposed rulemaking (71 FR 40786) to implement the provisions in sections 114 and 315 of the FACT Act of 2003, which amends the FCRA. The comment period for this notice expired on September 18, 2006. The Federal Reserve received fifty four comment letters from industry groups and consumers. On November 9, 2007, a joint notice of final rulemaking was published in the *Federal Register* adopting the amendments, with mandatory compliance by November 1, 2008 (72 FR 63718).

Sensitive Questions

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

Legal Status

The Board's Legal Division has determined that the FCRA, as amended, authorizes the Federal Reserve to issue regulations to carry out the provisions of the Act (15 U.S.C. §§1681b, 1681c, 1681m, and 1681s). Because the records are maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Estimate of Respondent Burden

The current annual respondent burden for this information collection is estimated to be 107,840 hours. Approximately 30,000 financial institutions furnish information to CRAs. The Federal Reserve believes that providing the notice to consumers (under Section 217) would not significantly burden financial institutions because many provide a standardized notice to consumers routinely in connection with account openings prior to furnishing negative information. The Federal Reserve estimates that financial institutions with customized disclosures would take approximately fifteen minutes annually to update their notices with changes such as contact information. Under the affiliate marketing provisions (Section 214), the Federal Reserve estimates that the average amount of time for a financial institution to prepare and distribute an initial notice as required to consumers would be approximately eighteen hours. The Federal Reserve estimates that the average consumer would take approximately five minutes to respond to the notice and opt-out.

Under the new Red Flags provisions (Sections 114 and 315), the Federal Reserve estimates the annual burden per respondent is forty-one hours; twenty-five hours to develop a program, four hours to prepare an annual report, four hours for training, four hours for developing policies and procedures to assess the validity of changes of address, and four hours for developing policies and procedures to respond to notices of address discrepancy. Under the final rule, to implement the Red Flags provisions, the revisions are estimated to increase the annual burden to 155,892 hours. This represents less than 1 percent of total annual Federal Reserve System paperwork burden.

	<i>Number of respondents</i>	<i>Average annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
<u>Current</u> CRA notice (Section 217)	30,000	1	15 minutes	7,500
Affiliate Marketing opt-out notice (Section 214)				

<i>Financial Institutions</i>	2,619	1	18 hours	47,142
<i>Consumer Response</i>	638,380	1	5 minutes	<u>53,198</u>
<i>Total</i>				107,840
<u><i>Proposed</i></u>				
CRA notice (Section 217)	30,000	1	15 minutes	7,500
Affiliate Marketing opt-out notice (Section 214)				
<i>Financial Institutions</i>	2,619	1	18 hours	47,142
<i>Consumer Response</i>	638,380	1	5 minutes	53,198
Identity Theft Red Flags and Address Discrepancies (Sections 114 and 315)				
<i>Total</i>	1,172	1	41 hours	<u>48,052</u>
<i>Change</i>				48,052

The estimated cost to the public for this information collection is \$4,295,119.¹³

Estimated Cost to the Federal Reserve System

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

¹³ Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 75% - Clerical @ \$25, and 25% - Managerial or Technical @ \$55. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release. Consumer cost of \$18 is based on the U.S. Department of Labor Bureau of Labor Statistics, 2002 Quarterly Census of Employment and Wages <http://www.bls.gov/cew/state2002.txt>