

Supporting Statement
Debt Cancellation Contracts and Debt Suspension Agreements
12 CFR 37
OMB Control No. 1557-0224

A. Justification.

1. Circumstances that make the collection necessary:

National banks are authorized under 12 U.S.C. 24 (Seventh) to enter into debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) and to charge a fee in connection with these agreements. The purpose of part 37 is to set forth the standards that apply to a national bank's provision of DCCs and DSAs, enhance consumer protections for customers who buy DCCs and DSAs from national banks, and ensure that national banks providing DCCs or DSAs do so on a safe and sound basis. Part 37 requires banks to make certain disclosures to customers at the time of solicitation and prior to the purchase of DCCs and DSAs.

2. Use of the information:

The disclosures are located in § 37.6. The disclosures are intended to establish standards to promote the protection of customers who buy DCCs and DSAs. The disclosures promote a customer's understanding of the costs, benefits, and limitations of the product, prevent abusive sales practices, and enable a customer to make an informed decision whether to purchase a DCC or DSA. The rule also addresses safety and soundness issues to ensure that banks offering DCCs and DSAs effectively manage their risk exposure.

The documentation found in § 37.7 is consistent with Federal Reserve Board's Regulation Z, which requires that a customer sign or initial an affirmative written request for debt cancellation coverage if fees for such coverage are to be excluded from the finance charge.¹ This helps prevent coercion and customer confusion and enables customers to make informed decisions about whether to purchase a DCC or DSA.

Disclosure Requirements

Section 37.6 requires a bank to provide the following disclosures, as appropriate:

- o Anti-tying disclosure – A bank must inform the customer that purchase of the product is optional and neither its decision whether to approve a loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA. This disclosure appears in both the short form and the long form.

- o Explanation of debt suspension agreement – A bank must disclose, where applicable, that

¹ 12 CFR 226.4(d)(3)(i)(C).

if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan after the period of suspension has expired. This disclosure appears in the long form.

- o Disclosure of the amount of the fee – A bank must make disclosures regarding the amount of the fee. The disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either: 1) disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost, or 2) disclose the formula used to compute the fee. This disclosure appears in the long form.
- o Disclosure concerning lump sum payment of fee – A bank must disclose, where applicable, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate for a DCC or DSA provided in connection with a residential mortgage loan because, under part 37, paying the fee in a single payment is prohibited in that case. A bank must disclose that adding the fee to the amount borrowed will increase the cost of the contract. This disclosure appears in the both the short form and long form.
- o Disclosure concerning lump sum payment of fee with no refund – A bank must disclose, where applicable, that the customer has the option to choose a contract with or without a refund provision. This disclosure appears in both the short form and long form. This disclosure also requires a bank to inform a customer that prices of refund and no-refund products are likely to differ.
- o Disclosure concerning refund of fee paid in lump sum – If a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. The disclosure informs the customer that the DCC or DSA may be canceled at any time for a refund, within a specified number of days for a full refund, or with no refund. This disclosure appears in both the short form and long form.
- o Disclosure concerning whether use of credit line is restricted – A bank must inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line. This disclosure appears in the long form.
- o Disclosure concerning termination of a DCC or DSA – A bank must explain the circumstances under which a customer or the bank could terminate the contract if termination is permitted during the life of the loan. This disclosure appears in the long form.

- o Disclosure concerning additional disclosures – A bank must inform consumers that the bank will provide additional information before the customer is required to pay for the product. This disclosure appears in the short form.
- o Disclosure pertaining to eligibility requirements, conditions, and exclusions – A bank must describe any material limitations relating to the DCC or DSA. This disclosure appears on both the short form and the long form. The content of the short and long form may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. The long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

Affirmative Election to Purchase and Acknowledgment of Receipt of Disclosures Required

Section 37.7 requires a bank to obtain a customer’s written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6.

If the sale of the contract occurs by telephone, the customer’s affirmative election to purchase may be made orally, and the requirement to obtain the customer’s acknowledgment of receipt of the required long form disclosures may be waived, provided the bank takes certain steps and maintains certain documentation.

If the contract is solicited through written materials such as mail inserts or “take one” applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment, together with the long form disclosures, to the customer. The bank may not obligate the customer to pay for the contract until after the bank has received the customer’s written acknowledgment of receipt of disclosures unless the bank takes certain steps and maintains certain documentation.

The affirmative election and acknowledgment may also be made electronically.

3. Consideration of the use of improved information technology:

All banks have the option of making the disclosures electronically, but may only do so if the customer consents and it done in a manner consistent with the requirements of the E-Sign Act.

4. Efforts to identify duplication:

The collections are unique and cover the specific contracts or agreements between the bank and its customer.

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

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

6. Consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently:

The purposes of the disclosures are to enhance consumer protections for customers who buy DCCs or DSAs from banks and ensure that national banks providing DCCs or DSAs do so on a safe and sound basis. If the disclosures are not given before customers purchase a DCC or DSA, customers will not benefit from the enhanced protection the rule provides. In addition, in the absence of the safety and soundness provision of the rule, banks that offer DCCs and DSAs may be less likely to do so in a safe and sound manner.

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

Not applicable. This information collection is conducted in accordance with OMB's guidelines in 12 CFR Part 1320.

8. Efforts to consult with persons outside the agency:

On August 26, 2008, the OCC published a 60-day notice in the Federal Register (73 FR 50400). No comments were received.

9. Payment to respondents:

There is no payment to respondents.

10. Any assurance of confidentiality:

No assurance of confidentiality is given.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

1,800 respondents @ 1 response = 1,800 responses
1,800 responses @ 24 burden hours = 43,200 burden hours

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

Legal: $100\% \times 43,200 = 43,200 @ \$100 = \$4,320,000$
Total: \$4,320,000

13. Estimate of annualized costs to respondents:

Banks should be able to use readily available equipment to comply with the information collection requirements.

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes in burden:

Former burden: 2,200 respondents @ 1 response = 2,200 responses
2,200 responses @ 24 hours = 52,800 burden hours

New burden: 1,800 respondents @ 1 response = 1,800 responses
1,800 responses @ 24 burden hours = 43,200 burden hours

Difference: - 400 respondents; -400 responses; - 9,600 burden hours

The estimates have been revised only to reflect the current number of national banks.

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

The results of these collections will not be published for statistical use.

17. Approval to not display expiration date of OMB approval:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.