

**Supporting Statement for the
Disclosure Requirements and Recordkeeping Associated with
Regulation V (Fair Credit Reporting) (OMB No. 7100-0308)**

***(Procedures to Enhance the Accuracy and Integrity of Information
Furnished to Consumer Reporting Agencies)
(Docket No. R-1300) (RIN 7100-AD18)***

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 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. Under the Red Flags provisions⁵ of Regulation V financial institutions are required 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. In addition, credit and debit card issuers, under certain circumstances, are required to assess the validity of notifications of changes of address. Lastly, Section 315 provides guidance regarding reasonable policies and procedures that a user of consumer reports⁶ must employ when a CRA sends the user a notice of address discrepancy.

On December 13, 2007, the Federal Reserve published a joint⁷ notice of proposed rulemaking (72 FR 70944) to implement the provisions in section 312 of the Fair and Accurate

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 Red Flags - Sections 114 and 315 of the FACT Act,

⁶ A consumer report is provided by a CRA and indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, *such as*: a. A recent and significant increase in the volume of inquiries. b. An unusual number of recently established credit relationships. c. A material change in the use of credit, especially with respect to recently established credit relationships. d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

⁷ 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)

Credit Transactions Act (FACT Act) of 2003, which amends the FCRA. As required by section 312, the agencies are proposing guidelines for use by entities that furnish information about consumers to a CRA regarding the accuracy and integrity of the information that they furnish. The agencies are also proposing regulations that would require each entity that furnishes information to a CRA to establish reasonable policies and procedures for implementing the guidelines. The comment period for this notice expired on February 11, 2008. The agencies received 4 comments from industry groups that specifically addressed paperwork burden. On July 1, 2009, a joint notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by July 1, 2010 (74 FR 31484).

The current annual paperwork burden for complying with these requirements is estimated to be 155,892 hours. Under the final rule, to establish reasonable policies and procedures for implementing the guidelines, the revisions are estimated to increase the annual burden by 189,672 hours to 345,564 hours.

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 of the FACT Act, relating to furnishing negative information.⁸ Because a financial institution is allowed to send this notice prior to, or within thirty days after, it furnishes negative information, the model forms contain alternative language that a financial institution may use,

⁸ 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).

depending on whether the notice is provided prior to, or after, furnishing negative information. The provisions in section 217 were effective December 1, 2004.⁹

On November 7, 2007, the Federal Reserve published a joint¹⁰ 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.

On November 9, 2007, the Federal Reserve published a joint¹¹ notice of final rulemaking (72 FR 63718) to implement the provisions in sections 114 and 315 (Red Flags) of the FACT Act. 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 CRA sends the user a notice of address discrepancy. Compliance with the provisions in sections 114 and 315 is mandatory effective November 1, 2008.

Description of Information Collection

Notice to CRA (Section 217)¹²

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)).¹³

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

9 69 FR 6526 (February 11, 2004).

10 OCC, FDIC, OTS, and NCUA

11 OCC, FDIC, OTS, NCUA, and FTC

12 (12 CFR, Part 222, appendix B)

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

customer.

Affiliate Marketing Opt-out Notice Requirements (Section 214)¹⁴

Affiliate marketing opt-out notice requirements provide that when a company communicates certain information about the consumer 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.

Red Flags Provision - Identity Theft (Section 114)¹⁵

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.

Red Flags Provision - Address Discrepancies (Section 315)¹⁶

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.

14 (12 CFR, Parts: 222.21– 222.27)

15 (12 CFR, Parts: 222.82 and 222.90)

16 (12 CFR, Part 222.91)

***New Procedures to Enhance the Accuracy and Integrity
of Information Furnished to Consumer Reporting Agencies (Section 312)¹⁷***

Policies and procedures – Each furnisher is required to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a CRA. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher’s activities.

Notice of determination – Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

Contents of notice of determination that a dispute is frivolous or irrelevant – A notice of determination that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information, which notice may consist of a standardized form describing the general nature of such information.

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 CRA 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 30 days from the date the notice is sent to elect to opt out by any reasonable means.

The notice requirement in Section 114 specifies that an institution 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. The notice requirement in Section 312 specifies that an institution, upon making a determination that a dispute is frivolous or irrelevant, must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher.

¹⁷ (12CFR, Parts: 222.42(a), 222.43(e)(2), and 222. 43(e)(3))

Consultation Outside the Agency and Discussion of Public Comments

The Federal Reserve, OCC, FDIC, OTS, NCUA, and FTC collaborated in this rulemaking. On December 13, 2007, the Federal Reserve published a joint notice of proposed rulemaking (72 FR 70944) to implement the provisions in section 312 of the FACT Act. The comment period for this notice expired on February 11, 2008. The agencies received four comments from industry groups that specifically addressed paperwork burden. In general, the commenters asserted that the hourly estimate of the cost of compliance should be considerably higher than the agencies projected. The commenters did not provide specific estimates of additional burden hours that would result from the proposal. In response to those comments, the agencies increased the burden estimate attributable to updating respondent's policy and procedures as reflected in the estimate of respondent burden section below. As discussed in the supplemental information section of the final rulemaking, the agencies recognized that a "one-size-fits all" approach for implementing the guidelines is inappropriate. The final rule specifies that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The agencies expect that the written policies and procedures for a small retail entity will differ substantially from, and be significantly less complex than, those of a multi-billion dollar financial services company. On July 1, 2009, a joint notice of final rulemaking was published in the *Federal Register* adopting the amendments largely as proposed, with mandatory compliance by July 1, 2010 (74 FR 31484).

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 155,892 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 would take approximately 15 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 18 hours. The Federal Reserve estimates that the average consumer would take approximately 5 minutes to respond to the notice and opt-out.

Under the Red Flags provisions (Sections 114 and 315), the Federal Reserve estimates the annual burden per respondent is 41 hours; 25 hours to develop a program, 4 hours to prepare an annual report, 4 hours for training, 4 hours for developing policies and procedures to assess the validity of changes of address, and 4 hours for developing policies and procedures to respond to notices of address discrepancy.

Under the new procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies (Section 312), the Federal Reserve estimates the annual burden per respondent is 40 hours (24 hours to implement written policies and procedures and training associated with the written policies and procedures, 8 hours to amend procedures for handling complaints received directly from consumers, 8 hours to implement the new dispute notice requirement) plus 14 minutes per notice for distribution. Under the final rule, to implement the new requirements, the revisions are estimated to increase the annual burden by 189,672 hours to 345,564 hours. This represents 7.13 percent of total annual Federal Reserve System paperwork burden.

	<i>Estimated number of respondents</i>	<i>Estimated average annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
<i>Current</i>				
CRA notice (Section 217)	30,000	1	15 minutes	7,500
AM opt-out notice (Section 214)				
Financial Institutions	2,619	1	18 hours	47,142
Consumer Response	638,380	1	5 minutes	53,198
Red Flags (Sections 114 and 315)	1,172	1	41 hours	<u>48,052</u>
<i>Total</i>				155,892
<i>Proposed</i>				
CRA notice (Section 217)	30,000	1	15 minutes	7,500
AM opt-out notice (Section 214)				
Financial Institutions	2,619	1	18 hours	47,142
Consumer Response	638,380	1	5 minutes	53,198
Red Flags (Sections 114 and 315)	1,172	1	41 hours	48,052
CRA (Section 312)				
Policy & procedures	1,172	1	40 hours	46,880
Irrelevant dispute notices	611,966	1	14 minutes	<u>142,792</u>
<i>Total</i>				345,564
<i>Change</i>				189,672

The current estimated cost to the public for this information collection is \$4,401,515.¹⁸ Under the final, rule to implement the new requirements, the revisions are estimated to increase the estimated cost to the public by \$6,164,340 to \$10,565,855

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.

¹⁸ 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% Administrative/Junior Analyst @ \$25, 25% Managerial or Technical @ \$55, 0% Senior Management @ \$100, and 0% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, Occupational Employment Consumer cost of \$20 is based on the U.S. Department of Labor Bureau of Labor Statistics, Quarterly Census of Employment and Wages and Wages, news release.