

**Supporting Statement for
Fair Credit Reporting Affiliate Marketing Regulations
OMB Control No. 1557-0230**

A. Justification:

1. Circumstances that make the collection necessary:

Twelve C.F.R. Part 41 Subpart C generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice of that potential use and an opportunity and a reasonably simple method to opt out of making such solicitations.

2. Use of the information:

Financial institutions will use the required notices to inform consumers about their rights under section 624 of Fair Credit Reporting Act and to comply with 12 C.F.R. Part 41, Subpart C. Consumers will use the notices to decide if they want to receive solicitations for marketing purposes or opt out. Financial institutions will use the consumers' opt out responses to determine the permissibility of using eligibility information obtained from an affiliate to make solicitations to the consumer, outside of the exceptions in §41.21. The responses will be used by financial institutions to comply with section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).¹

3. Consideration of the use of improved technology:

National banks may use any existing technology relevant to producing the notice, obtaining the consumer opt out determination, and maintaining records of the notice and opt out determination.

4. Efforts to duplication:

There is no duplication.

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

Neither the cost of the final rule, nor the annual cost of complying with the rule, has a significant impact on a substantial number of small entities.

¹ Pub. L. 108-159, 117 Stat. 1952).

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

Less frequent collection would not comply with the requirements of section 214 of the FACT Act.

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

Not applicable.

8. Efforts to consult with persons outside the agency:

The collection of information was published for 60 days of comment. 75 FR 42824 (July 22, 2010). No comments were received.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

No assurance of confidentiality is made.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

The OCC estimates that it will take approximately 18 hours per national bank for newly chartered banks to develop a compliance program (including employee training) and to prepare and distribute the initial opt-out notice to consumers. For those banks that have already established a compliance program, developed and distributed opt-out notices to their existing customers, the OCC estimates it will take approximately two hours per national bank for banks sending a separate notice, and one hour per national bank for banks sending a coordinated or consolidated notice. For those consumers that choose to opt out of having their information shared with an affiliate, the OCC estimates it will take between one and four minutes to respond to either the initial notice or a renewal notice.²

The burden estimates have been lowered since our last submission. This is due to several factors.

² Financial institutions that do not provide for a permanent opt out time period must notify consumers of the upcoming expiration of such time period before making solicitations for marketing purposes to them, where required by the final rule and section 214 of the FACT Act.

1. Because national banks may coordinate and consolidate affiliate marketing opt out notices with any other notice or disclosure they are required to issue under any other provision of law, some banks issue their affiliate marketing notices in a single notice with the bank's annual privacy notice. This has resulted in some overlap in burden estimates.³ We attempt to eliminate the overlap here.
2. All national banks currently required to provide an opt-out notice to their customers have done so.
3. Some national banks provide a perpetual opt out to consumers, thus reducing the bank's burden.

³ The OCC has a separately approved PRA collection covering privacy notices, OMB Control No. 1557-0216.

Number of Respondents:

360 Number of banks likely to produce either individual or consolidated opt out notices for consumers⁴

+ 541,500 Number of consumers opting out⁵

541,860 Total number of respondents

Bank Burden Hours:

180 hours newly chartered banks (18 hours per bank)

270 hours for banks sending consolidated opt out notices (1 hour per bank)

180 hours for banks not sending consolidated opt out notices (2 hours per bank)

+ 135 additional hours for banks sending consolidated notices, but not providing perpetual opt out

765 Total Bank Burden Hours

Consumer Burden Hours:

0 hours for 50% of 917,000 who opted out with a bank offering perpetual opt out

6,769 hours for 406,125 consumers who opted out with a bank providing a consolidated notice

+ 9,025 hours for 135,375 consumers opting out (initial or renewal) with a bank not providing a consolidated notice

15,794 Total Consumer Burden Hours

Total burden hours: 16,559 (765 + 15,794)

The OCC estimates the cost of the hour burden per newly chartered national bank respondent (assuming one third of new banks have affiliates and will send opt out notices) to be \$1,674 per bank @ \$93 per hour.⁶

⁴ There are 716 national banks, trust companies or foreign branches and agencies with a related U.S. organization.

⁵ There are an estimated 1,000,000 consumers opting out or that have already opted out but 458,500 are assumed to be have already opted out under a perpetual opt out notice.

13. Estimates of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes in burden:

Former burden:

Total Respondents: 917,665

Total Burden Hours: 90,265

Current Burden:

Total Respondents: 541,860

Total Burden Hours: 16,559 hours

Difference:

Total Respondents: + 375,805

Total Burden Hours: - 73,706 hours

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

Not applicable.

17. Request to not display expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods:

Not applicable.

⁶ Median hourly wage adjusted for increase to December 2009 (applicable to finance and insurance) plus 30 percent (average private sector cost of benefits) for lawyers in NAICS 522100.
http://www.bls.gov/oes/2008/may/naics4_522100.htm