

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:

The regulation requires national banks to disclose information about a Debt Cancellation Contract (DCC) or Debt Suspension Agreement (DSA). The short form disclosure usually is made orally and is issued at the time the bank first solicits the purchase of a contract. The long form disclosure usually is made in writing and is issued before the customer completes the purchase of the contract. There are special rules for transactions by telephone, solicitations using written mail inserts or “take one” applications, and electronic transactions. Part 37 provides two forms of disclosure that serve as models for satisfying the requirements of the rule. Use of the forms is not mandatory. A bank may adjust the form and wording of its disclosures so long as the requirements of the regulation are met.

12 U.S.C. 24 (Seventh) authorizes national banks to enter into DCCs and DSAs. The requirements of part 37 enhance consumer protections for customers who buy DCCs and DSAs from national banks and ensure that national banks provide these products in a safe and sound manner by requiring them to effectively manage their risk exposure.

2. Use of the information:

Section 37.6

Section 37.6 and Appendices A and B to part 37 require a bank to provide the following disclosures, as appropriate:

- Anti-tying —A bank must inform the customer that purchase of the product is optional and neither its decision whether to approve the loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA.
- Explanation of debt suspension agreement—A bank must disclose that 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.
- 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 disclose that the periodic fee is based on the account balance multiplied by a unit

cost and provide the unit cost, or disclose the formula used to compute the fee.

- Lump sum payment of fee—A bank must disclose, where appropriate, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan since the option to pay the fee in a single payment is not available in that case. Banks are also required to disclose that adding the fee to the amount borrowed will increase the cost of the contract.
- Lump sum payment of fee with no refund—A bank must disclose that the customer has the option to choose a contract with or without a refund provision. This disclosure also states that prices of refund and no-refund products are likely to differ.
- 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 of the bank's refund policy, as applicable, *i.e.*, that the DCC or DSA: (i) may be canceled at any time for a refund; (ii) may be cancelled within a specified number of days for a full refund; or (iii) may be cancelled at any time with no refund.
- 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.
- Termination of a DCC or DSA— If termination is permitted during the life of the loan, a bank must explain the circumstances under which a customer or the bank could terminate the contract.
- Additional disclosures—A bank must inform consumers that it will provide additional information before the customer is required to pay for the product.
- Eligibility requirements, conditions, and exclusions—A bank must describe any material limitations relating to the DCC or DSA.

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.

Section 37.7

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 and acknowledgment of receipt of the required short form may be made orally, provided the bank maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract; mails the affirmative written election and written acknowledgment, together with the long form disclosures required by section 37.6, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and permits the customer to cancel the purchase of the contract without penalty within 30 days after it mailed the long form disclosures to the customer.

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, maintains certain documentation, and permits the customer to cancel the purchase within 30 days after mailing the long form disclosures to the customer.

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 is 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 June 28, 2011, the OCC published a 60-day notice in the *Federal Register* (76 FR 37889). One comment was received from a service provider. The comment supported the renewal of the information collection.

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:

1,650 respondents @ 1 response = 1,650 responses
1,650 responses @ 24 burden hours = 39,600 burden hours

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

Legal: $100\% \times 39,600 = 39,600 @ \$100 = \$3,960,000$
Total: \$3,960,000

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

New burden: 1,650 respondents @ 1 response = 1,650 responses
 1,650 responses @ 24 burden hours = 39,600 burden hours

Difference: - 150 respondents; - 150 responses; - 3,600 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.