

SUPPORTING STATEMENT
Unfair and Deceptive Acts or Practices,
18(f)(1) of the Federal Trade Commission Act (FTC Act), 12 U.S.C. 57a(f)(1)

A. Justification

1. Circumstances that make the collection necessary

OTS is making a non-substantive change due to no longer requiring respondents to comply with 12 CFR 535.24(a). OTS published an amended final notice on May 4, 2010 (75 FR 23565) which revised the joint agencies' Final Rule published on January 29, 2009 (73 FR 5498) for Unfair or Deceptive Acts Practices. The effective date for the Amended Final Rule is July 1, 2010.

Under section 18(f)(1) of the FTC Act, OTS is exclusively responsible for prescribing rules applicable to savings associations to prevent unfair or deceptive acts or practices (UDAPs) in or affecting commerce, including acts or practices that are unfair or deceptive to consumers.

2. Use of the Information Collected

The FTC Act does not require that OTS impose information collection requirements. Section 535.13 is not a new requirement, but is renumbered in this proposed rule. The proposal in section 535.32 to require that institutions provide an opportunity to consumers to opt out of overdraft services on deposit accounts will turn OTS guidance into a rule, and will therefore not create more information collection than institutions currently conduct.

3. Consideration of the use of improved information technology

An institution may use any effective information technology it chooses to reduce any burden associated with the rule implementing section 18(f)(1) of the FTC Act.

4. Efforts to identify 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

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

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

The burden associated with this collection is largely attributable to practices that an institution should already be carrying out under the current Credit Practices Rule and OTS guidance.

7. **Special circumstances necessitating collection inconsistent with 5 CFR part 1320**

No special circumstances exist.

8. **Consultation with persons outside the agency**

OTS issued an advance notice of proposed rulemaking seeking comment. 73 FR 97 (May 19, 2008). OTS received twenty-nine comments, but no comments specifically addressed PRA burden.

9. **Payment to respondents**

OTS provides no payments or gifts to respondents.

10. **Confidentiality**

The final rule does not contain any requirements for thrifts to report information to OTS. To the extent OTS obtains information about thrifts' compliance, the Freedom of Information Act, the Trade Secrets Act, Executive Order 12,600, Treasury Department regulations at 31 CFR pt. 1, and OTS regulations at 12 CFR pts. 505 and 510 will apply.

11. **Information of a Sensitive Nature**

None.

12. **Burden estimate**

OTS believes that most covered entities already comply with its Credit Practices Rule and provide opt outs so that consumers may chose whether to accept overdraft protection programs.^[1]

OTS' estimates attribute all burdens to covered entities, which are entities directly subject to the requirements of the final rulemaking. A covered entity that outsources activities to a third-party service provider is, in effect, reallocating to that service provider the burden that it would otherwise have carried itself. Under these circumstances, burden is, by contract, shifted from the covered entity to the service provider, but the total amount of burden is not increased. Thus, third-party service provider burden is already included in the burden estimates provided for covered entities.

Number of respondents: 116

Estimated to for training and reporting: 4

Total estimated annual burden: 464 hours

13. **Estimate of annualized costs to respondents**

^[1] OTS Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (Feb. 18, 2005).

The costs to savings associations for developing training and reporting is based on an hourly rate of \$50 would be 200 per respondent.

14. Estimate of annualized costs to the government

There are no costs to the government.

15. Analysis of change in burden

OTS is citing a decrease in the inventory burden of 464 as a program change due to the deletion of a paperwork section from the Final Rule.

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. Display of expiration date

There no forms that require the display of expiration date.

18. Exceptions to certification statement

None.

B. STATISTICAL METHODS

Not applicable.