

**Supporting Statement for a Paperwork Reduction Act
Submission to OMB
Proposed Data Collection on FDICIA Compliance
(OMB Control No. 3084-NEW)**

1. & 2. Necessity for Information Collection and How the Data Will Be Used

In 1991, Congress enacted section 43 of FDICIA (12 U.S.C. 1831t) in response to incidents affecting the safety of deposits in certain financial institutions.¹ The law imposes several requirements on non-federally insured institutions. Among other things, it mandates, under 12 U.S.C. 1831t(b), that depository institutions lacking federal deposit insurance disclose to consumers, in periodic statements, signature cards, passbooks, certificate of deposit, and advertising that the institution does not have federal deposit insurance and that, if the institution fails, the federal government does not guarantee that depositors will get their money back. Pursuant to 12 U.S.C. 1831t(f), the Commission has authority to enforce the disclosure requirements under the FTC Act (15 U.S.C. 41 et seq.).

Until 2003, the Commission's appropriations authority prohibited the use of FTC resources to enforce those requirements.² In 2005, the Commission sought public comment on proposed rules implementing the statutory disclosure requirements.³ In 2006, before the Commission issued a final rule, Congress passed substantial amendments to the existing requirements as part of the Financial Services Regulatory Relief Act of 2006 (FSRRA) (Pub. L. 109-351). The Commission thus sought public comment on proposed regulations that would be consistent with the FSRRA amendments,⁴ and is currently in the process of developing those regulations. Institutions lacking federal deposit insurance, however, must comply with these statutory provisions regardless of the status of FTC's regulations in this area.

Under existing law, all federally chartered and most state chartered depository institutions have federal deposit insurance. Federal deposit insurance provides a government guarantee of up to \$250,000 per depositor in most cases. Pursuant to Federal Deposit Insurance Corporation and National Credit Union Administration requirements, federally insured banks and credit unions must display signs that depositors are federally insured.⁵ Although most depository institutions have federal deposit insurance, there are some exceptions. For instance, there are more than a hundred and fifty state-chartered credit unions in nine states that do not

¹ See Pub. L. No. 102-242, 105 Stat. 2236.

² Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the Fiscal Year Ending September 30, 2004, and for Other Purposes, H.R. Conf. Rep. No. 108-401, 108th Cong., 1st Sess., at 88 (2003).

³ See 70 FR 12823 (Mar. 16, 2005).

⁴ See 74 FR 18043 (Mar. 13, 2009).

⁵ See 12 CFR Parts 328 and 740.

have federal deposit insurance.⁶ The credit unions in these states generally obtain private deposit insurance in lieu of federal insurance to protect members' accounts.

The FTC has the authority to compel production of data and information from depository institutions lacking federal deposit insurance under Section 6(b) of the FTC Act, 15 U.S.C. § 46(b). The Commission intends to send these Orders to all such institutions known to it in states that allow non-federally insured institutions.⁷ The responses will help the Commission determine whether covered entities are complying with the disclosure requirements in 12 U.S.C. § 1831t(b).

3. Information Technology

Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. 3504 note, the proposed collection will allow institutions to submit their responses in electronic format.

4. Efforts to Identify Duplication/Availability of Similar Information

Though state agencies may review compliance with these disclosure requirements in their financial reviews of these institutions, it is unlikely that they also collect the underlying information. Accordingly, the FTC proposes to do so in order to ensure that institutions are complying with existing requirements.

5. Efforts to Minimize Small Organization Burden

The Orders will minimize the amount of information institutions will have to provide (e.g., limiting the applicable time period for advertisements to three months) but, at the same time, ensure that the FTC will have the information necessary to determine whether each Order recipient is complying with the law.

6. Consequences to Federal Program and Policy Activities/Obstacles to Reducing Burden

If this information is not collected, the FTC will lack information to ensure that institutions

⁶ According to the U.S. Government Accountability Office, in 2003, eight states had credit unions that purchase private deposit insurance instead of federal insurance. Since that time, at least one additional state has allowed credit unions to use private deposit insurance. Other states either require federal insurance or allow private insurance but do not have any privately insured credit unions. "Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions," GAO-03-971 (Aug. 2003), at 7. Puerto Rican credit unions operate under a Puerto Rican government-backed deposit insurance system.

⁷ State-chartered credit unions lacking federal deposit insurance will likely be the recipients. The FTC also may seek information from some institutions covered by the Puerto Rican government deposit insurance system.

are complying with FDICIA's requirements. Collecting the information through on-site inspections at the institution may reduce slightly the burden of producing the required information, but would add other burdens associated with an on-site visit (e.g., officers meeting with FTC personnel) and increase substantially the cost to the Government.

7. Circumstances Requiring Collection Inconsistent with Guidelines

The proposed collection of information is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

8. Public Comments/Consultation Outside the Agency

In determining the information to collect, the Commission published a notice seeking comments. *See* 74 Fed. Reg. 33442 (July 13, 2009). No comments were received. Pursuant to OMB regulations, 5 CFR Part 1320, that implement the PRA, the Commission is providing a second opportunity for public comment.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

The Orders will not seek any information about the identity of individual consumers. Moreover, all documents and information provided in response to compulsory process, including through special orders authorized by Section 6(b) of the FTC Act, are exempt from public disclosure under Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and Exemption 3 of the Freedom of Information Act, 5 U.S.C. § 552(b)(3). In addition, to the extent applicable, section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under Exemption (4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4). Finally, under Section 21(c) of the FTC Act, 15 U.S.C. 57b-2(c), a person who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (e.g., official requests by Congress, requests from other agencies for law enforcement purposes, and administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. *See* 15 U.S.C. 57b-2; 16 CFR 4.9-4.11.

12. Estimated Annual Hours Burden and Associated Labor Cost

Based upon its knowledge of the industry, FTC staff estimates that, on average, the time

required to gather, organize, format, and produce the information sought will average 8 hours per response. Thus, assuming up to 200 recipients of the information Orders, the total burden would be approximately 1,600 hours.

It is difficult to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Managerial, legal, and clerical personnel may be involved in the information collection process. The FTC staff has assumed, conservatively, that managerial personnel and legal counsel will handle all of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of managerial time of \$58.12 (4 hours per entity) and an average hourly wage of legal staff time of \$40.87 (4 hours per entity).⁸ Thus, cumulatively, estimated labor costs for collecting and providing the information will be \$79,192 (($\58.12×800 hours) + ($\$40.87 \times 800$ hours)). The actual cost may be lower to the extent clerical personnel handle some of the tasks.

13. Annual Capital or Other Non-labor Costs

Staff anticipates that industry members maintain most, if not all, of the material sought in the orders in the normal course of business because they must disclose the information to customers under existing law. Moreover, to the extent that information sought is not generated in the normal course of business, any associated non-labor cost should be *de minimis*.

14. Estimate of Cost to Federal Government

The total cost to the Federal Government for the information collection will be approximately \$5,000. This estimate includes the costs incurred by agency personnel in processing the orders and reviewing responses. The cost of FTC staff time is necessarily an estimate because several components to this calculation may vary, including the number of staff involved and the actual amount of time required. Clerical and other support services and costs of conducting the study are included in this estimate.

15. Program Changes or Adjustments

This is a one-time collection; the incremental PRA burden attributable to it, as noted above, is an estimated 1,600 hours.

16. Plans for Tabulation and Publication

Because this information will involve questions of law enforcement, the FTC does not plan

⁸ Hourly wages are averages based on mean hourly wages shown in http://www.bls.gov/oes/2008/may/naics4_551100.htm#b11-0000 (May 2008 “National Industry-Specific Occupational Employment and Wage Estimates”) for sales and marketing managers and legal occupations (lawyers, paralegals, and other legal support), respectively.

to publish this material.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to Certification

Not applicable.