

Supporting Statement
Affiliate Marketing/Consumer Opt-Out Notices
(OMB No. 3064-0149)

Introduction

The Federal Deposit Insurance Corporation (FDIC) requests OMB approval to extend the above-captioned collection of information for three years. This collection is contained in an interagency rule implementing section 214 of the FACT Act, a 2003 amendment to the Fair Credit Reporting Act. Section 214 generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Thus, the elements of this collection are: (1) disclosures to consumers of the opportunity to opt-out of solicitations from affiliates, and (2) consumer responses to the opt-out notices. This collection was first approved by OMB in 2004. The collection is scheduled to expire on February 28, 2011.

A. Justification

1. Circumstances that Make the Collection Necessary

Section 214 of the FACT Act requires the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), and the Securities and Exchange Commission (SEC), in consultation and coordination with each other, to issue regulations in final form implementing section 214. The FDIC complied with this provision of law by revising its regulations at 12 CFR 334; the collection is contained in that regulation.

2. Use of the Information

Consumers will use the information in the disclosures to decide whether to opt out of their institutions' affiliate marketing practices. Respondent banks will use the opt out notices to manage their affiliate marketing practices appropriately.

3. Consideration of the Use of Improved Information Technology

Financial institutions and consumers are free to utilize any technology they wish to reduce the burden associated with this collection.

4. Efforts to Identify Duplication

The information is not available from any other source.

5. Methods Used to Minimize Burden on Small Entities

The collection applies to all institutions with affiliates, regardless of size, and all consumers associated with those institutions. However, in an effort to minimize the burden for financial institutions, particularly small banks (i.e., those with assets of less than \$250 million), the Agencies, including FDIC, have published model disclosures and opt out notices that may be used for this collection. In addition, the collection allows institutions to minimize disclosure burden by incorporating the affiliate marketing notices into privacy notices that are already required by Title V of the Gramm-Leach-Bliley Act (approved under OMB control number 3064-0136). Financial institutions also have the option of choosing not to engage in the sharing of certain information with their affiliates for marketing purposes.

6. Consequences to the Federal program if the Collection were Conducted Less Frequently

Section 214 of the FACT Act requires that consumer opt-outs be effective for a minimum of five years. Financial institutions have the option of adopting for themselves a less frequent disclosure requirement by making consumer opt-outs effective for longer than the minimum five-year period, or by making consumer opt-outs effective in perpetuity, unless revoked by the consumer.

7. Special Circumstances Necessitating Collection Inconsistent with 5 CFR Part 1320

None.

8. Efforts to Consult with Persons Outside the Agency

Extensive interagency collaboration was involved in creating this collection. The agencies sought comment on the collection in July 2004 when the NPRM for the rule containing it was published. A “first” Federal Register notice seeking comment for the renewal of this collection was published on December 6, 2010 (75 FR 75674). No comments were received.

9. Payment to Respondents

There is no payment to respondents.

10. Assurance of Confidentiality

Financial institutions would treat these disclosure requirements with the same degree of confidentiality as other disclosures of sensitive consumer information.

11. Justification for Questions of a Sensitive Nature

There are no questions of a sensitive nature.

12. Burden Estimate

The Agencies estimate that the amount of time to prepare an initial notice to consumers will average 18 hours per institution. For consumers who elect to opt-out of having certain information about them shared with an affiliate for marketing purposes, the Agencies estimate that the average consumer will take approximately five minutes to respond to the notice. For purposes of this analysis, it is estimated that the average number of consumers for large state nonmember banks is 25,000, the average number of consumers for small state nonmember banks is 5,000, and approximately 3.5 percent of all bank consumers will elect to opt-out of having information about them shared with affiliates. The FDIC estimates that 978 of the banks it supervises will be affected by this collection because they have affiliates, of which 39 (4%) are large banks and 939 (96%) are small banks.

Therefore the burden associated with this collection is calculated as follows:

Burden on Institutions

$978 \times 18 \text{ hours} = 17,604 \text{ hours}$

Burden on Consumers

Number of large-bank consumers who opt out = $39 \times 25,000 \times 0.035 = 34,125$

Number of small-bank consumers who opt out = $939 \times 5,000 \times 0.035 = 164,325$

Total number of consumers who opt out = $34,125 + 164,325 = 198,450$

Estimated time per consumer opt-out = 5 minutes

Estimated burden on consumers who opt out = $198,450 \times 5/60 \text{ hours} = 16,537.5 \text{ hours}$

Total Estimated Burden = $17,604 \text{ hours} + 16,537.5 \text{ hours} = 34,141.5 \text{ hours}$.

13. Capital/Start-up and Operation/Maintenance Costs

Institutions should be able to use readily available equipment to comply with the information collection requirements in the proposed rulemaking. Some software costs may be incurred to add the affiliate marketing disclosures and the processing of opt-out responses to the existing documents and procedures for privacy notices. Most institution documents of this nature are revised on a continuing basis. Therefore, whether the revisions are made in-house or through a servicer, the cost would be a part of usual and customary business practice.

14. Estimate of Annualized Cost to the Federal Government

None.

15. Reason for Change in Burden

There is no change in burden.

16. Publication

The information will not be published.

17. Display of Expiration Date

No exception is requested.

18. Exceptions to Certification Statement

None.

B. Collections of Information Employing Statistical Methods

Not applicable.