

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

Introduction

The Federal Deposit Insurance Corporation (FDIC) requests OMB approval to extend, without change, 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. The collection is scheduled to expire on November 30, 2020.

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

On September 4, 2020, the FDIC published a *Federal Register* notice seeking comment for a 60-day period on renewal of the information collection (85 FR 55287). 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

Table 1: Summary of Annual Burden and Internal Cost (OMB-3064-0149)

Information Collection (IC) Description	Type of Burden	Estimated Number of Respondents	Estimated Time per Response	Estimated Number of Responses per Respondent	Estimated Annual Burden (Hours)
Implementation	Third-Party Disclosure	1	18 hours	1	18
Ongoing	Third-Party Disclosure	887	2 hours	1	1,774
Consumer Opt-Out	Third-Party Disclosure	806,800	5 minutes	1	67,233
Total Annual Burden (Hours)					73,335

Source: *FDIC*

Table 2: Summary of Hourly Burden Cost Estimate for Group 1

Estimated Category of Personnel Responsible for Complying with the PRA Burden	Total Estimated Hourly Compensation	Estimated Weights	Weighted Hourly Wage
Compliance Officers ¹	\$66.43	10%	\$6.64
IT Specialist ²	\$91.05	5%	\$4.55
Clerical ³	\$32.99	85%	\$28.04
Weighted Average			\$39.23

Source: Bureau of Labor Statistics: "National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)" (May 2019), Employer Cost of Employee Compensation (March 2020), Consumer Price Index (March 2020).

Table 3: Summary of Hourly Burden Cost Estimate for Group 2

Estimated Category of Personnel Responsible for Complying with the PRA Burden	Total Estimated Hourly Compensation	Estimated Weights	Estimated Total Weighted Labor Cost Component
Executives and Managers ⁴	\$121.63	5%	\$6.08

¹ Occupation (SOC Code): Compliance Officers (131040).

² Occupation (SOC Code): Computer and Mathematical Occupations (150000).

³ Occupation (SOC Code): Office and Administrative Support Occupations (430000).

Lawyers ⁵	\$149.39	20%	\$29.88
Compliance Officer	\$66.43	20%	\$13.29
IT Specialists	\$91.05	15%	\$13.66
Financial Analysts ⁶	\$78.32	5%	\$3.92
Clerical	\$32.99	15%	\$4.95
Weighted Average			\$71.78

Source: Bureau of Labor Statistics.

The total annual cost burden for this ICR was achieved by multiplying the annual estimated burden hours reported in Table 1 by their respective weighted average hourly compensation estimates reported in Tables 2 and 3. The total annual cost burden is estimated as follows:

$$(1,774 \text{ hours/year} + 67,233 \text{ hours/year}) * (\$39.23/\text{hour}) + (18 \text{ hours/year} * \$71.78/\text{hour}) = \$2,708,437$$

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

None.

14. Estimate of Annualized Cost to the Federal Government

None.

15. Reason for Change in Burden

There is no change in the method or substance of this information collection. The reduction in respondents is a result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response remain the same.

16. Publication

The information will not be published.

17. Display of Expiration Date

No exception is requested.

18. Exceptions to Certification Statement

None.

⁴ Occupation (SOC Code): Management Occupations (110000).

⁵ Occupation (SOC Code): Legal Occupations (230000).

⁶ Occupation (SOC Code): Financial and Investment Analysts, Financial Risk Specialists, and Financial Specialists, All Other (132098).

B. Collections of Information Employing Statistical Methods

Not applicable.