

Supporting Statement
Debt Cancellation Contracts and Debt Suspension Agreements
12 CFR Part 37
OMB Control No. 1557-0224

A. Justification.

1. *Circumstances that make the collection necessary:*

12 U.S.C. 24(Seventh) authorizes a national bank (bank) to enter into Debt Cancellation Contract (DCCs) and Debt Suspension Agreement (DSAs). 12 CFR part 37 requires a bank to disclose information about a DCC or DSA using either a short or long form disclosure. The short form disclosure usually is made orally and issued at the time the bank first solicits the purchase of a contract. The long form disclosure usually is made in writing and 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 model forms of disclosure for satisfying the requirements of the rule. Use of the forms is not mandatory; the regulation permits a bank to adjust the form and wording of its disclosures so long as it meets the applicable requirements.

The requirements of part 37 enhance consumer protections for customers who buy DCCs and DSAs from national banks and ensure that national banks offer 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 requires the disclosures to be readily understandable and meaningful. 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. For example, the short form disclosure requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the contract, while the long form gives a bank the option of either: (i) separately summarizing the limitations; or (ii) 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 37.6 and appendices A and B to part 37 require a bank to provide the following disclosures (summarized below), as appropriate:

- Optional (anti-tying) (short and long form)—A bank must inform the customer that purchase of the product is optional and neither the bank’s 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 (long form)—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 (long form)—A bank must make disclosures regarding the amount of the fee. The content of the disclosure differs 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: (i) disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost; or (ii) disclose the formula used to compute the fee.
- Lump sum payment of fee (short and long form)—A bank must disclose, where appropriate, that: (i) a customer has the option to pay the fee in a single payment or in periodic payments; and (ii) adding the fee to the amount borrowed will increase the cost of the contract. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan where the option to pay the fee in a single payment is not available.
- Lump sum payment of fee with no refund (short and long form)—A bank must disclose that: (i) the customer has the option to choose a contract with or without a refund provision; and (ii) prices of refund and no-refund products are likely to differ.
- Refund of fee paid in lump sum (short and long form)—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 may be: (i) cancelled at any time for a refund; (ii) cancelled within a specified number of days for a full refund; or (iii) cancelled at any time with no refund.
- Whether use of a card or credit line is restricted (long form)—A bank must inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges on the credit card or using the credit line.
- Termination of a DCC or DSA (long form)— If termination is permitted during the life of the loan, a bank must explain the circumstances under which a customer or the bank may terminate the contract.
- Additional disclosures (short form)—A bank must inform customers that it will provide additional information before the customer is required to pay for the product.
- Eligibility requirements, conditions, and exclusions (short and long form)—A bank must describe any material limitations relating to the DCC or DSA.

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. The section further provides that the election and acknowledgment must be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. Pursuant to § 37.7(b), 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: (i) maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract; (ii) mails the affirmative written election and written acknowledgment, together with the long form disclosures required by § 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 (iii) permits the customer to cancel the purchase of the contract without penalty within 30 days after the bank has mailed the long form disclosures to the customer.

Pursuant to § 37.7(c), 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 within 3 business days, beginning on the first business day after the customer contacts the bank or otherwise responds to the solicitation. 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. Section 37.7(d) permits the customer's affirmative election and acknowledgment to be made electronically.

3. *Consideration of the use of improved information technology:*

All banks have the option of making the disclosures electronically, but they may only do so if the customer consents and the disclosure is made 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. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

There are no alternatives that would result in lowering the burden on small institutions, while still accomplishing the purpose of part 37.

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 banks offering DCCs or DSAs do so on a safe and sound basis. If the disclosures are not made before customers purchase DCCs or DSAs, customers will not benefit from the protections the rule provides. Furthermore, absent 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:*

The OCC issued a notice for 60 days of comment on February 17, 2021, 86 FR 9994. No comments were received.

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:*

Not applicable. No sensitive or personally identifiable information is collected.

12. *Burden estimate:*

1,098 respondents @ 1 response = 1,098 responses
1,098 responses @ 24 burden hours = 26,352 burden hours

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

$26,352 \times \$115.19 = \$ 3,035,486.88$

To estimate wages the OCC reviewed May 2019 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities excluding nondepository credit intermediaries (NAICS 5220A1). To estimate compensation

costs associated with the rule, the OCC uses \$115.19 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (3.1 percent as of Q1 2020 according to the BLS), plus an additional 33.4 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2019 for NAICS 522: credit intermediation and related activities).

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:

Prior Burden: 31,200 Hours.

Current Burden: 26,352 Hours.

Difference: (4,848) Hours.

The change in burden is due to the reduction in the number of regulated entities.

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.