

Supporting Statement
Fair Credit Reporting: Affiliate Marketing Regulations
OMB Control No. 1557-0230

A. Justification.

1. *Circumstances that make the collection necessary:*

Section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act),¹ which added section 624 to the Fair Credit Reporting Act (FCRA),² generally prohibits a person from using certain information received from an affiliate to solicit a customer for marketing purposes, unless the consumer is given notice and an opportunity and simple method to opt out of such solicitations.

2. *Use of the information:*

Financial institutions use the required notices to inform consumers about their rights under section 214 of the FACT Act. Consumers use the notices to decide if they want to receive solicitations for marketing purposes or opt out of such solicitations. Financial institutions use consumers' opt-out responses to determine the permissibility of making a solicitation for marketing purposes to consumers.

If a person receives certain consumer eligibility information from an affiliate, the person may not use that information to solicit the consumer about its products or services, unless the consumer is given notice and a simple method to opt out of such use of the information, and the consumer does not opt out. Exceptions include a person using eligibility information: (1) to make solicitations to a consumer with whom the person has a pre-existing business relationship; (2) to perform services for another affiliate subject to certain conditions; (3) in response to a communication initiated by the consumer; or (4) to make a solicitation that has been authorized or requested by the consumer. A consumer's affiliate marketing opt-out election must be effective for a period of at least five years. Upon expiration of the opt-out period, the consumer must be given a renewal notice and an opportunity to renew the opt-out before information received from an affiliate may be used to make solicitations to the consumer.

Twelve CFR 1022.20-1022.27 require financial institutions to issue notices informing consumers about their rights under section 214 of the FACT Act. Consumers use the notices to decide if they want to receive solicitations for marketing purposes or opt out. Financial institutions use consumers' opt-out responses to determine the permissibility of making a solicitation for marketing purposes.

¹ Pub. L. 108-159, 117 Stat. 1952 (December 4, 2003).

² 15 U.S.C. 1681 *et seq.*

3. Consideration of the use of improved technology:

National banks and Federal savings associations may adopt any existing technology relevant to producing the notice, obtaining the consumer opt-out determination, and maintaining records of the notice and opt-out determination.

4. Efforts to duplication:

There is no duplication. This collection is unique in that it involves a notice specific to section 214 of the FACT Act and each involved consumer needs to make one decision at five-year intervals or longer.

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 further lowering the burden on small institutions while still accomplishing the purpose of the rule.

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

Less frequent collection would not comply with the requirements of section 214 of the FACT Act.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

Not applicable.

8. Efforts to consult with persons outside the agency:

On May 24, 2024, the OCC issued a 60-day notice soliciting comment on the collection, 89 FR 45938. No comments were received.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

No personally identifiable information is collected.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

Number of Respondents:

306 Number of institutions likely to produce either individual or consolidated opt out notices for consumers (national banks, Federal savings associations, trust companies, or foreign branches and agencies with a related U.S. organization)

- Includes 3 new institutions
- 107 do not send consolidated notices
- 199 send consolidated notices

97,467 Number of consumers opting out

- 77,161 existing consumers opting out
- 20,306 new consumers opting out

97,773 Total number of respondents

Institution Burden Hours:

18 hours per newly chartered institution for set-up (3 x 18 = 54)

1 hour per institution for institutions sending consolidated opt out notices (199 x 1 = 199)

2 hours per institution for institutions not sending consolidated opt out notices (107 x 2 = 214)

467 Total Institution Burden Hours

Consumer Burden Hours:

5 minutes Per existing consumer (77,161 x 5 minutes = 6,430 hours)

10 minutes Per new consumer (20,306 x 10 minutes = 3,384 hours)

9,814 Total Consumer Burden Hours

10,281 Total burden hours

Cost of Hour Burden

$$10,281 \text{ hours} \times \$129.40 = \$1,330,361.40$$

To estimate wages the OCC reviewed May 2023 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses \$129.40 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (4.3 percent as of Q1 2024), plus an additional 34.6 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2023 for NAICS 522: credit intermediation and related activities).

13. Estimates of annualized costs to respondents:

Not applicable.

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes in burden:

No change in burden.

16. Information regarding collections whose results are planned to be published for statistical use:

Not applicable.

17. Request to not display expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.