

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Regulation S-AM
OMB Control No. 3235-0609

A. JUSTIFICATION

1. Necessity of Information Collection

Section 624 of the Fair Credit Reporting Act (“FCRA”) requires that consumers must be provided with notice and an opportunity to opt out before a company makes marketing solicitations to them based on the communication of certain personal financial information by an affiliated company. Section 624 was added to the FCRA by the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), which also required the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Secretary of the Treasury, and the National Credit Union Administration (collectively, the “Agencies”), as well as the Securities and Exchange Commission (“Commission”), to prescribe regulations necessary to implement the purposes of Section 624. As required by the FACT Act, the affiliate marketing rules contained in Regulation S-AM (17 CFR Part 248, Subpart B) are, to the extent possible, consistent with and comparable to the Agencies’ corresponding rules.

Regulation S-AM implements the requirements of Section 624 with respect to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers and investment companies (collectively, “Covered Persons”). Section 624 and Regulation S-AM limit a Covered Person’s use of certain consumer financial information (“eligibility information”) received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. In addition, as a practical matter, Covered Persons need to keep records of any opt-out elections in order for the opt-out elections to be effective. The opt-out period must last at least five years. At the end of the opt-out period, the consumer must be provided with an expiration notice and a new chance to opt out before the receiving affiliate may resume making marketing solicitations based on the consumer’s eligibility information.

Notice and opt-out opportunities are required only if a Covered Person receives eligibility information from an affiliate for use in marketing solicitations. Covered Persons that do not have affiliates, or that do not receive eligibility information from affiliates for use in marketing solicitations, would not be required to provide affiliate marketing notices or opt-out opportunities. The regulation also contains a number of exceptions that apply in other circumstances, such as where the affiliate has a pre-existing business relationship with the consumer or where the consumer requests marketing information.

Regulation S-AM is necessary to implement Section 624 of the FCRA and Section 214 of the FACT Act as directed by Congress. In drafting Regulation S-AM and the corresponding rules of the Agencies, the Commission and the Agencies attempted to retain procedural flexibility and to minimize compliance burdens except as required by the terms of the FACT Act.

The Commission and the Agencies believe that the rules do not impose significant burdens in excess of the statutory requirements.

2. Purpose and Use of Information Collection

Regulation S-AM requires that consumers be provided with notice and an opportunity to opt out of receiving marketing solicitations that are based on the communication of eligibility information between affiliates. The notice and opt-out requirements are designed to benefit consumers by enabling them to limit certain marketing solicitations from affiliated companies. The collection of information is required by Congress pursuant to Section 624 of the FCRA.

3. Consideration Given to Information Technology

In general, improved information technology would not reduce the burdens associated with Regulation S-AM. Notices may be delivered electronically to consumers who have agreed to the electronic delivery of information. Also, Covered Persons may use a Privacy Notice Online Form Builder to download and complete to create a customized privacy notice (available at http://www.federalreserve.gov/bankinfo/reg/privacy_notice_instructions.pdf).

4. Duplication

Regulation S-P (17 CFR Part 248, Subpart A) and the FCRA both contain provisions related to the *sharing* of consumer credit information between nonaffiliated third parties and affiliates, and a model form for providing financial privacy notices required by Regulation S-P may be used to satisfy Regulation S-AM's requirement to provide an initial affiliate marketing opt-out notice. With respect to Covered Persons, however, no rule other than Regulation S-AM addresses the *using* of eligibility information received from affiliates for use in marketing solicitations.

5. Effect on Small Entities

Small entities are not required to provide affiliate marketing notice and opt-out opportunities if they do not have affiliates or if they do not engage in the types of affiliate marketing practices covered by Regulation S-AM. Even when they are subject to the regulation's notice and opt-out requirements, however, smaller entities should not be subject to any disproportionate burden.

6. Consequences of Not Conducting Collection

A notice and opt-out opportunity need be given only once, before a Covered Person uses eligibility information received from an affiliate for a marketing solicitation. Less frequent reports would not be viable because the regulation's third-party reporting requirement is also required by Section 624 of the FCRA.

7. Inconsistencies with Guidelines in 5 CFR 320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable.

10. Confidentiality

No assurances of confidentiality are provided.

11. Sensitive Questions

The Information Collection does not collect information about individuals, therefore, a PIA, SORN, and PAS are not required.

12. Information Collection Burden

Regulation S-AM potentially applies to all of the approximately 22,824 Covered Persons registered with the Commission,¹ although only approximately 12,781 of them have one or more corporate affiliates, and the regulation requires only approximately 2,282 to provide consumers with an affiliate marketing notice and an opt-out opportunity.²

The Commission staff estimates that there are approximately 12,781 Covered Persons having one or more affiliates, and that they each spend an average of 0.20 hours per year to review affiliate marketing practices, for, collectively, an estimated annual time burden of approximately 2,556 hours at an annual internal compliance cost of approximately \$1,686,960. The staff also estimates that approximately 2,282 Covered Persons provide notice and opt-out opportunities to consumers, and that they each spend an average of 7.6 hours per year creating notices, providing notices and opt-out opportunities, monitoring the opt-out notice process, making and updating records of opt-out elections, and addressing consumer questions and concerns about opt-out notices, for, collectively, an estimated annual time burden of approximately 17,343 hours at an annual

¹ This includes, as of October 2025, all 16,470 SEC-registered investment advisers (according to filed Form ADV's), all 319 SEC-registered transfer agents (according to filed Form TA-1's), all 3,279 SEC-registered broker-dealers (according to filed Form BD's), and all 2,756 SEC-registered investment companies (according to Form N-CEN).

² Regulation S-AM: Limitations on Affiliate Marketing; Final Rules, 74 FR 40398 (Aug. 11, 2009) at 40427 ("Based on a review of forms filed with the Commission, we estimate that approximately 56% of Covered Persons have an affiliate. . . . [W]e estimate that approximately 10% of Covered Persons . . . will be required to provide consumers with notices and an opportunity to opt out under Regulation S-AM").

internal compliance cost of approximately \$4,210,665. Thus, the staff estimates that the collection of information requires a total of approximately 12,781 respondents to incur an estimated total annual time burden of approximately 19,899 hours at a total annual internal cost of compliance of approximately \$5,897,625.

As noted in Item 1 above, the election of a consumer to opt out must be effective for a period of at least five years. The staff estimates that respondents will incur an average burden of 1 hour every 5 years, or 0.20 hours per year ($1 / 5 = 0.20$) to review affiliate marketing practices. The staff also estimates that respondents will incur an estimated annual burden of 7.6 hours per year to create and deliver affiliate marketing notices, monitor and respond to inquiries about the opt-process, and make and update records of opt-out elections, based on an estimate of 4 hours to deliver notices and record opt-out elections, and 3.6 hours to create notices and monitor and respond to inquiries ($4 + 3.6 = 7.6$).

The staff estimates that a respondent's annual burden of senior compliance staff reviewing affiliate marketing practices will average 0.20 hours at approximately \$660 per hour (the \$660 per hour figure is based on the hourly cost for a Chief Compliance Officer according to the Securities Industry and Financial Markets Association (SIFMA)'s *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead ("2013 SIFMA Management & Professional Earnings data"). This estimate, together with the estimate of 12,781 as the number of Covered Persons having one or more affiliates, results in an estimated annual burden for reviewing marketing practices of approximately 2,556 hours ($0.20 \times 12,781 = 2,556.2$ rounded down to 2,556) at an internal compliance cost of approximately \$1,686,960 ($\$660 \times 2,556 = \$1,686,960$).

The staff estimates that a respondent's annual burden of delivering notices to consumers and recording opt-out elections will be 4 hours at approximately \$95 per hour (the \$95 per hour figure is based on the average hourly cost of \$97 for a Senior General Clerk, \$78 for a General Clerk, \$101 for an Administrative Assistant, \$87 for a Compliance Clerk, and \$110 for a Senior Data Entry Clerk according to SIFMA's *Office Salaries in the Securities Industry 2013*, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead ($\$97 + \$78 + \$101 + \$87 + \$110 = \473 . $\$473 / 5 = \94.6 , rounded up to \$95). The staff estimates that a respondent's annual burden of creating notices, monitoring the opt-process, and addressing consumer questions and concerns about opt-out notices will be 3.6 hours at approximately \$407 per hour (the \$407 per hour figure is based on the average hourly cost of \$299 for a Programmer Analyst, \$424 for a Senior Database Administrator, \$385 for a Compliance Manager, \$607 for a Director of Compliance, \$271 for a Paralegal, and \$454 for a Compliance Attorney according to 2013 SIFMA Management & Professional Earnings data ($\$299 + \$424 + \$385 + \$607 + \$271 + \$454 = \$2,440$. $\$2,440 / 6 = \406.66 , rounded up to \$407). These estimates, together with an estimate of 2,282 as the number of Covered Persons required to provide notice and opt-out opportunities to consumers, results in an estimated annual burden of approximately 17,343 hours for creating notices, providing notices and opt-out opportunities, monitoring the opt-out notice process, making and updating records of opt-out elections, and addressing consumer questions and concerns about opt-out notices ($3.6 + 4 = 7.6$; $7.6 \times 2,282 = 17,343$) at an internal compliance

cost of approximately \$4,210,665 ($4 \times 2,282 = 9,128$; $\$95 \times 9,128 = \$867,160$; $3.6 \times 2,282 = 8,215.2$, rounded down to 8,215; $\$407 \times 8,215 = \$3,343,505$; $\$867,160 + \$3,343,505 = \$4,210,665$).

Based on the foregoing, the estimated total annual time burden of the collection of information is approximately 19,899 hours ($2,556 + 17,343$) at an internal compliance cost of approximately \$5,897,625 ($\$1,686,960 + \$4,210,665 = \$5,897,625$).

Burden	Burden Type	Number of Respondents	Hours Per Year	Total Industry Hours
Review affiliate marketing practices	Third party disclosure	12,781	0.20	2,556
Deliver notices and record opt-out elections and create notices and monitor and respond to inquiries	Third party disclosure	2,282	7.6	17,343
Total Aggregate Burden				19,899 hours

13. Costs to Respondents

Other than the internal compliance costs discussed in Item 12 above, Regulation S-AM does not impose any additional start-up or continuing operating, maintenance, or materials costs.

14. Costs to Federal Government

Not applicable. Regulation S-AM requires third-party disclosure rather than government reporting.

15. Changes in Burden

The change in total annual time burden from 19,096 hours to 19,899 hours resulted from an increase in the number of entities subject to Regulation S-AM (the estimated number of Covered Persons having one or more affiliates increased from approximately 12,262 to approximately 12,781, and the estimated number of Covered Persons required to provide notice and opt-out opportunities increased from approximately 2,190 to approximately 2,282). Based on the changes described, the estimated total annual time burden of the collection of information changed from 19,096 hours ($2,452 + 16,644$) to 19,899 hours ($2,282 + 12,781$).

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.