Supporting Statement for the
Disclosure Requirements Associated with
Regulation V (Fair Credit Reporting)
(OMB No. 7100-0308)
(Affiliate Marketing – Docket No. R-1203)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), revised, without extension,[1] the disclosure requirements associated with Regulation V, which implements the Fair Credit Reporting Act (FCRA) (OMB No. 7100-0308).[2] The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies disclosure requirements of a regulation as "required information collections."[3]

On July 15, 2004, the Federal Reserve published a joint[4] notice of proposed rulemaking (69 FR 42502) to implement the affiliate marketing provisions in section 214 of the Fair and Accurate Credit Transactions Act (FACT Act) of 2003, which amends the FCRA. The proposed regulations generally prohibit a person from using information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and an opportunity and simple method to opt out of the making of such solicitations. The comment period for this notice expired on August 16, 2004. The Federal Reserve received 42 comment letters for industry groups and consumers. On November 7, 2007, a joint notice of final rulemaking was published in the *Federal Register* adopting the amendments, with mandatory compliance by October 1, 2008 (72 FR 62910).

Financial institutions that (1) extend credit and regularly and in the ordinary course of business furnish information to a nationwide consumer reporting agency (CRA), and (2) furnish negative information to such an agency regarding credit extended to a customer must provide a clear and conspicuous notice to the customer, in writing, about furnishing this negative information.[5] The Federal Reserve estimates that approximately 30,000 financial institutions furnish information to CRAs per year. The annual paperwork burden for furnishing these disclosures is estimated to be 7,500 hours.

Under the final rule, to implement the affiliate marketing provisions, the Federal Reserve estimates approximately 2,619 financial institutions[6] would provide opt-out notices to consumers

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[1] The information collections associated with the rulemakings for Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (Docket No R1255), will be assigned OMB No. 7100-0308.
[2] FCRA was enacted in 1970 and is codified at 15 U.S.C. § 1681 et seq. Regulation V is located at 12 C.F.R. Part 222.
[3] 44 U.S.C. § 3501 et seq.
[4] Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Treasury; and National Credit Union Administration (NCUA)
[5] Section 217 of the FACT Act defines the term "negative information" to mean information concerning a customer's delinquencies, late payments, insolvency, or any form of default.
[6] State member banks, branches and agencies of foreign banks (other than federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, Edge and agreement corporations, and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

and approximately 638,380 consumers would respond to the notice and opt-out. This would increase the estimated total annual burden of this information collection from 7,500 hours to 107,840 hours.

Background and Justification

On December 4, 2003, the President signed into law the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amends the FCRA. In general, the FACT Act enhances the ability of consumers to combat identity theft, increases the accuracy of consumer reports, and allows consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, the FACT Act creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy programs, education programs, grants, and materials of the Federal Government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation.

In the final rule (69 FR 33281, June 15, 2004) the Federal Reserve adopted model forms that all financial institutions may use to comply with the notice requirement under section 217.[7] Because a financial institution is allowed to send the notice relating to furnishing negative information prior to, or within thirty days after, it furnishes negative information, the model forms contain alternative language that a financial institution may use, depending on whether the notice is provided prior to, or after, furnishing negative information. The provisions in section 217 were effective December 1, 2004.[8]

Description of Information Collection

Notice to Consumer Reporting Agency (Section 217)[9]

A financial institution generally may provide the notice about furnishing negative information on or with any notice of default, any billing statement, or any other materials provided to the customer, so long as the notice is clear and conspicuous. After providing such notice, the financial institution may submit additional negative information to a CRA described in section 603(p) of the FACT Act, with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. Section 217

[7] Under section 217, the term "financial institution" is defined broadly to have the same meaning as in the privacy provisions of the Gramm-Leach-Bliley Act of 1999 (GLB Act), which defines financial institution to mean "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956," whether or not affiliated with a bank. 15 U.S.C. 6809(3). Thus, the term "financial institution" includes not only institutions regulated by the Federal Reserve and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information. 16 CFR 313.3(k) (65 FR 33646 and 33655, May 24, 2000).

Federal Reserve-covered institutions are defined by Regulation V as: banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq., and 611 et seq.), and bank holding companies and affiliates of such holding companies (other than depository institutions and consumer reporting agencies).

[8] 69 FR 6526 (February 11, 2004).

[9] (12 CFR, Part 222, appendix B)

specifically provides, however, that the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)).[10]

Section 217 also provides certain safe harbors for institutions concerning their efforts to comply with the notice requirement. A financial institution is deemed to be in compliance with the notice requirement if it uses the Federal Reserve's model form, or uses the model form and rearranges its format. In addition, section 217 provides that a financial institution is not liable for failure to perform the duties required by this section if, at the time of the failure, the institution maintained reasonable policies and procedures to comply with the section or the institution reasonably believed that the institution was prohibited by law from contacting the customer.

Affiliate Marketing Provisions

Affiliate marketing opt-out notice requirements (Section 214)[11]

Specifically, the FACT Act and the final rule provides that when a company communicates certain information about the consumer eligibility information to an affiliate, the affiliate may not use that information to make solicitations for marketing purposes to the consumer unless the consumer is given a notice and an opportunity to opt-out of that use of the information and the consumer does not opt-out. In general contents of opt-out notice must be clear, conspicuous, and concise, and must accurately disclose the name of the affiliate(s) providing the notice.

The notice must be provided by an affiliate that has or has previously had a pre-existing business relationship with the consumer; or as part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or has previously had a pre-existing business relationship with the consumer.

The election of a consumer to opt out must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period of more than five years may be established, including an opt-out period that does not expire unless revoked by the consumer. A consumer may opt out at any time.

Time Schedule for Information Collection

With respect to section 217, this notice requirement specifies that an institution must provide the required notice to the customer prior to, or no later than thirty days after, furnishing the negative information to a nationwide CRA. After providing the notice, the institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. If a financial institution has provided a customer with a notice prior to the furnishing of negative information, the institution is not required to furnish negative

[10] The collection of information under Regulation Z is assigned OMB No. 7100-0199 for purposes of the PRA.
[11] (12 CFR, Parts: 222.21– 222.27)

information about the customer to a nationwide CRA.

With respect to section 214, this notice requirement specifies that an institution must not use eligibility information about a consumer that it receives from an affiliate to make a solicitation to the consumer about the bank's products or services, unless the consumer is provided a reasonable opportunity to opt out. The consumer is given thirty days from the date the notice is sent to elect to opt out by any reasonable means.

Consultation Outside the Agency

On July 15, 2004, the Federal Reserve published a joint notice of proposed rulemaking (69 FR 42502) to implement the affiliate marketing provisions in section 214 of the Fair and Accurate Credit Transactions Act (FACT Act) of 2003, which amends the FCRA. The comment period for this notice expired on August 16, 2007. The Federal Reserve received 42 comment letters for industry groups and consumers. On November 7, 2007, a joint notice of final rulemaking was published in the *Federal Register* adopting the amendments, with mandatory compliance by October 1, 2008 (72 FR 62910).

Legal Status

The Board's Legal Division has determined that the FCRA, as amended, authorizes the Federal Reserve to issue regulations to carry out the provisions of the Act (15 U.S.C. § 1681s-2(a)(7)). Because the records are maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Estimate of Respondent Burden

The annual respondent burden for this information collection is estimated to be 7,500 hours. Approximately 30,000 financial institutions furnish information to CRAs. It is expected that providing the notice to consumers would not significantly burden financial institutions because many provide a standardized notice to consumers routinely in connection with account openings prior to furnishing negative information. The Federal Reserve estimates that financial institutions with customized disclosures would take approximately fifteen minutes annually to update their notices with changes such as contact information.

Under the final rule, to implement the affiliate marketing provisions, the Federal Reserve estimates that the average amount of time for a financial institution to prepare an initial notice as required and distribute the notice to consumers would be approximately 18 hours. The Federal Reserve recognized that the amount of time needed for any particular financial institution subject to the final requirements may be higher or lower, but believed that this average figure was a reasonable estimate. To minimize the compliance costs and burdens for financial institution, particularly small entities, the final rule contains model disclosures and opt-out notices that may be used to satisfy the statutory requirements. The final rule gave covered financial institution flexibility to satisfy the notice and opt-out requirement by sending the consumer a free-standing opt-out notice or by adding the opt-out notice to the privacy notices already provided to

consumers in accordance with the provisions of Title V of the GLBA. For covered financial institutions that choose to prepare a free-standing opt-out notice, the time necessary to prepare a free-standing opt-out notice would be minimal, because those financial institutions could simply copy the model disclosure, making minor adjustments as indicated by the model disclosure. Similarly, for covered financial institutions that choose to incorporate the opt-out notice into their GLBA privacy notices, the time necessary to integrate the model opt-out notice into their privacy notices would be minimal. The Federal Reserve estimates that the average consumer would take approximately five minutes to respond to the notice and opt-out. This represents less than 1 percent of total annual Federal Reserve System paperwork burden.

	Number of respondents	*Average annual frequency*	*Estimated average time per response*	*Estimated annual burden hours*
Current				
Section (217) CRA notice	30,000	1	15 minutes	7,500
Total				7,500
Proposed				
Section (217) CRA notice	30,000	1	15 minutes	7,500
Section (214) opt-out notice				
Financial Institutions	2,619	1	18 hours	47,142
Consumer Response	638,380	1	5 minutes	53,198
Total				107,840
Change				+100,340

The estimated cost to the public for this information collection is $2,733,429.[12]

Estimated Cost to the Federal Reserve System

The annual cost to the Federal Reserve System for collecting this information is negligible.

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

[12] Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 75% - Clerical @ $25, 25% - Managerial or Technical @ $55, 0% - Senior Management @ $100, and 0% - Legal Counsel @ $144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release. Consumer cost of $18 is based on the U.S. Department of Labor Bureau of Labor Statistics, 2002 Quarterly Census of Employment and Wages http://www.bls.gov/cew/state2002.txt