

**Supporting Statement for the
Survey of Information Sharing Practices with Affiliates
(FR 3214e; OMB No. 7100-0318)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to implement a new voluntary Survey¹ of Information Sharing Practices with Affiliates (FR 3214e; OMB No. 7100-0318) in order to fulfill the Federal Reserve's obligations under Section 214(e) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Section 214(e) requires the Federal Reserve and five other agencies (the Agencies)² to jointly study the consumer information sharing practices by financial institutions, and other persons that are creditors or users of consumer reports, with their affiliates.³

Under the FACT Act, a report must be made to the Congress on this study every three years. The Federal Reserve proposes to select and survey state member banks (SMBs) on a triennial basis. The reporting panel would consist of sixty SMBs that are likely to have affiliates with whom they share information. Attachment A provides a sample of the types of questions that might be asked to illustrate the format of the survey. The initial survey would be conducted during the first half of 2008. The Federal Reserve's total annual burden associated with the survey is estimated to be 600 hours.⁴

The Federal Reserve is required to implement and subsequently review these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies reporting of information to the agency as an information collection.⁵ A notice to implement the proposed information collection was published, on August 31, 2006, in the *Federal Register* for public comment (71 FR 51888). The public comment period ended on October 30, 2006, and the agencies jointly received five comment letters. The Federal Reserve approved this information collection, largely as proposed, under its delegated authority from OMB.⁶ On December 10, 2007, the Federal Reserve published a final notice in the *Federal Register* (72 FR 69729).

Background and Justification

The FACT Act became law on December 4, 2003 (Pub. L. 108-159, 117 Stat. 1952). In general, the FACT Act amends the Fair Credit Reporting Act to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. To promote increasingly efficient national credit markets, the FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information. Finally, the FACT Act requires a number of studies to be conducted.

¹ Qualitative survey (see OMB supporting statement Part B)

² Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Federal Trade Commission (FTC).

³ Affiliates are defined as persons that are related by common ownership or affiliated by common corporate control.

⁴ Each agency is responsible for the paperwork burden associated with surveying the entities under its jurisdiction.

⁵ 44 U.S.C. § 3501 *et seq*

⁶ The OCC, FDIC, OTS, NCUA, and FTC are soliciting comment on the implementation of the proposed information collection. The comment period expires January 9, 2008.

Section 214(e) of the FACT Act requires the Agencies to jointly conduct regular studies every three years of the consumer information sharing practices by financial institutions, and other persons that are creditors or users of consumer reports, with their affiliates, and to submit a report to the Congress. The information necessary for the Agencies to conduct these studies is not available from other sources. As a result, the Agencies believe it is necessary to conduct a survey to gather relevant data, ensure the accurate characterization of the information sharing practices of the subject entities, and develop a base of information to be used for comparative purposes in future reports.

Description of Information Collection⁷

The proposed survey would consist of questions designed to collect data in response to the specific statutory requirements of Section 214(e) of the FACT Act, as described below. The survey questions would be multiple choice and many questions would provide space for supplemental answers, as needed. The proposed survey instrument would be substantively similar for all agencies.

Section 214(e) of the FACT Act specifically requires the Agencies to identify:

- (1) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;
- (2) the types of information shared by such entities;
- (3) the number of choices provided to consumers with respect to the control of such sharing and the degree to and manner in which consumers exercise such choices, if at all; and
- (4) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes –
 - a. that are related to employment or hiring, including whether the person who is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or
 - b. of general publication of such information.

The Agencies also are required to examine the information sharing practices that financial institutions and other creditors or users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

Section 214(e) of the FACT Act requires the Agencies' joint report to the Congress to:

- (1) include any recommendations for legislative or regulatory action;
- (2) document any changes in the areas of study occurring since the date of submission of the previous report;
- (3) identify any changes in the practices of financial institutions and other creditors and users of consumer reports in sharing consumer information with their affiliates for the purpose of making underwriting decisions or credit evaluations of consumers occurring since the date of submission of the previous report; and
- (4) examine the effects that any such changes have had, if any, on the degree to which such information sharing practices reduce the need for financial institutions, creditors, and other users of consumer reports to rely on consumer reports for such decisions.

⁷ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Federal Reserve Board are available: <http://www.federalreserve.gov/GeneralInfo/Section515/default.htm>

Reporting Panel

The reporting panel would be selected based on three asset size categories and whether the SMB is known to have affiliates with which it can share information and whether it is likely to use consumer information.⁸ The proposed panel size of sixty SMBs was chosen to keep the sample size comparable to the proposed panels of the other Agencies⁹ and to minimize the number of SMBs that would be asked to participate, consistent with the need to collect adequate data.

For future triennial surveys, the Federal Reserve anticipates that panels would be selected based on the same three asset categories. The actual respondents in each category would likely change over the years because of structural changes such as mergers and asset growth. However, attempts would be made to survey the same respondents to the extent possible.

Time Schedule for Information Collection and Publication

The Federal Reserve proposes to conduct the initial survey during the first half of 2008. The Federal Reserve proposes to select and survey SMBs on a triennial basis. A copy of the report would be made available on the Board's public website, subsequent to its delivery to the Congress.

Legal Status

The Board's Legal Division has determined that the Survey of Information Sharing Practices with Affiliates is authorized by law Section 11(a)(1) of the Federal Reserve Act, (12 U.S.C. §§248 (a)(1) and is voluntary. Responses to survey questions that financial institutions are required to make public would not be protected from disclosure under the Freedom of Information Act (FOIA). However, it is possible that some information collected on this survey may be exempt. To the extent an institution can establish the potential for substantial competitive harm, those responses would be protected pursuant to exemption (b)(4) of the FOIA (5 U.S.C. 552 § (b)(4)). Thus, the confidentiality status of responses to certain survey questions would be determined on a case-by-case basis.

Sensitive Questions

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

Consultation Outside the Agency

The agencies collaborated on the content of the survey instrument and methods for collecting the data and jointly develop the final survey instrument. A notice to implement the proposed information collection was published, on August 31, 2006, in the *Federal Register* for public comment (71 FR 51888). The public comment period ended on October 30, 2006, and

⁸ During the initial contact with a SMB, the Federal Reserve would determine whether a SMB shares information with affiliates. Depending on the response a SMB may not need to complete the survey.

⁹ The Agencies would determine the exact number of potential respondents within each agency's jurisdiction. Currently, the survey panels for the other five agencies are anticipated to be as follows: OCC (40), FDIC (100), OTS (30), NCUA (50), and FTC (20). The various panel sizes of the Agencies reflect the different survey methods each agency would use and those methods' anticipated response rates.

the agencies jointly received five comment letters. The Federal Reserve approved this information collection, largely as proposed, under its delegated authority from OMB. On December 10, 2007, the Federal Reserve published a final notice in the *Federal Register* (72 FR 69729).

Estimate of Respondent Burden

The annual burden for the proposed information collection is estimated to be 600 hours. The average burden for each of the sixty respondents is estimated to be ten hours, including eight hours to consult and obtain data and up to two hours to complete the survey. The annual burden for this survey represents less than 1 percent of the total Federal Reserve paperwork burden.

	<i>Estimated number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<i>State member banks</i>	60	1	10	600

The total cost to the public is estimated to be \$36,990.¹⁰

Estimate of Cost to the Federal Reserve System

The Federal Reserve would incur negligible costs in conducting this survey.

¹⁰ "Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ \$25, 45% - Managerial or Technical @ \$55, 15% - Senior Management @ \$100, and 10% - 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."