

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

A. Justification:

1. Circumstances that make the collection necessary:

Section 214 of the FACT Act,<sup>1</sup> which added section 624 to the Fair Credit Reporting Act (FCRA),<sup>2</sup> generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to the consumer, unless the consumer is given notice and an opportunity and simple method to opt out of making such solicitations. Section 214 also requires the Agencies,<sup>3</sup> the Securities and Exchange Commission (SEC), and the Federal Trade Commission (FTC), in consultation and coordination with each other, to issue regulations implementing section 214 that, to the extent possible, are consistent and comparable.

Administration of these regulations, which were codified by the OCC at 12 CFR 41.20-41.28 and that have not changed since they were last cleared by OMB under the PRA, has been transferred to the Bureau of Consumer Financial Protection (CFPB) and are now found at 12 CFR 1022.20-1022.27. Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>4</sup> (Dodd-Frank Act) transferred the regulations and the CFPB republished them (76 FR 79308 (December 21, 2011)). The burden estimates have been revised to remove the burden attributable to OCC-regulated institutions with over \$10 billion in total assets, now carried by CFPB pursuant to section 1025 of the Dodd-Frank Act. The OCC retains enforcement authority and carries burden for those institutions under its supervision with total assets of \$10 billion or less.

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. Financial institutions use the 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 make solicitations to 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

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<sup>1</sup> Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, 117 Stat. 1952 (December 4, 2003).

<sup>2</sup> 15 U.S.C. 1681 *et seq.*

<sup>3</sup> OCC, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.

<sup>4</sup> Pub. L. 111-203, 124 Stat. 1955, July 21, 2010.

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.

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. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

The collection imposes on financial institutions, regardless of size, only the minimum burden necessary for compliance with the FACT Act.

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:

The OCC published a 60-day Federal Register Notice on September 13, 2013, 78 FR 56771. No comments were received.

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

No assurance of confidentiality is made.

11. Justification for questions of a sensitive nature:

There are no questions involving personally identifiable information.

12. Burden estimate:

**Number of Respondents:**

300 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
- 105 do not send consolidated notices
- 195 send consolidated notices

166,144 Number of consumers opting out

- 131,532 existing consumers opting out
- 34,612 new consumers opting out

**166,444 Total number of respondents**

**Institution Burden Hours:**

18 hours per newly chartered institution (3 x 18 = 54)

1 hour per institution for institutions sending consolidated opt out notices (195 x 1 = 195)

2 hours per institution for institutions not sending consolidated opt out notices (105 x 2 = 210)

**459 Total Institution Burden Hours**

**Consumer Burden Hours:**

5 minutes Per existing consumer (131,532 x 5 minutes = 10,961 hours)

10 minutes Per new consumer (34,612 x 10 minutes = 5,769 hours)

**16,730 Total Consumer Burden Hours**

**17,189 Total burden hours**

13. Estimates of annualized costs to respondents:

Clerical:	90% x 17,189 x \$25 /hr	= \$ 386,753
Managerial/Technical:	9% x 17,189 x \$60/hr	= \$ 92,821
Senior Management/Professional:	1% x 17,189 x \$100 /hr	= \$ 17,189
		<b>\$ 596,763</b>

14. Estimate of annualized costs to the government:

Not applicable.

15. Changes in burden:

Former burden:

Total Respondents: 735,339  
Total Burden Hours: 22,472

Current Burden:

Total Respondents: 166,444  
Total Burden Hours: 17,189

Difference:

Total Respondents: - 568,895  
Total Burden Hours: - 5,283

The change in burden is due to more accurate burden estimates. The prior estimate of the number of respondents was overstated due to: estimates transferred from OTS during the transition; and the use of the total number of consumers instead of the actual percentage opting out to determine the number of consumers who have opted out.

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.