

Supporting Statement
Affiliate Marketing/Consumer Opt-Out Notices
(OMB No. 3064-0149)

Introduction

The Federal Deposit Insurance Corporation (FDIC) requests OMB approval to extend, without change, the above-captioned collection of information for three years. This collection is contained in an interagency rule implementing section 214 of the FACT Act, a 2003 amendment to the Fair Credit Reporting Act. Section 214 generally provides that, if a person shares certain information about a consumer with an affiliate, the affiliate may not use that information to make or send solicitations to the consumer about its products or services, unless the consumer is given notice and a reasonable opportunity to opt out of such use of the information and the consumer does not opt out. Thus, the elements of this collection are: (1) disclosures to consumers of the opportunity to opt-out of solicitations from affiliates, and (2) consumer responses to the opt-out notices. This collection was first approved by OMB in 2004. The collection is scheduled to expire on July 31, 2017.

A. Justification

1. Circumstances that Make the Collection Necessary

Section 214 of the FACT Act requires the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), and the Securities and Exchange Commission (SEC), in consultation and coordination with each other, to issue regulations in final form implementing section 214. The FDIC complied with this provision of law by revising its regulations at 12 CFR 334; the collection is contained in that regulation.

2. Use of the Information

Consumers will use the information in the disclosures to decide whether to opt out of their institutions' affiliate marketing practices. Respondent banks will use the opt-out notices to manage their affiliate marketing practices appropriately.

3. Consideration of the Use of Improved Information Technology

Financial institutions and consumers are free to utilize any technology they wish to reduce the burden associated with this collection.

4. Efforts to Identify Duplication

The information is not available from any other source.

5. Methods Used to Minimize Burden on Small Entities

The collection applies to all institutions with affiliates, regardless of size, and all consumers associated with those institutions. However, in an effort to minimize the burden for financial institutions, particularly small banks (i.e., those with assets of less than \$250 million), the Agencies, including FDIC, have published model disclosures and opt out notices that may be used for this collection. In addition, the collection allows institutions to minimize disclosure burden by incorporating the affiliate marketing notices into privacy notices that are already required by Title V of the Gramm-Leach-Bliley Act (approved under OMB control number 3064-0136). Financial institutions also have the option of choosing not to engage in the sharing of certain information with their affiliates for marketing purposes.

6. Consequences to the Federal program if the Collection were Conducted Less Frequently

Section 214 of the FACT Act requires that consumer opt-outs be effective for a minimum of five years. Financial institutions have the option of adopting for themselves a less frequent disclosure requirement by making consumer opt-outs effective for longer than the minimum five-year period, or by making consumer opt-outs effective in perpetuity, unless revoked by the consumer.

7. Special Circumstances Necessitating Collection Inconsistent with 5 CFR Part 1320

None.

8. Efforts to Consult with Persons Outside the Agency

On May 17, 2017, the FDIC published a *Federal Register* notice seeking comment for a 60-day period on renewal of the information collection (82 FR 22665). No comments were received.

9. Payment to Respondents

There is no payment to respondents.

10. Assurance of Confidentiality

Financial institutions would treat these disclosure requirements with the same degree of confidentiality as other disclosures of sensitive consumer information.

11. Justification for Questions of a Sensitive Nature

There are no questions of a sensitive nature.

12. Burden Estimate

Type of Burden	Estimated Number of Respondents	Estimated Time per Response	Frequency of Response	Total Estimated Annual Burden
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Implementation	8	18 hours	1	144
Ongoing	990	2 hours	1	1,980
Consumer Opt-Out	857,027	5 minutes	1	71,419
Total Estimated Annual Burden				73,543 hours

According to data from the Federal Reserve’s National Information Center (NIC), there were 3,063 FDIC supervised institutions with an affiliate as of March 31st, 2017. This is an increase of 23 institutions from March 31st, 2014, which had 3,040 institutions with affiliates. Based on the research and NIC data, it is reasonable to estimate that the population of institutions with affiliates will continue to grow by approximately 23 institutions over the next three years. Thus, FDIC anticipates approximately 8 institutions per year will have an implementation burden.

The FDIC estimates that 95.4% of the 990 banks impacted by this information collection are community banks having an average of 12,098 consumers and the remaining 4.6% are non-community (larger) banks having an average of 124,745 consumers. The FDIC estimates that 5% of the 17,140,540 estimated consumers at these 990 institutions (857,027 consumers) elect to Opt-Out of affiliate marketing information sharing.

The following is the estimated cost of compliance:

Costs for Institutions

$$2,124 \text{ hours} * \$76.61^1 = \$162,720$$

Costs for Consumers

$$71,419 \text{ hours} * \$36.74^2 = \$2,623,934$$

Total Cost Burden

$$\$162,720 + \$2,623,934 = \$2,786,654$$

13. Capital/Start-up and Operation/Maintenance Costs

None.

14. Estimate of Annualized Cost to the Federal Government

¹ The hourly compensation estimate is based on published compensation rates for Compliance Officers (\$76.86) in the depository credit intermediation sector. The estimate includes the May 2016 90th percentile hourly wage rate reported by the BLS, National Industry-Specific Occupational Employment and Wage Estimates. The reported hourly wage rate is adjusted for changes in the CPI-U between May 2016 and March 2017 (1.83 percent) and grossed up by 155.3 percent to account for non-monetary compensation as reported by the March 2017 Employer Costs for Employee Compensation Data.

² The hourly compensation estimate is based on published compensation rates for All Occupations (\$37.73) in the U.S. economy. The estimate includes the May 2016 average hourly wage rate reported by the BLS, National Industry-Specific Occupational Employment and Wage Estimates. The reported hourly wage rate is adjusted for changes in the CPI-U between May 2016 and March 2017 (1.83 percent) and grossed up by 155.3 percent to account for non-monetary compensation as reported by the March 2017 Employer Costs for Employee Compensation Data.

None.

15. Reason for Change in Burden

There is no change in the method or substance of this information collection. There has been a net increase in the estimated total annual burden primarily because of an upward adjustment in the agency's estimate of the number of consumers at FDIC-supervised institutions that elect to opt-out of affiliate marketing information sharing. The increase in burden due to the adjustment in the estimated number of consumers affected was offset by the fact that most banks have completed the implementation phase of the information collection; the estimated ongoing time per response for most affected institutions decreasing from 18 hours at implementation to 2 hours ongoing.

16. Publication

The information will not be published.

17. Display of Expiration Date

No exception is requested.

18. Exceptions to Certification Statement

None.

B. Collections of Information Employing Statistical Methods

Not applicable.