

**Supporting Statement for
Information Collection Provisions of the
Free Annual File Disclosures Rule
16 C.F.R. Parts 610 & 698
(OMB Control # 3084-0128)**

(1) & (2) Necessity for and Use of the Information Collected

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act), Pub. L. No. 108-159, required the Federal Trade Commission to adopt rules to require the establishment of (1) a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. These file disclosures are commonly known as credit reports.

The Act directed the Commission to issue these rules in final form no later than six months after the enactment of the FACT Act. Accordingly, the Commission issued a final rule on June 4, 2004. As mandated by the Act, the Rule requires nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to disclose information to third parties by requiring those consumer reporting agencies to provide to consumers, upon request, one annual file disclosure. The extent to which these requirements are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (“PRA”), is described below.

The centralized source required by the Rule provides consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet website, toll-free telephone number, and postal address. The Rule also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement.

(3) Consideration of the Use of Information Technology to Reduce Burden

The Act and Rule require nationwide consumer reporting agencies to use information technologies in complying with their disclosure obligations under the Act by requiring those consumer reporting agencies to establish a centralized internet web site for consumers to request a free annual file disclosure. The Rule also contemplates that nationwide specialty consumer reporting agencies may use information technologies in complying with their disclosure obligations under the Act. Such technologies may help reduce the burden of information collection imposed by the Act. In addition, nothing in the Act or Rule prohibits regulated entities from using the least burdensome information technology to reduce compliance burdens.

Consistent with the Government Paperwork Reduction Elimination Act., Pub L. No. 105-227, Title XVII, 112 Stat. 2681-749, nothing in the Rule prescribes that the disclosures be made, records filed or kept, or signatures executed, on paper or in any particular format that would

preclude the use of electronic methods to comply with the Rule's requirements.

(4) Efforts to Identify Duplication

The Rule's disclosure requirements do not duplicate any other information collection requirements imposed by the Commission. To the extent some state laws also require free annual file disclosures, similar to that required by the Act and Rule, nationwide and nationwide specialty consumer reporting agencies can comply with such state laws by complying with the Act and Rule, thereby avoiding duplication.¹

(5) Efforts to Minimize Burden on Small Organizations

The Rule's disclosure requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size.

The Commission does not anticipate that the Rule will have a significant economic impact on a substantial number of small entities. As noted above, the Rule applies to two types of consumer reporting agencies: (1) nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies. The Commission has not identified any nationwide consumer reporting agencies that are small entities. Furthermore, the Commission estimates, based on industry sources, that there are fewer than 50 nationwide specialty consumer reporting agencies currently doing business in the U.S. The Commission has been unable to find data on which to estimate how many of these nationwide specialty consumer reporting agencies, if any, are small entities. Based on industry sources, however, the Commission believes that the number of such agencies that are small entities, if any, is insubstantial. While the economic impact of the Rule on a particular small entity could be significant, overall the Rule will not have a significant economic impact on a substantial number of small entities.

The Rule contains provisions that reduce burden on all entities. The Rule provides that, during periods of extraordinary request volume, nationwide and nationwide specialty consumer reporting agencies may redirect, or decline to accept, some requests, provided that those consumer reporting agencies implement reasonable procedures to anticipate and respond to consumer demand for annual file disclosures.

(6) Consequences of Conducting the Collection Less Frequently

Less frequent "collection" would violate the express statutory language of the Act. Specifically, the Act's requirement that nationwide and nationwide specialty consumer reporting agencies make a free annual file disclosure upon request of the consumer, does not permit less frequent disclosure. FACT Act § 211(a).

¹ The FACT Act does not preempt existing state laws which allow a consumer to obtain a free file disclosure more than once a year. See FACT Act § 212(e)(4).

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collection of information in the Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Public Comments/Consultation Outside the Agency

Before promulgating the Rule, the FTC sought public comments on the Rule, received and considered comments from entities covered by the Rule's disclosure requirements. In seeking renewal of OMB clearance, on December 29, 2006, the FTC again sought public comments on the information collection requirements associated with the Rule. No comments were received.

(9) Payments and Gifts to Respondents

Not applicable.

(10) Assurances of Confidentiality

Not applicable. No assurance of confidentiality is necessary because although the Rule requires regulated entities to disclose records, it does not require the submission of any such records with the agency.

(11) Matters of a Sensitive Nature

Not applicable. The Rule does not require the disclosure or production of sensitive or confidential information to the Commission.

(12) Estimated Annual Hours and Labor Cost Burden

Estimated total annual hours burden: 311,000 hours (rounded to the nearest thousand)

In its 2004 PRA-related Federal Register Notices² and corresponding submission to OMB, FTC staff estimated that consumer reporting agencies would receive an average of 16.6 million new annual file disclosure requests per year during the three-year period from May 1, 2004 through April 30, 2007.³ Estimated average annual disclosure burden for those three years

² 69 FR 13192 (Mar. 19, 2004); 69 FR 35468 (Jun. 24, 2004).

³ Staff predicted that nationwide and nationwide specialty consumer reporting agencies would receive 19.9 million new annual file disclosure requests per year. However, the nationwide and nationwide specialty consumer reporting agencies were not required to provide annual file disclosures under the Rule until

was approximately 199,000 hours.⁴

No provisions in the Rule have been amended since staff's prior submission to OMB. However, the Consumer Data Industry Association recently stated that since December 1, 2004, the nationwide consumer reporting agencies have provided over 52 million free annual file disclosures through the centralized Internet website, toll-free telephone number, and postal address required to be established by the FACT Act and the Rule.⁵ Applying this data, staff estimates that the average annual disclosure burden for the three-year period for which the Commission seeks OMB clearance is approximately 311,000 hours, as detailed below, and that the nationwide and the nationwide specialty consumer reporting agencies will receive 26.69 million requests per year from consumers for free annual file disclosures.⁶

Annual File Disclosures Provided Through the Internet

Both nationwide and nationwide specialty consumer reporting agencies will likely handle the overwhelming majority of consumer requests through internet websites.⁷ The annual file disclosure requests processed through the internet will not impose any hours burden per request on the nationwide and nationwide specialty consumer reporting agencies, even though there will be some periodically recurring time and investment required to adjust the internet capacity needed to handle the new changing request volume. Consumer reporting agencies likely will make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Negotiating and renegotiating such contracts requires the time of trained

December 2004, 6 months after the Rule was published. On that basis, staff predicted there would be 9.45 million new requests for annual file disclosures for the first year of the clearance (19.9 million/2). Thus, staff projected that consumer reporting agencies would receive an average of 16.6 million new requests per year during the requested clearance period. $[(9.45 \text{ million} + 19.9 \text{ million} + 19.9 \text{ million})/3 = 16.6 \text{ million}]$

⁴ This total included estimated time to increase call center and internet capacity to handle heightened request volume, alternate use of live operators in limited instances, and processing mail requests.

⁵ Letter from Stuart K. Pratt, President & CEO, Consumer Data Industry Association, to Rep. Barney Frank, Committee on Financial Services, U.S. House of Representatives (Dec. 1, 2006).

⁶ This figure annualizes the Consumer Data Industry Association's estimate of 52 million new requests for the two-year period from December 1, 2004 to December 1, 2006 and revises it upward over the next three years based on population growth projections issued by the U.S. Census Bureau. See U.S. Census Bureau Interim Projections by Age, Sex, Race, and Hispanic Origin, available at <http://www.census.gov/ipc/www/usinterimproj/>.

⁷ According to a HarrisInteractive poll, the percentage of households that have access to the internet is currently over 60% and increasing. See The Harris Poll #8, February 5, 2003, available at http://www.harrisinteractive.com/harris_poll/index.asp?PID=356. In addition, internet users are probably more likely to request an annual file disclosure. Accordingly, staff estimates that annually, 75% of the 26.69 million new requests (or approximately 20 million) will be made online.

personnel. Staff estimates that negotiating such contracts will require a cumulative total of 8,320 hours and \$425,318 in setup and/or maintenance costs.⁸ Such activity is treated as an annual burden of maintaining and adjusting the changing internet capacity requirements.

Annual File Disclosures Requested over the Telephone

Most of the telephone requests for annual file disclosures will also be handled in an automated fashion, without any additional personnel needed to process the requests. As with the internet, additional time and investment will be needed to increase and administer the automated telephone capacity for the expected increase in request volume. The nationwide and nationwide specialty consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Staff estimates that this will require a total of 6,240 hours at a cost of \$301,205 in setup and/or maintenance costs.⁹ This also is treated as an annual recurring burden necessary to obtain, maintain, and adjust automated call center capacity.

A small percentage of those consumers who telephone the centralized source or the nationwide speciality consumer reporting agencies will not have telephone equipment compatible with an automated system and may need to be processed by a live operator.¹⁰ Based on their knowledge of the industry, staff estimates that each of these requests will take 5 minutes to process, for a total of 5,334 additional hours of operator time. $[(64,008 \times 5 \text{ minutes})/60 \text{ minutes} = 5,334 \text{ hours}]$

⁸ Based on the time necessary for similar activity in the federal government (including at the FTC), staff estimates that such contracting and administration will require approximately 4 full-time equivalent employees ("FTE") for the web service contract. Thus, staff estimates that administering the contract will require 4 FTE, which is 8,320 hours per year (4 FTE x 2080 hrs/yr). The cost is based on the reported Bureau of Labor Statistics (BLS) rate (\$48.03) for computer programmers for 2005 (most recently available BLS data) multiplied by 6.426% (approximate wage inflation for 2005 and 2006 based on the BLS Employment Cost Index), resulting in a wage of \$51.12 per hour. Thus, the estimated setup and maintenance cost for an internet system is \$425,318 per year (8,320 hours x \$51.12/hour).

⁹ Staff estimates that recurrent contracting for automated telephone capacity will require approximately 3 FTE, a total of 6,240 hours (3 x 2,080 hours). Applying a wage rate of \$48.27 based on the 2005 BLS rate for marketing managers (\$45.36/hr), the estimate for setup and maintenance cost is \$301,205 (6,240 x \$48.27) per year.

¹⁰ Based on their knowledge of the industry, staff estimates that consumers will submit 24% (6.4 million) of the average 26.69 million new requests for annual file disclosures by telephone. Of those, an estimated 1% (or 64,056) will not have telephone equipment compatible with an automated system and may need to be serviced by live personnel.

Annual File Disclosures that Require Processing by Mail

Based on their knowledge of the industry, staff believes that no more than 1% of consumers (1% x 26.69 million, or 266,900) will request an annual file disclosure through US postal service mail. Staff estimates that 10 minutes per request is required to handle these requests, thereby totaling 44,483 hours of time by clerical personnel. [(266,900 x 10 minutes)/60 minutes = 44,483 hours]

In addition, whenever the requesting consumer cannot be identified using an automated method (a website or automated telephone service), it will be necessary to redirect that consumer to send identifying material along with the request by mail. Staff estimates that this will occur in about 5% of the new requests (or 1,321,155) that were originally placed over the internet or telephone. Staff estimates that inputting and processing those redirected requests will consume approximately 10 minutes apiece at a cumulative total of 220,193 clerical hours. [(1,321,155 x 10 minutes)/60 minutes = 220,193 hours]

Instructions to consumers

The Rule also requires that certain instructions be provided to consumers. See Rule sections 610.2(b)(2)(iv)(A,B), 610.3(a)(2)(iii)(A,B). Minimal associated time or cost is involved, however. Internet instructions to consumers are embedded in the centralized source website and do not require additional time or cost for the nationwide consumer reporting agencies. Similarly, regarding telephone requests, the automated phone systems provide the requisite instructions when consumers select certain options. Some consumers who request their credit reports by mail may additionally request printed instructions from the nationwide and nationwide specialty consumer reporting agencies. Staff estimates that there will be a total of 1,588,055 requests each year for free annual file disclosures by mail.¹¹ Based on their knowledge of the industry, staff estimates that of the predicted 1,588,055 mail requests 10% (or 158,806) will request instructions by mail. If printed instructions are sent to each of these consumers by mail, requiring 10 minutes of clerical time per consumer, this will total 26,468 hours. [(158,806 instructions x 10 minutes)/60 minutes per hour]

Labor costs: \$5.19 million

Labor costs are derived by applying hourly cost figures to the burden hours described above. Accordingly, staff estimates that it will cost \$70,195 to provide annual file disclosures for

¹¹ This figure includes both the estimated 1% of 26.69 million requests that will be made by mail each year (266,900), and the estimated 5% of the requests initially made over the internet or telephone that will be redirected to the mail process (5% of 99% of 26.69 million = 1,321,155).

requests that require a telephone service representative (5,338 hours x \$13.15 per hour).¹² The remaining processing of requests for annual file disclosures and instructions will be performed by clerical personnel, which will require 291,144 hours at a cost of \$4,390,452. [(44,483 hours for handling initial mail request + 220,193 hours for handling requests redirected to mail + 26,468 hours for handling instructions mailed to consumers) x \$15.08 per hour¹³] As elaborated on above, staff estimates that a total of 14,560 labor hours (8,320 internet contract hours + 6,240 telephone capacity contract hours) will be needed to obtain, maintain, and adjust the new capacity requirements for the automated telephone call center and the internet web services. This will result in approximately \$726,523 per year in labor costs. [(8,320 hours x \$51.12 per hour for automated phone service) + (6,240 hours x \$48.27 per hour for web services)]¹⁴ Thus, staff estimates that all non-contract labor will cost \$5.19 million each year.

(13) Capital and Other Non-labor Costs

Estimated annual non-labor cost burden: \$8.39 million.

Staff believes it is likely that the consumer reporting agencies will use third-party contractors (instead of their own employees) to increase the capacity of their systems. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of requests handled by the systems. Staff estimates that the total annual amount to be paid for services delivered under these contracts is \$8.39 million.¹⁵

(14) Estimated Cost to the Federal Government

Staff estimates that the fiscal year cost to the FTC Bureau of Consumer Protection of enforcing the Rule's disclosure requirements will be approximately \$160,000 per year. This estimate is based on the assumption that 1.5 full attorney work years will be expended to enforce the Rule's requirements relating to disclosure. Clerical and other support services are also included in this estimate.

¹² The 2005 BLS wage rate for telephone operators, \$12.36, increased by 6.426% for compounded wage inflation, is \$13.15.

¹³ The 2005 BLS wage rate for employees in administrative support, clerical (level 4 of 9), \$14.17, multiplied by 6.426% for compounded wage inflation, is \$15.08.

¹⁴ The 2005 BLS wage rate for top-level computer programmers, \$48.03, multiplied by 6.426% for compounded wage inflation, is \$51.12. The 2005 BLS wage rate for marketing managers, averaged overall, is \$45.36; compounded for wage inflation at 6.426% it becomes \$48.27.

¹⁵ This consists of an estimated \$7.69 million for automated telephone cost (\$1.20 per request x 6.41 million requests) and an estimated \$700,000 (\$0.035 per request x 20 million requests) for internet web service cost. Per unit cost estimates are based on staff's knowledge of the industry.

(15) Program Changes or Adjustments

There are no program changes posed by the final Rule. Increased estimates for burden hours and labor costs from the FTC's prior clearance request are due to a sharp increase in staff's estimated average number of annual file disclosure requests per year (previously estimated at 16.6 million, now 26.69 million) and, additionally regarding labor costs, an increase in estimated hourly wage rates.

(16) Statistical Use of Information/Publication of results

Not applicable. There are no plans to publish for statistical use any information required by the Rule.

(17) Display of the Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to the "Certification for Paperwork Reduction Act Submissions"

Not applicable.