

**Supporting Statement for the
Prescreen Opt-Out Disclosure Rule
16 C.F.R. Part 642
(OMB Control No. 3084-0132)**

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

Section 213 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act” or “the Act”) required the Federal Trade Commission, in consultation with the federal banking agencies and the National Credit Union Administration, to issue a rule to improve the required notice to consumers of their right to opt out of solicitations for receiving firm offers of credit or insurance (“prescreened” offers). A final Rule was published in the Federal Register on January 31, 2005 (70 FR 5022) with an effective date of August 1, 2005.

Under Section 615 of the Fair Credit and Reporting Act (“FCRA”), 15 U.S.C. § 1681m, users of consumer reports have been required to provide consumers receiving prescreened offers of credit or insurance with a notice of their right to elect to be excluded from the list of those receiving such solicitations. In order to make the notice simple and easy to understand, as mandated by the FACT Act, the Rule sets forth certain baseline requirements for the size, placement, and format of the notice. The Rule also provides entities making prescreened solicitations with model notices (16 C.F.R. Part 698, Appendix A) that they may use to comply with the Rule.

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

Not applicable. The required notices are standardized and machine-generated. The statute applies only to “written” solicitations. 15 U.S.C. § 1681m(d)(1). In addition, prescreened solicitations, by definition, are sent directly to consumers. Because prescreened solicitations are based upon information received from consumer reporting agencies, entities making prescreened solicitations typically only have physical mailing addresses, not e-mail addresses, for consumers solicited. Nothing in the Rule precludes electronic solicitations from being accompanied by a similar electronic notice. As such, the Rule is consistent with the Government Paperwork Elimination Act, Pub. L. No.105-227, Title XVII, 112 Stat. 2681-749, which requires, in relevant part, that agencies provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper.

(4) Efforts to Identify Duplication

The Rule’s notice requirements do not duplicate any other information collection requirements imposed under federal or state law.

(5) Efforts to Minimize Burden on Small Organizations

The Rule’s notice requirements are designed to impose the minimum burden on all

affected members of the industry, regardless of size.

The Commission does not believe that the Rule has had a significant economic impact on a substantial number of small entities. The FCRA, as noted, previously mandated the opt-out notice. The FACT Act required the Commission to adopt a rule to make the required statement simple and easy to understand. The Rule applies to any entity that makes prescreened offers of credit or insurance. The Commission has been unable to determine the number of small entities that purchase prescreened lists from consumer reporting agencies. The Commission believes, however, that very few small entities make prescreened offers of credit or insurance. Although there may be some small entities among the entities making prescreened offers, the economic impact of the Rule is unlikely to be significant on a particular entity, nor is the Rule likely to have a significant economic impact on a substantial number of small entities. The minimal impact on creditors and insurers would likely consist of revising notices that they already give in order to make the notices simple and easy to understand, and the Rule contains a model notice form to assist in this process.

(6) Consequences of Conducting the Collection Less Frequently

Less frequent “collection” would violate the express statutory language of the FCRA, which requires that each prescreened offer of credit or insurance be accompanied by an opt-out notice.

(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

During the rulemaking, the FTC received approximately 60 comments concerning the proposed Rule. Most commenters expressed general support for a Rule requiring an improved and more understandable opt-out notice, but commenters disagreed on what manner and format would be best to accomplish the goals of the FACT Act. Moreover, as required by the FACT Act, during the rulemaking, the Commission staff consulted with the other affected federal agencies on drafting the Rule. In addition, Commission staff conducted discussions with various trade associations. In July 2007, the Commission specifically sought public comment to extend through November 30, 2010, the current OMB clearance for information collection requirements contained in the Rule. No comments were received in response to that request. 72 FR 42091 (Aug 1, 2007).

(9) Payments and Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

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

(12) Estimated Annual Hours and Labor Cost Burden

Annual Hours

The FTC staff estimates that the information collection burden for the notice requirements mandated by the Act and the Rule will be between 1,000 to 1,500 hours.

When issuing the final Rule, the Commission estimated that the annual burden to industry would be between 43,600 and 45,600 hours. This estimate was comprised of 500 - 750 companies each spending 8 hours to revise an existing solicitation, plus 100 companies each needing an additional 396 hours to revise multiple solicitations ((500 companies x 8 burden hours + 39,600 burden hours = 43,600 burden hours); (750 companies x 8 burden hours + 39,600 burden hours = 45,600 burden hours)).

Since the OMB's approval of the final Rule in 2004, the requirements of the Rule have not changed. The previous estimates included a one-time burden to reprogram and update systems to revise existing notices and to re-format solicitations to comply with the Rule. Because the Rule has been in effect since August 1, 2005, covered entities have already incurred the one-time costs of transition to compliant notice formats. Accordingly, the annual PRA-related burden associated with the Rule is now reduced. FTC staff believes that the primary cost of continuing to comply with the Rule is limited to the legal review each entity determines is necessary to remain in compliance.

The Commission staff continues to estimate that between 500 and 750 entities make prescreened solicitations. Because no addition revision or reformatting is necessary, however, staff has lowered the estimate of the burden hours to approximately 2 hours (one quarter of one business day), rather than the 8 hours that was the estimate to revise and reformat solicitations when the Rule was promulgated. Accordingly, the total annual burden is between 1,000 and 1,500 hours (500 to 750 x 2 hours of annual burden).

Labor costs

The Commission staff estimate assumes that in-house legal counsel will handle most of the compliance review and has applied an average hourly wage of \$250/hour for their labor. Accordingly, the total cost for all affected entities would be between \$250,000 and \$375,000 (1,000 to 1,500 burden hours x \$250 per hour of legal review time).

(13) Capital and Other Non-labor Costs: 0 or minimal.

Covered entities are now equipped to provide the required notice.

(14) Estimated Cost to the Federal Government

As part of its ongoing responsibilities for FCRA enforcement, staff currently monitors compliance with the prescreen opt-out notice requirement by those limited number of affected entities that fall under the Commission’s jurisdiction. Consequently, the additional costs incurred from monitoring the Rule’s notice requirements are estimated to be 0 or minimal.

(15) Program Changes or Adjustments

There are no program changes. The estimated total annual hours burden has decreased to 1,500 hours from the 45,600 hours estimate in 2004. This decrease is due to staff’s updated burden estimate, which no longer includes the one-time burden to reprogram and update systems to comply with the Rule. For the same reason, the estimated total labor hours burden has also decreased to \$375,000 from \$1,213,329.

(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.