

**Supporting Statement for Information Collection
Proposed Furnisher Rules under the
Fair and Accurate Credit Transactions Act of 2003
(OMB Control # 3084-NEW)**

1. & 2. Necessity for and Use of the Information Collected

The instant joint proposed rulemaking implements section 312 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), Pub. L. No. 108-159 (2003). As described, below, portions of the FACT Act amend the Fair Credit Reporting Act of 1970 (“FCRA”), 15 U.S.C. 1681 *et seq.*, to require the Federal Trade Commission (“FTC” or “Commission”), Office of the Comptroller of the Currency (Treasury), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision (Treasury), and National Credit Union Administration (collectively, “Agencies”) to prescribe regulations concerning the accuracy and integrity of information furnished to consumer reporting agencies (“CRAs”), and to jointly prescribe regulations that identify circumstances under which a furnisher must investigate a dispute concerning the accuracy of information contained in a consumer report, in response to a direct request from the consumer to whom the report relates.

FACT Act Section 312(a)

Section 312(a) of the FACT Act adds a new section 623(e) to the FCRA, 15 U.S.C. 1681s-2(e), to require the Agencies to, in consultation and coordination:

Establish and maintain guidelines for use by furnishers of information to CRAs regarding the accuracy and integrity of the information relating to consumers that such entities furnish to CRAs and update such guidelines as often as necessary. In developing the guidelines, the Agencies should: (1) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of furnished information; (2) review the methods (including technological means) used to furnish information to CRAs; (3) determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to CRAs; and (4) examine the policies and procedures that furnishers employ to conduct investigations and correct inaccurate information that has been furnished to CRAs.

Prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines.

FACT Act Section 312(c)

Section 312(c) of the FACT Act adds a new section 623(a)(8) to the FCRA, 15 U.S.C. 1681s-2(a)(8), to require the Agencies to jointly prescribe regulations that identify the circumstances under which a furnisher must investigate a dispute concerning the accuracy of information contained in a consumer report, in response to a direct request from the consumer to whom the report relates. In prescribing these regulations, the Agencies must weigh: (1) the

benefits to consumers and the costs to furnishers and the credit reporting system; (2) the impact of any requirements imposed by the rule on the overall accuracy and integrity of consumer reports; (3) whether permitting consumers to contact furnishers directly to dispute the accuracy of consumer report information will likely result in the most expeditious resolution of such disputes; and (4) the potential impact on the credit reporting process if “credit repair organizations,” as defined in the Credit Repair Organization Act, are able to submit notices of dispute directly to furnishers on behalf of consumers.

The information collections in the proposed regulations implementing section 312(c) would require each furnisher to amend their procedures to ensure that disputes received directly from consumers are handled the same way as disputes received from CRAs. The proposed regulations would also require each furnisher to notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant.

3. Consideration of Using Improved Information Technology to Reduce Burden

Consistent with the aims of the Government Paperwork Elimination Act, Pub. L. 105-277, Title XVII, 112 Stat. 2681-749, 44 U.S.C. § 3504 note, the proposed Furnisher Regulations permit furnishers latitude in using new technologies to reduce compliance costs. Indeed, the Agencies attempted to draft the proposed regulations in a flexible, technology-neutral manner. For example, the proposed regulations do not prevent furnishers from continuing to use automated, electronic, mechanical, or other technological means to provide information about consumers to CRAs. In addition, as noted in #2 above, furnishers would be permitted to use means other than postal mail (if authorized by the consumer) to notify consumers after making a determination that a dispute is frivolous or irrelevant.

4. Efforts to Identify Duplication/Availability of Similar Information

FTC staff has not identified any other federal or state statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed regulations. Section 625(b)(1)(F) of the FCRA preempts states from enacting any law concerning furnisher obligations included in section 623 of the FCRA, including the requirements contained in the proposed regulations.

5. Efforts to Minimize Burdens on Small Businesses

The collection applies to any entity, other than an individual consumer, that furnishes information relating to consumers to one or more CRAs, regardless of size. The standards in the proposed regulations are flexible and designed to take into account a covered entity’s size and sophistication to minimize burdens on small businesses.

6. Consequences of Conducting Collection Less Frequently

The burden associated with this proposed rulemaking is in part attributable to the written policies and procedures that a respondent must establish to implement the guidelines. Once they are developed, these policies and procedures will only need to be adjusted if they become ineffective. The burden associated with this proposed rulemaking is also in part attributable to the requirement that a furnisher must investigate disputes received directly from consumers and notify consumers after making a determination that a dispute is frivolous or irrelevant. Furnishers would only need to amend their procedures once to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs, and would need to notify consumers after making a determination that a dispute is frivolous or irrelevant only when such a determination is made.

7. Circumstances Requiring Disclosures Inconsistent with Guidelines

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

8. Consultation Outside the Agency

The Agencies collaborated to draft these proposed regulations. In conjunction with this current request, the Agencies are seeking public comment on the proposed regulations as a whole and with particular respect to the proposed regulations' recordkeeping and disclosure requirements.

9. Payments/Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

No assurance of confidentiality is necessary because the proposed Rule does not require furnishers to register or file any documents with the Agencies. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f), 57b-2, will apply.

12. Estimated Hours Burden:¹ 68,000 total burden hours, rounded to the nearest thousand (51,000 hours for Section 312(a) + 17,000 hours for Section 312(c))

¹ Due to the varied nature of the entities subject to the jurisdiction of the FTC, item #12 reflects only the view of the FTC. The other federal agencies participating in this rulemaking proceeding have jointly prepared a separate PRA analysis.

Section 312(a):

Affected Public: Businesses that furnish information to a CRA and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1))

Estimated Hours Burden: 51,000 hours (rounded to the nearest thousand)

As discussed above, the proposed regulations would require furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a CRA. The proposed regulations would define “furnisher” to mean an entity other than an individual consumer that furnishes information relating to consumers to one or more CRAs, except when it provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA.² Given the broad range of entities that are furnishers, it is difficult to determine precisely the number that are subject to the FTC’s jurisdiction. Nonetheless, FTC staff estimates that the proposed regulations pursuant to section 312(a) will affect approximately 6,133 furnishers under the FTC’s jurisdiction.³

The proposed regulations are drafted in a flexible manner that allows entities to establish and implement different types of written policies and procedures based upon the nature, size, complexity, and scope of their activities. A furnisher may include any of its existing policies and procedures in place to ensure the accuracy of information. The Commission believes that many entities have already implemented a significant portion of the policies and procedures required by the proposed rule. Entities have had an ongoing requirement under Section 623 of the FCRA to provide accurate information when they choose to furnish data to CRAs. The written policies and procedures proposed in the rule would formalize the processes and controls necessary for accurate reporting. Accordingly, FTC staff estimates that entities will require 21 hours to establish and

² 15 U.S.C. 1681b(a).

³ The Commission invited comment and information about the categories and number of furnishers subject to its jurisdiction. The FTC staff estimate is derived from the number of furnishers reporting to the three nationwide CRAs (approximately 18,000), minus the number of entities subject to jurisdiction by the federal financial agencies and the NCUA (14,167 combined), and adding the number of furnishers to medical information bureaus (approximately 500) and the number of insurance companies furnishing information to other types of CRAs (approximately 1,800) [18,000 - 14,167 + 500 + 1,800 = 6,133]. As of June, 2007, there were 18,000 estimated furnishers reporting to the three nationwide CRAs. Statement of Stuart K. Pratt, Consumer Data Industry Association, Before the Committee on Financial Services, House of Representatives, *Credit Reports: Consumers’ Ability to Dispute and Change Inaccurate Information*, at 12-13 (June 19, 2007), available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/ospratt061907.pdf [hereinafter *Pratt testimony*]. There are approximately 500 furnishers to medical information bureaus. See http://www.mib.com/html/about_mib_group.html. According to information received from the National Association of Insurance Commissioners, in 2006, there were an estimated 920 home owners insurance companies and an estimated 1,023 auto insurance companies. FTC staff estimates that 90% of home owners insurance companies and 95% auto insurance companies furnish information to a CRA. See http://www.choicepoint.com/business/pc_ins/us_2.html; http://www.choicepoint.com/business/pc_ins/us_1.html. [(920 x .90) + (1,023 x .95) ≈ 1,800]

implement written policies and procedures, including the incremental time to train staff to implement these policies and procedures, with an annual recurring burden of 2 hours.

FTC staff estimates that the proposed regulations implementing section 312(a) affect 6,133 furnishers subject to the FTC's jurisdiction at an average annual burden of 8.33 hours per entity [average annual burden over 3-year clearance period for establishment and implementation of written policies and procedures $((21 + 2 + 2 \text{ hours})/3)$], for a cumulative average annual total of 51,000 hours (rounded to the nearest thousand) $[(6,133 \text{ furnishers} \times 8.33 \text{ hours})]$.

Estimated Labor Cost Burden: \$1,985,000 (rounded to the nearest thousand)

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of management and/or technical staff among companies of different sizes. In calculating the cost figures, staff assumes that managerial and/or professional technical personnel will draft the written policies and procedures and train staff, at an hourly rate of \$38.93.⁴

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the proposed regulations in section 660.3 are \$1,985,000 (rounded to the nearest thousand) $[(51,000 \text{ hours} \times \$ 38.93)]$.

Section 312(c):

Affected Public: Businesses that furnish information to a CRA, and are subject to administrative enforcement by the FTC pursuant to section 621(a)(1) of the FCRA (15 U.S.C. 1681s(a)(1)).

Estimated Hours Burden: 17,000 hours (rounded to the nearest thousand)

The proposed regulations would require entities that furnish information about consumers to CRAs to respond to direct disputes from consumers. FTC staff estimates that the proposed regulations pursuant to section 312(c) will also affect approximately 6,133 furnishers subject to the FTC's jurisdiction.

FTC staff estimates that it will take furnishers four hours to amend their procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs. FTC staff believes that furnishers of information to CRAs will have automated the process of responding to direct disputes in the first year of the clearance. Thus, there will be no annual recurring burden. FTC staff estimates that it will take furnishers four hours in the first year

⁴ This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations. *See* http://www.bls.gov/oes/current/oes_nat.htm#b11-0000.

to implement the requirement to notify a consumer by mail or other means after making a determination that a dispute is frivolous or irrelevant. FTC staff believes that furnishers will also automate this process in the first year of clearance, so there will be no annual recurring burden.

FTC staff further estimates that to prepare and distribute a notice to a consumer after a furnisher determines that a dispute is frivolous or irrelevant will require approximately five minutes per notice. FTC staff projects that furnishers under its jurisdiction would receive 5,430 frivolous or irrelevant disputes requiring a notice each year. This number is derived from an estimate of disputes per year that relate to information provided by an entity under the FTC's jurisdiction and the Agencies' estimated 10% increase of the number of written notices that furnishers will provide to consumers in response to direct disputes that are frivolous or irrelevant.⁵ Accordingly, FTC staff estimates that it will take furnishers 452 hours for each of the three years for which OMB clearance is sought (5,430 dispute notices x 5 minutes each). The estimated annual labor cost associated with this notification requirement is \$6,102.

⁵ In particular, FTC staff estimates that 10,000,000 disputes are submitted to CRAs each year, based on information available from the Consumer Data Industry Association. See *Pratt testimony*, at 8-9; Federal Trade Commission and Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, at 12 (August 2006), available at <http://www.ftc.gov/os/comments/fracdispute/P044808fracdisputeprocessreporttocongress.pdf>. The Agencies used data on consumer complaints to a CRA as the basis for calculating each agency's share of direct disputes (that is, the percent of disputes that relate to information supplied by furnishers under the jurisdiction of each agency). The Agencies estimated their market share of disputes by market sector. For example, the Agencies estimated their respective market share of disputes associated with bankcards based on the market share of the top 50 card issuers, and the market share for mortgages based on the market share of the top 40 mortgage servicers. Accordingly, FTC staff estimated that 1.086% percent of the 10,000,000 disputes submitted to CRAs each year are related to information provided by a furnisher under the FTC's jurisdiction, for a total of 108,600 disputes.

Of these 108,600 disputes, the Agencies have estimated that 50% will be sent directly to furnishers under this rule, and that the number of written notices that furnishers will have to provide to consumers in response to direct disputes that are frivolous or irrelevant will increase by an amount equal to 10% of the number of disputes. With respect to estimating the potential burden associated with providing the notices to consumers, the Agencies received one comment on the ANPR from a financial institution stating that it is estimated that 50% of disputes received are frivolous or irrelevant. In contrast, one trade association commented that in only 25% of disputes is the information in the consumer report being challenged verified as correct; thus, even assuming that every time the information in the consumer report is verified the underlying dispute was frivolous or irrelevant, a maximum of 25% of disputes could be frivolous or irrelevant. The Agencies are also aware that a significant number of furnishers are already providing consumers with a written notice in response to direct disputes. Further, commenters from both industry and consumer groups observed that disputes filed with CRAs from credit repair organizations have been particularly likely to be rejected, though they disagreed on the reasons. Considering all of these comments and information, and taking into account that direct disputes from credit repair organizations are prohibited by section 623(a)(8)(G) of the FCRA, the Agencies believe it is reasonable to estimate that the number of written notices that furnishers provide to consumers in response to direct disputes would increase by an amount equal to 10%.

Thus, FTC staff estimates that furnishers under its jurisdiction would receive 5,430 frivolous or irrelevant disputes requiring a notice each year under the proposed regulations. $[(108,600 \times 50\% \times 10\%)]$.

Based on the above estimates and assumptions, the total average annual hours burden for all categories of covered entities under the proposed regulations pursuant to section 312(c) is 17,000 hours $(((4 + 4 \text{ hours})/3 \times 6,133 \text{ entities}) + (5,430 \text{ dispute notices} \times 5 \text{ minutes each}))$.

Estimated Labor Cost Burden: \$641,000 (rounded to the nearest thousand)

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the proposed regulations, as they entail varying compensation levels of different types of support staff among companies of different sizes. Nonetheless, in calculating labor cost, staff assumes managerial and/or professional technical personnel at an hourly rate of \$38.93⁶ will amend procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs. Staff also assumes such personnel will implement the aforementioned notification requirement regarding frivolous or irrelevant disputes. Staff assumes that administrative support personnel will provide the required notices to consumers, at an hourly rate of \$13.50.⁷

Based on the above estimates and assumptions, the total average annual labor costs for all categories of covered entities under the proposed regulations pursuant to section 312(c) are \$641,000 (rounded to the nearest thousand) $(((4 + 4 \text{ hours})/3 \times 6,133 \times \$38.93) + (452 \text{ hours} \times \$13.50))$.

13. Estimated Capital and Other Non-Labor Costs

The FTC staff estimates that the proposed regulations impose negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (*e.g.*, offices and computers) for the information collections described herein.

14. Estimated Cost to the Federal Government

FTC staff estimates that a representative year's cost to the FTC of administering the proposed regulations requirements during the 3-year clearance period sought will be approximately \$15,750. This represents one tenth of an attorney work year, and includes employee benefits.

15. Program Changes or Adjustments

FTC staff estimates that the average annual burden for the proposed regulations will

⁶ This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for management occupations. *See* http://www.bls.gov/oes/current/oes_nat.htm#b11-0000.

⁷ This cost is derived from the median hourly wage from the 2006 National Occupational Employment and Wage Estimates by the Bureau of Labor Statistics for office and administrative support occupations. *See* http://www.bls.gov/oes/current/oes_nat.htm#b11-0000.

approximate 68,000 hours. This is a program change due to the Commission's proposal of new regulations.

16. Publishing Results of the Collection of Information

There are no plans to publish any information for statistical use.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certifications for PRA Submissions

Not applicable.