

**Supporting Statement for Proposed Amendments to
Information Collection Provisions of
Proposed Amendments to the Telemarketing Sales Rule
16 C.F.R. Part 310
(OMB Control No. 3084-0097)**

(1) Necessity for Collecting the Information

The Federal Trade Commission (“FTC” or “Commission”) promulgated the Telemarketing Sales Rule (“TSR” or “Rule”) in 1995. The Rule was issued in accordance with the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”),¹ which sought to prevent deceptive or abusive telemarketing practices by requiring the Commission to promulgate rules regarding such telemarketing practices and by increasing the consumer fraud enforcement tools available to the FTC.²

The proposed amended TSR would address unlawful practices that have been occurring with increasing frequency in the telemarketing of debt relief services, including for-profit credit counseling services, debt settlement, and debt negotiation services. Based on recent law enforcement actions, staff outreach to stakeholders (see further discussion under item (8) of this Supporting Statement), analysis of complaint data, and other research, staff believes that tailoring the TSR to address law violations in the sale of debt relief services is warranted under the Telemarketing Act to enhance consumer protection.

(2) Use of the Information

The proposed amendments would require specific new disclosures in the sale of a “debt relief service,” as that term is defined in proposed Section 310.2(m), which would result in PRA burden for all covered entities – both new and existing respondents – that engage in telemarketing of these services. The proposed amendments, would, among other things: (1) apply the TSR to *inbound* telemarketing of debt relief services³; and (2) add new required disclosures and prohibited representations to curb deceptive practices prevalent in the telemarketing of debt relief services.

These proposed modifications would provide sellers and telemarketers of debt relief services with clear requirements and expand the Commission's ability to use the TSR – an important tool in its law enforcement arsenal – to bring law enforcement actions against, and obtain civil penalties from, debt relief service providers who prey on vulnerable consumers.

¹ Public Law No. 103-297, 15 U.S.C. §§ 6101-6108.

² The Telemarketing Act specified that telemarketing sales rules issued by the Commission must include: (1) requirements prohibiting unsolicited telephone calls that reasonably might be considered to be coercive or abusive of the consumer's right to privacy; (2) restrictions on the hours when unsolicited telephone calls may be made; (3) requirements that the telemarketer promptly and clearly disclose the purpose of the call, as well as make any other disclosures the Commission deems appropriate, including the nature and price of the goods and services; and (4) provisions defining and prohibiting deceptive telemarketing practices. The Telemarketing Act also directed the Commission to consider recordkeeping requirements in promulgating the Rule.

³ While the TSR already covers outbound calls by debt relief service providers, the proposed amendments would also bring inbound calls within the TSR's reach.

(3) Consideration of Using Improved Information Technology to Reduce Burden

The TSR's recordkeeping provisions permit sellers and telemarketers to keep records in whatever form, manner, format, or location they choose. Accordingly, the Rule's recordkeeping provisions are consistent with the requirements of the Government Paperwork Elimination Act ("GPEA").⁴ The disclosures required by the TSR for the most part are made orally and, secondarily, by direct mail. Thus, electronic disclosures for purposes of implementing the provisions of the GPEA are either inapplicable or impracticable.

(4) Efforts to Identify Duplication

The TSR's recordkeeping requirements involve the preparation and retention of records demonstrating compliance with the Rule. Other federal and state government agencies may also require the retention of some records that the TSR requires to be retained (e.g., personnel, sales, or donation information). The proposed amendments would create a new obligation under the TSR's existing recordkeeping requirements for sellers conducting inbound debt relief telemarketing to retain electronic or other records of consumers' written agreement to receive such calls, and the scripts used in such calls.⁵ Some state laws entail the retention of records required by the proposed debt relief amendments, but the Commission is unaware of any federal laws that impose such requirements.⁶ To the extent that the recordkeeping requirements of the TSR may duplicate the information collection requirements of other federal or state government agencies, the TSR does not require that any duplicate records be maintained.

Many state laws require the same or similar disclosures as those the TSR mandates. Staff knows of no instance, however, under which the TSR and any other law or regulation governing telemarketing require that a specific disclosure be made in duplicative ways to satisfy the Rule's requirements and a parallel law or regulation's requirements.

⁴ 44 U.S.C. § 3504 note.

⁵ 16 C.F.R. 310.5(a)(1) and (5). No specific recordkeeping requirement in the TSR applies to any other provision of the prerecorded call amendment. Telemarketers will continue to have the burden of proof to establish as an affirmative defense that they have complied with the call abandonment safe harbor, and may keep records showing that their call abandonment rates have not exceeded 3 percent over a 30-day period under the abandonment rate calculation amendment, although this is not expressly required by the TSR.

⁶ See, e.g., Colorado Statutes § 12-15-5-203 *et seq.*

(5) Efforts to Minimize Burden on Small Businesses

The proposed amendments to the Rule will affect sellers and telemarketers of debt relief services engaged in “telemarketing,” as defined by the Rule to mean “a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.”⁷ As explained below under item #12, staff estimates that the proposed amended Rule will apply to approximately 2,000 entities. Determining a precise estimate of how many of these are small entities, or describing those entities further, is not readily feasible because the staff is unaware of published data that reports annual revenue figures for debt relief service providers.⁸ Further, the Commission’s requests to date for information about the number and size of debt settlement companies have yielded no useful information. The Commission has invited comment and information on this issue in its notice of proposed rulemaking (“NPRM”).

(6) Consequences of Conducting the Collection Less Frequently

(a) Recordkeeping

The TSR requires specified records to be retained for 24 months.⁹ A record retention period of less than two-years would frustrate many investigations under the FTC’s enforcement program. Consumers who complain to the FTC about transactions covered by the Rule often do not do so immediately. Therefore, there may already be a substantial “lag time” between the time the alleged rule violations occur and the time the FTC learns of the alleged violations. A two-year record retention period allows Commission staff to gather the information needed to pursue enforcement actions and to identify those persons who have most recently suffered injury from the alleged deceptive or abusive telemarketing practices.

(b) Disclosures

All of the disclosures required by the Rule provide consumers with information necessary to make informed purchasing decisions or are essential to protect their privacy. Moreover, the Rule’s disclosure requirements address specific areas of recurring deception or abuse in telemarketing, and have been narrowly crafted to address the specific problems identified in these transactions through law enforcement efforts by the states and the FTC.

⁷ 16 CFR 310.2(cc) (in the proposed amended Rule, this definition is renumbered as Section 310.2(dd)).

⁸ Directly covered entities under the proposed amended Rule are classified as small businesses under the Small Business Size Standards component of the North American Industry Classification System (“NAICS”) as follows: All Other Professional, Scientific and Technical Services (NAICS code 541990) with no more than \$7.0 million dollars in average annual receipts (no employee size limit is listed). *See* SBA, Table of Small Business Size Standards Matched to North American Industry Classification System codes (Aug. 22, 2008), available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf

⁹ 16 C.F.R. § 310.5.

(7) Circumstances Requiring Collection Inconsistent With OMB Guidelines

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

(8) Consultation Outside the Agency

The proposed NPRM and amended Rule are informed by several important sources, including: law enforcement actions, a recent public workshop, outreach and consultation with stakeholders, and consumer complaint information.

First, the FTC has observed a great deal about the evolving abuses in this industry through its law enforcement. To date, the FTC has brought fifteen actions against debt relief service providers for a variety of deceptive and abusive practices.

Second, in September 2008, the Commission hosted a public workshop, entitled “Consumer Protection and the Debt Settlement Industry,” which included panelists from debt settlement companies, nonprofit credit counselors, creditors, state and federal regulators, and consumer advocacy organizations. The workshop examined recent developments in debt relief services, particularly the emergence over the past decade of for-profit debt settlement companies; legal and regulatory developments in the field; trends in advertising and marketing debt relief services; and the role of lead generators and other services providers in the debt relief services business model. Among other things, participants generally agreed that the Commission should set forth federal standards for preventing deceptive and unfair practices in debt relief.

Third, following the workshop, staff has engaged in outreach with fellow law enforcement and regulatory agencies. This past spring, Commission staff hosted conference calls with members of the National Association of Attorneys General (“NAAG”) and the National Association of Consumer Agency Administrators (“NACAA”); over two dozen states participated on one or more of these calls. During these meetings, representatives of the states confirmed that they have observed and attempted to curb the same abuses now outlined in the proposed NPRM.

Finally, staff has been monitoring consumer complaints regarding debt relief services and initiating new law enforcement investigations as appropriate. The overall number of such complaints has increased over the last few years. Additionally, consumers registering these complaints confirm the staff’s observations that, among other things, debt relief services often fail to provide promised services – or refunds, to the extent efforts are unsuccessful.

Consistent with 44 U.S.C. 3506(c)(2)(B), the FTC is providing an opportunity for public comment on the information collections contained in this proposed rulemaking. See 74 Fed. Reg. 41,988 (Aug. 19, 2009).

(9) Payments or Gifts to Respondents

Not applicable.

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

The collection of information in this proposed Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2). To the extent that information covered by a recordkeeping requirement of the Rule is collected by the Commission for law enforcement purposes, the confidentiality protections of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, will apply.

(12) Burden Estimate

Estimated Additional Annual Hours Burden: 42,580 hours

The definition of “debt relief service” in the proposed Rule would include debt settlement companies, for-profit credit counselors, and debt negotiation companies. Commission staff estimates that approximately 2,000 entities sell debt relief services and thus would be covered by the Commission’s proposed Rule.¹⁰ This includes existing entities already subject to the TSR for which there would be new recordkeeping or disclosure requirements (“existing respondents”),¹¹ as well as existing entities that newly will be subject to the TSR (“new respondents”).¹² This is based on data obtained through research and from industry sources of the number of debt settlement companies¹³ and the number of for-profit credit counselors.¹⁴ Although these inputs suggest that an estimate of 2,000 entities might be overstated, staff has used it in its burden calculations in an effort to account for all

¹⁰ To err in favor of being overinclusive, staff assumes that every entity that sells debt relief services does so using telemarketing.

¹¹ Outbound telemarketing and non-exempt inbound telemarketing of debt relief services are currently subject to the TSR. Non-exempt inbound telemarketing would include calls to debt relief service providers by consumers in response to direct mail advertising that does not contain disclosures required by Section 310.3(a)(1) of the Rule. *See* 16 CFR 310.6(b)(6) (providing an exemption for “[t]elephone calls initiation by a customer . . . in response to a direct mail solicitation . . . that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule . . .”).

¹² Inbound telemarketing calls in response to advertisements in any medium other than direct mail solicitation are generally exempt from the Rule’s coverage under the “general media exemption.” 16 CFR 310.6(b)(5). Inbound telemarketing calls in response to direct mail advertisements are also exempt to the extent that the direct mail pieces “clearly, conspicuously, and truthfully disclose[] all material information listed in § 310.3(a)(1) of this Rule” 16 CFR 310.6(b)(6).

¹³ *See* Streitfeld, David, *Debt Settlers Offer Promises But Little Help*, N.Y. Times, Apr. 19, 2009 (stating, without attribution, that “[a]s many as 2,000 settlement companies operate in the United States, triple the number of a few years ago.”); Birnbaum, Jane, *Debt Relief Can Cause Headaches of Its Own*, N.Y. Times, Feb. 9, 2008 (noting that “[a] thousand such [debt settlement] companies exist nationwide, up from about 300 a couple of years ago, estimated David Leuthold, vice president of the Association of Settlement Companies, which has 70 members and is based in Madison, Wis.”). *See also* SIC Code 72991001 (“Debt Counseling or Adjustment Service, Individuals”) (<http://www.melissadata.com/lookups/sic.asp?sic=Debt+Counseling+or+Adjustment+Service>): 1,598 entities.

¹⁴ According to industry sources consulted by Commission staff, there are believed to be fewer than 100 for-profit credit counseling firms operating in the United States.

entities that would be subject to the proposed amendments, including debt negotiation companies, for which no reliable estimates are available.

As explained below, the estimated annual burden for recordkeeping attributable to the proposed Rule amendments, averaged over a prospective 3-year PRA clearance, is 29,886 hours for all industry members affected by the Rule. Although the first year of compliance will entail setting up compliant recordkeeping systems, burden will decline in succeeding years as they will then have in place such systems. The estimated burden for the disclosures that the Rule requires, including the newly proposed disclosures relating to debt relief services, is 12,694 hours for all affected industry members. Thus, the total PRA burden is 42,580 hours.

A. Number of Respondents

Based on its estimate that 2,000 entities sell debt relief services, and that each of these entities engages in telemarketing as defined by the TSR, staff estimates that 879 new respondents will be subject to the Rule as a result of the proposed amendments. The latter figure is derived by a series of calculations, beginning with an estimate of the number of these entities that conduct inbound versus outbound telemarketing of debt relief services. This added estimate is needed to determine how many debt relief service providers are existing respondents and how many are new respondents, the distinction being relevant because their respective PRA burdens will differ.

Staff is unaware of any source that directly states the number of outbound or inbound debt relief telemarketers; instead, estimates of these numbers are extrapolated from external data. According to the DMA, 21% of all direct marketing in 2007 was by inbound telemarketing and 20% was by outbound telemarketing.¹⁵ Using this relative weighting, staff estimates that the number of inbound debt relief telemarketers is 1,024 ($2,000 \times 21 \div (20 + 21)$) and the number of outbound telemarketers is 976 ($2,000 \times 20 \div (20 + 21)$).

Of the estimated 1,024 entities engaged in inbound telemarketing of debt relief services, an estimated 217 entities conduct inbound debt relief telemarketing through direct mail; the remaining 807 entities do so through general media advertising and would thus far largely be exempt from the Rule's current requirements.¹⁶ Of the 217 entities using direct mail, staff estimates that 72, approximately one-third, make the disclosures necessary to exempt them from the Rule's existing requirements.¹⁷ Thus, an estimated 879 entities ($807 + 72$) are new respondents that will be subject to the TSR and its PRA burden, including burden derived from the new debt relief disclosures.

¹⁵ See *DMA Statistical Fact Book 17* (30th ed. 2008).

¹⁶ According to the DMA, 21.2% of annual U.S. advertising expenditures for direct marketing is through direct mail; the remaining 78.8% is through all other forms of general media (e.g., newspapers, television, Internet, Yellow Pages). See *Id.* at 11. Thus, applying these percentages to the above estimate of 1,024 inbound telemarketers, 217 entities (21.2%) advertise by direct mail and 807 (78.8%) use general media.

¹⁷ The apportionment of one-third is a longstanding assumption stated in past FTC analyses of PRA burden for the TSR. See, e.g., *Agency Information Collection Activities*, 74 Fed. Reg. 25540, 25543 (May 28, 2009); *Agency Information Collection Activities*, 71 Fed. Reg. 28698, 28700 (May 17, 2006). No comments have been received to date with an alternative apportionment or reasons to modify it.

The remaining 145 entities (217 - 72) conducting inbound telemarketing for debt relief through direct mail would be existing respondents because they receive inbound telemarketing calls in response to direct mail advertisements that do not make the requisite disclosures to qualify for the direct mail exemption.¹⁸ The estimated 976 entities conducting outbound telemarketing of debt relief services are already subject to the TSR and thus, too, would be existing respondents. Accordingly, an estimated 1,121 telemarketers selling debt relief services would be subject only to the additional PRA burden imposed by the newly proposed debt relief disclosures in proposed amended Rule Section 310.3(a)(1)(viii).

B. Recordkeeping Hours

Staff estimates that in the first year following promulgation of the proposed amended Rule, it will take 100 hours for each of the 879 new respondents identified above to set up compliant recordkeeping systems. This estimate is consistent with the amount of time allocated in other PRA analyses that have addressed new entrants, i.e., newly formed entities subject to the TSR.¹⁹ The recordkeeping burden for these entities in the first year following the proposed amended Rule's adoption is 87,900 hours (879 new respondents x 100 hours each). In subsequent years, when TSR-compliant recordkeeping systems will have presumably been established, the burden for these entities should parallel the one hour of ongoing recordkeeping burden staff has previously estimated for existing respondents under the Rule.²⁰ Thus, annualized over a prospective 3-year PRA clearance period, cumulative annual recordkeeping burden for the 879 new respondents would be 29,886 hours (87,900 hours in Year 1; 879 hours for each of Years 2 and 3). Burden accruing to new entrants, 100 hours apiece to set up new recordkeeping systems compliant with the Rule, has already been factored into the FTC's existing clearance from OMB for an estimated 75 entrants per year, and is also incorporated within the FTC's latest pursuit of renewed clearance for the TSR under OMB Control No. 3084-0097.²¹

Staff believes that the 1,121 existing respondents identified above will not have recordkeeping burden associated with setting up compliant recordkeeping systems. These entities are already required to comply with the Rule, and thus should already have recordkeeping systems in place. As noted above, these existing respondents will each require approximately one hour per year to file and store records required by the TSR. Here, too, however, this recordkeeping task is already accounted for in

¹⁸ 16 CFR 310.6(b)(6).

¹⁹ See, e.g., *Agency Information Collection Activities*, 74 Fed. Reg. at 25542; *Agency Information Collection Activities*, 71 Fed. Reg. at 28699.

²⁰ *Id.*

²¹ *Agency Information Collection Activities*, 74 Fed. Reg. at 25542 (“The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours.”). The term “new entrant” denotes an entity that has not yet, but may in the future come into being.

the FTC's existing PRA clearance totals and included within the latest request for renewed OMB clearance for the TSR.²²

C. Disclosure Hours

As has been stated in prior FTC analyses for the TSR under the PRA, staff believes that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because doing so constitutes good business practice.²³ To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden."²⁴ Moreover, some state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable to the Rule is far less than the total number of hours associated with the disclosures overall. Staff continues to assume that most of the disclosures the Rule requires would be made in at least 75 percent of telemarketing calls even absent the Rule.²⁵

To determine the number of outbound and inbound calls regarding debt relief services, staff has combined external data with internal assumptions. Staff assumes that outbound calls to sell and inbound calls to buy debt relief services are made only to and by consumers who are delinquent on one or more credit cards.²⁶ For simplicity, and lacking specific information to the contrary, staff further assumes that each such consumer or household will receive one outbound call and place one inbound call for these services.

According to recently published figures, 78% of U.S. households, or 91.1 million households, had one or more credit cards at the end of 2008.²⁷ The Federal Reserve Board reported in May 2009 that the delinquency rate for credit cards had risen to 6.5%.²⁸ Applying this rate to the stated number of households, 91.1 million, yields 5,921,500 consumers who will receive and place a call for debt relief services in a given year.

²² *Id.*

²³ *See, e.g., id.*

²⁴ 16 CFR 1320.3(b)(2).

²⁵ *See, e.g., Agency Information Collection Activities*, 74 Fed. Reg. at 25543; *Agency Information Collection Activities*, 71 Fed. Reg. at 28699. Accordingly, staff has continued to estimate that the hours burden for most of the Rule's disclosure requirements is 25 percent of the total hours associated with disclosures of the type the TSR requires.

²⁶ By extension upsells on these initial calls would not be likely.

²⁷ *See Woolsey, Ben and Schulz, Matt, Credit Card Statistics, industry facts, debt statistics, available at <http://www.creditcards.com/credit-card-news/credit-card-industry-facts-personal-debt-statistics-1276.php>.*

²⁸ FRB, *Federal Reserve Statistical Release: Charge Offs and Delinquency Rates on Loans and Leases at Commercial Banks*, available at <http://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (reporting a 6.5% delinquency rate for credit cards for the first quarter of 2009).

Because outbound calls are already subject to the existing provisions of the TSR, each such call will entail only the incremental PRA burden resulting from the new debt relief disclosures. For inbound calls, however, there will be new respondents in addition to existing ones, and associated underlying distinctions between current exemptions applicable to direct marketing via direct mail and those for general media (discussed further below). Accordingly, separate estimates are necessary for inbound debt relief calls attributable to each.

To determine the number of inbound debt relief calls attributable to general media advertising versus direct mail advertising, staff relied upon the DMA estimate that 21.2% of direct marketing is done by direct mail²⁹ and 78.8% of direct marketing is done by general media methods.³⁰ Applying these percentages to the above-noted estimate of 5,921,500 inbound debt relief calls translates to 4,666,142 calls resulting from general media advertising and 1,255,358 calls arising from direct mail. Staff then estimated that 1/3 of inbound direct mail debt relief calls, or 418,453 such calls, are currently exempt from the TSR because they are in response to direct mail advertising that makes the requisite Section 310.3(a)(1) disclosures. The remaining 2/3, or 836,905 inbound direct mail calls, are non-exempt.

(1) Existing respondents' disclosure burden

The proposed amended Rule includes a new provision, Section 310.3(a)(1)(viii), which requires that debt relief service providers make six fundamental disclosures, including (to summarize):

- (1) The amount of time it will take to receive the results represented by the provider, including the timing of settlement offers by the provider to each creditor.
- (2) The amount or percentage of each debt that the consumer will have to accumulate before settlement offers will be made.
- (3) The fact that not all creditors or debt collectors will make settlements or concessions.
- (4) Pending completion of the debt relief service, the fact that creditors and debt collectors may still attempt to collect (or even file lawsuits against consumers).
- (5) To the extent that the service causes consumers to stop paying their creditors, it will hurt their creditworthiness and may result in other harms.
- (6) That savings realized from debt relief services may be taxable.

Staff estimates that reciting these disclosures in each sales call pertaining to debt relief services will take 12 seconds.

For outbound calls, the disclosure burden for existing entities from the new debt relief disclosures is 4,935 hours [5,921,500 outbound calls involving debt relief x 12 seconds each (for new debt relief disclosures) x 25% TRS burden].

²⁹ See *supra* note 16.

³⁰ *Id.*

Similarly, currently non-exempt inbound calls – inbound calls placed as a result of direct mail solicitations that do not include the Section 310.3(a)(1) disclosures – will only entail the incremental PRA burden resulting from the new debt relief disclosures. As noted above, this totals 836,905 such calls each year. The associated disclosure burden for these calls would be 697 hours (836,905 non-exempt direct mail inbound calls x 12 seconds for debt relief disclosures x 25% burden from TSR).

Thus, the total disclosure burden under the proposed amended Rule for all existing respondents is 5,632 hours (4,935 hours for entities conducting outbound calls + 697 hours for entities conducting inbound, non-exempt telemarketing).

(2) New respondents' disclosure burden

New respondents – those currently exempt from the Rule's coverage as a result of the direct mail or general media exemptions for inbound calls – will incur disclosure burden not only for the debt relief disclosures in proposed Section 310.3(a)(1)(viii), but also for the existing general disclosures for which such entities will newly be responsible.³¹

As noted above, inbound calls responding to debt relief services advertised in general media are currently exempt from the Rule.³² The disclosure burden for these calls would be 20 seconds each [8 seconds for existing Section 310.3(a)(1) disclosures + 12 seconds for debt relief disclosures]. Applying this unit measure to the estimated 4,666,142 inbound debt relief calls arising from general media advertising, the cumulative disclosure burden is 6,481 hours per year (4,666,142 inbound debt relief calls in response to general media advertising x 20 seconds x 25% burden from TSR).

Applying these estimates and assumptions, the disclosure burden for new respondents attributable to currently exempt inbound calls tied to direct mail (i.e., currently exempt when the requisite Section 310.3(a)(1) disclosures are made), is 581 hours per year (418,453 exempt inbound direct mail calls x 20 seconds x 25% burden from TSR).

Thus, the total disclosure burden attributable to the revised proposed Rule is 12,694 hours (4,935 + 697 + 6,481 + 581).

D. Associated Annual Labor Cost: \$ 905,726

1. Recordkeeping:

Assuming a cumulative burden of 87,900 hours in Year 1 (of a prospective 3-year PRA clearance for the TSR) to set up compliant recordkeeping systems for existing debt relief service providers newly subject to the Rule (879 new respondents x 100 hours each in Year 1 only), and

³¹ See *Agency Information Collection Activities*, 74 Fed. Reg. at 25543 - 25544.

³² This is so because, at present, no limitation or exemption would limit use of the general media exemption by those selling debt relief services via inbound telemarketing. See 16 CFR 310.6(b)(5) (the general media exemption, unlike the direct mail exemption, is not conditional and does not presently except from its coverage debt relief services).

applying to that a skilled labor rate of \$25/hour,³³ labor costs would approximate \$2,197,500 in the first year of compliance for new respondents.³⁴ As discussed above, however, in succeeding years, recordkeeping associated with the Rule will only require 879 hours, cumulatively, per year. Using a clerical wage rate of \$14/hour, this would amount to \$12,306 in each of those years. Thus, the estimated labor costs for recordkeeping associated with the revised proposed Rule, averaged over a prospective 3-year clearance period, is \$740,704.

2. Disclosure:

The estimated annual labor cost for disclosures for under the revised proposed Rule is \$165,022. This total is the product of applying an assumed hourly wage rate of \$13³⁵ to the earlier stated estimate of 12,694 hours pertaining to general and specific disclosures in initial outbound and inbound calls.

(13) Capital and Other Non-Labor Cost Estimate

Estimated Annual Capital/Non-Labor Cost: \$ 61,716

1. Recordkeeping:

Staff believes that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records, but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life.

Affected entities need some storage media such as file folders, electronic storage media or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, staff estimates that the estimated 879 new respondents subject to the revised proposed Rule (see *supra* p. 6) will spend an annual amount of \$50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of \$43,950.

³³ This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages). See <http://www.bls.gov/ncs/ncswage2007.htm>.

³⁴ As discussed above, existing respondents should already have compliant recordkeeping systems and thus are not included in this calculation.

³⁵ This rounded figure is derived from the mean hourly earnings shown for telemarketers found in the National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages). See <http://www.bls.gov/ncs/ncswage2007.htm>.

2. Disclosure:

Estimated outbound disclosure hours (4,935) per above multiplied by an estimated commercial calling rate of 6 cents per minute (\$3.60 per hour) equals \$17,766 in phone-related costs.³⁶

(14) Estimated Cost to the Federal Government

The Commission has also amended the TSR several times in order to impose fees on entities that must pay for access to the National Registry.³⁷ In the Do-Not-Call Registry Fee Extension Act of 2007, Congress directed the FTC to make a moderate reduction in the TSR's fees for access to the National Registry, and to expand the definition of "exempt" entities eligible to access the National Registry without charge.³⁸ Notwithstanding the recent access fee reduction, staff anticipates that there will be no annualized net cost to the Federal Government to implement and enforce the TSR during the three year period for which clearance is sought because all such costs will be offset by fee collections.

(15) Adjustments

The relevant program changes, staff calculation adjustments, and their incremental effects on PRA burden are detailed in items #12-13.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Exceptions for the Display of the Expiration Date for OMB Approval

Not applicable.

³⁶ Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally be above such costs.

³⁷ The Do-Not-Call Implementation Act enacted by Congress shortly after the Commission amended the TSR authorized the Commission to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]." Pub. L. 108-10, 117 Stat. 557 (2003) at § 2. Since receiving that authority, the Commission has conducted amendment proceedings several times to set and adjust National Registry access fees. See 68 Fed. Reg. 45134 (July 31, 2003); 69 Fed. Reg. 45580 (July 30, 2004); 70 Fed. Reg. 43273 (July 27, 2005); 71 Fed. Reg. 43040 (July 31, 2006). Most recently, the Commission has reduced the access fees, in compliance with the Do-Not-Call Registry Fee Extension Act of 2007, Pub. L. 110-188, 122 Stat. 63573. See 73 Fed. Reg. 43354 (July 25, 2008).

³⁸ Pub. L. 110-188, 122 Stat. 635 (2007). Under the Act, National Registry access fees are to be increased after fiscal year 2009 by the amount by which the average monthly Consumer Price Index for urban consumers for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12 month period ending June 30, 2008, provided the increase is at least one percent.

(18) **Exceptions to the “Certification for Paperwork Reduction Act Submissions”**

Not applicable.