

Supporting Statement for Information Collection
Proposed Amendments to the Free Annual File Disclosures Rule
16 C.F.R. Part 610
(OMB Control No. 3084-0128)

1. Necessity for and Use of the Information

The Credit CARD Act of 2009 (“the Act”) mandates that the Federal Trade Commission (“FTC” or “Commission”) adopt a rule by February 22, 2010, requiring any advertisement for a free credit report, in any medium, to disclose prominently that free credit reports are available under federal law at “AnnualCreditReport.com.” The Commission intends to implement the Act’s disclosure requirements by amending the current Free Annual File Disclosures Rule (“Free Reports Rule” or “the Rule”), 16 C.F.R. Part 610, which requires nationwide consumer reporting agencies (“CRAs”) and nationwide specialty CRAs to provide to consumers, upon request, one free annual file disclosure. The Rule also requires the nationwide CRAs to provide consumers with the ability to request this disclosure through a centralized source, including an Internet website, a toll-free telephone number, and a postal address.

Section 610.4 of the proposed amended Rule implements the Act’s advertisement disclosure requirements, requiring prominent disclosures for television, radio, print, Internet websites, Internet-hosted multi-media, and inbound and outbound telemarketing of “free credit reports.” For example, television and radio advertisements must have the following disclosure: “This is not the free credit report provided for by Federal law.” Moreover, the disclosure for television must be in both the audio and visual portions of the advertisement. Proposed section 610.4 also contains general specifications to ensure that the required disclosures are sufficiently prominent, such as requiring all audio disclosures to be delivered in a slow and deliberate manner. The required information about how and where to obtain truly free credit reports and their required visual and/or oral prominence will help prevent consumer deception regarding the marketing of “free credit reports.”

The Commission also proposes to amend section 610.2 of the current Rule to prevent interference with consumer ability to obtain free annual file disclosures through the centralized source, as permitted by federal law. Specifically, proposed section 610.2(g)(1) provides that if a nationwide CRA chooses to advertise products and services through the centralized source website, such as credit scores or credit monitoring, it can do so only after the consumer has obtained his or her free annual file disclosure. In addition, proposed section 610.2(h) prohibits three practices that may interfere with or undermine consumer ability to obtain free annual file disclosures: (1) placing hyperlinks on AnnualCreditReport.com that transport consumers away from the centralized source to the nationwide CRAs’ commercial websites; (2) requiring consumers to establish an account to obtain a free annual file disclosure; and (3) imposing any “terms and conditions” on consumers’ access to free annual file disclosures. These requirements are intended to make it easier for consumers to obtain their free annual file disclosures from the centralized source without distracting advertising, including advertising leading consumers to commercial websites.

3. Consideration of Using Improved Information Technology to Reduce Burden

Section 610.4 of the Proposed Amended Rule

The proposed section 610.4 amendments implement section 205 of the Act, requiring prominent disclosures in advertisements for free credit reports. Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, the disclosures are tailored to the specific medium in which the advertisements appear. Accordingly, the proposed amended Rule is flexible, permitting each covered entity to choose the form of advertising that it considers best, without the need to acquire any expensive new technology in order to comply with the Rule.

Section 610.2 of the Proposed Amended Rule

The proposed section 610.2 amendments address interference with consumer ability to obtain free credit reports through AnnualCreditReport.com, the only recognized source of free credit reports under federal law. These proposed amendments are designed to make it easier for consumers to take advantage of information technology to obtain their free credit reports. Ultimately, facilitating the dissemination of credit reports through AnnualCreditReport.com reduces compliance costs for covered entities.

4. Efforts to Identify Duplication/Availability of Similar Information

FTC staff has not identified any other federal or state statutes, rules, or policies that duplicate, overlap, or conflict with the proposed amendments to the Free Reports Rule.

5. Efforts to Minimize Burdens on Small Businesses

Section 610.4

As discussed above, the proposed section 610.4 amendments implement section 205 of the Act. The universe of entities offering “free credit reports” is likely to be small, comprised mostly of the three nationwide CRAs and their subsidiaries and affiliates. In addition, there also may be a small number of independently operating credit reporting agencies or resellers of consumer reports, that, in theory, might advertise for “free credit reports.” Based upon its knowledge of the industry, Commission staff believes that the number of such entities is likely to be fewer than 30. Accordingly, the economic impact of section 610.4 is unlikely to be significant.

Section 610.2

The proposed amendments to this section pertain solely to nationwide CRAs that provide annual file disclosures through the centralized source. Accordingly, these proposed amendments will not impact any small entity.

6. Consequences of Conducting Collection Less Frequently

The proposed section 610.4 advertising disclosures implement the express intent of section 205 of the Act. The requirement that any advertisement for a free credit report in any medium carry proscribed disclosures does not permit less frequent disclosure. In addition, the section 610.2 requirements pertaining to advertising on the centralized source are intended to facilitate consumer ability to obtain free credit reports, as intended by federal law.

7. Circumstances Requiring Disclosures Inconsistent with Guidelines

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

8. Consultation Outside the Agency

Before finalizing revisions to the Rule, the FTC will seek and review public comments and consider any recommendations to modify the proposed amendments.

9. Payments/Gifts to Respondents

Not applicable.

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

Not applicable. The proposed amendments do not require any covered entities to register or file any documents with the Commission.

12. Estimated Hours Burden:

Section 610.4

Affected Public: Nationwide CRAs, nationwide specialty CRAs, and independent resellers of consumer information

Proposed section 610.4 requires all advertisements for “free credit reports” to contain certain proscribed disclosures tailored to the medium used. As such, those disclosures are not a “collection of information,” as defined by OMB’s regulations that implement the PRA,¹ for which to accord associated PRA “burden.”

¹ See 5 CFR 1320.3(c)(2) (excluding from the definition of “collection of information” the “public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public”).

Section 610.2

Affected Public: Nationwide CRAs

Estimated Hours Burden: 36 hours, cumulatively

Section 610.2 of the proposed amended Rule is designed to prevent interference by the nationwide CRAs with consumer ability to obtain free annual file disclosures through the centralized source, as permitted by federal law. Specifically, the nationwide CRAs must remove hyperlinks on the centralized source to their commercial websites. In addition, nationwide CRAs must delay advertising through the centralized source until after the consumer has obtained requested annual file disclosures. The proposed amendments do not modify the nationwide CRAs' obligation under the current Rule to provide consumers with annual file disclosures upon request.² Nor are the proposed amendments likely to increase or decrease the estimated number of annual file disclosures made available to consumers free of charge, whether through the Internet, telephone, or mail.

The administrative costs associated with the proposed amendments to section 610.2 should present no more than a de minimis, one-time burden, as the three nationwide CRAs reconfigure the centralized source and their own proprietary websites. Commission staff estimates that these tasks will require approximately 36 hours (12 hours per CRA), cumulatively, to complete.

Estimated Labor Cost: \$1,419, cumulatively

As noted above, the proposed amendments to section 610.2 should impose no more than a de minimis, one-time burden for the three nationwide CRAs to reconfigure the centralized source and their own proprietary websites. Commission staff assumes that professional technical personnel and/or management personnel will implement the proposed amendments, at an hourly rate of \$39.42.³ Accordingly, estimated total labor cost for each of the three nationwide CRAs to comply with the proposed Rule amendments is \$473.00 (12 hours x \$39.42) or, cumulatively, \$1,419.

13. Estimated Capital and Other Non-Labor Costs

The proposed Rule amendments should not impose any capital or other non-labor costs. Nationwide CRAs likely will continue their current practice of using third-party contractors

² The burden estimates for those obligations have already been accounted for and are subsumed within the FTC's existing clearance for OMB Control No. 3084-0128.

³ See http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor, released August 2009, Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages). The above amount is an average of the mean hourly wages of administrative services managers, computer and information systems managers, computer systems analysts, and network and computer systems administrators.

(instead of their own employees) to fulfill consumer requests for annual file disclosures, pursuant to the Rule. Because of the way these contracts are typically estimated, these costs likely will be incurred on a continuing basis, and will be calculated based on the number of annual file disclosures requested by consumers. Again, staff believes that the proposed amendments will not increase the burden on industry to supply such file disclosures nor affect the overall number of file disclosures provided to consumers annually because it is likely that consumers will merely be redirected from websites that require consumers to pay for their “free credit report” to the centralized source.

14. Estimated Cost to the Federal Government

FTC staff believes that the proposed amendments to the Rule will impose no additional costs on the federal government. In the 2007 clearance for the current Rule, staff estimated that the fiscal year cost to the FTC Bureau of Consumer Protection of enforcing the Rule’s disclosure requirements would be approximately \$160,000 per year. This estimate was based on the assumption that 1.5 full attorney work years would be expended to enforce the Rule’s requirements relating to disclosure. Clerical and other support services were also included in this estimate. Staff believes that enforcement of the proposed amendments will require no additional attorney work years.

15. Program Changes or Adjustments

The proposed amendments under section 610.4 do not give rise to any “collection of information” under the PRA. The proposed amendments to section 610.2 should impose no more than a de minimis, one-time burden for the three nationwide CRAs to reconfigure the centralized source and their own proprietary websites at an estimated 36 hours (12 hours per CRA), cumulatively, to complete, at an estimated labor cost of \$1,419 (\$473 per CRA). As stated above, the proposed Rule amendments should not impose any capital or other non-labor costs.

16. Publishing Results of the Collection of Information

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

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certifications for PRA Submissions

Not applicable.