

Supporting Statement for Information Collection Proposed Fair Credit Reporting Risk-Based Pricing Rules

1. Necessity for Collecting and Retaining the Information

The Federal Trade Commission (“FTC” or “Commission”) requests approval from the Office of Management and Budget (“OMB”) for the collections of information contained in the attached joint proposed rulemaking, which implements section 311 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), Pub. L. No. 108-159 (2003). The FACT Act amends the Fair Credit Reporting Act of 1970 (“FCRA”), 15 U.S.C. 1681 *et seq.*, to require the FTC and the Board of Governors of the Federal Reserve System (“Board”) to jointly prescribe rules to implement the risk-based pricing provisions in section 311 of the FACT Act. The statute and the rule require creditors to provide risk-based pricing notices to consumers when the creditor uses a consumer report “to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through the creditor.” The statute requires that the rules address the specifics of the risk-based pricing notice, including the form it should take, its content, the time at which it should be provided to consumers, and the manner in which it should be delivered. In addition, the FACT Act requires the Commission and the Board to develop model notices and provide appropriate exceptions to the notice requirement.

2. Use of the Information

The consumer disclosures proposed in this rulemaking are to alert consumers to the fact that, for example, they are offered a higher-cost loan based on their credit score. Consumers then can use the information provided to consider the implications of risk-based pricing and decide whether to check their credit report for errors and inaccuracies.

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 rules allow creditors to use applicable technologies to reduce compliance costs. The proposed rule is drafted in a flexible, technology neutral manner.

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 or conflict with the proposed rules. One possible conflict is eliminated because the proposed rules allow mortgage creditors to modify their existing 609(g) notices¹ in a way that satisfies both the 609(g) requirements and the risk-based pricing requirements of the FCRA.

¹ Section 609(g) of the Fair Credit Reporting Act, 15 U.S.C. § 1681g, requires that creditors offering loans secured by one to four units of residential real property shall provide consumer notices when they use a

5. Efforts to Minimize Burdens on Small Businesses

The proposed rules apply to any creditor that engages in risk-based pricing, regardless of size. The proposed rules are drafted so that creditors have various options for complying and can choose the option that makes the most sense within their individual business model, which should aid small creditors with compliance. Additionally, model notices are provided to reduce the burden on creditors in drafting an appropriate notice.

6. Consequences of Conducting Collection Less Frequently

The FACT Act requires the agencies to issue rules that will require providing consumers with notices regarding risk-based pricing. The Act provides limited authority to create exceptions to the risk-based pricing notice requirement, which has been used where appropriate.

Much of the burden associated with the proposed rules is attributable to the Act's requirement that creditors identify those consumers who should receive risk-based pricing notices. Creditors likely will be able to reduce this burden, because once the process is developed to determine which consumers should receive notices, it will only occasionally need adjustment.² The burden of complying is also due to the Act's requirement that a creditor give risk-based pricing notices to those consumers who receive a less favorable offer. Similarly, these notices would need to be revised only if the standard notice information changes.

7. Circumstances Requiring Disclosure Inconsistent with Guidelines

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

8. Consultation Outside the Agency

The FTC and the Board worked together to develop this proposed rule. In addition, Commission and Board staff consulted with a variety of stakeholders, both industry members and consumer groups, in the process of drafting it. In conjunction with this instant clearance request, the Commission and the Board are seeking public comment on the proposed rules as well as the burden analysis presented here.

9. Payments/Gifts to Respondents

Not applicable.

consumer credit score in connection with a loan. The notice must contain the consumer's credit score and certain statutorily mandated language that would help to place the score in context.

² For example, under one of the methods for determining which applicants should receive risk-based pricing notices, a creditor likely would reevaluate its applicant pool no more frequently than once every two years to confirm that its risk-based pricing analysis remained valid.

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

No assurance of confidentiality is necessary because the proposed Rule does not require creditors to register or file any documents with the Commission or the Board.

12. Estimated Hours Burden

As detailed below, Commission staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 14,630,000 hours (rounded). This figure is premised first on staff's estimate that the proposed rules will affect approximately 199,500 creditors subject to the FTC's jurisdiction.³ Those subject to the FTC's jurisdiction under the proposed rule are creditors that engage in risk-based pricing 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)).

Because creditors have long been complying with section 615 of the FCRA, which requires specific disclosures for adverse action notices when a lender uses a credit report to deny credit, implementing the proposed requirements will require the adaptation of existing business processes, rather than the development of new ones. The proposed rule also allows creditors to perform their risk-based pricing analysis according to the method they find least burdensome and best-suited to their particular business model. The proposed rule also provides a model risk-based pricing notice that entities can use, thereby significantly limiting the time and effort needed to comply with the proposed rule.

During the rules' first year in effect, businesses likely will develop automated or other processes to determine whether a consumer should receive a risk-based pricing notice. Staff estimates that businesses will require, on average, forty (40) hours (1 business week) to reprogram and update their systems to incorporate the new notice requirements, provide employee training, and modify model notices with respondent information to comply with the proposed requirements. This one-time burden in the aggregate would thus be approximately 7,980,000 hours (199,500 creditors x 40 hours) rounded to the nearest thousand for the first year. In addition, staff estimates that businesses would need five (5) hours per month, on a continuing basis, to modify and distribute notices to consumers. The resulting cumulative annual burden to modify and distribute notices would thus be approximately 11,970,000 hours (rounded to the nearest

³ This estimate derives in part from an analysis of the figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses. See <http://www.naics.com/search.htm>. Commission staff identified categories of entities under its jurisdiction that also directly provide credit to consumers. Those categories include retail, vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. See 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the National Credit Union Administration for the number of non-federal credit unions. See http://www.ncua.gov/news/quick_facts/Facts2007.pdf. For purposes of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing.

thousand). Cumulatively, then, average annual burden over the three-year PRA clearance sought will be 14,630,000 hours $[(7,980,000 \div 3) + 11,970,000]$.

Associated Labor Cost:

Commission 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 rules, as they entail varying compensation levels of clerical, 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 develop procedures for conducting the risk-based pricing analyses, adapt the written notices as necessary, and train staff, at an hourly rate of \$38.93.⁴ To distribute and update the notices, staff assumes that personnel involved in sales and similar responsibilities will update and distribute the notices at an hourly rate of \$11.14.⁵

Based on the above estimates and assumptions, the estimated average annual labor cost for all categories of covered entities under the proposed rules is \$237,000,000 (rounded to the nearest thousand) $[(40 \text{ hours} \times \$38.93) + (180 \text{ hours} \times \$11.14)] \times 199,500 \div 3$.

13. Estimated Capital and Non-Labor Costs

Commission staff believes that the proposed rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.*, offices and computers) for the information collections discussed above.

14. Estimated Cost to the Federal Government

Commission staff estimates that a representative year's cost to the FTC of administering the requirements of the proposed rules 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

Not applicable. These are newly proposed rules, not a change or an adjustment to an existing program.

16. Publishing Results of the Collection of Information

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

⁴This cost is derived from the median hourly wage for management occupations found in the 2006 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics.

⁵ This cost is derived from the median hourly wage for sales and related occupations found in the 2006 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics.

17. Display of Expiration Date for OMB Approval

Not applicable.

18. Exceptions to the Certification for PRA Submissions

Not applicable.