

**Supplemental Supporting Statement for Information Collection  
Furnisher Rules under the  
Fair and Accurate Credit Transactions Act of 2003  
16 CFR Part 660  
(OMB Control # 3084-NEW)**

In connection with the related, preceding notice of proposed rulemaking (“NPRM”),<sup>1</sup> the Federal Trade Commission (“FTC” or “Commission”) and participating sister agencies submitted the information collection requirements in the proposed rules to OMB for review under the Paperwork Reduction Act (“PRA”). In response, OMB filed comments with the agencies in accordance with 5 CFR 1320.11(c), and instructed them to describe how they have maximized the practical utility of the rule’s information collection requirements and minimized associated PRA burden. The Agencies addressed this in the final rule preamble. *See* 74 Fed. Reg. 31484 (July 1, 2009). The FTC additionally elaborates on its final rules PRA analysis in this supplemental Supporting Statement.

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

The instant joint 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 issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies (“CRAs”) and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. These final rules also implement the requirement that the Agencies issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer. The Commission has placed the final regulations and guidelines in the part of its regulations that implement the FCRA, specifically, 16 CFR Part 660.

FACT Act Section 312(a) (implemented within 16 C.F.R. 660.3)

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)

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<sup>1</sup> 72 Fed. Reg. 70944 (Dec. 13, 2007).

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) (implemented within 16 C.F.R. 660.4)

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 regulations implementing section 312(c) 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 regulations 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, 44 U.S.C. § 3504 note, the Furnisher Regulations permit furnishers latitude in using new technologies to reduce compliance costs. Indeed, the Agencies attempted to draft the regulations in a flexible, technology-neutral manner. For example, the 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 are 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 duplicate, overlap, or conflict with these 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 instant 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 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 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 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 will 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 will 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 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 regulations. In conjunction with this PRA clearance request, the Agencies sought and obtained public comment in its NPRM regarding the proposed regulations as a whole and with particular respect to their disclosure requirements. The final version of these regulations incorporate public feedback regarding the prior proposals.

**Comment Summary**

Of the comments received in response to the NPRM, four industry commenters specifically addressed PRA burden and an additional five industry commenters generally addressed burden issues. Some commenters noted that if the final rule would require furnishers to engage in certain activities in response to a direct consumer dispute, the number of disputes

received from consumers would likely increase significantly. Commenters also noted that the Summary of Rights under the FCRA (currently provided to consumers) instructs consumers to direct their disputes to the CRA that provided them with a copy of their file, which may explain why most disputes are directed to CRAs. It is reasonable to assume that changes to the disclosures made by CRAs to consumers (due to the changes the FTC will make to the Summary of Rights to include information about consumers' section 312 direct dispute rights) will likely increase the number of disputes furnishers receive directly from consumers.

### Accuracy of Estimates

One industry commenter questioned the Agencies' estimates. The commenter stated that, until furnishers begin implementing the proposal, it will be impossible to determine whether the Agencies' estimates to implement the final rule are understated. In addition, the commenter stated that, until a final rule is published, it is impossible to estimate the time required to comply with its requirements. The commenter further stated that it is "probably" unreasonable to estimate that it will take only 5 minutes to prepare and send a notice since it is likely to take much longer to review and investigate a dispute. The Agencies acknowledge that furnishers are likely to spend more than 5 minutes reviewing and investigating disputes received directly from consumers. The estimated PRA disclosure burden per notice published in the NPRM represented strictly the 5 minutes it would take a furnisher to prepare and distribute each notice; but it did not include the time required to review and investigate a dispute. However, given that each notice will be consumer specific, and that the amount of automation used to send each notice will vary based on each dispute, the Agencies have decided to re-estimate the average time furnishers will devote to preparing and sending notices. The Agencies have increased the estimated burden for preparing and sending each notice from 5 minutes to an average of 14 minutes per dispute to prepare and send a notice to a consumer. Our estimate of 14 minutes per dispute is based upon an estimate of the average time required to respond to three different types or categories of frivolous or irrelevant disputes. For purposes of estimating paperwork burden, we assume that disputes based on form letters from credit repair organizations will make up 25 percent of all frivolous or irrelevant disputes and, on average, furnishers will devote 8 minutes to each notice. We assume that duplicate credit reporting agency disputes will make up 60 percent of frivolous or irrelevant disputes, and we estimate this category will require an average of 15 minutes for each notice. Disputes that are frivolous or irrelevant for other reasons are assumed to make up 15 percent of frivolous or irrelevant disputes, and we estimate these other categories of disputes will require an average of 20 minutes each.

Another commenter stated that, while most furnishers would only make minor modifications, if any, to their existing practices to develop and implement the accuracy and integrity program, even these minor modifications will require significantly more than 21 hours, especially for furnishers of significant amounts of data from a wide range of business lines.

### Review of Furnishing Practices

Two commenters expressed concern that furnishers would be required to audit their furnishing practice. One of them stated that it could take several days for furnishers to design an

audit of their furnishing practices and additional time to perform it and provide an audit report. The commenter urged the Agencies to consider the impact of the requirements, keeping in mind accumulating burden and cost. The commenter stated that it is critical that the Agencies regulating financial institutions convey clearly and publicly to their respective examiners their expectations of the implementation process, given the Agencies' stated view that the final rule will not impose significant burden or cost upon furnishers.

Another commenter opined that the suggested actions a furnisher should take to establish and maintain a compliance program should be reduced or eliminated. The commenter stated it was unclear how the suggested actions could be considered and documented, let alone designed and implemented, in 21 hours, even for small furnishers. The commenter expressed the concern that examiners of financial institutions will treat suggestions - such as the one that furnishers audit their existing furnishing activities - as requirements, and added that it is unclear whether any furnisher needs to audit its existing program to comply with the final rules. The commenter additionally observed that the Agencies' burden estimate of 21 hours to comply with the final rule would be inconsistent with additionally having to conduct such audits. The commenter asserted that it would require more than 21 hours simply to conduct an audit of a mid-sized furnisher, and additional time beyond that to evaluate the audit results before drafting a compliance program. Finally, the commenter predicted that the costs of an audit may lead some institutions not to furnish information. Based on the comments received, the Agencies have decided to increase the burden associated with this requirement from 21 hours to 24 hours (three business days). In doing so, however, we note that, as stated earlier in the Supplementary Information section, the requirement for a furnisher to periodically review policies and procedures and update them as necessary is not an audit requirement. The final rule does not impose an audit requirement on a furnisher to conduct an official examination and verification of consumer accounts and records regarding its policies and procedures. In fact, the Agencies believe that an audit would impose undue burden on furnishers, especially small furnishers, and result in less information being provided into the credit reporting system.

#### Impact on Small Institutions

One commenter stated that the impact of the proposal on small institutions' current resources would be severe and that they would have to use significant resources to comply with the proposed requirements. The commenter added that its member companies spend about one hour verifying each dispute, and it expects a substantial increase in direct disputes once the rule is implemented. The commenter anticipates that consumers will choose to use direct disputes over contacting CRAs.

The Agencies recognize that a "one-size-fits-all" approach for implementing the guidelines is inappropriate. The final rule specifies that a furnisher's policies and procedures must be appropriate to the nature, size, complexity, and scope of the furnisher's activities. The Agencies expect that the written policies and procedures for a small retail entity will differ substantially from, and be significantly less complex than, those of a multi-billion dollar financial services company. The Agencies have also addressed furnishers' implementation burden for § .43 of the final rule by permitting furnishers to specify a direct dispute address for

receiving such disputes. The address may be provided to consumers either by a CRA setting forth the address, which is provided by the furnisher, on a consumer report or by other means to consumers in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher).

**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 regulations do not require furnishers to register or file any documents with the Agencies. Moreover, the regulations do not contain recordkeeping requirements.

**12. Estimated Hours Burden**

**95,000 total burden hours, rounded to the nearest thousand** (57,000 hours for 16 C.F.R. 660.3 + 38,000 hours for 16 C.F.R. 660.4)

*Number of respondents:* 6,133

*Number of frivolous or irrelevant dispute notices:* 21,720

*Estimated burden per respondent:*

(a) 24 hours in the first year of the rule's existence to implement written policies and procedures and training associated with the written policies and procedures; (b) 8 hours in the first year to amend procedures for handling complaints received directly from consumers; (c) 8 hours to implement the new dispute notice requirement; and (d) 14 minutes per notice for preparation and distribution.<sup>2</sup> Recurring burden, if any, in subsequent years are further detailed below.

*Estimated Hours Burden:*

**Section 660.3**

As discussed above, the final rule requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the

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<sup>2</sup> Preceding public comment feedback on the NPRM, FTC estimate were: (a) 21 hours in the first year of the rule's existence to implement written policies and procedures and training associated with the written policies and procedures, (b) 4 hours in the first year to amend procedures to handle complaints received directly from consumers; (c) 4 hours to implement the new dispute notice requirement; and (d) 5 minutes per notice for preparation and distribution.

information relating to consumers that it furnishes to a CRA. The final rule defines “furnisher” to mean an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report, but provides that an entity is not a furnisher when it: provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA<sup>3</sup>; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer’s character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

Given the broad scope of furnishers, it is difficult to determine precisely the number of furnishers that are subject to the FTC’s jurisdiction. Nonetheless, FTC staff estimates that the final regulations in § 660.3 will affect approximately 6,133 furnishers subject to the FTC’s jurisdiction.<sup>4</sup> As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 57,000 hours (rounded to the nearest thousand).

The final rule is 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 FTC believes that many entities have already implemented a significant portion of the policies and procedures required by the final 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 in the rule formalize the processes and controls necessary for accurate reporting. Accordingly, FTC staff estimates that entities will require 24 hours to establish and 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; thus, as annualized over a 3-year clearance period, 9.33 hours (28 hours ÷ 3).

Accordingly, cumulative annualized burden for 6,133 furnishers subject to the FTC’s jurisdiction to establish and implement written policies and procedures is 57,000 hours (rounded to the nearest thousand).

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<sup>3</sup> 15 U.S.C. 1681b(a).

<sup>4</sup> This estimate derives from the number of furnishers reporting to the three nationwide CRAs (approximately 18,000), minus the number of entities subject to jurisdiction of 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).

## Section 660.4

The final regulations will also require entities that furnish information about consumers to respond to direct disputes from consumers. FTC staff estimates that the final regulations in § 660.4 will also affect approximately 6,133 furnishers subject to the FTC's jurisdiction. As detailed below, FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will cumulatively be 38,000 hours (rounded to the nearest thousand).

In response to public comments and in concurrence with the Agencies' modified estimate noted above, the FTC now estimates that it will take furnishers eight 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, therefore, there will be no annual recurring burden. Accordingly, the associated annualized burden hours over a projected three-year OMB clearance would be approximately 2.67 hours. Similarly, FTC staff also estimates that it will take furnishers eight hours in the first year to implement the requirement to notify a consumer 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. FTC staff believes that furnishers will also automate this process in the first year of clearance, so there will be no annual recurring burden. Likewise, annualized burden hours would be approximately 2.67 hours.

In response to public comments and in concurrence with the Agencies' modified estimate noted above, the FTC now 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 14 minutes per notice. FTC staff does not know the current extent to which furnishers are already directly receiving disputes and sending related notices to consumers. Nevertheless, FTC staff assumes that 50 percent of all disputes will be filed directly with the furnisher after the rule is in effect. As a result of these factors, FTC staff projects that furnishers under its jurisdiction would directly receive 21,720 frivolous or irrelevant disputes requiring a notice each year.<sup>5</sup> Thus, FTC staff estimates it will take furnishers 5,068 hours, cumulatively, for each of the three years for which OMB clearance is sought to prepare and distribute these notices.

*Associated Labor Cost:*

## Section 660.3

The FTC staff derived labor costs by applying appropriate estimated hourly cost figures

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<sup>5</sup> This number derives from an estimate of disputes per year that relate to information provided by an entity under the FTC's jurisdiction (108,600), an estimated 50% of which will be received directly by furnishers, and the Agencies' estimated 40% increase of the number of written notices that furnishers will provide to consumers in response to direct disputes that are frivolous or irrelevant.



to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the final regulations, as they entail varying compensation levels of management and/or professional 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. In the NPRM analysis, FTC staff estimated labor cost for such employees to be \$38.93, based on 2006 BLS data for management occupations. However, based on more current available BLS data, the FTC revised upward this prior estimate to \$41 for the July 1, 2009 published final rules.<sup>6</sup>

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the final regulations in § 660.3 are \$2,337,000 (rounded to the nearest thousand) [(57,000 hours x \$41)].

#### Section 660.4

As with its PRA analysis for § 660.3, the FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. Again, it is difficult to calculate with precision the labor costs associated with the final regulations, as they entail varying compensation levels of different types of support staff among companies of different sizes. Nonetheless, in calculating the cost figures, staff assumes managerial and/or professional technical personnel will amend procedures to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs and will implement the requirement to notify a consumer by mail or other means, after making a determination that a dispute is frivolous or irrelevant, at an hourly rate of \$41.<sup>7</sup> Staff now assumes that skilled administrative support personnel will provide the required notices to consumers, and revised upward the estimated hourly rate from \$13.50 to \$18.50.<sup>8</sup>

Based on the above estimates and assumptions, the total average annual labor costs for all categories of covered entities under the final regulations in section 660.4 are \$1,437,000 (rounded to the nearest thousand) [((2.67 hours) x 6,133 x \$41) + ((2.67 hours) x 6,133 x \$41) + (5,073 hours x \$18.50) (for preparing and distributing frivolous or irrelevant dispute notices)].

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<sup>6</sup> This revised hourly wage rate is based on <http://www.bls.gov/ncs/ncswage2007.htm> (last visited March 3, 2009) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 (“Full-time civilian workers,” mean and median hourly wages) for management occupations).

<sup>7</sup> See *supra* note 6 regarding labor cost estimates under § 660.3 for management occupations.

<sup>8</sup> See <http://www.bls.gov/ncs/ncswage2007.htm> (last visited March 3, 2009) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 (“Full-time civilian workers,” mean and median hourly wages). This estimate is based on rates appearing therein for a combination of potentially analogous employee types (e.g., first-line supervisors of office support, accounting and auditing clerks, brokerage clerks, eligibility reviewers of government programs).

**13. Estimated Capital and Other Non-Labor Costs**

The FTC staff believes that the 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 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**

This is a new rulemaking. The difference, however, between the FTC's burden hour estimate for the proposed and final rules is an increase of 27,000 for the final rules, which incorporates public comment input. Broken down by relevant FCRA sections, the initial and revised estimates are as follows:

Section 312(a): 51,000 hours increases to 57,000 hours

Section 312(c): 17,000 hours increases to 38,000 hours

Estimated labor costs rise accordingly, and have also increased on account of updated BLS data to estimate hourly wages. Further differences in the component estimates are detailed in footnote 1 and the accompanying text of this Supporting Statement.

**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.