

**Supporting Statement for the
Prescreen Opt-Out Disclosure Rule
16 C.F.R. Part 642
(OMB Control No. 3084-0132)**

(1) & (2) Necessity for and Use of the Information Collected

Section 213 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act” or “the Act”) required the Federal Trade Commission (“FTC” or “Commission”), in consultation with the federal banking agencies and the National Credit Union Administration, to issue a rule to improve the required notice to consumers of their right to opt out of solicitations for receiving firm offers of credit or insurance (“prescreened” offers). A final Rule published in the Federal Register on January 31, 2005 (70 Fed. Reg. 5022) with an effective date of August 1, 2005.

Under Section 615 of the Fair Credit and Reporting Act (“FCRA”), 15 U.S.C. § 1681m, users of consumer reports have been required to provide consumers receiving prescreened offers of credit or insurance with a notice of their right to elect to be excluded from the list of those receiving such solicitations. In order to make the notice simple and easy to understand, as mandated by the FACT Act, the Rule sets forth certain baseline requirements for the size, placement, and format of the notice. The Rule also provides entities making prescreened solicitations with model notices (16 C.F.R. Part 698, Appendix A) that they may use to comply with the Rule.

(3) Consideration of the Use of Information Technology to Reduce Burden

Not applicable. The statute applies only to “written” solicitations. 15 U.S.C. § 1681m(d)(1). Even so, the required notices are standardized and machine-generated. Moreover, prescreened solicitations, by definition, are sent directly to consumers. Because prescreened solicitations are based upon information received from consumer reporting agencies, entities making prescreened solicitations typically only have physical mailing addresses, not e-mail addresses, for consumers solicited. Nonetheless, nothing in the Rule precludes electronic solicitations from being accompanied by a similar electronic notice. As such, the Rule is consistent with the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, which requires, in relevant part, that agencies provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper.

(4) Efforts to Identify Duplication

The Rule’s notice requirements do not duplicate any other information collection requirements imposed under federal or state law.

(5) Efforts to Minimize Burden on Small Organizations

The Rule’s notice requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size.

The Commission does not believe that the Rule has had a significant economic impact on a substantial number of small entities. The FCRA, as noted, previously mandated the opt-out notice. The FACT Act required the Commission to adopt a rule to make the required statement simple and easy to understand. The Rule applies to any entity that makes prescreened offers of credit or insurance. The Commission has been unable to determine the number of small entities that purchase prescreened lists from consumer reporting agencies but it believes that very few small entities make prescreened offers of credit or insurance. Although there may be some small entities among entities making prescreened offers, the Rule's economic impact on any particular entity is unlikely to be significant, nor is the Rule likely to have a significant economic impact on a substantial number of small entities. The minimal impact on creditors and insurers would likely consist of revising notices that they already give in order to make the notices simple and easy to understand, and the Rule contains a model notice form to assist in this process.

(6) Consequences of Conducting the Collection Less Frequently

Less frequent "collection" would violate the express statutory language of the FCRA, which requires that each prescreened offer of credit or insurance be accompanied by an opt-out notice.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

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

(8) Public Comments/Consultation Outside the Agency

The Commission most recently sought public comment on the Paperwork Reduction Act (44 U.S.C. Chapter 35) ("PRA") aspects of the Rule, as required by 5 C.F.R. § 1320.8(d). See 75 Fed. Reg. 37436 (June 29, 2010). The Commission is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rule.

(9) Payments and Gifts to Respondents

Not applicable.

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

Not applicable. The Rule does not require the disclosure or production of sensitive or confidential respondent or customer information.

(12) Estimated Annual Hours and Labor Cost Burden

As in the 2007 PRA burden analysis when the Commission last sought renewed

clearance,¹ FTC staff estimates that between 500 and 750 entities make prescreened solicitations and will each spend approximately 2 hours to monitor compliance with the Rule. Accordingly, cumulative total annual burden is between 1,000 to 1,500 hours.

Additionally, FTC staff assumes that in-house legal counsel will handle most of the compliance review, and at an estimated average hourly wage of \$250/hour. Accordingly, cumulative labor cost for all affected entities would be between \$250,000 and \$375,000.

(13) Capital and Other Non-labor Costs

Capital and other non-labor costs should be minimal, at most, since the Rule has been in effect several years, with covered entities now equipped to provide the required notice.

(14) Estimated Cost to the Federal Government

As part of its ongoing responsibilities for FCRA enforcement, staff currently monitors compliance with the prescreen opt-out notice requirement by those limited number of affected entities that fall under the Commission’s jurisdiction. Consequently, there are little or no incremental costs incurred from monitoring the Rule’s notice requirements.

(15) Program Changes or Adjustments

Not applicable.

(16) Statistical Use of Information/Publication of results

Not applicable.

(17) Display of the Expiration Date for OMB Approval

Not applicable.

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

Not applicable.

¹ 72 FR 60672 (Oct. 25, 2007); 72 FR 42092 (Aug. 1, 2007). No comments were received in response to those notices. Nor were any received in response to the most recent notice referenced in response to item # 8 above.