

**Supplemental Supporting Statement for Information Collection  
Final Amendments to Fair Credit Reporting Risk-Based Pricing Regulations,  
16 CFR Part 640 (OMB Control Number 3084-0145)**

**1. Necessity for Collecting and Retaining the Information**

On January 15, 2010, the Federal Trade Commission (“FTC” or “Commission”) and the Board of Governors of the Federal Reserve System (“Board”) (collectively, “the Agencies”) published final risk-based pricing regulations to implement the requirements of section 311 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), Pub. L. No. 108-159 (2003).<sup>1</sup> In general, the risk-based pricing regulations 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 risk-based pricing notice must include a statement that consumer report information has been used, that material terms have been set based on this information, that those terms may be less favorable than the terms offered to consumers with better credit histories, and that the consumer can obtain free copies of his or her report from consumer reporting agencies (“CRA”). The regulations also include model notices that creditors can use as safe harbors for meeting the regulations’ content requirements. The final regulations became effective on January 1, 2011.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”), was signed into law. Section 1100F of the Dodd-Frank Act amends the risk-based pricing provisions of the Fair Credit Reporting Act of 1970 (“FCRA”), 15 U.S.C. 1681 *et seq.*, to require creditors to disclose in risk-based pricing notices a credit score used in making a credit decision, along with certain additional information. The amendments to the risk-based pricing regulations implement the requirements of Section 1100F by adding content to the risk-based pricing notices and providing additional model notices.

Although Section 1100F does not specifically require a rulemaking, the Agencies believe it is important that there be uniform and consistent credit score disclosures to consumers. Absent a rule, companies may comply with the new requirements in different ways and without providing consumers appropriate context. The amended regulations add new model notices that creditors may draw from if they use credit scores in risk-based pricing. Because we believe that a majority of creditors will use these models, the amendments will help ensure that consumers receive uniform and consistent disclosures. To facilitate compliance with the new requirements under section 1100F, the Agencies are issuing the amendments to the risk-based pricing regulations pursuant to their existing authority under section 615(h) of the FCRA.

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<sup>1</sup> Section 311 of the FACT Act amended the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681 *et seq.*, to require the Agencies to jointly prescribe rules to implement its risk-based pricing provisions.

Accordingly, the Commission requests approval from the Office of Management and Budget (“OMB”) for the collections of information contained in the FTC’s implementation of the amendments.

## **2. Use of the Information**

The consumer disclosures proposed in this rulemaking are to alert consumers that their credit score was used in setting the credit terms that may be less favorable than the terms offered to consumers with better credit histories. It also includes certain other contextual information about the 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 amendments to the regulations allow creditors to use applicable technologies to reduce compliance costs. The amendments are 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 amendments to the regulations.

## **5. Efforts to Minimize Burdens on Small Businesses**

The amendments apply only to creditors that engage in risk-based pricing and use a credit score in making their credit decisions, regardless of the creditor’s size. The amendments require those creditors that must provide a risk-based pricing notice under the final regulations and that use credit scoring to include a credit score and information pertaining to it in the notice. The amendments also include a model notice businesses may use to comply with this requirement. Alternatively, a business may comply with the regulations by providing a credit score disclosure notice. By providing a range of options and model notices, the Agencies have sought to help businesses of all sizes reduce the burden or inconvenience of complying with the amendments to the regulations.

## **6. Consequences of Conducting Collection Less Frequently**

The Dodd-Frank Act amends the risk-based pricing provisions of the FCRA by requiring creditors to disclose in risk-based pricing notices a credit score used in making a credit decision, along with certain additional information. Since creditors are already required to provide risk-based pricing notices, the burden of updating notices to include this additional information is minimal. The burden of complying is further diminished by

the Agencies provision of model notices that creditors may use. The notices are inherently transaction-specific; accordingly, reducing their frequency is inapposite.

**7. Circumstances Requiring Disclosure Inconsistent with Guidelines**

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

**8. Consultation Outside the Agency**

On March 15, 2011, the FTC and Board published in the Federal Register a joint notice of proposed rulemaking consistent with new content requirements in section 615(h) of the FCRA that were added by section 1100F of the Dodd-Frank Act. 76 Fed. Reg. 13,902. The Agencies worked together to develop these amendments implementing the Dodd-Frank requirements and through the notice of proposed rulemaking sought public comment on the amendments and the associated burden analyses.

In the proposed rulemaking, the Agencies collectively estimated that respondents potentially affected by the additional notice would take, on average, 16 hours (2 business days) to update their systems and modify model notices to comply with the proposed requirements. The Agencies recognized that the amount of time needed for any particular creditor subject to the proposed requirements may be higher or lower, but believed this average figure was a reasonable estimate.

The Agencies received 13 comments – two from banks, three from utilities, two from credit union trade association, two from banking trade associations, two from credit and financial services companies, one from a consumer credit trade association, and one from a law firm on behalf of an unspecified client – in response to the PRA section of the proposal. The commenters asserted that the time needed to update their systems to incorporate these requirements and coordinate with consumer reporting agencies as necessary would exceed the Agencies’ estimate of 16 hours. Based on these comments, the Agencies agreed that some additional time beyond 16 hours may be needed. The Agencies, therefore, increased their burden estimate to 32 hours (4 business days), and they believe this is a reasonable adjustment to the prior estimate.

**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 amendments do 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 respondents would require, on average, 32 hours (four business days) to update their systems and modify model notices to comply with the requirements. Thus, based on an estimated 199,500 respondents,<sup>2</sup> the one-time burden, annualized for a 3-year PRA clearance, would be 2,128,000 hours  $[(32 \times 199,500) \div 3]$ . The Commission believes that, on a continuing basis, the revision to the regulations would have a negligible effect on the annual burden.

### 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 regulations, as they entail varying compensation levels of clerical, management, and/or technical staff among companies of different sizes. In calculating the cost figures, Commission staff assumes that managerial and/or professional technical personnel will update systems for providing risk-based pricing notices and adapt the written notices as necessary at an hourly rate of \$42.95.<sup>3</sup>

Based on the above estimates and assumptions, the estimated one-time labor cost for all categories of FTC covered entities under the regulations, annualized for a 3-year PRA clearance, is \$91,397,600  $[(32 \text{ hours} \times \$42.95) \times 199,500 \div 3]$ .

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

Commission staff does not anticipate that compliance with the amendments will require any new capital or other non-labor expenditures. The amendments provide a simple and concise model notice that creditors may use to comply, and as creditors already are providing risk-based pricing notices to consumers under the FCRA, they already have the necessary resources to generate and distribute these notices. Thus, any capital or non-labor costs associated with compliance would be negligible.

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<sup>2</sup> 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 Credit Union National Association for the number of non-federal credit unions. See [http://www.ncua.gov/news/quick\\_facts/Facts2007.pdf](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 and use a credit score in making the credit decision requiring a risk-based pricing notice.

<sup>3</sup> This cost is derived from the median hourly wage for management occupations found in the May 2009 National Occupational Employment and Wage Estimates of the Bureau of Labor Statistics, Table 1.

#### **14. Estimated Cost to the Federal Government**

Commission staff believes that the cost to the FTC for administering the amendments to the risk-based pricing regulations will be de minimis. Accordingly, the Commission staff retains its preceding estimate of \$18,795 per year as the cost to the government to implement the final risk-based pricing regulations. This represents one-tenth of an attorney work year, and includes employee benefits.

#### **15. Program Changes or Adjustments**

The amendments implement the requirements of the Dodd-Frank Act which require creditors to disclose in risk-based pricing notices a credit score used in making a credit decision, along with certain additional information relating to the credit score. The amended regulations add these new content requirements to risk-based pricing notices. The amendments also add new model notices incorporating the credit score disclosure that creditors may use to comply with the regulations. The estimated incremental burden of these amendments is noted in item #12 above.

As discussed in more detail in response to item 8 above, the Agencies have adjusted upward from the March 15, 2011 notice of proposed rulemaking their estimate (from 16 hours to 32 hours) of the time needed for affected entities to update their systems to incorporate the amendments' requirements and to coordinate with consumer reporting agencies as necessary. Estimated labor costs increased proportionately.

#### **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. The assigned OMB control number and current date of expiring clearance will appear in the final rulemaking.

#### **18. Exceptions to the Certification for PRA Submissions**

Not applicable.