

Supporting Statement for Information Collection
Regulation V, Subpart N (formerly, the Free Annual File Disclosures Rule)
12 C.F.R. §§ 1022.130 - 1022.138
(OMB Control No. 3084-0128)

The Federal Trade Commission (“FTC” or “Commission”) seeks to extend through November 30, 2015, the current Paperwork Reduction Act (“PRA”)¹ clearance for the FTC’s shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the information collection requirements in subpart N of Regulation V (“subpart N” or “Rule”).

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act² transferred rulemaking authority for several consumer financial protection laws to the CFPB. Accordingly, the Commission rescinded several rules under the Fair Credit Reporting Act, including the FTC’s Free Annual File Disclosures Rule that appeared under 16 C.F.R. Parts 610 and 698. On December 21, 2011, the CFPB issued an interim final rule, Regulation V (Fair Credit Reporting), 12 C.F.R. Part 1022, which incorporated within its subpart N (Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers), §§ 1022.130 - 1022.138, with only minor changes (non-substantive, technical, formatting, and stylistic), the former Free Annual File Disclosures Rule, and in Appendix L to Part 1022, the associated model notice.³ Subpart N of Regulation V continues the disclosure requirements that had existed under the Free Annual File Disclosures Rule.

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

Subpart N requires nationwide consumer reporting agencies and nationwide consumer specialty reporting agencies to provide to consumers, upon request, one free file disclosure within any 12-month period. Generally, it requires the nationwide consumer reporting agencies, as defined in Section 603(p) of the FCRA, 15 U.S.C. 1681a(p), to create and operate a centralized source that provides consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet website, toll-free telephone number, and postal address. Subpart N also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement. It additionally requires nationwide specialty consumer reporting agencies, as defined in Section 603(w) of the FCRA, 15 U.S.C. 1681a(w), to establish a streamlined process for consumers to request annual file disclosures. This streamlined process must include a toll-free telephone number for consumers to make such requests.

¹ 44 U.S.C. Ch. 35.

² Pub. L. 111-203, 124 Stat. 1376 (2010). Title X comprises sections 1001 - 1100H (collectively, the “Consumer Financial Protection Act of 2010”).

³ 76 Fed. Reg. 79,307 (Dec. 21, 2011).

3. Consideration of Using Improved Information Technology to Reduce Burden

Subpart N requires nationwide consumer reporting agencies to use information technologies in complying with their disclosure obligations. Subpart N also contemplates that nationwide specialty consumer reporting agencies may use information technologies in complying with their disclosure obligations. Such technologies may help reduce the burden of information collection. In addition, nothing in subpart N prohibits regulated entities from using the least burdensome information technology to reduce compliance burdens. Consistent with the Government Paperwork Reduction Elimination Act., 44 U.S.C. § 3504 note, nothing in subpart N prescribes that disclosures be made, records filed or kept, or signatures executed, on paper or in any particular format that would preclude the use of electronic methods to comply with subpart N.

4. Efforts to Identify Duplication/Availability of Similar Information

Subpart N does not duplicate, overlap, or conflict with any other federal statutes, rules, or policies. To the extent some state laws also require free annual file disclosures, nationwide and nationwide specialty consumer reporting agencies can comply with such state laws by complying with Subpart N, thereby avoiding duplication.

5. Efforts to Minimize Burdens on Small Businesses

Subpart N's disclosure requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size. In addition, subpart N is unlikely to have a significant economic impact on a substantial number of small entities. As noted above, subpart N applies to two types of consumer reporting agencies: (1) nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies. The nationwide consumer reporting agencies are not small entities. Furthermore, the economic impact on nationwide specialty consumer reporting agencies is unlikely to be significant because there are relatively few (estimated at less than 50) nationwide specialty consumer reporting agencies currently doing business in the U.S.

6. Consequences of Conducting Collection Less Frequently

Subpart N implements federal laws that do not permit less frequent disclosure. Less frequent collection would violate 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

As required by the PRA, the FTC provided opportunity for public comment before requesting that OMB extend its existing clearance for subpart N. See 77 Fed. Reg. 50,106 (Aug. 20, 2012). No comments were received.

9. Payments/Gifts to Respondents

Not applicable.

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

No assurance of confidentiality is necessary because subpart N does not require affected entities to register or file any documents with the FTC or CFPB. Moreover, subpart N does not contain recordkeeping requirements.

12. Estimated Hours Burden: 170,905 hours (and \$3,069,239, associated labor costs)

On February 3, 2012, OMB cleared the FTC's adjusting entries to split PRA burden with the CFPB regarding the formerly designated Free Annual File Disclosures Rule. The FTC's currently cleared burden totals are 155,512 hours and \$4,195,000 in non-labor/capital costs. Associated labor costs are \$2,595,710. These figures represent a halving of the FTC's prior burden estimates, including the incremental effects of the FTC's 2010 final amendments to the Free Annual File Disclosures Rule.

The FTC's updated estimates, excluding the halving (to be shown at the conclusion of this analysis), are as follows:

A. Requests Per Year From Consumers for Free Annual File Disclosures

The Consumer Data Industry Association has stated that between December 2004 and December 2006, the nationwide consumer reporting agencies provided over 52 million free annual file disclosures through the centralized Internet website, toll-free telephone number, and postal address required to be established by the FACT Act and the Rule,⁴ an annual rate of about 26 million requests per year. Because the prospective clearance renewal would run through November 30, 2015, by that time, nine years will have passed since the Commission received the data informing its past estimate of the yearly volume of requests for free annual file disclosures. We expect that the number of requests for free annual file disclosures has increased since 2006, both because of increases in the population and because consumers will have become more aware that they are entitled to a free annual file disclosure. As a proxy, we will use an estimate

⁴ Letter from Stuart K. Pratt, President & CEO, Consumer Data Industry Association, to Rep. Barney Frank, Committee on Financial Services, U.S. House of Representatives (Dec. 1, 2006).

of 30 million requests per year as a representative average year to estimate PRA burden for purposes of the instant analysis.

B. Annual File Disclosures Provided Through the Internet

Both nationwide and nationwide specialty consumer reporting agencies will likely handle the overwhelming majority of consumer requests through Internet websites. The annual file disclosure requests processed through the Internet will not impose any hours burden per request on the nationwide and nationwide specialty consumer reporting agencies, even though consumer reporting agencies periodically will be required to adjust the Internet capacity needed to handle the changing request volume. Consumer reporting agencies likely will make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Trained personnel will need to spend time negotiating and renegotiating such contracts. Commission staff estimates that negotiating such contracts will require a cumulative total of 8,320 hours and \$502,611 in setup and/or maintenance costs.⁵ Such activity is treated as an annual burden of maintaining and adjusting the changing Internet capacity requirements.

C. Annual File Disclosures Requested Over the Telephone

Most of the telephone requests for annual file disclosures will also be handled in an automated fashion, without any additional personnel needed to process the requests. As with the Internet, consumer reporting agencies will require additional time and investment to increase and administer the automated telephone capacity for the expected increase in request volume. The nationwide and nationwide specialty consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Staff estimates that this will require a total of 6,240 hours at a cost of \$376,958 in setup and/or maintenance costs.⁶ This activity also is treated as an annual recurring burden necessary to obtain, maintain, and adjust automated call center capacity.

⁵ Based on the time necessary for similar activity in the federal government (including at the FTC), staff estimates that such contracting and administration will require approximately 4 full-time equivalent employees (“FTE”) for the web service contracts. Thus, staff estimates that administering the contract will require 4 FTE, which is 8,320 hours per year (4 FTE x 2,080 hours/year). The cost is based on the reported May 2011 Bureau of Labor Statistics (BLS) rate (\$60.41) for computer and information systems managers. *See* National Occupational and Wages - May 2011, Table 1, available at http://www.bls.gov/news.release/archives/ocwage_03272012.pdf. Thus, the estimated setup and maintenance cost for an Internet system is \$502,611 per year (8,320 hours x \$60.41/hour).

⁶ Staff estimates that recurring contracting for automated telephone capacity will require approximately 3 FTE, a total of 6,240 hours (3 x 2,080 hours). Applying an hourly wage rate of \$60.41 based on May 2011 BLS data for computer and information systems managers, the estimate for setup and maintenance cost is \$376,958 (6,240 x \$60.41) per year. *See* http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.

D. Annual File Disclosures Requiring Processing by Mail

Based on their knowledge of the industry, staff believes that no more than 1% of consumers (1% x 30 million, or 300,000) will request an annual file disclosure through U.S. postal service mail. Staff estimates that clerical personnel will require 10 minutes per request to handle these requests, thereby totaling 50,000 hours of time. $[(300,000 \times 10 \text{ minutes})/60 \text{ minutes} = 50,000 \text{ hours}]$

In addition, whenever the requesting consumer cannot be identified using an automated method (a website or automated telephone service), it will be necessary to redirect that consumer to send identifying material along with the request by mail. Staff estimates that this will occur in about 5% of the new requests (or 1,485,000⁷) that were originally placed over the Internet or telephone. Staff estimates that clerical personnel will require approximately 10 minutes per request to input and process those redirected requests for a cumulative total of 247,500 clerical hours. $[(1,485,000 \times 10 \text{ minutes})/60 \text{ minutes} = 247,500 \text{ hours}]$

E. Instructions to Consumers

The Rule also requires that certain instructions be provided to consumers. See Rule sections 1022.136(b)(2)(iv)(A,B), 1022.137(a)(2)(iii)(A,B). Minimal associated time or cost is involved, however. Internet instructions to consumers are embedded in the centralized source website and do not require additional time or cost for the nationwide consumer reporting agencies. Similarly, for telephone requests, the automated phone systems provide the requisite instructions when consumers select certain options. Some consumers who request their file disclosures by mail might additionally request printed instructions from the nationwide and nationwide specialty consumer reporting agencies. Staff estimates that there will be a total of 1,785,000 requests each year for free annual file disclosures by mail.⁸ Based on their knowledge of the industry, staff estimates that, of the predicted 1,785,000 mail requests, 10% (or 178,500) will request instructions by mail. If printed instructions are sent to each of these consumers by mail, requiring 10 minutes of clerical time per consumer, this will total 29,750 hours. $[(178,500 \text{ instructions} \times 10 \text{ minutes})/60 \text{ minutes per hour}]$

⁷ This figure reflects 5 percent of all requests, net of the estimated 1 percent of all requests that might initially be made by mail. That is, $.05 \times (30,000,000 - 300,000) = 1,485,000$.

⁸ This figure includes both the estimated 1% of 30 million requests that will be made by mail each year (300,000), and the estimated 1,485,000 requests initially made over the Internet or telephone that will be redirected to the mail process (see supra note 7).

F. 2010 FTC Final Amendments⁹

There is no further incremental PRA burden tied to the 2010 amendments. Previously FTC staff had estimated that administrative amendments to former section 610.2 (designed to prevent interference with consumers' ability to obtain their free annual file disclosures through the centralized source) would impose no more than a minimal, one-time burden for the nationwide consumer reporting agency to reconfigure the centralized source and their own proprietary websites. Those amendments, however, became effective April 2, 2010, so the implementation should now be complete. Moreover, the other amendments, which were to former section 610.4, did not constitute a PRA "collection of information" as defined by OMB's regulations that implement the PRA. The section 610.4 amendment required that all advertisements for "free credit reports" contain certain prescribed disclosures tailored to the medium used. OMB excludes 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." 5 C.F.R. 1320.3(c)(2).

G. Labor Costs

Labor costs are derived by applying hourly cost figures to the burden hours described above. Accordingly, staff estimates that processing of requests for annual file disclosures and instructions will be performed by clerical personnel, which will require 327,250 hours at a cost of \$5,258,908. [(50,000 hours for handling initial mail request + 247,500 hours for handling requests redirected to mail + 29,750 hours for handling instructions mailed to consumers) x \$16.07 per hour¹⁰]

I. Net Burden for FTC, After 50:50 Split

After halving the updated estimates to split the PRA burden with the CFPB regarding the formerly designated Free Annual File Disclosures Rule, the FTC's apportioned burden hour and labor cost totals are 170,905 hours and \$3,069,239, respectively.

13. Estimated Capital and Other Non-Labor Costs

FTC staff believes it is likely that consumer reporting agencies will use third-party contractors (instead of their own employees) to increase the capacity of their systems. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of requests handled by the systems. Staff estimates that the total annual amount to be paid for services delivered under these

⁹ As noted above, the 2010 FTC amendments have been incorporated into what is now Regulation V, subpart N.

¹⁰ See National Occupational and Wages - May 2011, Table 1, available at http://www.bls.gov/news.release/archives/ocwage_03272012.pdf (Office and administrative support workers, general).

contracts is \$12.22 million.¹¹ After halving this updated estimate to split the PRA burden with the CFPB regarding the Rule, the FTC's apportioned estimate is \$6.11 million.

14. Estimated Cost to the Federal Government

Staff estimates that the fiscal year cost to the FTC Bureau of Consumer Protection of enforcing the Rule's disclosure requirements will be approximately \$80,000 per year. This estimate is based on the assumption that 0.75 full attorney work years will be expended to enforce the Rule's requirements relating to disclosure. Clerical and other support services are also included in this estimate.

15. Program Changes or Adjustments

The updated burden estimates present increases of 15,393 hours, \$1,916,000 in capital/non-labor costs, and \$473,529 in labor costs, respectively, over the currently cleared FTC burden totals, after the halving for shared interagency enforcement. These increases are largely attributable to FTC staff's estimate of the projected increase in the number of requests for free annual file disclosures (previously an estimate of 26 million requests per year and projected to be an annual average of 30 million requests over a prospective three-year PRA clearance from November 30, 2012 to November 30, 2015).

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.

¹¹ This consists of an estimated \$8.19 million for automated telephone cost (\$1.82 per request x 4.5 million requests) and an estimated \$4.03 million (\$0.16 per request x 25.2 million requests) for Internet web service cost. Per unit cost estimates are based on staff's knowledge of the industry.

