

Supporting Statement for Information Collection
Final Amendments to Fair Credit Reporting Risk-Based Pricing Regulations,
16 CFR Part 640 and 12 CFR 1022.70 (OMB Control Number 3084-0145)

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

The disclosure provisions for which the Federal Trade Commission (“FTC” or “Commission”) seeks renewed OMB clearance implement section 311 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), Pub. L. No. 108-159 (2003), and Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. 111-203, 124 Stat. 1376 (2010).

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).¹ The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) most of the FTC’s rulemaking authority for the risk-based pricing provisions of the Fair Credit Reporting Act (“FCRA”),² on July 21, 2011.³

The FTC retains rulemaking authority for the Fair Credit Reporting Risk-Based Pricing Regulations (“RBP Rule”) solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁴

In addition, the FTC retains its authority to enforce the risk-based pricing provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB (“the Agencies”) have overlapping enforcement authority for many entities subject to the CFPB rule (subpart H of the CFPB’s Regulation V) and the FTC has sole enforcement authority for the motor vehicle dealers subject to the RBP Rule (collectively, “Rules”).

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the risk-based pricing provisions (subpart H) of CFPB’s Regulation V.⁵ Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies’ respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 15 U.S.C. 1681 *et seq.*

³ Dodd-Frank Act, § 1061. This date was the “designated transfer date” established by the Treasury Department under the Dodd-Frank Act. *See* Dep’t of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date*, 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

⁴ *See* Dodd-Frank Act, § 1029(a), (c).

⁵ 76 FR 79308 (Dec. 21, 2011).

above. The discussion below (in particular, under item #12) continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

Under §§ 640.3 - 640.4 of the FTC's RBP Rule⁶ and §§ 1022.72 - 1022.73 of the CFPB Rule,⁷ a creditor must provide a risk-based pricing notice to a consumer 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 that creditor. Additionally, these provisions require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit.

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 Rules allow creditors to use applicable technologies to reduce compliance costs. The Rules are flexible and technology-neutral.

4. Efforts to Identify Duplication/Availability of Similar Information

Apart from the Dodd-Frank Act amendments to the FCRA that enable some overlapping FCRA jurisdiction between the FTC and the CFPB, the FTC staff has not identified any other federal or state statutes, rules, or policies that duplicate, overlap, or conflict with the RBP Rule.

5. Efforts to Minimize Burdens on Small Businesses

The Rules apply only to creditors that engage in risk-based pricing, regardless of the creditor's size. The Rules require those creditors to provide risk-based pricing notices. Additionally, creditors using credit scores to make risk-based pricing decisions must include a credit score and information pertaining to it in the risk-based pricing notice. The Rules provide a model notice that 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 Rules.

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

⁶ 16 CFR 640.3, - 640.4.

⁷ 12 CFR 1022.72, -1022.73.

this additional information is minimal. The burden of complying is diminished further by the Rules' inclusion of model notices that creditors may use. The notices are inherently transaction-specific; thus, 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

The Commission most recently sought public comment on the PRA aspects of the Rule, as required by 5 C.F.R. 1320.8(d). *See* 79 Fed. Reg. 11,108 (Feb. 27, 2014). No comments were received. The Commission is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the notice provisions of the Rules.

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 Rules do not require creditors to register or file any documents with the Agencies.

12. Estimated Hours Burden

The FTC's currently cleared burden totals, post-adjustment for the effects of the Dodd-Frank Act, are 13,319,471 hours. The past burden analysis, however, was tied to the inception of the Rule and its later amendments, and included one-time burdens attributable to implementation. The FTC's updated estimate of burden hours reflects solely the recurring burden of complying with the Rules.

Using the currently cleared estimates (post-adjustment for the effects of the Dodd-Frank Act) for the number of applicable motor vehicle dealers and their assumed recurring disclosure burdens, in addition to the estimated number of and burden for other entities over which the FTC shares enforcement burden with the CFPB, the FTC proposes the following:

- A. Estimated number of respondents: 160,875⁸
- B. Burden Hours: 9,652,500

Yearly recurring burden of 60 hours per respondent⁹ to modify and distribute notices x 160,875 respondents = 9,652,500 hours, cumulatively.

- C. Labor Costs: \$166,216,050

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use correspondence clerks, at a mean hourly wage of \$17.22,¹⁰ to modify and distribute notices to consumers, for a cumulative labor cost total of \$166,216,050.

13. Estimated Capital and Non-Labor Costs

The FTC believes that the 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 or enforcing the requirements of the above-noted Rules during the 3-year

⁸ 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/Legal/Documents/Reports/AR2012.pdf>. For purposes of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing. The resulting tally of entities numbered 199,500. From this amount, the FTC deducted an estimated portion attributable to motor vehicle dealers in order to calculate a net amount in which to split evenly with the CFPB for the remaining number of respondents for purposes of estimating the FTC's overall share of PRA burden. The FTC estimated there were 122,250 motor vehicle dealers, determined as follows: 111,136 car dealers per NAICS data (57,535 new car dealers, 53,601 used car dealers) + 10% add-on approximation for other motor vehicle types (motorbikes, boats, other recreational). Excluding the estimated number of motor vehicle dealers, 122,250, from the estimated overall number of affected entities, 199,500, leaves 77,250 as the number of respondents for the agencies' 50:50 apportionment: 77,250, i.e., about 38,625 each. Thus, for the FTC, the estimated number of respondents for its calculations is 160,875 (122,250 + 38,625).

⁹ Assumption: 5 hours per month per respondent.

¹⁰ Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013": <http://www.bls.gov/news.release/ocwage.htm>. This is an update of the labor information used in the February 27, 2014 Notice. The newer table shows \$17.22 as the mean hourly wage for correspondence clerks.

clearance period sought will be approximately \$17,281. This represents one-tenth of an attorney work year, and includes employee benefits.

15. Program Changes or Adjustments

The decrease from the previously cleared 13,319,471 burden hours to the currently estimated 9,652,500 hours reflects the elimination of prior accounting for one-time burdens associated with the RBP Rule's initial implementation. The current time estimates reflect solely the recurring burden of complying with the Rules.

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 Certification for PRA Submissions

Not applicable.