

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 December 31, 2015, the current Paperwork Reduction Act (“PRA”)¹ clearance for the FTC’s shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the disclosure 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 Accordingly, the Commission rescinded several rules under the Fair Credit Reporting Act, including the FTC’s Free Annual File Disclosures Rule that appeared under 16 C.F.R. Parts 610 and 698.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

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).

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.

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 80 Fed. Reg. 46,988 (Aug. 6, 2015). No relevant comments were received. Pursuant to PRA implementing regulations under 5 C.F.R. Part 1320, the Commission is providing a second opportunity for public comment on the instant burden analysis, 80 Fed. Reg. 66,005 (Oct. 28, 2015), contemporaneous with this submission.

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: 198,176 hours (and \$3,638,215, 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 170,905 hours and \$6,110,000 in non-labor/capital costs. Associated labor costs are \$3,069,239. 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 had once 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 subpart N,⁴ an annual rate of about 26 million requests per year. When it last sought clearance renewal for the Rule, the FTC had been unable to obtain, through public comment or otherwise, updated information on request volume. As a proxy, it then assumed a volume of 30 million requests per year. We expect that the number of requests for free annual credit reports will rise over the next three years because of increases in the population and consumer awareness that they are entitled to a free annual report. As a proxy, we will now use an estimate of 35 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. However, 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. 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. This activity also is treated as an annual recurring burden necessary to obtain, maintain, and adjust automated call center capacity.

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).

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 35 million, or 350,000) 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 58,333 hours of time. [(350,000 x 10 minutes)/60 minutes = 58,333 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 1,732,500⁵) 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 288,750 clerical hours. [(1,732,500 x 10 minutes)/60 minutes = 288,750 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 credit reports 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 2,082,500 requests each year for free annual file disclosures by mail.⁶ Based on their knowledge of the industry, staff estimates that, of the predicted 2,082,500 mail requests, 10% (or 208,250) 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 34,708 hours. [(208,250 instructions x 10 minutes)/60 minutes per hour].

⁵ This figure reflects five percent of all requests, net of the estimated one percent of all requests that might initially be made by mail. That is, $.05 \times (35,000,000 - 350,000) = 1,732,500$.

⁶ This figure includes both the estimated 1% of 35 million requests that will be made by mail each year (350,000), and the estimated 1,732,500 requests initially made over the Internet or telephone that will be redirected to the mail process (see *supra* note 5).

F. Labor Costs

Labor costs are derived by applying hourly cost figures to the burden hours described above. Staff anticipates that processing of requests for annual file disclosures and instructions will be performed by clerical personnel, and estimates that the processing will require 381,791 hours at a cost of \$6,322,459. [(58,333 hours for handling initial mail request + 288,750 hours for handling requests redirected to mail + 34,708 hours for handling instructions mailed to consumers) x \$16.56 per hour.⁷]

As elaborated on above, staff estimates that a total of 14,560 labor hours will be needed to negotiate or renegotiate outsourced service contracts annually (or as conditions otherwise change) to increase internet (8,320 hours) and telephone (6,240 hours) capacity requirements for internet web services and the automated telephone call center. This will result in approximately \$953,971 per year in labor costs. [14,560 hours x \$65.52 per hour.⁸]

Thus, estimated cumulative labor will costs are \$7,276,430.

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

After halving the updated estimates above to split the PRA burden with the CFPB regarding the Rule, the FTC's burden totals are 198,176 hours and \$3,638,215 in associated labor costs. Non-labor/capital costs are discussed below.

13. Estimated Capital and Other Non-Labor Costs

As in the previous PRA clearance analysis, 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

⁷ See *Occupational Employment and Wages – May 2014*, Table 1, available at <http://www.bls.gov/news.release/ocwage.nr0.htm> (Office and administrative support workers, general).

⁸ 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 2014 Bureau of Labor Statistics (BLS) rate (\$65.52) for computer and information systems managers. See *Occupational Employment and Wages – May 2014*, Table 1, available at <http://www.bls.gov/news.release/ocwage.nr0.htm>. Thus, the estimated setup and maintenance cost for an Internet system is \$545,126 per year (8,320 hours x \$65.52/hour). 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 \$65.52, estimated setup and maintenance cost is \$408,845 (6,240 x \$65.52) per year.

requests handled by the systems. Staff estimates that the total annual amount to be paid for services delivered under these contracts is \$11,931,500.⁹ After halving this updated estimate to split the PRA burden with the CFPB regarding the Rule, the FTC's apportioned estimate is \$5,965,750.

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 \$95,000 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 27,271 hours and \$568,976 in labor costs, and a \$144,250 decrease in capital/non-labor cost, over the currently cleared FTC burden totals, after the halving for shared interagency enforcement. The increases are largely attributable to, respectively, an increased estimate of the projected number of requests for free annual file disclosures (as detailed above) and updated hourly wage estimates for labor costs. The decrease in estimated non-labor/capital costs primarily owes to an erroneous unit cost input in 2012 in calculating estimated automated telephone costs. The entry had been \$1.82, but \$1.37 was the intended input at the time. Secondly, the decrease in those costs is attributable to a modest decline in unit cost (from \$1.37, as intended, in 2012, to \$1.33 now) for the current calculation.

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.

⁹ This consists of an estimated \$7,913,500 for automated telephone cost (\$1.33 per request x 5.95 million requests) and an estimated \$4,018,000 (\$0.14 per request x 28.7 million requests) for Internet web service cost. Per unit cost estimates are based on staff's knowledge of the industry.