

**Supporting Statement for the
Prescreen Opt-Out Notice Rule 16
C.F.R. § 642; 12 C.F.R. §1022.54
(OMB Control No. 3084-0132)**

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

The Prescreen Opt-Out Notice Rule

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). The Prescreen Opt-Out Notice Rule (“Rule”) published in the Federal Register on January 31, 2005 (70 Fed. Reg. 5,022), 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. § 698, Appendix A) that they may use to comply with the Rule.

Subpart F of CFPB Regulation V

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 prescreen opt-out provisions of the Fair Credit Reporting Act (“FCRA”),² on July 21, 2011.³ The FTC retains rulemaking authority for its Prescreen Opt-Out Notice Rule, 16 CFR § 642, 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 Additionally, the FTC shares enforcement authority with the CFPB for provisions of Regulation V that apply to other entities. Thus, the

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

² 15 U.S.C. §1681 *et seq.*

³ Dodd-Frank Act, at § 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 Fed. Reg. 57,252, 57,253 (Sept. 20, 2010); *see also* Dodd-Frank Act, at section 1062.

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

FTC and CFPB have overlapping enforcement authority for many entities subject to the CFPB rule and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

On December 21, 2011, the CFPB issued its interim final FCRA rule, Regulation V, including the prescreen opt-out provisions of subpart F, 12 C.F.R. § 1022.54.⁵ Subpart F became effective on December 30, 2011, and is codified at 12 C.F.R. § 1022.54. Regulation V does not affect the pre-existing requirements of the FCRA. Contemporaneous with the issued interim final rule, 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 above. The discussion below continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

NOTE: "Rule" when used below references the FTC's Prescreen Opt-Out Notice Rule. "Rules" refers collectively to the FTC Rule and subpart F of the CFPB's Regulation V.

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

Affected entities may use any existing technology relevant to producing the required notice, obtaining the consumer opt out determination, and maintaining records of the notice and opt out determination. The required notices are standardized and computer-generated. 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 Rules preclude electronic solicitations from being accompanied by a similar electronic notice. As such, the Rules are 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 Rules' 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 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. The Rules' notice requirements are designed to impose the minimum burden on all affected members of the industry, regardless of size. The minimal impact on creditors and insurers would likely consist of revising notices that they

⁵ 76 Fed. Reg. 79,308 (Dec. 21, 2011).

already give in order to make the notices simple and easy to understand, and the Rules contain 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 Rules are 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 Rules, as required by 5 C.F.R. § 1320.8(d). See 81 Fed. Reg. 33,255 (May 25, 2016). 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 information collection provisions of the Rules.

(9) Payments and Gifts to Respondents

Not applicable.

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

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

(12) Estimated Annual Hours and Labor Cost Burden

The current FTC apportionment of its share of PRA burden is the following:

Total Number of Respondents: 499
Total Burden Hours: 998
Total Labor Costs: \$249,500
Total Capital/Non-Labor Costs: \$0.

These figures were determined as follows:

A. Number of Respondents

FTC staff estimates that between 500 and 750 entities make prescreened solicitations. Staff

conservatively assumed the high-end of this range for further apportioning. From the total of 750 respondents, FTC staff assumed a 33% “carve-out”⁶ to the FTC for the above-noted motor vehicle dealers. This resulted in an estimate of 248 motor vehicle dealers subject to the FTC’s jurisdiction. After deducting the latter figure from the total of 750 respondents, 502 respondents were left to divide 50:50 between the agencies. With rounding, the FTC apportioned 251 of those respondents to its burden estimates; adding to that the estimated total of 248 motor vehicle dealers resulted in 499 respondents for the FTC.

B. FTC Share of Burden Hours: 998 hours

Staff assumed that respondents will each spend approximately 2 hours to monitor compliance with the Rule. Thus, 499 respondents for the FTC multiplied by the two hour estimate per respondent resulted in 998 burden hours apportioned to the FTC.

C. FTC Share of Labor Costs: \$249,500

Staff assumed that in-house legal counsel for respondents would handle most of the compliance review, and at an estimated average hourly wage of \$250 per hour.

Based on staff’s review of industry data and its experience in this area, we have no information to suggest that these figures are not still valid.

(13) **Capital and Other Non-labor Costs**

Capital and other non-labor costs for the FTC Rule should be minimal, at most, since the Rule has been in effect several years, with covered entities (i.e., certain motor vehicle dealers, as specified above) 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 Rules’ notice requirements.

⁶ For purposes of estimating its motor vehicle dealer furnisher carve-out, the FTC has assumed that 33% of the respondents constitute the number of motor vehicle dealers over which the FTC retains exclusive jurisdiction under the Dodd-Frank Act. To derive this 33% estimate, FTC staff divided an estimated number of car dealers—62,750 (based on industry data for the number of franchise/new car and independent/used car dealers) by 199,500 (Commission staff’s PRA estimate of the number of entities that extend credit to consumers subject to FTC jurisdiction under the FCRA, pre-Dodd-Frank, for the Risk-Based Pricing regulations, as detailed at 75 FR 2724, 2748 n.18 (Jan. 15, 2010)). This came out to 31%. Staff increased this amount to 33% to account for other motor vehicle dealer types (motorbikes, boats, other recreational) also covered within the definition of “motor vehicle dealer” under section 1029(a) of the Dodd-Frank Act.

(15) **Program Changes or Adjustments**

The FTC's estimated burden was adjusted slightly upward (from 974 hours in 2013 up to 998 hours in 2016) due to a slightly higher estimate of motor vehicle dealers subject to the Rule's requirements (from 55,417 in 2013 up to 62,750 in 2016).

(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.