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").

Under §§ 640.3 - 640.4 of the FTC's RBP Rule[5] and §§ 1022.72 - 1022.73 of the CFPB Rule,[6] 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

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[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] 16 CFR 640.3, - 640.4.

[6] 12 CFR 1022.72, -1022.73.

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 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 FTC most recently sought public comment on the PRA aspects of the Rule, as required by 5 C.F.R. 1320.8(d). *See* 82 Fed. Reg. 12,452 (March 3, 2017). One relevant comment was received in response to the FTC's March 3, 2017 Federal Register Notice.[7] The commenter, the National Automobile Dealers Association ("NADA"), suggested that many dealers face compliance costs beyond those that the FTC had estimated for affected entities ("respondents") to modify and distribute notices. According to NADA, these compliance costs include:

> (a) obtaining those reports, including (i) the direct costs from the CRA's, (ii) the personnel costs associated with obtaining the reports, and (b) the direct and indirect costs of properly handling, storing, and disposing the notices.

Additionally, NADA contended that the FTC's estimate of hours burden does not contemplate the burden associated with "obtaining, and properly handling, storing, and disposing of the information in the [credit] reports."

The FTC believes that its burden estimates do not need to be increased. NADA's suggestion that compliance with the Rule compels its members to purchase consumer credit scores is incorrect. Automobile dealers, and all other respondents, are covered by the Rule *only if* they already use consumer reports and/or credit scores to set the terms of credit they offer to consumers. Because respondents already are using consumer reports and have access to the information necessary to provide the notices, the Rule does not impose, directly or indirectly, the additional cost of purchasing consumer reports or credit scores.

NADA's comment focuses on automobile dealers that are engaged in three-party financing transactions, in which a dealer agrees to extend financing to a consumer and then assigns the loan to a third party, such as a bank or financing company. In this scenario, automobile dealers will obtain certain personal information from consumers, along with an authorization to obtain their consumer reports, and will shop the information to several potential financing sources. These financing sources will pull consumer reports in order to determine the "buy rate" at which the financing source would agree to purchase the contract. The automobile dealer uses a consumer report in setting the retail financing rate for the credit because it uses the "buy rate" offered by the third-party financing source to set the rate offered to the consumer. In some instances, the dealer may not have physically accessed the consumer report. Nevertheless, the FTC has always maintained that the Rule covers these dealers since they are the original creditor in a transaction that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit. The FTC's interpretation of the Rule was upheld by the D.C. District Court in *Nat'l Auto Dealers Ass'n v. FTC*, 854 F. Supp. 2d 65 (D.D.C. May 22, 2012).

[7] https://www.ftc.gov/policy/public-comments/initiative-702.

This interpretation that dealers are "original" creditors under the Rule does not impose the vast costs that NADA suggests. As the court in *Nat'l Auto Dealers Ass'n* noted in its decision, ". . .given the preexisting channels between financing sources and auto dealers (to convey, for example, credit applications and loan rates), the dealer could get the credit information from the financing source as well…[the FTC's interpretation] does not mandate an impossibility nor does it obligate them to purchase a consumer report."[8] Indeed, the dealer could require simply that the financing source pass on to the dealer the credit score it obtained on the consumer. Although the Rule does allow dealers to comply by providing all consumers with their credit scores, nothing in the Rule mandates this course of action.

Moreover, automobile dealers already handle, maintain, store, and dispose of sensitive personal information about consumers (e.g., credit applications, financing contracts etc.). Thus, the FTC does not believe that the Rule imposes an additional burden when it comes to the handling, storing, and disposing of consumer report information.

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 9,652,500 hours based on an estimated population of 160,875 entities apportioned to FTC enforcement and/or rulemaking authority.

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 updated estimates:

[8] *Nat'l Auto Dealers Ass'n v. FTC*, 864 F. Supp. 2d 65, n.17 (D.D.C. May 22, 2012).

A. Estimated number of respondents: 160,250[9]

B. Burden Hours: 9,615,000

Yearly recurring burden of 60 hours per respondent[10] to modify and distribute notices x 160,250 respondents = 9,615,000 hours, cumulatively.

C. Labor Costs: $174,127,650

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 $18.11, [11] to modify and distribute notices to consumers, for a cumulative labor cost total of $174,127,650.

D. Capital/Non-Labor Costs: $0

The FTC believes that the FTC and CFPB 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.

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[9] 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 https://www.ncua.gov/Legal/Documents/Reports/annual-report-2015.pdf . For purposes of estimating the burden, Commission staff conservatively assumed 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 estimates there are approximately 121,000 motor vehicle dealers, determined as follows: 86,442 car dealers per NAICS data (49,905 new car dealers, 36,537 used car dealers) + [3,191 Recreational Vehicle Dealers; 7,185 boat dealers; 24,157 motorcycle, ATV/All Other Motor Vehicle Dealers] = 120,975. See https://www.naics.com/six-digit-naics/?code=4445. Excluding the estimated number of motor vehicle dealers, 121,000, from the estimated overall number of affected entities, 199,500, leaves 78,500 as the number of respondents for the agencies' 50:50 apportionment: 78,500, i.e., 39,250 each. Thus, for the FTC, the estimated number of respondents for its calculations is 160,250 (121,000 + 39,250).

[10] Assumption: 5 hours per month per respondent.

[11] https://www.bls.gov/news.release/ocwage.htm: Bureau of Labor Statistics, Economic News Release, March 31, 2017, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016." This is an update of the labor information used in the FTC's March 3, 2017 Federal Register Notice. The newer table shows $18.11 as the mean hourly wage for correspondence clerks, an increase from $17.47 previously used.

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 clearance period sought will be approximately $17,809. This represents one-tenth of an attorney work year (tied, conservatively, to the 2017 annual pay of a General Schedule Grade 15, Step 10, senior federal employee, with locality pay adjustment) and includes employee benefits.

15. Program Changes or Adjustments

There are no program changes. A slight reduction in estimated burden hours from the existing clearance (9,652,500) to the current estimate (9,615,000) is a direct result of the current, slightly reduced estimated number of affected respondents (160,875 to 160,250).

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.