

Federal Trade Commission
Supporting Statement for Information Collection Provisions in the Identity Theft
Red Flags, Card Issuers, and Address Discrepancies Rules
(OMB Control #: 3084-0137)

The Federal Trade Commission (“FTC” or “Commission”) requests renewed Office of Management and Budget (“OMB”) clearance for the collections of information in the rules implementing sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ and the Red Flags Program Clarification Act of 2010 (“Clarification Act”).² These rules³ enhance the ability of consumers to resolve problems caused by identity theft and increase the accuracy of consumer reports.

1. Necessity for Collecting and Retaining the Information

FACT Act Section 114

Section 114 of the FACT Act, 15 U.S.C. § 1681m(e), amended section 615 of the Fair Credit Reporting Act (“FCRA”) to require the Commission, among other things, to issue:

A regulation requiring each financial institution and creditor to develop and implement a written Identity Theft Prevention Program (“Program”) to detect, prevent, and mitigate identity theft in connection with existing accounts or the opening of new accounts (“Red Flags Rule”); and

A regulation generally requiring credit and debit card issuers to assess the validity of change of address requests (“Card Issuers Rule”).

FACT Act Section 315

Section 315 of the FACT Act, 15 U.S.C. § 1681c(h), amended section 605 of the FCRA to require the Federal Trade Commission to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (“Address Discrepancies Rule”). On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted. The Dodd-Frank Act

¹ Pub. L. 111-203 (2010).

² Red Flag Program Clarification Act of 2010, 15 U.S.C. 1681m(e)(4).

³ Red Flags Rule (16 C.F.R. 681.1); Card Issuers Rule (16 C.F.R. 681.2); and Address Discrepancies Rule (16 C.F.R. 641) (collectively, “Rules”).

substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Bureau of Consumer Financial Protection the Commission's rulemaking authority under portions of the FCRA. The FTC retained rulemaking and enforcement authority for the Address Discrepancy Rule to the extent the rule applies to 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 them, or both. See 77 Fed. Reg. 22200, 22201 (Apr. 13, 2012). The Commission is authorized to maintain the Address Discrepancy Rule pursuant to section 1029(c) of the Dodd-Frank Act and section 504(a) of the Gramm-Leach-Bliley Act, and the rule remains in effect to the extent that it applies to motor vehicle dealers. *Id.* The FTC also retains its authority to bring law enforcement actions to enforce both its Address Discrepancy Rule and the Bureau of Consumer Financial Protection's corresponding rule. *Id.*

The rule requires covered motor vehicle dealers that use consumer reports ("users") to develop and implement reasonable policies and procedures to:

Enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report, and

Reconcile the address of the consumer with the consumer reporting agency, if the user establishes a continuing relationship with the consumer and regularly and in the ordinary course of business furnishes information to the consumer reporting agency.

2. Use of the Information

FACT Act Section 114

As required by section 114, the Red Flags Rule requires financial institutions and covered creditors within the FTC's jurisdiction to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The Red Flags Rule also requires each covered entity to establish reasonable policies and procedures to address the risk of identity theft. In addition, each covered entity must create a Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the Red Flags Rule. In addition, staff of covered entities must be trained to carry out the Program.

Further, the Card Issuers Rule requires credit card and debit card issuers to develop policies and procedures to assess the validity of a request for a change of address under certain circumstances. Each credit and debit card issuer must establish policies and procedures to assess the validity of a change of address request. The card issuer must notify the cardholder or use another means to assess the validity of the change of address.

FACT Act Section 315

As required by section 315, the Address Discrepancies Rule provides guidance on reasonable policies and procedures that a covered motor vehicle dealer that is a user of consumer reports must follow when the user receives a notice of address discrepancy from a consumer reporting agency. Each user of consumer reports that is a motor vehicle dealer described in section 1029(a) of the Dodd-Frank Act that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both, must develop and implement reasonable policies and procedures that it will follow when it receives a notice of address discrepancy from a consumer reporting agency. In certain instances, the user must furnish an address that the user has reasonably confirmed to be accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

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 permit covered financial institutions (including motor vehicle dealers), creditors, and credit card users great latitude in using new technologies to reduce compliance costs. Nothing in the Rules precludes the use of electronic methods for compliance purposes. For example, the Red Flags Rule was drafted to be flexible and in a technologically neutral manner so that covered entities would not be forced to acquire expensive new technology in order to comply with that rule.

4. Efforts to Identify Duplication/Availability of Similar Information

FTC staff has not identified any other federal or state statutes, rules, or policies that duplicate, overlap, or conflict with the Rules. To the extent that there exist any such state laws, sections 114 and 314 of the FACT Act preempt them.

5. Efforts to Minimize Burdens on Small Businesses

Although the reach of the Red Flags Rule is broad, the Rule nonetheless permits maximum flexibility, enabling each covered entity to prepare a Program tailored to its particular size, sophistication, and prior experience with identity theft. Moreover, since promulgation of the original Rule, President Obama signed the Clarification Act, which narrowed the definition of “creditor” for purposes of section 114 of the FCRA. Specifically, only those creditors using consumer reports, furnishing information to consumer reporting agencies, or advancing funds are now covered by the Red Flags Rule. As a practical matter, this means that many small businesses no longer fall within the scope of the Rule.

The Address Discrepancies Rule and Card Issuers Rule minimize the burden on covered businesses – including small businesses – by building upon standard business practices, many of which were in use before these two rules were promulgated. As noted above, only users of consumer reports that are motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act and that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both, are covered under the Address Discrepancies Rule. It is the usual and customary business practice for users covered by the Address Discrepancies Rule to furnish information to consumer reporting agencies in response to notices of address discrepancies. Similarly, many entities covered by the Card Issuers Rule routinely assess the validity of change of address requests and, for the most part, have automated the process for doing so. Accordingly, the burden on businesses covered by the Address Discrepancies Rule and Card Issuers Rule is minimal.

6. Consequences of Conducting Collection Less Frequently

The burden associated with the Rules is largely attributable to the policies and procedures that a covered entity must develop to create a Program, to assess the validity of a change of address request, or to respond to notices of address discrepancy. Once they are developed, these policies and procedures will only need to be adjusted if they become ineffective. Similarly, staff of covered entities will need to be trained only once, unless policies and procedures change.

The Red Flags Rule requires annual reports to the board or senior management of covered entities. The Commission believes that the board, a committee of the board, or senior management should monitor compliance through the review of annual reports that assess the effectiveness of the entity's Program.

7. Circumstances Requiring Disclosures Inconsistent with Guidelines

The collection of information required by the Rules is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

8. Consultation Outside the Agency/Public Comments

In addition to past consultations and public comments sought for the Rule when it was proposed, the Commission more recently sought public comment regarding its latest PRA clearance request for this Rule. *See* 83 Fed. Reg. 39,096 (August 8, 2018). 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, 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 the Rules do not require financial institutions or creditors to register or file any documents with the Commission. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality protections of sections 6(f) and 21 of the FTC Act, 15 U.S.C. §§ 46(f), 57b-2 will apply.

12. Estimated Annual Hours Burden and Associated Labor Costs

1,385,290 total burden hours (1,328,823 hours for section 114 + 56,467 hours for section 315); **\$66,185,200, labor costs** (\$65,112,327 for section 114 and \$1,072,873 for section 315)⁴

Section 114: Red Flags and Card Issuers Rules

A. Red Flags Rule

Affected Public: Utilities; motor vehicle dealerships; telecommunications firms; colleges and universities; hospitals; nursing homes; public warehouse and storage firms; fuel dealers; financial transaction processing firms; other persons satisfying the definition of “creditor,” as modified by the Clarification Act.

Estimated Hours Burden: 1,261,855 hours

The Red Flags Rule requires financial institutions and certain creditors with covered accounts to develop and implement a written Program and report to the board of directors, a committee thereof or senior management at least annually on compliance with the Rule. Under the Rule, a “financial institution” is “a State or National bank, a State or Federal saving and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a

⁴ These figures correct the summarized totals that appeared in the FTC’s August 8, 2018 *Federal Register Notice*, 83 Fed. Reg. 39,096, at Part II. (p. 39,097) and Part III. C. (p. 39,099). They are reflected correctly in the FTC’s ensuing *Federal Register Notice* that coincides with this document’s submission to OMB.

transaction account (as defined in section 19(b) of the Federal Reserve Act, 12 U.S.C. ch. 3) belonging to a consumer.”⁵

Under the Rule, “creditor” has the same meaning as in section 702 of the Equal Credit Opportunity Act (ECOA).⁶ The Clarification Act, however, narrows the definition to those creditors that use consumer reports, furnish information to consumer reporting agencies, or advance funds. As a result, many small businesses, service providers, and other persons that would ordinarily satisfy the ECOA definition of “creditor” will nonetheless be excluded from the definition of “creditor” for purposes of the Red Flags Rule.

Nonetheless, the scope of entities covered by the Red Flags Rule within the FTC’s jurisdiction is broad, making it difficult to determine precisely the number of financial institutions and creditors that are subject to the FTC’s jurisdiction. There are numerous businesses under the FTC’s jurisdiction and there is no formal way to track them; moreover, as a whole, the entities under the FTC’s jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the Red Flag Rule’s requirement to have a written Program affects over 6,278 financial⁷ institutions and almost 151,307 creditors.⁸

To estimate burden hours for the Red Flags Rule under section 114, FTC staff has divided affected entities into two categories, based on the nature of their businesses: (1) entities that are subject to a high risk of identity theft;⁹ and (2) entities that are subject to a low risk of identity theft.¹⁰

⁵ The Rule refers to the definition of “financial institution” that is found in FCRA, 15 U.S.C. § 1681a(t).

⁶ 15 U.S.C. §1681a(r)(5).

⁷ The total number of financial institutions is derived from an analysis of state credit unions and insurers within the FTC’s jurisdiction using 2015 Census data (“County Business Patterns,” U.S.) and other online industry data.

⁸ The total number of creditors draws from FTC staff analysis of 2015 Census data and industry data for businesses or organizations that market goods and services to consumers or other businesses or organizations subject to the FTC’s jurisdiction, reduced by entities not likely to: (1) obtain credit reports, report credit transactions, or advance loans; and (2) entities not likely to have covered accounts under the Rule.

⁹ In general, high-risk entities include, for example, financial institutions within the FTC’s jurisdiction and utilities, motor vehicle dealerships, telecommunications firms, colleges and universities, and hospitals.

¹⁰ Low-risk entities have a minimal risk of identity theft, but have covered accounts. These include, for example, public warehouse and storage firms, nursing and residential care facilities, automotive equipment rental and leasing firms, office supplies and stationery stores, fuel dealers, and financial transaction processing firms.

1. High-Risk Entities

FTC staff estimates that high-risk entities will each require 25 hours to create and implement a written Program, with an annual recurring burden of one hour. FTC staff anticipates that these entities will incorporate into their Programs policies and procedures that they likely already have in place. Further, FTC staff estimates that preparation of an annual report will require each high-risk entity four hours initially, with an annual recurring burden of one hour. Finally, FTC staff believes that many of the high-risk entities, as part of their usual and customary business practices, already take steps to minimize losses due to fraud, including conducting employee training. Accordingly, only relevant staff need to be trained to implement the Program: for example, staff already trained as part of a covered entity's anti-fraud prevention efforts do not need to be re-trained except as incrementally needed. FTC staff estimates that training in connection with the implementation of a Program of a high-risk entity will require four hours, and recurring annual training thereafter will require one hour. Thus, the estimated hours burden for high-risk entities is as follows:

- 94,052 high-risk entities subject to the FTC's jurisdiction at an average annual burden of 13 hours per entity [average annual burden over 3-year clearance period for creation and implementation of Program $((25+1+1) \div 3)$, plus average annual burden over 3-year clearance period for staff training $((4+1+1) \div 3)$, plus average annual burden over 3-year clearance period for preparing annual report $((4+1+1) \div 3)$, for a total of 1,222,676 hours.

2. Low-Risk Entities

FTC staff believes that the burden on low-risk entities to comply with the rules is minimal. Entities that have a low risk of identity theft, but that have covered accounts, likely will only need a streamlined Program. FTC staff estimates that such entities will require one hour to create such a Program, with an annual recurring burden of 5 minutes. Training staff of low-risk entities to be attentive to future risks of identity theft should require no more than 10 minutes in an initial year, with an annual recurring burden of 5 minutes. Thus, the estimated hours burden for low-risk entities is as follows:

- 63,533 low-risk entities¹¹ that have covered accounts subject to the FTC's jurisdiction at an average annual burden of approximately 37 minutes per entity [average annual burden over 3-year clearance period for creation and

¹¹ This figure is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses that market goods or services to consumers or other businesses within the FTC's jurisdiction, reduced further by: (1) those that satisfy the Clarification Act's definition of "creditor" and (2) those that are likely to have covered accounts.

implementation of streamlined Program $((60+5+5) \div 3)$, plus average annual burden over 3-year clearance period for staff training $((10+5+5) \div 3)$, plus average annual burden over 3-year clearance period for preparing annual report $((10+5+5) \div 3)$, for a total of 39,179 hours.

B. Card Issuers Rule

Affected Public: State-chartered credit unions; general merchandise stores; colleges and universities; telecommunications firms; and other persons satisfying the definition of “creditor,” as modified by the Clarification Act.

Estimated Hours Burden: 66,968 hours

The Card Issuers Rule requires credit and debit card issuers to establish policies and procedures to assess the validity of a change of address request, including notifying the cardholder or using another means of assessing the validity of the change of address. FTC staff believes that there may be as many as 16,742 credit or debit card issuers under the FTC’s jurisdiction, including state-chartered credit unions, retailers, and certain universities, businesses, and telecommunications companies. FTC staff estimates that most of these card issuers already have automated the process of notifying the cardholder or are using other means to assess the validity of the change of address, such that implementation will pose no further burden. Nevertheless, in order to be conservative, FTC staff estimates that it will take the 16,742 card issuers four hours to develop and implement policies and procedures to assess the validity of a change of address request for a total burden of 66,968 hours.

Section 315 - Address Discrepancies Rule:

Affected Public: Users of consumer reports that are motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act and that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both (below, referenced as “users”).

Estimated Hours Burden:

As discussed above, the Address Discrepancies Rule provides guidance on reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency. Assuming that every covered motor vehicle dealer is a user of consumer reports, FTC staff estimates that the Rule affects approximately 121,000 entities.¹²

¹² See 82 Fed. Reg. 12,452 (March 3, 2017). This represents a substantial reduction of FTC staff’s stated estimate (1,967,167 entities) in the August 8, 2018 *Federal Register* Notice published as part of

FTC staff estimates that it would take an infrequent user of consumer reports no more than 16 minutes to develop and follow the policies and procedures that it will employ when it receives a notice of address discrepancy, whereas a frequent user may take one hour. Similarly, FTC staff estimates that, during the remaining two years of the clearance, it may take an infrequent user no more than one minute to comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, whereas a frequent user may take 45 minutes. Taking into account these extremes, FTC staff estimates that, during the first year of the clearance, it will take users of consumer reports an average of 38 minutes [the midrange between 16 minutes and 60 minutes] to develop and comply with the policies and procedures that they will employ when they receive a notice of address discrepancy. FTC staff also estimates that the average recurring burden during the remaining two years of the clearance period will be 23 minutes [the midrange between one minute and 45 minutes].

Thus, for these 121,000 entities, the average annual burden for each of them to perform these collective tasks will be 28 minutes $[(38+23+23) \div 3]$; cumulatively, 56,467 hours.¹³

Estimated Labor Cost: \$66,187,157 (\$65,112,327 for section 114 and \$1,072,873 for section 315):

Section 114: Red Flags and Card Issuers Rules

FTC staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. It is difficult to calculate with precision the labor costs associated with the Rules, as they entail varying compensation levels of management and/or technical staff among companies of different sizes. In calculating

the current pursuit of renewed OMB clearance. The prior estimate did not reflect a statutory change pursuant to the Dodd-Frank Act that significantly reduced the scope of the Rule. The FTC Address Discrepancy Rule covers only users of consumer reports that are motor vehicle dealers described in section 1029(a) of that Act and that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both.

¹³ The above-noted customer verification requirements and the estimate of 56,467 hours concern 16 C.F.R. 641.1(c). In addition, 16 C.F.R. 641.1(d) requires users that (a) furnish a consumer's address to a consumer reporting agency, and (b) have established a continuing relationship with the consumer, to develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed is accurate. Staff previously estimated that of almost 2 million users of consumer reports covered by 16 C.F.R. 641.1(c), 10,000 would also be required to comply with 16 C.F.R. 641.1(d). 83 Fed. Reg. 39,099. However, given the Rule's significantly reduced scope (see supra note 12), a correlating reduced estimated number of entities (121,000) covered under 16 C.F.R. 641.1(c), a still lower number of entities to which 16 C.F.R. 641.1(d) and its address verification requirements applies, at an estimated 10 minutes, annualized, per entity to comply, the cumulative burden hours associated with 16 C.F.R. 641.1(d) would be *de minimis*. Thus, the estimate above concerns solely 16 C.F.R. 641.1(c).

the cost figures, staff assumes that entities, professional technical personnel and/or managerial personnel will create and implement the Program, prepare the annual report, train employees, and assess the validity of a change of address request at an hourly rate of \$49.¹⁴

Based on the above estimates and assumptions, the total annual labor costs for all categories of covered entities under the Red Flags and Card Issuers Rules for section 114 is \$65,112,327 (1,328,823 hours x \$49).

Section 315 - Address Discrepancies Rule

FTC staff assumes that the policies and procedures for compliance with the Address Discrepancies Rule will be set up by administrative support personnel at an hourly rate of \$19.¹⁵ Based on the above estimates and assumptions, the total annual labor cost for the two categories of burden under section 315 is \$1,072,873 [(56,467 hours x \$19)].

13. Estimated Capital and Other Non-Labor Costs

The FTC staff 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 described herein.

14. Estimated Cost to the Federal Government

FTC staff estimates that a representative year's cost to the FTC of administering the Rules requirements during the 3-year clearance period sought will be approximately \$65,516. This represents three-tenths of an attorney work year, including employee benefits.

¹⁴ This estimate is based on mean hourly wages found at <http://www.bls.gov/news.release/ocwage.t01.htm> ("Bureau of Labor Statistics, Economic News Release," March 30, 2018, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017") for the various managerial and technical staff support exemplified above (administrative service managers, computer & information systems managers, training & development managers, computer systems analysts, network & computer systems analysts, computer support specialists) (hereinafter "BLS Table 1").

¹⁵ This estimate – rounded to the nearest dollar – is based on mean hourly wages for various administrative personnel (computer operators; data entry and information processing workers; word processors and typists) found within BLS Table 1 (*see supra* note 14).

15. Program Changes or Adjustments

The chief change is a corrective adjustment to the estimated population subject to section 315 of the FACT Act, which previously had been greatly overstated. The prior estimate failed to recognize that, pursuant to the Dodd-Frank Act, the FTC Address Discrepancy Rule covers only users of consumer reports that are motor vehicle dealers described in section 1029(a) of that Act and that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of them, or both. Separately, prior estimated labor costs for FACT Act section 114 were overstated due to an averaging error in calculating an hourly wage for “professional technical personnel and/or managerial personnel.” (Hence, the current reduction from \$54 to \$49 per hour for that classification.)

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 Certifications for PRA Submissions

Not applicable.