

Supporting Statement for Information Collection
Regulation V, Subpart N (formerly, the Free Annual File Disclosures Rule)
12 CFR §§ 1022.130 - 1022.138
(OMB Control No. 3084-0128)

The Federal Trade Commission (“FTC” or “Commission”) seeks to extend for three years, 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 Accordingly, the Commission rescinded several rules under the Fair Credit Reporting Act (“FCRA”), including the FTC’s Free Annual File Disclosures Rule that appeared under 16 C.F.R. Parts 610 and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notice.³ Subpart N of Regulation V continues the disclosure requirements that had previously existed under the FTC’s rescinded Free Annual File Disclosures Rule.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 streamlined process for consumers to request annual file disclosures. This streamlined process

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).

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 83 Fed. Reg. 43,683 (Aug. 27, 2018). No relevant public 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. Since the FTC sought public comment on August 27, 2018, the Consumer Data Industry Association (“CDIA”) provided an updated estimate regarding the number of free annual file disclosures requested by consumers through the centralized Internet website required to be established by the FACT Act and subpart N. Accordingly, the FTC updated the PRA burden analysis based on this data.

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 and Labor Burden

Burden statement:

Because the FTC shares enforcement authority with the CFPB for subpart N, the two agencies split between them the related estimate of PRA burden for firms under their co-enforcement jurisdiction. The overall burden calculations attributable to the CFPB and the FTC are set out below. In summary after splitting between the two agencies, the estimated annual burden solely for FTC would be 176,360 hours and \$3,560,755 in associated labor costs.

A. Requests per Year from Consumers for Free Annual File Disclosures

The CDIA estimated that in 2016 and 2017, the nationwide consumer reporting agencies provided on average approximately 25 million free annual file disclosures through the centralized Internet website required to be established by the FACT Act and subpart N. Based on its knowledge of the industry, FTC staff believes that the consumer reporting agencies provided no more than 6 million free annual file disclosures through the centralized toll-free telephone number and postal address required to be established by the FACT Act and subpart N. Accordingly, we are

now estimating 31 million requests per year as a representative average year to estimate PRA burden for purposes of the instant analysis. 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 35 million requests per year. The CDIA attributes this decrease to the many new and alternative channels where consumers can access credit reports.

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 and \$598,957 in labor costs.⁴ 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 at a cost of \$449,218 in labor costs.⁵ This activity also is treated as an annual recurring burden necessary to obtain, maintain, and adjust automated call center capacity.

⁴ 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 four full-time equivalent employees (“FTE”) for the web service contracts. Thus, staff estimates that administering the contract will require four FTE, which is 8,320 hours per year (four FTE x 2,080 hours/year). The cost is based on the reported May 2017 Bureau of Labor Statistics (BLS) rate (\$71.99) for computer and information systems managers. See *Occupational Employment and Wages – May 2017*, Table 1, available at <https://www.bls.gov/news.release/ocwage.t01.htm>. Thus, the estimated setup and maintenance cost for an Internet system is \$598,957 per year (8,320 hours x \$71.99/hour).

⁵ Staff estimates that recurring contracting for automated telephone capacity will require approximately three FTE, a total of 6,240 hours (3 x 2,080 hours). Applying an hourly wage rate of \$71.99 (see supra note 5), estimated setup and maintenance cost is \$449,218 (6,240 x \$71.99) per year.

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 31 million, or 310,000) 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 51,667 hours of time. [(310,000 x 10 minutes)/60 minutes per hour = 51,667 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 1,534,500)⁶ 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 255,750 clerical hours. [(1,534,500 x 10 minutes)/60 minutes per hour = 255,750 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 1,844,500 requests each year for free annual file disclosures by mail.⁷ Based on their knowledge of the industry, staff estimates that, of the predicted 1,844,500 mail requests, 10% (or 184,450) 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 30,742 hours. [(184,450 instructions x 10 minutes)/60 minutes per hour = 30,742 hours]

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 338,159 hours at a cost of \$6,073,336. [(51,667 hours for handling initial mail request + 255,750 hours for handling

⁶ This figure reflects five percent of all requests, net of the estimated one percent of all requests expected to have initially been made by mail. That is, $0.05 \times (31,000,000 - 310,000) = 1,534,500$.

⁷ This figure includes both the estimated 1% of 31 million requests that will be made by mail each year (310,000), and the estimated 1,534,500 requests initially made over the Internet or telephone that will be redirected to the mail process (see *supra* note 6).

requests redirected to mail + 30,742 hours for handling instructions mailed to consumers) x \$17.96 per hour.⁸]

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 \$1,048,174 per year in labor costs. [14,560 hours x \$71.99 per hour⁹] Thus, estimated cumulative labor will costs are \$7,121,510.

G. Net Burden for FTC: 176,360 hours and \$3,560,755 in associated labor costs.

After halving the updated estimates to split the PRA burden with the CFPB regarding the Rule, the FTC's burden totals are 176,360 hours and \$3,560,755 in associated labor costs.

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 requests handled by the systems. Staff estimates that the total annual amount to be paid for services delivered under these contracts is \$11,355,300.¹⁰ After halving the updated estimates to split the PRA burden with the CFPB regarding the Rule, the FTC's burden total is \$5,677,650 in non-labor/capital costs.

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.

⁸ See *Occupational Employment and Wages – May 2017*, Table 1, available at <https://www.bls.gov/news.release/ocwage.t01.htm> (Office and administrative support workers, general).

⁹ See *supra* notes 5 and 6.

¹⁰ This consists of an estimated \$7,588,800 for automated telephone cost (\$1.36 per request x 5.58 million requests) and an estimated \$3,766,500 (\$0.15 per request x 25.11 million requests) for Internet web service cost. Per unit cost estimates are based on staff's knowledge of the industry.

15. Program Changes or Adjustments

The updated burden estimates present decreases of 21,816 hours and \$77,460 in labor costs, and a \$288,100 decrease in capital/non-labor cost, over the currently cleared FTC burden totals, after the halving for shared interagency enforcement. The decreases in hours, labor costs, and capital/non-labor costs are largely attributable to, respectively, a decreased estimate of the projected number of requests for free annual file disclosures (as detailed above).

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.