

**Supporting Statement for
Information Collection Provisions of
The Telemarketing Sales Rule
16 C.F.R. Part 310
(OMB Control No. 3084-0097)**

(1) Necessity for Collecting the Information

The Telemarketing Sales Rule (“TSR” or “Rule”), 16 C.F.R. § 310, implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 (“Telemarketing Act”), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“USA PATRIOT Act”), Pub. L. 107056 (Oct. 25, 2001). The Act seeks to prevent deceptive or abusive telemarketing practices in telemarketing, which, pursuant to the USA PATRIOT Act, includes calls made to solicit charitable contributions by third-party telemarketers. As required by the Telemarketing Act, the TSR mandates certain disclosures for telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2003, the Commission amended the TSR to include certain new disclosure requirements and to expand the Rule in other ways. See 68 Fed. Reg. 4580 (Jan. 29, 2003). Specifically, the Rule was amended to cover “upsells”¹ (not only in outbound calls, but also in inbound calls) and the solicitation by telephone of charitable donations by third-party telemarketers. Finally, the amendments established the National Do Not Call Registry (“Registry”), permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls.² Accordingly, under the TSR, most sellers and telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.³ Moreover, sellers and telemarketers must

¹ An “upsell” is the solicitation in a single telephone call of the purchase of goods or services after an initial transaction occurs. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer (“external upsell”). Alternatively, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer (“internal upsell”).

² 68 Fed. Reg. 4580 (Jan. 29, 2003). The Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third-party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It does not limit calls by political organizations, charities, or telephone surveyors.

³ 16 C.F.R. § 310.4(b)(1)(iii)(B).

periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.⁴

In 2008, the Commission promulgated amendments to the TSR regarding prerecorded calls, 16 C.F.R. § 310.4(b)(1)(v), and call abandonment rate calculations, 16 C.F.R. § 310.4(b)(4)(i).⁵ The amendment regarding prerecorded calls added certain information collection requirements.⁶ Specifically, the amendment authorized sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers only if: (1) the seller has obtained written agreements from those consumers to receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses and provides an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.⁷

In 2010, the Commission published additional amendments taking effect that year to require specific new disclosures in the sale of a “debt relief service,” as that term is defined in Section 310.2(m) to include for-profit credit counseling services, debt settlement, and debt negotiation services. The amendments result in Paperwork Reduction Act (“PRA”) burden for all covered entities -- both new and existing respondents -- that engage in telemarketing of these services. The amendments, among other things: (1) applied the TSR to inbound telemarketing of debt relief services; and (2) added new required disclosures and prohibited representations to curb deceptive practices prevalent in the telemarketing of debt relief services.

(a) Recordkeeping

The Rule expressly requires that certain records be kept by covered entities. Specifically, records evidencing various aspects of each covered transaction must be kept for a period of 24 months.⁸ These records include marketing material, telemarketing scripts, identifying information for prize recipients, identifying information for customers and the goods or services that customers purchased, identifying information for employees engaged in telemarketing, and documents evidencing customers’ authorization to be billed.

⁴ 16 C.F.R. § 310.4(b)(3)(iv). Effective January 1, 2005, the Commission amended the TSR to require telemarketers to access the Registry at least once every 31 days. See 69 Fed. Reg. 16,368 (Mar. 29, 2004).

⁵ See 73 Fed. Reg. 51,164 (Aug. 29, 2008).

⁶ By contrast, the revised standard for measuring the call abandonment rate did not impose any new or affect any existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the PRA. That amendment relaxed the prior requirement that the abandonment rate be calculated on a “per day per campaign” basis by permitting, but not requiring, its calculation over a 30-day period, as industry requested.

⁷ The prerecorded call amendment provided the first explicit authorization in the TSR for sellers and telemarketers to place prerecorded telemarketing calls to consumers. The pre-amendment call abandonment prohibition of the TSR implicitly barred such calls by requiring that all telemarketing calls be connected to a sales representative, rather than a recording, within two seconds of the completed greeting of the person who answers. The requirements apply not only to prerecorded calls that are answered by a consumer, but also to prerecorded messages left on consumers’ answering machines or voicemail services.

⁸ 16 C.F.R. § 310.5(a).

(b) Disclosures

The TSR deems the failure to make specified disclosures of material information a deceptive act or practice. These include the failure to disclose the “total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;”⁹ failing to disclose “[a]ll material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;”¹⁰ failing to disclose “[a]ll material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;”¹¹ and failing to disclose all material conditions related to negative option offers.¹² The prerecorded call amendment also requires that all prerecorded calls disclose at the outset of the message the key to press or what to say to terminate the call and be placed automatically on the seller’s do-not-call list. The other disclosure required by the amendment is designed to ensure that consumers who are asked to agree to receive prerecorded calls clearly understand the agreement they are making.

(2) Use of the Information

(a) Recordkeeping

The recordkeeping requirements are essential to the Commission’s ability to monitor compliance with the TSR. The Rule requires the production of records on a case-by-case basis, and the records are used to establish whether the company or persons affiliated with the company have violated the Rule. In addition, the FTC, other governmental agencies, or private litigants may use the records as evidence in administrative or court proceedings, to identify witnesses, and to identify consumers who may be entitled to redress in connection with any law enforcement actions. Without the required records, it would be difficult to ensure that entities are complying with the Rule’s requirements and to redress injury that may have resulted from violations of the Rule.

(b) Disclosures

The Rule’s disclosure requirements for live telemarketing calls help prevent deceptive or abusive telemarketing acts or practices by ensuring that consumers are informed about the purpose of the call and the terms and conditions of the potential sale or solicitation. Consumers use the disclosed information in making purchasing decisions. The Rule’s disclosure requirements are also intended to prevent fraud by making it more difficult for telemarketing companies to mislead consumers and easier for law enforcement officials to identify and take action against those engaged in deceptive or abusive telemarketing practices. The debt relief provisions similarly require disclosures to curb deceptive

⁹ 16 C.F.R. § 310.3(a)(1)(i).

¹⁰ 16 C.F.R. § 310.3(a)(1)(ii).

¹¹ 16 C.F.R. § 310.3(a)(1)(v).

¹² 16 C.F.R. § 310.3(a)(1)(vii).

practices prevalent in the telemarketing of debt relief services. The disclosure requirements for prerecorded telemarketing calls protect consumer privacy by ensuring that consumers have the same ability as in a live telemarketing call to ask to be placed on a seller's company-specific do-not-call list and terminate the call.

(3) Consideration of Using Improved Information Technology to Reduce Burden

The TSR's recordkeeping provisions permit sellers and telemarketers to keep records in whatever form, manner, format, or location they choose. Accordingly, the Rule's recordkeeping provisions are consistent with the requirements of the Government Paperwork Elimination Act ("GPEA").¹³ The disclosures required by the TSR for the most part are made orally and, secondarily, by direct mail. Thus, electronic disclosures for purposes of implementing the provisions of the GPEA are either inapplicable or impracticable.

Neither the 2008 nor the 2010 amendments altered the TSR's recordkeeping requirements, and each is designed to encourage the use of electronic means of compliance. As previously noted, the prerecorded call amendment expressly permits the use of electronic means to record the written agreements required by the amendment, as well as the use of electronic media for making required disclosures.

(4) Efforts to Identify Duplication

The TSR's recordkeeping requirements involve the preparation and retention of records demonstrating compliance with the Rule. Other federal and state government agencies may also require the retention of some records that the TSR requires to be retained (e.g., personnel, sales, or donation information). The debt relief and prerecorded call provisions create an obligation under the TSR's existing recordkeeping requirements for sellers to retain electronic or other records of consumers' written agreements to receive such calls, and the scripts used in such calls. Staff is aware of substantially identical Federal Communications Commission ("FCC") prerecorded call and call abandonment requirements¹⁴ and some state law requirements for the calculation of call abandonment rates.¹⁵ To the extent that the recordkeeping requirements of the TSR may duplicate the information collection requirements of other federal or state government agencies, the TSR does not require that a duplicate set of records be maintained.

Many state laws require the same or similar disclosures that the TSR mandates. Staff knows of no instance, however, under which the TSR or any other law or regulation governing telemarketing requires that a specific disclosure be made in duplicative ways.

¹³ Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749 (1998) codified at 44 U.S.C. § 3501 et seq.

¹⁴ 47 C.F.R. §§ 64.1200(a)(1)-(3), 64.1200(a)(7), and 64.1200(b)(3). The FCC's opt-out requirements took effect on January 14, 2013. The written agreement requirements took effect on October 13, 2013.

¹⁵ *E.g.*, California Public Utilities Commission, Interim Opinion, Rulemaking 02-02-020 (June 27, 2002) at 20.

(5) Efforts to Minimize Burden on Small Businesses

The TSR's disclosure and recordkeeping requirements are generally consistent with the business practices that most telemarketing organizations would choose to follow, regardless of legal requirements. Moreover, the Rule has been designed to minimize the burdens on all business entities, including small businesses. For example, the Rule contains an exemption that allows a seller and its telemarketer to place live telemarketing calls to consumers with whom the seller has an established business relationship, even if the consumer has placed his or her telephone number on the National Registry. The effect of this exemption is that businesses—and in particular small businesses—do not need to check their lists of existing customers against the National Registry for live telemarketing calls. In addition, the burden placed on small charities is minimized by the fact that for-profit firms that make fundraising calls on behalf of charitable organizations are not required to ensure that they exclude consumers who have placed their telephone numbers on the National Registry.¹⁶ Rather, they only have to honor individual consumer requests not to be called by the particular charity.¹⁷ Furthermore, the TSR permits all entities accessing the National Registry to obtain the first five area codes of data for free, limiting the burden placed on businesses that only require access to a small portion of the National Registry.

The prerecorded call provisions of the TSR are not likely to have a significant impact on legitimate small business for several reasons. By their nature, most small businesses serve local customers, develop personal relationships with their clientele, and are therefore likely to be able to obtain their customers' agreements to receive useful prerecorded telemarketing messages. Moreover, purely informational prerecorded messages are not covered by the TSR, and the use of such messages to schedule service calls, delivery times, and the like therefore will not be subject to the written agreement requirement. In addition, to the extent that, in this Internet age, small businesses may no longer be strictly local businesses, the option provided by the amendment to obtain written agreements to receive prerecorded message calls pursuant to E-SIGN will place them on an equal footing with other businesses.

Likewise, the Commission has taken care in developing the debt relief provisions to set performance standards, which establish the objective results that must be achieved, but do not establish a particular technology that must be employed in achieving those objectives. Moreover, the debt relief disclosure requirements are format-neutral; sellers and telemarketers may make the disclosures in writing or orally, as long as they are clear and conspicuous. In sum, the FTC has worked to minimize any significant economic impact on small entities.

¹⁶ 16 C.F.R. § 310.6(a).

¹⁷ 16 C.F.R. § 310.4(b)(1)(iii).

(6) Consequences of Conducting the Collection Less Frequently

(a) Recordkeeping

The TSR requires specified records to be retained for 24 months.¹⁸ A record retention period of less than two years would frustrate many investigations under the FTC's enforcement program. Consumers who complain to the FTC about transactions covered by the Rule often do not do so immediately. Therefore, there may already be a substantial "lag time" between the time the alleged rule violations occur and the time the FTC learns of the alleged violations. A two-year record retention period allows Commission staff to gather the information needed to pursue enforcement actions and to identify those persons who have most recently suffered injury from the alleged deceptive or abusive telemarketing practices.

(b) Disclosures

All of the disclosures required by the Rule provide consumers with information necessary to make informed purchasing decisions or are essential to protect their privacy. Moreover, the Rule's disclosure requirements address specific areas of recurring deception or abuse in telemarketing. They have been narrowly crafted to address the specific problems identified in these transactions through law enforcement efforts by the states and the FTC.

(7) Circumstances Requiring Collection Inconsistent With OMB Guidelines

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

Dating back to the Rule's inception, the Commission has had a long history of consultation with outside parties, including affected entities and consumers. As noted above, in connection with the Commission's congressionally-mandated review of the Rule,¹⁹ the TSR was amended in January 2003 to include certain new disclosure requirements and to expand the Rule's parameters in other ways. During the 2003 Rule review, representatives of the industry informed the FTC that the information collection burdens the Rule imposes are minimal and that some have even lessened over time as technology has improved. During this time, Commission staff also met with federal, state, and local law enforcement agencies to determine, among other things, whether the TSR's recordkeeping requirements were sufficient to facilitate effective enforcement of the Rule.

The Commission also sought and received extensive comment from interested parties on the prerecorded call, debt relief, and anti-fraud amendments. The comments factored significantly in the

¹⁸ 16 C.F.R. § 310.5.

¹⁹ 16 U.S.C. § 6108.

Commission's tailoring of the amendments to minimize burden consistent with the amendments' consumer protection and privacy objectives. However, no public comments addressed the FTC's PRA burden analyses in these rulemakings.

Most recently, Commission staff sought public comment in connection with its current PRA clearance request for the TSR, in accordance with 5 C.F.R. § 1320.8(d). See 81 Fed. Reg. 22,082 (Apr. 14, 2016). The Commission received four comments, none of which addressed the questions posed about the Commission's PRA analysis.

Consistent with 5 C.F.R. § 1320.12(c), the FTC is providing an additional opportunity for public comment contemporaneous with this submission.

(9) Payments or Gifts to Respondents

Not applicable.

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

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2). To the extent that information covered by a recordkeeping requirement of the Rule is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, will apply.

(12) Burden Estimate

Estimated Annual Hours Burden: 1,233,817 hours

The estimated burden for recordkeeping compliance is 14,061 hours for all industry members affected by the Rule. The estimated burden for the requisite disclosures for both live telemarketing calls and prerecorded calls is 1,219,428 hours for all affected industry members. Estimated burden for reporting requirements is 328 hours. Thus, the total PRA burden is 1,233,817 hours. These estimates are explained below.

Number of Respondents:

In calendar year 2018, 18,714 telemarketing entities accessed the Do Not Call Registry; however, 561 were "exempt" entities obtaining access to data.²⁰ Of the 18,153 non-exempt entities, 13,131 sellers and 5,022 telemarketers accessed the Registry. Of those, however, 8,447 sellers and 3,145 telemarketers obtained data for just one state. Staff assumes that these 11,592 entities are

²⁰ An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

operating solely intrastate, and thus would not be subject to the TSR.²¹ Therefore, Staff estimates that 6,561 telemarketing entities are currently subject to the TSR, of which 4,684 (13,131 – 8,447) are sellers and 1,877 (5,022 – 3,145) are telemarketers.²²

²¹ These entities would nonetheless likely be subject to the Federal Communications Commission’s (“FCC”) Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the Registry.

²² For purposes of these calculations, staff assumes that telemarketers making prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, because the latter may consume much more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

(a) Recordkeeping Hours

Staff estimates that the 6,561 telemarketing entities subject to the Rule each require approximately one hour per year to file and store records required by the TSR for an annual total of 6,561 burden hours. The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours. These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities²³ is 14,061 hours.

(b) Disclosure Hours

Staff believes that in the ordinary course of business, a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute "burden." 5 C.F.R. § 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought OMB clearance, staff estimates that most of the Rule disclosures would be made in at least 75 percent of telemarketing calls even absent the Rule.²⁴ Accordingly, staff has continued to estimate that the hours burden for most of the Rule's disclosure requirements is 25 percent of the total hours.

Pre-sale Disclosures

Consistent with its past practice, staff necessarily has made additional assumptions in estimating burden. Based on industry data and further FTC extrapolations,²⁵ staff estimates that 2.3

²³ The recordkeeping requirements for prerecorded calls are de minimis, and are subsumed within the PRA estimates above for existing and new telemarketing entities. As in its prior estimates, staff continues to believe that any ongoing incremental burden on sellers to create and retain electronic records of written agreements by new customers to receive prerecorded calls should not be material since the agreements may be obtained and recorded electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, "E-SIGN"). Although telemarketers (and telefundors) that place prerecorded calls on behalf of sellers or charities must capture and transmit to the seller any requests they receive to place a consumer's telephone number on the seller's entity-specific do-not-call list, this obligation extends both to live and prerecorded telemarketing calls, and is also subsumed within the PRA estimates above.

²⁴ 78 Fed. Reg. at 19,485.

²⁵ Staff employs the methodology, assumptions, and studies it has consistently used since their development for the 2003 TSR amendments to determine, indirectly from external sales data and the relative percentages of inbound and outbound calls, the number of telemarketing calls and resulting number of sales because no call or sales number totals are otherwise available. Staff relies on its own prior estimates that of the \$134.7 billion of sales from outbound calls to consumers in 2012 (DMA 2013 Statistical Fact Book, at 5), 92.8% of those sales, or \$125 billion, are subject to FTC jurisdiction, with the average value of a sale being \$85 and 20% of outbound calls resulting in a sale.

billion outbound telemarketing calls are subject to FTC jurisdiction and attributable to direct orders, that 450 million of these calls result in direct sales,²⁶ and that there are 1.8 billion inbound calls that result in direct sales. Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds²⁷ for telemarketers to recite the required pre-sale disclosures plus 3 additional seconds²⁸ to disclose the information required in the case of an upsell. Staff also retains its longstanding estimates that at least 60 percent of sales calls result in “hang-ups” before the telemarketer can make all the required disclosures and that “hang-up” calls allow for only 2 seconds of disclosures.²⁹

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer—whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls.³⁰ Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell before the seller or telemarketer makes the full required disclosures.

Based on the above, staff estimates that the total time associated with these pre-sale disclosure requirements is 826,389 hours per year: [(2.3 billion outbound calls x 40% lasting the duration x 7 seconds of full pre-sale disclosures ÷ 3,600 (conversion of minutes to hours) x 25% burden = 447,222 hours) + (2.3 billion outbound calls x 60% terminated prematurely x 2 seconds of disclosures ÷ 3,600 x 25% burden = 191,667 hours) + (450 million outbound calls resulting in direct sales x 40% upsell conversions x 3 seconds of related disclosures ÷ 3,600 x 25% burden = 37,500 hours) + (1.8 billion inbound calls x 40% upsell conversions x 3 seconds ÷ 3,600 x 25% burden = 150,000 hours)] = 826,389 hours).

General Sales Disclosures

The TSR also requires several general sales disclosures in telemarketing calls before the

²⁶ For staff’s PRA burden calculations, only direct sales orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR’s recordkeeping and disclosure provisions. The direct sales transactions total of 450 million is based on an estimated 1.5 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is derived from the only known available outside direct sales data for telephone marketing to consumers. *See* DMA Statistical Fact Book (2001), p. 301.

²⁷ *See, e.g.*, 60 Fed. Reg. 32,682, 32,683 (June 23, 1995); 63 Fed. Reg. 40,713, 40,714 (July 30, 1998); 66 Fed. Reg. 33,701, 33,702 (June 25, 2001); 71 Fed. Reg. 28,698, 28,700 (May 17, 2006); 74 Fed. Reg. 11,952, 11,955 (Mar. 20, 2009); 78 Fed. Reg. at 19,485.

²⁸ 71 Fed. Reg. 3302, 3304 (Jan. 20, 2006); 71 Fed. Reg. at 28,700; 78 Fed. Reg. at 19,485.

²⁹ *See, e.g.*, 60 Fed. Reg. at 32,683; 78 Fed. Reg. at 19,485.

³⁰ This assumption originated with industry response to the Commission’s 2003 Final Amended TSR. *See* 68 Fed. Reg. 4580, 4597 n.183 (Jan. 29, 2003). Although the comment provided an estimate specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, absent the receipt of any information to the contrary.

customer pays for goods or services.³¹ These disclosures include the total costs of the offered goods or services, all material restrictions, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer).

Staff estimates that the general sales disclosures for telemarketing calls require 352,513 hours annually. This figure includes the burden for written disclosures (1,005 inbound telemarketing entities estimated to use direct mail³² x 10 hours³³ per year x 25% burden = 2,513 hours), as well as oral disclosures [(450 million outbound calls x 8 seconds ÷ 3,600 x 25% burden = 250,000 hours) + (450 million outbound calls x 40% upsell attempts x 20% sales conversion x 8 seconds ÷ 3,600 x 25% burden = 20,000 hours) + (1.8 billion inbound calls x 40% upsell attempts x 20% sales conversion x 8 seconds ÷ 3,600 x 25% burden = 80,000 hours)] = 352,513 hours.³⁴

Disclosures for Debt Relief Services

To estimate the time required to provide the general sales disclosures for calls offering debt relief services, staff employs different assumptions and calculations.³⁵ Employing that analysis, as modified in response to a public comment to account for inbound debt relief sales,³⁶ staff continues to assume that outbound calls to sell and inbound calls to buy debt relief services are made only to consumers who are delinquent on one or more credit cards.³⁷ Staff further assumes that each such consumer will receive one outbound call and place one inbound call for these services.

To estimate the number of consumers who are delinquent on one or more credit cards, staff assumes that couples constitute a single decision-making unit, as do single adults (widowed, divorced, separated, never married) within each household. According to the most current U.S. Census Bureau

³¹ 16 C.F.R. § 310.3(a)(1)(i)-(iii).

³² Based on previous assumptions, staff estimates that of the 6,561 telemarketing entities, 3,015 conduct inbound telemarketing. Consistent with its previous analyses, staff estimates that, of the 3,015 entities that conduct inbound telemarketing, approximately one-third (1,005) will choose to incorporate written disclosures in their direct mail solicitations. Because it is likely that industry members make the requisite disclosures in direct mail solicitation in an effort to qualify for a Rule exemption, Commission staff believes it is appropriate to include those written disclosures in the burden hour calculation.

³³ FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff believes this estimate remains reasonable.

³⁴ The percentage and unit of time measurements are FTC staff estimates. (For more information regarding the 25% apportionment appearing above *see supra* note 17 and surrounding text.)

³⁵ 75 Fed. Reg. at 48,504-05.

³⁶ Debt relief sales in outbound calls have always been subject to the general sales disclosure requirements, and are subsumed in the outbound general sales disclosure totals.

³⁷ By extension, upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

data available, there are 165,015,000 decision-making units.³⁸ Of these, 119,140,830 have one or more credit cards,³⁹ and there are 2,942,779 decision-making units with at least one delinquent credit card account.⁴⁰

Accordingly, allowing for the above-stated FTC staff estimate of eight seconds per general sales disclosures, staff estimates further that the general sales disclosure burden for inbound debt relief calls is 1,635 hours (2,942,779 inbound debt relief calls to decision-making units with at least one delinquent credit card account x 8 seconds ÷ 3,600 x 25% burden).

Disclosures for non-exempt inbound calls

The TSR general sales disclosures must also be made by sellers and telemarketers for inbound calls in response to ads for investment opportunities, certain business opportunities, credit card loss protection (“CCLP”),⁴¹ credit repair,⁴² loss recovery services,⁴³ and advance fee loans.⁴⁴

Staff’s estimate for each of these types of non-exempt inbound calls is determined by comparing the number of complaints reported to the FTC’s Consumer Sentinel system in the most recent complete year to the total number of reported fraud complaints for that year. The resulting percentage of total fraud complaints must be adjusted to reflect the fact that only a relatively small percentage of telemarketing calls are fraudulent. To extrapolate the percentage of fraudulent telemarketing calls, staff

³⁸ U.S. Census Bureau, *Income and Poverty in the United States: 2017* (September 2018), Table 1, available at <https://www.census.gov/content/census/en/library/publications/2018/demo/p60-263.html> reflecting 127,586,000 households in 2017); U.S. Census Bureau, *Sharing a Household: Household Composition and Economic Well Being: 2007-2010* (June 2012), Table 2, p. 4, available at <https://www.census.gov/prod/2012pubs/p60-242.pdf> (reflecting 37,429,000 adults living with a householder who is neither a spouse nor cohabiting partner in 2010 and includes adults enrolled in school). Commission staff was unable to locate more current data for the latter source.

³⁹ The estimated number of consumers with one or more credit cards is derived by multiplying the estimated decision making units (165,015,000) by the percentage of consumers with one or more credit cards: 72.2%. The percentage of consumers with one or more credit card is based on a study conducted by the Federal Reserve Bank of Boston. See Federal Reserve Bank of Boston, Consumer Payments Research Center, *The 2009 Survey of Consumer Payment Choice* (April 2011), screen pp. 8, 48 available at www.bostonfed.org/economic/ppdp/2011/ppdp1101.pdf. Commission staff have not found percentage updates of comparable nature. Later versions of such data differ in how they present consumer adoption of payment instruments, e.g., combining, rather than presenting as separate percentages, consumer purchases through credit and charge card use.

⁴⁰ The estimated number of consumers with a delinquent account is derived by multiplying the estimate of consumers with one or more credit cards (119,140,830) by the delinquency rate for credit cards (2.47%). Board of Governors of the Federal Reserve System, *Charge Off and Delinquency Rates on Loans and Leases at Commercial Banks*, available at <https://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (reporting a 2.47% delinquency rate for credit cards for the second quarter of 2018).

⁴¹ 16 C.F.R. § 310.3(a)(1)(vi).

⁴² 16 C.F.R. § 310.4(a)(2).

⁴³ 16 C.F.R. § 310.4(a)(3).

⁴⁴ 16 C.F.R. § 310.4(a)(4).

divides a Congressional estimate of annual consumer injury from telemarketing fraud (\$40 billion)⁴⁵ by available data on total consumer and business-to-business telemarketing sales (\$310.0 billion projected for 2016),⁴⁶ or 13%. The two percentages are then multiplied together to determine the percentage of the 1.8 billion annual inbound telemarketing calls represented by each type of fraud complaint.

Thus, for the 7,631 Sentinel complaints in 2018 about investment opportunities covered by the TSR,⁴⁷ or 0.5% of the 1,427,563 total fraud complaints reported that year,⁴⁸ the general sales disclosure burden is 2,800 hours (1.8 billion inbound calls x 0.0007 [0.005 x 0.13] x 8 seconds ÷ 3,600). Likewise, the burden for business opportunity sales (14,225 complaints), including complaints for multi-level marketing/pyramids/chain letters⁴⁹ is 4,000 hours (1.8 billion x .001 [0.01 x 0.13] x 8 seconds ÷ 3,600); for advance fee loan sales (16,027 complaints)⁵⁰ is 4,000 hours (1.8 billion x 0.001 [0.011 x 0.13] x 8 seconds ÷ 3,600); for credit repair sales (2,928 complaints)⁵¹ is 1,200 hours (1.8 billion x 0.0003 [0.002 x 0.13] x 8 seconds ÷ 3,600); 400 hours for loss recovery services (547 complaints)⁵² (1.8 billion x 0.0001 [0.0004 x 0.13] x 8 seconds ÷ 3,600); and 40 hours for CCLP sales (73 complaints)⁵³ (1.8 billion x 0.00001 [0.0001 x 0.13] x 8 seconds ÷ 3,600). The exceptions to the TSR's inbound call exemptions add an additional 12,440 hours to the general sales disclosure burden.

Altogether, the general sales disclosure burden is 366,588 hours (352,513 hours for outbound sales + 1,635 hours for debt relief inbound sales + 12,440 hours for non-exempt inbound sales).

⁴⁵ *House Committee on Government Operations, The Scourge of Telemarketing Fraud: What Can Be Done Against It*, H.R. Rep. 421, 102nd Cong., 1st Sess. at 7 (Dec. 18, 1991). The FBI believes that this estimate overstates telemarketing fraud losses as a result of its investigations and closings of once massive telemarketing boiler room operations. See *FBI, A Byte Out of History: Turning the Tables on Telemarketing Fraud* (Dec. 8, 2010), available at https://www.fbi.gov/news/stories/2010/december/telemarketing_120810/telemarketing_120810. See also Internet Crime Complaint Center, 2017 Annual Report on Internet Crime (citing \$1.4 billion of losses claimed in consumer complaints for 2017), available at https://pdf.ic3.gov/2017_IC3Report.pdf.

⁴⁶ DMA 2013 Statistical Fact Book (January 2013) projection up through 2016, p. 5 (no associated DMA updates made or otherwise found thereafter).

⁴⁷ See FTC, *Consumer Sentinel Network Data Book 2018* (March 2019) (“Sentinel Data”), Appendix B3, p. 86, available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf. The figure above tallies the number of complaints under the subcategories “Advice, Seminars” and “Art\Gems\Rare Coins.” The remaining subcategories under the “Investment Related” category are not covered by either the FTC Act or the TSR.

⁴⁸ Sentinel Data at 8.

⁴⁹ Sentinel Data at 85. While this total excludes “Franchises/Distributorships” covered by the Franchise Rule and thus not subject to the TSR, the data cannot additionally be segregated to omit “Work-At-Home” opportunities now covered by the Business Opportunity Rule and thus also not subject to the TSR. Staff therefore believes this total significantly overstates the opportunities subject to the TSR.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

Specific Transaction Disclosures

Additional specific disclosures are required if the call involves a prize promotion,⁵⁴ the sale of credit card loss protection products,⁵⁵ an offer with a negative option feature,⁵⁶ or the sale of a debt relief service.⁵⁷ Staff estimates that the specific sales disclosures other than for debt relief services will require 22,363 hours annually [(450 million direct sales transactions from outbound calls x 5% [estimate of percentage of sales transactions involving prize promotions] x 3 seconds ÷ 3,600 x 25% burden = 4,688 hours) + (450 million direct sales transactions from outbound calls x 0.1% [estimate of percentage of sales transactions involving CCLP] x 4 seconds ÷ 3,600 x 25% burden = 125 hours) + (450 million sales transactions from outbound calls x 40% attempted upsell conversions x 20% sales conversions x 0.1% [estimate of percentage of outbound calls involving CCLP upsells] x 4 seconds x 25% burden ÷ 3,600 = 10 hours) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 0.1% [estimate of percentage of inbound calls involving CCLP upsells] x 4 seconds x 25% burden ÷ 3,600 = 40 hours) + (450 million sales transactions from outbound calls x 10% [estimate of percentage of outbound calls involving negative options] x 4 seconds ÷ 3,600 x 25% burden = 12,500 hours) + (450 million sales transactions from outbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of outbound calls involving negative option upsells] x 4 seconds x 25% burden ÷ 3,600 = 1,000 hours) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of inbound calls involving negative option upsells] x 4 seconds ÷ 3,600 x 25% burden = 4,000 hours)].

Staff estimates that reciting the specific sales disclosures in each debt relief sales call will take ten seconds, and therefore the disclosure burden associated with the debt relief disclosures is 4,088 hours (2,942,779 outbound debt relief calls x 10 seconds ÷ 3,600 x 25% burden = 2,044 hours) + (2,942,779 inbound debt relief calls x 10 seconds ÷ 3,600 x 25% burden = 2,044 hours).

Thus, the total specific transaction disclosure burden is 26,451 hours annually (22,363 for non-debt-relief calls) + 4,088 (for debt relief calls).

Cumulatively, therefore, the total annual burden for all of the disclosures is 1,219,428 (826,389 hours pre-sales disclosures + 366,588 hours general sales disclosures + 26,451 hours specific sales disclosures).

(c) Reporting Hours

Finally, any entity that accesses the Registry must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of

⁵⁴ 16 C.F.R. § 310.3(a)(1)(iv)-(v).

⁵⁵ 16 C.F.R. § 310.3(a)(1)(vi). It is neither staff's understanding nor belief that CCLP sales occur through inbound calls. Staff anticipates, however, the potential for such sales in an upsell following an inbound call.

⁵⁶ 16 C.F.R. § 310.3(a)(1)(vii).

⁵⁷ 16 C.F.R. § 310.3(a)(1)(viii).

the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR.

As it has since the Commission's initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information annually.⁵⁸ Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 219 burden hours (6,561 entities x 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 109 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 328 hours per year.

Thus, total recordkeeping, disclosure, and reporting burden is 1,233,817 hours (14,061 hours + 1,219,428 hours + 328 hours).

⁵⁸ See 67 Fed. Reg. 37,366 (May 29, 2002). The two-minute estimate likely is conservative. The OMB regulation defining "information" under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. See 5 C.F.R. § 1320.3(h)(1).

Estimated Annual Labor Cost: \$17,181,914

(a) Recordkeeping Labor Cost

As indicated above, staff estimates that existing telemarketing entities require 14,061 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical wage rate of \$16.92/hour,⁵⁹ recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately \$237,912. Assuming also from the above a cumulative burden of 7,500 hours for 75 new telemarketing entities per year to set up compliant recordkeeping systems (75 new entrants/year x 100 hours each), and applying to that a skilled labor rate of \$27.86/hour,⁶⁰ cumulative labor costs for them would approximate \$208,950 yearly. Thus, the estimated labor cost for recordkeeping associated with the TSR for both new and existing telemarketing entities, including prerecorded and debt relief calls, is \$446,862.

(b) Disclosure Labor Cost

The estimated annual labor cost for disclosures for all telemarketing entities is \$16,730,552. This total is the product of applying an assumed hourly wage rate of \$13.72⁶¹ to the earlier stated estimate of 1,219,428 hours pertaining to the pre-sale, general and specific disclosures.

(c) Reporting Labor Cost

Estimated labor cost supplying basic identifying information to the Registry operator is \$4,500 (328 hours x \$13.72 per hour).

Thus, cumulatively for both new and existing telemarketing entities total labor costs are \$17,181,914 [(\$446,862 recordkeeping) + (\$16,730,552 disclosure) + (\$4,500 reporting)].

(13) Estimated Annual Non-Labor Cost: \$4,717,991

(a) Recordkeeping

Staff believes that the capital and start-up costs associated with the TSR's recordkeeping provisions are de minimis. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, consistent with its prior analyses, staff estimates that the

⁵⁹ This figure is derived from the mean hourly wage shown for Office Clerks, General. See "Occupational Employment and Wages—May 2018," Bureau of Labor Statistics, U.S. Department of Labor, released March 29, 2019, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018"), available at <https://www.bls.gov/news.release/ocwage.nr0.htm>.

⁶⁰ This figure is derived from the mean hourly wage shown for "Computer Support Specialist." See *id.*

⁶¹ This figure is derived from the mean hourly wage shown for Telemarketers. See *supra* note 57. It is applied additionally to the ensuing calculation of reporting labor cost regarding the Registry operator.

estimated 6,561 telemarketing entities subject to the Rule continue to spend an annual amount of \$50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of \$328,050.

(b) Disclosure

Applying the disclosure estimates of 1,219,428 hours to an estimated commercial calling rate of 6 cents per minute (\$3.60 per hour), staff estimates a total of \$4,389,941 in telephone charges.⁶²

Thus, total capital and/or other non-labor costs are \$4,717,991 (\$328,050 (office supplies) + \$4,389,941 (telephone charges)).

(14) Estimated Cost to the Federal Government

The Commission has also amended the TSR several times in order to impose fees on entities that must pay for access to the National Registry.⁶³ In the Do-Not-Call Registry Fee Extension Act of 2007, Congress directed the FTC to make a moderate reduction in the TSR's fees for access to the National Registry, and to expand the definition of "exempt" entities eligible to access the National Registry without charge.⁶⁴ Accordingly, the Commission amended the Rule to comply with that directive. Staff anticipates that, to the extent Registry and enforcement costs are not fully offset by the fees collected, the FTC's budget will cover the shortfall.

(15) Adjustments

The instant cumulative burden estimate of 1,233,817 hours is slightly reduced from the FTC's prior cleared burden estimate in 2016 of 1,238,670 hours. Estimated annual non-labor cost is reduced

⁶² Staff believes that other non-labor costs would be incurred largely by affected entities in the ordinary course of business and, beyond that, would not materially exceed those ordinary costs.

⁶³ The Do-Not-Call Implementation Act enacted by Congress shortly after the Commission amended the TSR in 2003 authorized the Commission to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]." Pub. L. 108-10, 117 Stat. 557 (2003) at § 2. After receiving that authority, the Commission has conducted annual amendment proceedings to set and adjust the National Registry access fees to cover the costs of the Registry and Do Not Call enforcement. See for example 68 Fed. Reg. 45,134 (July 31, 2003); 69 Fed. Reg. 45,580 (July 30, 2004); 70 Fed. Reg. 43,273 (July 27, 2005); 71 Fed. Reg. 43,040 (July 31, 2006).

⁶⁴ Pub. L. 110-188, 122 Stat. 635 (2008). The Commission subsequently reduced the access fees in compliance with the Act. See 73 Fed. Reg. 43,354 (July 25, 2008). The Act also requires that the National Registry access fees be adjusted annually after fiscal year 2009 to reflect the amount by which the average monthly Consumer Price Index for urban consumers for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12 month period ending June 30, 2008, provided the increase is at least one percent. Accordingly, the Commission has issued yearly notices of any fee adjustments made pursuant to the Act. See 74 Fed. Reg. 42,771 (Aug. 25, 2009); 75 Fed. Reg. 55,269 (Sept 10, 2010); 76 Fed. Reg. 53,636 (Aug. 29, 2011); 77 Fed. Reg. 51,697 (Aug. 27, 2012); 78 Fed. Reg. 53,642 (Aug. 30, 2013); (79 Fed. Reg. 51,477 (Aug, 29, 2014); 80 Fed. Reg. 59,778 (Oct. 2, 2015); 81 Fed. Reg. 59,845 (Aug. 31, 2016); 82 Fed. Reg. 39,533 (Aug. 21, 2017); 83 Fed. Reg. 46,639 (Sept. 14, 2018).

from \$4,757,647 to \$4,717,991. These reductions are largely attributable to staff's reduced estimates for the number of telemarketing entities subject to the TSR, based on updated National Registry data.

(16) Statistical Use of Information

There are no plans to publish any information for statistical use.

(17) Exceptions for the Display of the Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to the "Certification for Paperwork Reduction Act Submissions"

Not applicable.