

**Supporting Statement for Information Collection
Furnisher Rules under the
Fair and Accurate Credit Transactions Act of 2003 and
the Dodd-Frank Act of 2010
16 C.F.R. Part 660 and 12 C.F.R. Part 1022
(OMB Control # 3084-0144)**

1. & 2. Necessity for and Use of the Information Collected

The information collection provisions for which the Federal Trade Commission (“FTC” or “Commission”) seeks renewed OMB clearance implement section 312 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), Pub. L. No. 108-159 (2003), and Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) or (“DFA”), Pub. L. 111-203, 124 Stat. 1376 (2010).

As described, below, portions of the FACT Act amended the Fair Credit Reporting Act of 1970 (“FCRA”), 15 U.S.C. 1681 et seq., to require the FTC, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration (collectively, “Agencies”) to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies (“CRAs”) and to prescribe rules requiring furnishers to establish reasonable policies and procedures for implementing the guidelines.

The prescribed rules also implement the requirement that the Agencies issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

FACT Act Section 312(a) (implemented within 16 C.F.R. 660.3)

Section 312(a) of the FACT Act added section 623(e) to the FCRA, 15 U.S.C. 1681s-2(e), to require the Agencies to, in consultation and coordination, (a) establish and maintain guidelines for use by furnishers of information to CRAs regarding the accuracy and integrity of the information relating to consumers that such entities furnish to CRAs and update such guidelines as often as necessary; and (b) prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines.

In developing the guidelines, the Agencies were directed to: (1) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of furnished information; (2) review the methods (including technological means) used to furnish information to CRAs; (3) determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to CRAs; and (4) examine the policies and procedures that furnishers employ to conduct investigations and correct inaccurate information

that has been furnished to CRAs.

FACT Act Section 312(c) (implemented within 16 C.F.R. 660.4).

Section 312(c) of the FACT Act added section 623(a)(8) to the FCRA, 15 U.S.C. 1681s-2(a)(8), to require the Agencies to jointly prescribe regulations that identify the circumstances under which a furnisher must investigate a dispute concerning the accuracy of information contained in a consumer report, in response to a direct request from the consumer to whom the report relates.

In prescribing these regulations, the Agencies were required to weigh: (1) the benefits to consumers and the costs to furnishers and the credit reporting system; (2) the impact of any requirements imposed by the rule on the overall accuracy and integrity of consumer reports; (3) whether permitting consumers to contact furnishers directly to dispute the accuracy of consumer report information will likely result in the most expeditious resolution of such disputes; and (4) the potential impact on the credit reporting process if “credit repair organizations,” as defined in the Credit Repair Organization Act, are able to submit notices of dispute directly to furnishers on behalf of consumers.

The regulations implementing section 312(c) require each furnisher to amend their procedures to ensure that disputes received directly from consumers are handled the same way as disputes received from CRAs. The regulations also require each furnisher to notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant.

On July 21, 2010, President Obama signed into law the Dodd-Frank Act. The Dodd-Frank Act 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 (“CFPB”) most of the FTC’s rulemaking authority for the furnisher provisions of the FCRA on July 21, 2011. The Commission, however, retains rulemaking authority under the FCRA over any 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 motor vehicles, or both.

In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB have overlapping enforcement authority for many entities subject to the CFPB rule and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

Under section 660.3 of the FTC’s Information Furnishers Rule¹ and section 1022.42 of

¹ 16 C.F.R. Part 660.

the CFPB Rule,² furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency (“CRA”).³ Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require entities that furnish information about consumers to a CRA to respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (“F/I dispute”).

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the furnisher provisions (subpart E) of CFPB’s Regulation V.⁴ Contemporaneous with that issuance, the CFPB and FTC had each submitted to OMB, and received its approval for, the agencies’ respective burden estimates reflecting their overlapping enforcement jurisdiction, with the FTC supplementing its estimates for the enforcement authority exclusive to it regarding the class of motor vehicle dealers noted above. The discussion below continues that analytical framework, as appropriately updated or otherwise refined for instant purposes.

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 Furnisher Regulations permit furnishers latitude in using new technologies to reduce compliance costs. Indeed, the Agencies attempted to draft the regulations in a flexible, technology-neutral manner. For example, the regulations do not prevent furnishers from continuing to use automated, electronic, mechanical, or other technological means to provide information about consumers to CRAs. In addition, as noted in #2 above, furnishers are permitted to use means other than postal mail (if authorized by the consumer) to notify consumers after making a determination that a dispute is frivolous or irrelevant.

4. Efforts to Identify Duplication/Availability of Similar Information

Apart from DFA’s amendments to the FCRA that enable some overlapping FCRA jurisdiction between the FTC and the CFPB, the FTC staff has not identified any other federal or state statutes, rules, or policies that duplicate, overlap, or conflict with these regulations. Section 625(b)(1)(F) of the FCRA preempts states from enacting any law concerning furnisher obligations included in section 623 of the FCRA, including the requirements contained in the

² 12 C.F.R. Part 1022.

³ The rule defines a “furnisher” as an entity that furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report, but provides that an entity is not a furnisher when it: Provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

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

instant regulations.

5. Efforts to Minimize Burdens on Small Businesses

The collection applies to any entity, other than an individual consumer, that furnishes information relating to consumers to one or more CRAs, regardless of size. The standards in the regulations are flexible and designed to take into account a covered entity's size and sophistication to minimize burdens on small businesses.

6. Consequences of Conducting Collection Less Frequently

The burden associated with this rulemaking is in part attributable to the written policies and procedures that a respondent must establish to implement the guidelines. Once they are developed, these policies and procedures will only need to be adjusted if they become ineffective. The burden associated with this rulemaking is also in part attributable to the requirement that a furnisher must investigate disputes received directly from consumers and notify consumers after making a determination that a dispute is frivolous or irrelevant. Furnishers will only need to amend their procedures once to ensure that disputes received directly from consumers are handled the same way as complaints from CRAs, and will need to notify consumers after making a determination that a dispute is frivolous or irrelevant only when such a determination is made.

7. Circumstances Requiring Disclosures Inconsistent with Guidelines

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

8. Consultation Outside the Agency

The Agencies sought public comment on the originating rulemaking, factoring them into consideration for the final rule.⁵ In addition, in response to OMB filed comments on the associated notice of proposed rulemaking, the Agencies described in the final rule preamble how they maximized the practical utility of the rule's information collection requirements and minimized associated PRA burden. More recently, the Commission sought public comment on the information collection requirements associated with the Information Furnishers Rule and the FTC's shared enforcement with the CFPB of the furnisher provisions in subpart E of the CFPB's Regulation V. 84 Fed. Reg. 10074 (March 19, 2019). No relevant comments were received.

9. Payments/Gifts to Respondents

Not applicable.

⁵ See 74 Fed. Reg. 31,484, 31,502 (July 1, 2009).

10. & 11. Assurances of Confidentiality/Matters of a Sensitive Nature

No assurance of confidentiality is necessary because the regulations do not require furnishers to register or file any documents with the Agencies. Moreover, the regulations do not contain recordkeeping requirements.

12. Estimated Hours Burden

The FTC's currently cleared burden totals, post-adjustment for the effects of the Dodd Frank Act, are 10,607 hours with \$488,148 in associated labor costs. Estimated capital/non-labor costs remain listed as \$0 because FTC staff had reiterated its belief that the Rule imposes negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (e.g., offices and computers) for the information collections within the Rule.

Using the currently cleared estimates (post-adjustment for the effects of the Dodd-Frank Act) of the number of applicable motor vehicle dealers and their assumed recurring disclosure burdens, the FTC proposes the following:

Estimated number of respondents: 7,210⁶

Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule:

A. Burden Hours

Yearly recurring burden of 2 hours for training⁷ to help ensure continued compliance regarding written policies and procedures for the accuracy and integrity of the information furnished to a CRA about consumers.

⁶ The CFPB estimates that there are 16,000 furnishers, excluding motor vehicle dealers that are subject to the FTC's jurisdiction, with an allocation to that agency of 63% of the burden or 10,080 respondents. See CFPB Supporting Statement Part A, Fair Credit Reporting Act (Regulation V) 12 CFR 1022 (OMB Control Number: 3170-0002) (https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201707-3170-002). Allocating the remaining 37% of the burden to the FTC yields 5,920 respondents, excluding motor vehicle dealers that are subject to the FTC's jurisdiction. Based on figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses, the FTC estimates that there are approximately 129,000 motor vehicle dealers determined as follows: 88,695 car dealers per NAICS data (53,549 new car dealers, 35,146 used car dealers) in addition to 4,023 Recreational Vehicle Dealers; 9,248 boat dealers; and 26,706 motorcycle, ATV/All Other Motor Vehicle Dealers. See <https://www.naics.com/six-digit-naics/?code=44-45>. It is difficult to determine precisely the number of motor vehicle dealers that are subject to the FTC's jurisdiction and that are furnishers. Given the restrictions in section 1029(a) of the Dodd-Frank Act that motor vehicle dealers subject to the FTC's jurisdiction are those that routinely assign consumer contracts governing retail credit to an unaffiliated third party finance source, Commission staff believes the number is de minimis. Accordingly, the FTC estimates that 1% of motor vehicle dealers subject to the FTC's jurisdiction are furnishers of information to CRAs or 1,290 respondents. Thus, 1,290 motor vehicle dealers + 5,920 other entities = 7,210 respondents for the FTC's burden calculations.

⁷ 74 Fed. Reg. at 31,505.

7,210 respondents x 2 hours for training = **14,420 hours**

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use managerial and/or professional technical personnel to train company employees in order to foster continued compliance with the information collection requirements in the Information Furnishers Rule and the furnisher provisions of Regulation V.

14,420 hours x \$56.58⁸ = **\$815,884**

Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule:

A. Burden Hours

No recurring burden other than that necessary to prepare and distribute F/I notices (estimate: 14 minutes per notice⁹).

1. 21,720 F/I disputes (estimated number received by furnishers under the FTC's jurisdiction¹⁰)
2. "Carve-out" to FTC: assumed 4%¹¹ = 869 F/I disputes
3. 21,720 F&I disputes - 869 "carve-out" = 20,851 respondents for CFPB-FTC split
 - a. Divided by 2 = 10,425 F/I disputes, co-jurisdiction estimate
 - b. CFPB: 10,425 F/I disputes

⁸ <http://www.bls.gov/news.release/ocwage.nr0.htm>: "Occupational Employment and Wages—May 2017," Bureau of Labor Statistics, U.S. Department of Labor, released March 30, 2018, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017) (hereinafter, "BLS Table 1").

See mean hourly wage for "Training and Development Managers."

⁹ 74 Fed. Reg. at 31,505.

¹⁰ *Id.* at 31,506 n. 58.

¹¹ FTC staff believes that 4% is a reasonable estimate based on recent data. See "Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus handle consumer data," December 2012, pp. 14, 29, 31, 34. The CFPB report noted that almost 40% of all consumer disputes at the nationwide CRAs, on average, can be linked to collections. It stated that collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines – specifically, four times higher than auto. These figures seem to suggest that almost 10% of all consumer disputes at the nationwide CRAs, on average, can be linked to auto. When the FTC issued its final Rule, FTC staff estimated that 40% of direct disputes would result in the sending of F/I dispute notices. See 74 Fed. Reg. 31,506 n.58. The FTC's estimate of 4% is based on taking forty percent of the 10% of all consumer disputes at the nationwide CRAs, on average, linked to auto loans.

c. FTC: 869 “carve-out” + 10,425 additional F/I disputes = 11,294 F/I disputes

d. FTC: 11,294 F/I disputes x 14 minutes each = **2,635 hours**

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use skilled administrative support personnel to provide the required F/I dispute notices to consumers.

$$2,635 \text{ hours} \times \$23.69^{12} = \mathbf{\$62,423}$$

Thus, total estimated burden under the above-noted regulatory sections is 17,055 hours and \$878,307 in associated labor costs.

13. Estimated Capital and Other Non-Labor Costs

The FTC staff believes that the regulations impose negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and/or equipment (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 regulations requirements during the 3-year clearance period sought will be approximately \$17,170. This represents one-tenth of an attorney work year, and includes employee benefits.

15. Program Changes or Adjustments

There are no program changes. The only adjustments to the most recently cleared estimates reflect updates to estimated labor costs informed by newer Bureau of Labor Statistics data. Remaining estimates are unchanged from the last clearance.

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.

¹² The revised figure is an average of Bureau of Labor Statistics mean hourly wages for potentially analogous employee types: First-line supervisors of office and administrative support workers (\$28.14); bookkeeping, accounting, and auditing clerks (\$19.76); brokerage clerks (\$25.41); eligibility interviewers, government programs (\$21.45). See BLS Table 1. This averages to \$23.69 per hour, rounded.

18. Exceptions to the Certifications for PRA Submissions

Not applicable.