Supporting Statement for Information Collection
Fair Credit Reporting Risk-Based Pricing Regulations
16 CFR Part 640 and 12 CFR 1022.70
(OMB Control Number 3084-0145)

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

The disclosure provisions for which the Federal Trade Commission ("FTC" or "Commission") seeks renewed OMB clearance implement section 311 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), Pub. L. No. 108-159 (2003), and Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. 111-203, 124 Stat. 1376 (2010).

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau ("CFPB") most of the FTC's rulemaking authority for the risk-based pricing provisions of the Fair Credit Reporting Act ("FCRA"),[2] on July 21, 2011.[3]

The FTC retains rulemaking authority for the Fair Credit Reporting Risk-Based Pricing Regulations ("Risk-Based Pricing Rule") solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[4]

In addition, the FTC retains its authority to enforce the risk-based pricing provisions of the FCRA and the FTC and CFPB rules issued under those provisions. Thus, the FTC and CFPB ("the Agencies") have overlapping enforcement authority for many entities subject to the CFPB rule (subpart H of the CFPB's Regulation V) and the FTC has sole enforcement authority for the motor vehicle dealers subject to the Risk-Based Pricing Rule (collectively, "Rules").

Under §§ 640.3-640.4 of the FTC's Risk-Based Pricing Rule[5] and §§ 1022.72 - 1022.73 of the CFPB Rule,[6] a creditor must provide a risk-based pricing notice to a

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1 Pub. L. 111-203, 124 Stat. 1376 (2010).

2 15 U.S.C. 1681 *et seq*.

3 Dodd-Frank Act, § 1061. This date was the "designated transfer date" established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date*, 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

4 *See* Dodd-Frank Act, § 1029(a), (c).

5 16 CFR 640.3-640.4.

6 12 CFR 1022.72-1022.73.

consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor. Additionally, these provisions require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit.

3. Consideration of Using Improved Information Technology to Reduce Burden

Consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, the Rules allow creditors to use applicable technologies to reduce compliance costs. The Rules are flexible and technology-neutral.

4. Efforts to Identify Duplication/Availability of Similar Information

Apart from the Dodd-Frank Act amendments to the FCRA that enable some overlapping FCRA jurisdiction between the FTC and the CFPB, the FTC staff has not identified any other federal or state statutes, rules, or policies that duplicate, overlap, or conflict with the RBP Rule.

5. Efforts to Minimize Burdens on Small Businesses

The Rules apply only to creditors that engage in risk-based pricing, regardless of the creditor's size. The Rules require those creditors to provide risk-based pricing notices. Additionally, creditors using credit scores to make risk-based pricing decisions must include a credit score and information pertaining to it in the risk-based pricing notice. The Rules provide a model notice that businesses may use to comply with this requirement. Alternatively, a business may comply with the regulations by providing a credit score disclosure notice. By providing a range of options and model notices, the Agencies have sought to help businesses of all sizes reduce the burden or inconvenience of complying with the Rules.

6. Consequences of Conducting Collection Less Frequently

Risk-based pricing notices required under the Rules are inherently transaction-specific; thus, reducing their frequency is not feasible. The compliance burden associated with the Rules is diminished by the inclusion of model notices that creditors may use.

7. Circumstances Requiring Disclosure Inconsistent with Guidelines

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

8. Consultation Outside the Agency

As required by 5 C.F.R. § 1320.8(d)(1), the FTC sought public comment on its proposal to extend its current OMB clearance for the Risk-Based Pricing Rule's information collection requirements . *See* 85 Fed. Reg. 9,775 (February 20, 2020). No relevant comments were received. The Commission is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rules.

9. Payments/Gifts to Respondents

Not applicable.

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

No assurance of confidentiality is necessary because the Rules do not require creditors to register or file any documents with the Agencies.

12. Estimated Hours Burden

***Annual Hours Burden*:** 7,950,000 hours

The Commission estimates that approximately 168,000 entities are covered by the FTC and CFPB Rules,[7] including 97,000 motor vehicle dealers that are subject to exclusive FTC jurisdiction.[8] The FTC assumes the full burden for the motor vehicle dealers subject to its exclusive jurisdiction and shares burden for the remaining entities subject to both CFPB and FTC enforcement authority.

As an analytical framework, the FTC estimates burden pertaining to respondents over which both agencies have shared enforcement authority, divides the resulting total by one-half to reflect the FTC's shared burden, and adds to the resulting subtotal the estimated burden for motor vehicle dealers over which the FTC retains exclusive rulemaking and enforcement authority.

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[7] *See* http://www.naics.com/search.htm (categories of covered entities include retail, motor vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. See 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the Credit Union National Association for the number of non-federal credit unions. *See* https://www.ncua.gov/Legal/Documents/Reports/annual-report-2015.pdf.

[8] This total is based on estimates that there are 54,753 franchise/new car and independent/used car dealers in the U.S., as well as 3,876 recreational vehicle dealers, 11,034 boat dealers, and 27,336 ATV/ Other Motor Vehicle Dealers. These figures are based on estimates by the National Automobile Dealers Association and the National Independent Automobile Dealers Association, *see NADA Data 2018: Annual Report*; *NIADA.com*, as well as data from the NAICS Association, *see* https://www.naics.com/six-digit-naics/?code=4445.

This yields a total of 132,500 respondents for whom the FTC accounts for burden (97,000 motor vehicle dealers plus one-half (i.e., 35,500) of the remaining 71,000 entities subject to shared FTC-CFPB jurisdiction). The FTC estimates that covered entities spend approximately 60 hours per year to comply with the Rule's requirements. As a result, the FTC estimates that the total burden hours attributable to FTC requirements is 7,950,000 hours (132,500 respondents × 60 hours).

Annual Labor Cost**:** $149,062,500.

FTC staff derives labor costs by applying estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use correspondence clerks, at a mean hourly wage of $18.75,[9] to modify and distribute notices to consumers, for a cumulative labor cost total of $149,062,500 (7,950,000 hours × $18.75 hours).

13. Estimated Capital and Non-Labor Costs

The FTC believes that the Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., offices and computers) for the information collections discussed above.

14. Estimated Cost to the Federal Government

Commission staff estimates that that the yearly cost to the FTC of administering or enforcing the requirements of the Rules during the 3-year clearance period will be approximately $18,000. This represents one-tenth of an attorney work year and includes employee benefits.

15. Program Changes or Adjustments

There are no program changes. The differences in burden estimates from the prior clearance reflect updates in the estimated number of respondents and the hourly costs associated with compliance with the Rules.

16. Plans for Tabulation and Publication

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

17. Display of Expiration Date for OMB Approval

Not applicable.

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9 *See* Bureau of Labor Statistics, Occupational Employment and Wages News Release, May 2018, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018," at: https://www.bls.gov/news.release/ocwage.htm.

18. Exceptions to the Certification for PRA Submissions

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.