



[Billing code: 6750-01-S]
FEDERAL TRADE COMMISSION

**Agency Information Collection Activities;
Proposed Collection; Comment Request; Extension**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for the FTC’s enforcement of the information collection requirements in its “Fair Credit Reporting Risk-Based Pricing Regulations” (“RBP Rule”), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the risk-based pricing provisions (subpart H) of the CFPB’s Regulation V regarding other entities. That clearance expires on July 1, 2017.

DATES: Comments must be filed by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “RBP Rule, PRA Comment, P145403,” on your comment and file your comment online at <https://ftcpbcommentworks.com/ftc/rbprulepra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC

20024.

FOR FURTHER INFORMATION CONTACT: Katherine White, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-2878, 600 Pennsylvania Ave., NW, Room CC-8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: 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 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 RBP 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 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.

As an analytical framework to estimate PRA burden in the “Burden Statement” below, 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

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).

jurisdiction, and adds to the resulting subtotal the incremental estimated burden regarding the motor vehicle dealers described above over which the FTC retains exclusive enforcement (and rulemaking) authority.

Burden statement:

Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. “Collection of information” includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on:

(1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

Under §§ 640.3 - 640.4 of the FTC’s RBP Rule⁵ and §§ 1022.72 - 1022.73 of the CFPB Rule,⁶ a creditor must provide a risk-based pricing notice to a 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

⁵ 16 CFR 640.3, - 640.4.

⁶ 12 CFR 1022.72, -1022.73.

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.

The FTC's currently cleared burden totals, post-adjustment for the effects of the Dodd-Frank Act, are 9,652,500 hours based on an estimated population of 160,875 entities apportioned to FTC enforcement and/or rulemaking authority.⁷

Using the currently cleared estimates (post-adjustment for the effects of the Dodd-Frank Act) for the number of applicable motor vehicle dealers and their assumed recurring disclosure burdens, in addition to the estimated number of and burden for other entities over which the FTC shares enforcement burden with the CFPB, the FTC proposes the following updated estimates:

- A. Estimated number of respondents: 160,250⁸
- B. Burden Hours: 9,615,000

Yearly recurring burden of 60 hours per respondent⁹ to modify and distribute notices x 160,250 respondents = 9,615,000 hours, cumulatively.

- C. Labor Costs: \$167,974,050

⁷ OMB Control No. 3084-0145.

⁸ This estimate derives in part from an analysis of the figures obtained from the North American Industry Classification System (NAICS) Association's database of U.S. businesses. See <http://www.naics.com/search.htm>. Commission staff identified categories of entities under its jurisdiction that also directly provide credit to consumers. Those categories include retail, 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>. For purposes of estimating the burden, Commission staff made the conservative assumption that all of the included entities engage in risk-based pricing. The resulting tally of entities numbered 199,500. From this amount, the FTC deducted an estimated portion attributable to motor vehicle dealers in order to calculate a net amount in which to split evenly with the CFPB for the remaining number of respondents for purposes of estimating the FTC's overall share of PRA burden. The FTC estimates there are approximately 121,000 motor vehicle dealers, determined as follows: 86,442 car dealers per NAICS data (49,905 new car dealers, 36,537 used car dealers) + [3,191 Recreational Vehicle Dealers; 7,185 boat dealers; 24,157 motorcycle, ATV/All Other Motor Vehicle Dealers] = 120,975. See <https://www.naics.com/six-digit-naics/?code=4445>. Excluding the estimated number of motor vehicle dealers, 121,000, from the estimated overall number of affected entities, 199,500, leaves 78,500 as the number of respondents for the agencies' 50:50 apportionment: 78,500, i.e., 39,250 each. Thus, for the FTC, the estimated number of respondents for its calculations is 160,250 (121,000 + 39,250).

⁹ Assumption: 5 hours per month per respondent.

Labor costs are derived by applying appropriate 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 \$17.47,¹⁰ to modify and distribute notices to consumers, for a cumulative labor cost total of \$167,974,050.

D. Capital/Non-Labor Costs: \$0

The FTC believes that the FTC and CFPB 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.

Request for Comment:

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 60 days from FEDERAL REGISTER date of publication]. Write “RBP Rule, PRA Comment, P145403,” on your comment. Your comment – including your name and your state - will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

¹⁰ <https://www.bls.gov/news.release/ocwage.htm>: Bureau of Labor Statistics, Economic News Release, March 30, 2016, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015.”

any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential” as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).¹¹ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment is posted, as legally required by FTC Rule 4.9(b), we cannot redact or remove your comment from the FTC’s public record, including the FTC’s Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request in accordance with the law and the public interest, as explained above.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/rbprulepra>, by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Website.

¹¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

If you file your comment on paper, write “RBP Rule, PRA Comment, P145403,” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka
Acting General Counsel.
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