



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

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

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its “Fair Credit Reporting Risk-Based Pricing Regulations” (“Risk-Based Pricing 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. The current clearance expires on July 31, 2020.

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 “Risk-Based Pricing Rule, PRA Comment, P145403,” on your comment and file your comment online at <https://www.regulations.gov>, 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: Monique Einhorn, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-2575, 600 Pennsylvania Ave., NW, Room CC-8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fair Credit Reporting Risk-Based Pricing Regulations, 16 CFR 640.

OMB Control Number: 3084-0145.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 7,950,000.

Estimated Annual Labor Costs: \$149,062,500.

Abstract:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted on July 21, 2010.¹ 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 After the enactment of the Dodd-Frank Act, the FTC retains rulemaking authority for its Risk-Based Pricing Rule (16 CFR 640) 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

The FTC shares enforcement authority with the CFPB for provisions of Regulation V subpart C

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).

(12 CFR 1022.21) that apply to entities other than motor vehicle dealers described above.

The Risk-Based Pricing Rule and the CFPB's Regulation V require that a creditor 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.⁵ 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.

Under the PRA, 44 U.S.C. §§ 3501-3521, the FTC is requesting that OMB renew the clearance (OMB Control Number 3084-0145) for the PRA burden associated with the Rule. The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Burden statement:

The Commission estimates that approximately 168,000 entities are covered by the FTC and CFPB Rules,⁶ including 97,000 motor vehicle dealers that are subject to exclusive FTC jurisdiction.⁷ 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. Accordingly, as an analytical framework, the FTC estimates burden

⁵ 16 CFR 640.3-640.4; 12 CFR 1022.72-1022.73.

⁶ 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>).

⁷ 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>.

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.

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).

Labor costs are derived 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 \$18.75,⁸ to modify and distribute notices to consumers, for a cumulative labor cost total of \$149,062,500.

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:

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

⁸ 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>.

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*].

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 AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Risk-Based Pricing Rule, PRA Comment, P145403” on your comment. 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 through the <https://www.regulations.gov> website by following the instructions on the web-based form provided. Your comment, including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

If you file your comment on paper, write “Risk-Based Pricing Rule, PRA Comment, P145403” on your comment and on the envelope, and 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, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or

anyone else’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 any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). 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). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, 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.

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 <https://www.ftc.gov/site-information/privacy-policy>.

Heather Hipsley,
Deputy General Counsel.

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