



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

**Agency Information Collection Activities;
Submission for OMB Review; 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 31, 2017.

DATES: Comments must be filed by [INSERT DATE 30 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://ftcpublishcommentworks.com/ftc/rbprulepra> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “RBP 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, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, 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.

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 March 3, 2017, the FTC sought public comment on the information collection requirements (creditor disclosures to consumers) associated with the RBP Rule and the Commission’s shared enforcement with the CFPB of subpart H of Regulation V (March 3, 2017 Notice¹) and the FTC’s associated PRA burden analysis. One relevant comment was received.² The commenter, the National Automobile Dealers Association (“NADA”), observed that many dealers face compliance costs beyond those that the FTC had estimated for respondents to modify and distribute notices:

(a) obtaining those reports, including (i) the direct costs from the CRA’s, (ii) the personnel costs associated with obtaining the reports, and (b) the direct and indirect costs of properly handling, storing, and disposing of that sensitive personally identifiable information.

Additionally, NADA contended that the FTC’s estimate of hours burden does not contemplate the burden associated with “obtaining, and properly handling, storing, and disposing of the information in the [credit] reports.”

The FTC believes that its burden estimates do not need to be increased. NADA’s suggestion that compliance with the Rule compels its members to purchase consumer credit scores is incorrect. Automobile dealers, and all other respondents, are covered by the Rule *only*

¹ 82 FR 12452.

² <https://www.ftc.gov/policy/public-comments/initiative-702>.

if they already use consumer reports and/or credit scores to set the terms of credit they offer to consumers. Because respondents already are using consumer reports and have access to the information necessary to provide the notices, the Rule does not impose, directly or indirectly, the additional cost of purchasing consumer reports or credit scores.

NADA's comment focuses on automobile dealers that are engaged in three-party financing transactions, in which a dealer agrees to extend financing to a consumer and then assigns the loan to a third party, such as a bank or financing company. In this scenario, automobile dealers will obtain certain personal information from consumers, along with an authorization to obtain their consumer reports, and will shop the information to several potential financing sources. These financing sources will pull consumer reports in order to determine the "buy rate" at which the financing source would agree to purchase the contract. The automobile dealer uses a consumer report in setting the retail financing rate for the credit because it uses the "buy rate" offered by the third-party financing source to set the rate offered to the consumer. In some instances, the dealer may not have physically accessed the consumer report. Nevertheless, the FTC has always maintained that the Rule covers these dealers since they are the original creditor in a transaction that uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit. The FTC's interpretation of the Rule was upheld by the D.C. District Court in *Nat'l Auto Dealers Ass'n v. FTC*, 854 F. Supp. 2d 65 (D.D.C. May 22, 2012).

This interpretation that dealers are "original" creditors under the Rule does not impose the vast costs that NADA suggests. As the court in *Nat'l Auto Dealers Ass'n* noted in its decision, ". . .given the preexisting channels between financing sources and auto dealers (to convey, for example, credit applications and loan rates), the dealer could get the credit

information from the financing source as well...[the FTC's interpretation] does not mandate an impossibility nor does it obligate them to purchase a consumer report.”³ Indeed, the dealer could require simply that the financing source pass on to the dealer the credit score it obtained on the consumer. Although the Rule does allow dealers to comply by providing all consumers with their credit scores, nothing in the Rule mandates this course of action.

Moreover, automobile dealers already handle, maintain, store, and dispose of sensitive personal information about consumers (e.g., credit applications, financing contracts etc.). Thus, the FTC does not believe that the Rule imposes an additional burden when it comes to the handling, storing, and disposing of consumer report information.

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the FTC's calculated share of the associated PRA burden for the underlying disclosure requirements.

Burden statement: The burden figures below present estimates of the number of applicable motor vehicle dealers subject to the FTC's RBP Rule⁴ and their assumed recurring disclosure burden, in addition to the estimated number of and burden for other entities over which the FTC shares enforcement burden with the CFPB under subpart H of Regulation V. For more details about the creditor notifications required and the basis for the calculations summarized below, see the March 3, 2017 Notice.

Title: Fair Credit Reporting Risk-Based Pricing Regulations

³ *Nat'l Auto Dealers Ass'n v. FTC*, 864 F. Supp. 2d 65, n.17 (D.D.C. May 22, 2012).

⁴ The FTC retains rulemaking authority for its RBP Rule solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (2010)) that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

OMB Control Number: 3084-0145

Type of Review: Extension of currently approved collection

Estimated number of respondents: 160,250

Estimated Annual Burden: 9,652,500 hours and \$174,127,650⁵ in associated labor costs.

Estimated Capital or Other Non-Labor Costs: 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 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. 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 <https://www.ftc.gov/policy/public-comments>.

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/rbprulepra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Website.

If you file your comment on paper, write “RBP Rule, PRA Comment, P145403” on your

⁵ Bureau of Labor Statistics, Economic News Release, March 31, 2017, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016”: <http://www.bls.gov/news.release/ocwage.htm>. This is an update of the labor information used in the March 3, 2017 Notice. The newer table shows \$18.11 as the mean hourly wage for correspondence clerks, an increase from \$17.47 previously used.

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.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail are subject to delays due to heightened security precautions. Thus, comments instead can also be sent via email to wlberante@omb.eop.gov.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, 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.

Visit the FTC Website to read this Notice. 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 30 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>.

David C. Shonka
Acting General Counsel.

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