

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 310

#### Telemarketing Sales Rule; Extension of Comment Period in the Notice of Proposed Rulemaking

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

**ACTION:** Extension of comment period.

**SUMMARY:** In a **Federal Register** document announced on July 30, 2009,<sup>1</sup> and published in the **Federal Register** on August 19, 2009 (“Notice”),<sup>2</sup> the Federal Trade Commission requested comment on its Notice of Proposed Rulemaking (“NPRM”) in connection with proposed debt relief amendments to the Telemarketing Sales Rule (“TSR”). The NPRM stated that comments must be received on or before October 9, 2009. In response to a request to extend the comment period received on September 17, 2009, the Commission has determined to extend the comment period until October 26, 2009.

**DATES:** Written comments addressing the debt relief amendments to the TSR must be received on or before October 26, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. For important information concerning the comments you file, please review the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be filed at the following electronic address: (<https://secure.commentworks.com/ftc-TSRDebtRelief>) (following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the

manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:**

Allison Brown, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-3224.

**SUPPLEMENTARY INFORMATION:** On August 19, 2009, the Commission published an NPRM proposing amendments to the Telemarketing Sales Rule (16 CFR part 310) to address concerns about debt relief services. In that Notice, the Commission solicited comment regarding the proposed Rule and provided for a 60-day comment period. Thus, the comment period for the NPRM would close October 9, 2009.

On September 17, 2009, U.S. Congressman Dan Burton sent a letter to FTC Chairman Jon D. Leibowitz requesting a 120-day extension of the comment period, and on October 2, 2009, U.S. Congressman Pete Sessions and nine other Members of Congress<sup>4</sup> sent a letter to Chairman Leibowitz similarly requesting a 120-day extension of the comment period. In their letters, Congressman Burton and the other Members of Congress state that the NPRM involves issues that are important to many Members of Congress, who were unable to give the issues proper consideration due to the August recess and ensuing and pressing Congressional business. They also state that many members of the public will be unable to participate in the comment process given the current comment deadline.

The Commission concludes that although an extension is warranted, an extension of 120 days is unnecessary to ensure that interested parties have an adequate opportunity to prepare and submit comments and would cause undue delay. In addition, the FTC staff is holding a public forum on November 4, 2009 to discuss the comments received on the proposed rule and allow members of the public to express views about the proposed rule. The public forum provides another opportunity to provide information to the Commission.

<sup>4</sup> The other signatories are Rep. John Sullivan, Rep. Steve Scalise, Rep. Lynne Westmoreland, Rep. Sam Johnson, Rep. Sue Myrick, Rep. Marsha Blackburn, Rep. Mike Coffman, Rep. Tom Price, and Rep. Mary Fallin.

Requests to participate in the public forum are due on October 9, 2009.<sup>5</sup>

Accordingly, the Commission has decided to extend the comment period from October 9, 2009 to October 26, 2009. Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Telemarketing Sales Rule - Debt Relief Amendments, R411001” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as any individual’s: Social Security Number; date of birth; driver’s license number, other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). 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), 16 CFR 4.9(c).<sup>6</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://>

<sup>5</sup> Additional information about the public forum is available at (<http://www1.ftc.gov/opa/2009/08/tsrforum.shtml>).

<sup>6</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

<sup>1</sup> The Notice was announced in a press release on July 30, 2009, available at: (<http://www.ftc.gov/opa/2009/07/tsr.shtml>).

<sup>2</sup> 74 FR 41988 (Aug. 19, 2009).

secure.commentworks.com/ftc-TSRDebtRelief) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<https://secure.commentworks.com/ftc-TSRDebtRelief>). If this Notice appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (<http://www.ftc.gov>) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Telemarketing Sales Rule - Debt Relief Amendments - R411001" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, to avoid security related delays.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB"), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws 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, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 610

RIN 3084-AA94

#### Free Annual File Disclosures Amendments to Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** Section 205 of the Credit CARD Act of 2009 requires the Federal Trade Commission ("FTC" or "Commission") to issue a rule by February 22, 2010, to prevent deceptive marketing of "free credit reports." To that end, the Commission proposes, and seeks comment on, amendments to the Commission's Free Annual File Disclosures Rule, 16 CFR Part 610. The proposed amendments would require certain advertisements for "free credit reports" to include prominent disclosures designed to prevent consumers from confusing these "free" offers with the federally mandated free annual file disclosures available through the single centralized source. In addition, the Commission proposes amendments to delay advertisements for products and services through the centralized source until after the consumer receives his or her free annual file disclosure, and to prohibit other practices that may interfere with the free file disclosure process. Finally, the Commission proposes certain technical amendments to the Rule.

**DATES:** Comments must be received on or before November 30, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Comments in electronic form should be submitted by using the following weblink: (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135

(Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the SUPPLEMENTARY INFORMATION section below.

#### FOR FURTHER INFORMATION CONTACT:

Katherine Armstrong, Attorney, or Steven Toporoff, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2252.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In this Notice, the Commission is proposing to amend its Free Annual File Disclosures Rule ("Free Reports Rule" or "Rule"),<sup>1</sup> which went into effect in 2004. This Rule sets out the procedures that nationwide consumer reporting agencies<sup>2</sup> ("CRAs") and nationwide specialty consumer reporting agencies<sup>3</sup> must follow to comply with section 612 of the Fair Credit Reporting Act ("FCRA"), which gives consumers the right to obtain free annual file disclosures from the nationwide CRAs through a single centralized source. The Commission's proposed amendments implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Act"),<sup>4</sup> which directs the Commission to promulgate a rule within nine months requiring certain disclosures in the advertising for "free credit reports" to reduce consumer confusion. The Commission also is proposing a number of changes to address certain practices that the Commission believes interfere with or detract from consumers' ability to obtain their free annual file disclosures, as well as certain technical corrections described below.

##### A. The Free Annual File Disclosures Rule

The Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") amended the FCRA and directed the Commission to promulgate a rule specifying the procedures for consumers

<sup>1</sup>16 CFR Part 610.

<sup>2</sup>Section 603(p) of the FCRA defines a "nationwide consumer reporting agency" as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. At this time, there are three nationwide consumer reporting agencies - Equifax Inc., Experian, and TransUnion LLC.

<sup>3</sup>Nationwide specialty consumer reporting agencies are defined in section 603(w) of the FCRA. Specifically, section 603(w) defines "nationwide specialty consumer reporting agency" as a CRA that compiles and maintains files on consumers on a nationwide basis relating to (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history, or (5) insurance claims.

<sup>4</sup>Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009).