

of the nonpayment of most checks in each category (such as “nonlocal” checks and “local” checks). The results of the proposed survey would be used to determine whether reducing the hold periods in Regulation CC is warranted.

The proposed survey would consist of five sections. Section I would collect general information on the depository institution, such as name, address, and contact person.

Section II consists of seven questions on respondents’ losses and recoveries related to check fraud. In its role as bank of first deposit and as paying bank, an institution would be asked to provide the value and number of check losses incurred in 2005, as well as the value and number of cases associated with recoveries received in 2005 from check losses. As bank of first deposit, institutions would be asked to provide information on their losses by category, such as the origin of the check (e.g., local or non-local), whether the check was dishonored versus subject to a warranty claim, and the age of the account. As paying bank, institutions would be asked to provide their losses by presentment method (original checks, substitute checks, or checks presented electronically). Both the dollar value and the number of cases would be reported. The respondent also would be asked to compare its check losses in 2005 with its check losses in 2004. Section II questions are in response to study requirements 4 and 5.

Section III consists of two questions on the volume of checks, for cases where the institution was the paying bank and for cases where the institution was the bank of first deposit. The institution would be asked to provide the total number and value of checks presented to it in a calendar month, categorized by presentment method (original checks, substitute checks, or checks presented electronically). The institution also would be asked to provide the total number and value of checks deposited at the institution as the bank of first deposit during the same calendar month, categorized by origin of the check. Section III questions are in response to study requirement 1.

Section IV consists of five questions on the institution’s funds availability policies and practices for next-day availability, local, and nonlocal checks. The institution would be asked to provide its number of transaction accounts and the percentage of these accounts held by consumers. The institution would also be asked to indicate its published funds availability policy, including the percentage of consumer transaction accounts for which the policy permits hold

extensions on a case-by-case basis, and to specify what changes (if any) it has made to its policy in the past two years. The institution would be asked to indicate its funds availability practices for deposits that do not qualify as exception holds under Regulation CC. Finally, institutions would be asked for the percentage of check deposits subject to Regulation CC exception holds that receive later availability than the Regulation CC permitted holds for next-day availability, local, and nonlocal checks. Section IV questions are in response to study requirement 2.

Section V consists of three questions addressing the institution’s experiences with returned checks. The institution would be asked to specify the number of business days within which it receives local and nonlocal checks that have been returned unpaid by the paying bank. Two questions request data on notifications and procedures regarding large-dollar returned checks. Section V questions are in response to study requirement 3.

The Federal Reserve will accept comments on all aspects of the proposed survey. In general, the Federal Reserve requests comment on how the survey might be modified to improve its responsiveness to the requirements of section 16 of the Check 21 Act, while also enabling depository institutions to respond to the survey with reasonable burden. More specifically, the Federal Reserve requests comments on the following. To what extent are institutions, in their role as banks of first deposit, able to categorize check losses by local and non-local checks (proposed question 2.2)? To what extent are institutions, in their role as paying banks, able to categorize check losses by presentment method (proposed question 2.6)? How might questions 4.2 and 4.4 be restructured to better capture the frequency with which institutions make funds available sooner than Regulation CC requires? Do the options listed under question 4.3(d) capture the reasons why institutions might have changed their funds availability policies in the past two years? And, finally, do institutions typically track check losses by check or by case (which may involve one or more checks)? The proposed survey is available electronically at <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm>.

Board of Governors of the Federal Reserve System, May 5, 2005.

Jennifer J. Johnson,
Secretary of the Board.

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FEDERAL TRADE COMMISSION

Notice of Agency Information Collection Activities Regarding a Pilot Study Pursuant to Section 319 of the Fair and Accurate Credit Transactions Act of 2003

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below have been submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The Federal Trade Commission (the “Commission” or “FTC”) is seeking public comments on its proposal to conduct a pilot study in connection with Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act” or the “Act”).

DATES: Public comments must be received on or before June 9, 2005.

ADDRESSES: Comments should refer to the “Accuracy Pilot Study: Paperwork Comment (FTC file no. P044804)” to facilitate the organization of the comments. A comment filed in paper form should include this 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–159 (Annex Y), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: AccuracyPilotStudy@ftc.gov.

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). 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 Commission Rule 4.9(c), 16 CFR 4.9(c).

is subject to lengthy 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. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. 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.htm>.

FOR FURTHER INFORMATION CONTACT: Peter Vander Nat, Economist, (202) 326-3518, Federal Trade Commission, Bureau of Economics, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 319 of the FACT Act, Public Law 108-159 (2003), requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. Section 319 requires the Commission to issue a series of biennial reports to Congress over a period of eleven years. The first report was submitted to Congress in December 2004 ("December 2004 Report").²

As discussed in the December 2004 Report, the FTC intends to conduct a pilot study which will evaluate the feasibility and methodology of a nationwide survey on the accuracy and completeness of consumer reports. On October 20, 2004, the FTC sought comment on the information collection requirements associated with its proposed pilot study. 69 FR 61675. Ten comments were received, which are discussed below.³ Pursuant to the OMB regulations that implement the PRA, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval for the proposed pilot study.

The purpose of the proposed pilot study is to evaluate the feasibility of directly involving consumers in a review of the information in their credit

reports. The pilot study does not rely on the selection of a nationally representative sample of consumers, and as the Commission stated in the December 2004 report (at 32), statistical conclusions will not be drawn from this study. The study will involve a small group of consumers who give the designated contractor permission to review their credit reports. The contractor will help the participants to understand their reports and to discern inaccuracies or incompleteness in them. This process of review will also involve contact with the three nationwide consumer reporting agencies ("CRAs") and those who furnish information ("data furnishers") to these agencies. The pilot study is primarily a tool to assess whether the collection of certain data pertinent to credit report accuracy can be performed in a way that is not unduly resource-intensive and would not be cost-prohibitive if extended to a nationwide survey (including such matters as identifying and screening participants, as well as involving data furnishers).

Subject to OMB clearance for the study under the Paperwork Reduction Act, the FTC has designated a contractor with high-level expertise in credit reporting issues.⁴ The design elements of the study are the following:

1. The study group will be drawn by a randomized procedure that is screened to consist of adult members of households to whom credit has been extended in the form of credit cards, automobile loans, home mortgages, or other forms of installment credit. The FTC will send a letter to potential study participants describing the nature and purpose of the pilot study. The contractor will screen consumers through telephone interviews. The selected study group will consist of approximately 35 consumers having a diversity of credit scores over three broad categories: poor, fair, and good.⁵ As various consumers give consent to participate (and thereby give the contractor permission to know their credit scores), if the respective categories of credit scores have an

⁴ The designated contractor is a consortium comprised of the Credit Research Center from Georgetown University, the University of Missouri via its Center for Business and Industrial Studies, and the Fair Isaac Corporation.

⁵ A credit score is a numerical summary of the information in a credit report and is designed to be predictive of the risk of default. Credit scores are created by proprietary formulas that render the following general result: the higher the credit score, the lower the risk of default. The designated contractor for the pilot study plans to use the "FICO" credit score, which is a commonly used score in credit reporting that is developed by the Fair Isaac Corporation.

unequal distribution of consumers, then an array will be chosen to favor the consumers with the relatively lower credit scores.

2. The contractor will help the participants obtain their credit reports from the three nationwide CRAs—Equifax, Experian, and TransUnion—through the Web site <http://www.myfico.com>. Each participant will request his or her three credit reports on the same day, although different participants will generally request their reports on different days.

3. The contractor will help the participants review their credit reports by resolving common misunderstandings that they may have about the information in their reports; this will involve educating the participant wherever appropriate (thereby helping them to distinguish between accurate and inaccurate information). In addition, the contractor will help the consumer locate any material differences or discrepancies among their three reports, and check whether these differences indicate inaccuracies.

4. The contractor will facilitate a participant's contact with the CRAs and with data furnishers as necessary to help resolve credit report items that the participant views as inaccurate. To the extent necessary, the contractor will guide participants through the dispute process established by the Fair Credit Reporting Act ("FCRA"), (the FCRA limits this process to 30 days, but the time may be extended to 45 days if the consumer submits relevant information during the 30-day period). The contractor will not contact the CRAs and data furnishers directly during the course of the study, however. The contractor will determine any changes in the participant's FICO credit score resulting from changes in credit report information.⁶

As discussed further below, the contractor will use procedures that avoid the identification of study participants to CRAs and data furnishers. The pilot study will not create any hypothetical disputes, and it will use procedures that regularly pertain to credit reporting activities.

⁶ In making this comparison, the contractor will not retrieve from Fair Isaac's Web site a FICO score after the items have been corrected. Fair Isaac, as a member of the designated consortium of contractors, will compute a new FICO score based on the information in the original credit report and any changes directly related to the contractor's review. This method addresses a concern that changes in a credit score retrieved from Fair Isaac's Web site could be the result of the addition of new items rather than corrected items. See comments from the Consumer Data Industry Association at 5; comments from Equifax at 15.

² Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2004. This report is available at <http://www.ftc.gov/reports/index.htm#2004>.

³ The comments are available at <http://www.ftc.gov/os/statutes/fcrajump.htm>.

Summary of Comments to the First Federal Register Notice Regarding Pilot Study

Some of the commenters enthusiastically support the proposed pilot study.⁷ Other commenters stated that, because they support a study of accuracy and completeness, they want more information about the pilot study.⁸

Several of the commenters are concerned about the purpose of the pilot study. Springboard (at 1–2) summarizes the focus of the proposed pilot study as “gauging how difficult it is for people to obtain, understand, and correct inaccurate information in their credit reports on a ‘do-it-yourself’ basis;” Springboard further fears that the goal of the pilot study is to conclude that the “do-it-yourself model” is adequate “as is.” In the opposite direction, industry representatives have expressed the fear to FTC staff that the pilot study may be designed to conclude that consumers should generally have expert assistance made available to them in reviewing a credit report. Both of these fears express misunderstandings about the purpose of the pilot study. The pilot study is not intended to replicate normal circumstances under which consumers generally review their credit reports; nor is it intended to evaluate the adequacy or complexity of the dispute process. The purpose of the pilot study is to evaluate the feasibility of involving consumers in a review of the accuracy and completeness of the information in their credit reports. The scrutiny applied to the reports of study participants, via the help of an expert coach, would not at all be indicative of a consumer’s normal experience in reviewing a credit report. The FTC recognizes that consumers often are not familiar with credit reporting procedures and may have difficulties in understanding a credit report (which may be partly due to a consumer’s own misconceptions). The pilot study seeks to evaluate the feasibility of obtaining information pertinent to credit report accuracy by directly involving consumers under expert assistance. This evaluation is a first step in designing a more comprehensive study of credit report inaccuracies.

Several commenters are concerned that the FTC is apparently doing just “one” pilot study, further stating that a single pilot study cannot adequately

address the issues to be dealt with in preparation for a national study.⁹ The Commission has stated in its December 2004 Report (at 35) that several pilot studies may be needed in preparation for a national study.

Privacy Rights Clearinghouse (“PRC”) (at 2) asks whether measures are in place to mask the identity of participants from both CRAs and data furnishers. The study is designed to use only the normal business procedures of the CRAs and data furnishers, and therefore masks the identity of consumers as study participants. First, participants will request their credit reports through the Web site <http://www.myfico.com>. For the CRAs that receive and process these requests, they will be identical in form to thousands of requests that are regularly processed; indeed, nothing in the nature of the request identifies the consumer as a study participant. Second, any follow-up contact by study participants with a CRA or data furnisher will be through the normal process used by consumers when clarifying or disputing information in their credit reports. Thus, CRAs and data furnishers will not be able to identify communications from study participants. In addition, each member of the contractor consortium has signed an agreement not to disclose the identity of any study participant to parties other than the FTC.

PRC questions whether participant’s credit reports will be agency records subject to the Privacy Act, 5 U.S.C. 552a, and, if so, whether participants will receive any notice required by that Act. To the extent, if any, that the Act applies, the reports would be part of the agency’s existing system for legal, investigational and other records,¹⁰ and, whether or not the Act applies, the FTC intends to include a notice consistent with the Act on any information collection forms (e.g., the letter sent by the FTC to potential study participants). PRC has also questioned whether there will be any express agreement to prohibit secondary uses of the collected data by the contractor. The letter to potential participants will inform them that the contractor has been permitted to collect the data only for the purpose of pilot study, and that other uses by the contractor have been prohibited.

Industry commenters such as the Consumer Data Industry Association (“CDIA”), Experian, Equifax, TransUnion, and the Coalition to Implement the Fact Act (“Coalition”), raise a number of other questions and concerns. They ask what definition the

FTC will use for the “accuracy and completeness” of credit reports in the pilot study, as well as for a more comprehensive study. The pilot study is not employing a specific definition of accuracy and completeness.¹¹ Instead, the pilot study is assessing a potential methodology for directly involving consumers in a review of the information in their credit reports. The pilot study will list possible outcomes of the items reviewed on credit reports, as follows:

“Item not disputed by consumer”;
 “Disputed by consumer and relevant party agrees to make a change”;
 “Disputed by consumer and the relevant party disagrees and maintains the information as originally reported”;
 “Disputed by consumer and deleted due to expiration of statutory [FCRA] time frame”;
 “Data item not present on report”; or
 “Item not applicable.”

This list of outcomes demonstrates that the pilot study will be useful in designing a nationwide survey regardless of how accuracy and completeness are defined for such a survey. No decision has yet been made regarding the definition of these terms for a nationwide survey.

TransUnion (at 3) states that “[it] is particularly concerned that the FTC has not indicated how it will evaluate the completeness of consumer report information, nor can the FTC’s intent be inferred from the Notice.” Although the pilot study is not measuring incompleteness, one of the outcomes of the review will be “data item(s) not present on the report.” The FTC staff recognizes the different reporting cycles of data furnishers and also the voluntary basis on which information is provided to a CRA. Hence, there may be several possible explanations for why an anticipated item is not on a particular credit report.¹² If the results of the pilot study indicate that its methodology is inadequate to study incompleteness, other methods will be considered.

Regarding the pilot study’s methodology, Equifax asks (at 17) what the FTC means by “informal contact.”¹³

¹¹ See also December 2004 Report at 5 n.10 (discussing different definitions of completeness) and at 16–18 (discussing the accuracy and completeness requirements of the FCRA).

¹² The item may be missing because a data furnisher did not provide the information to a certain CRA (or to any CRA), or—due to the specific reporting cycle of the data furnisher—because it was provided at a time after the credit report was inspected by the consumer. It could also be that the item was submitted to a CRA but was not placed in the correct consumer’s file.

¹³ The October 20, 2004 Notice indicated that both formal and informal contacts with CRAs and

⁷ See the comments of Bixby Consulting and the comments of the American Financial Services Association (“AFSA”). The comments from Visa USA are also generally supportive and add suggestions about additional studies.

⁸ See comments from Springboard Nonprofit Consumer Credit Management (“Springboard”) and Privacy Rights Clearing House (“PRC”).

⁹ CDIA at 2; Equifax at 10.

¹⁰ See <http://www.ftc.gov/foia/sysnot/i-1.pdf>

For the purpose of the pilot study, "informal contact" means any communication between a consumer and CRA or data furnisher that does not involve a formal FCRA dispute. From data presented in testimony before Congress by the Consumer Data Industry Association, it can be inferred that a significant number of participants in the pilot study will use informal contact to resolve discrepancies in their credit report.¹⁴

Some commenters ask how the pilot study will resolve disputed items about which the consumer and data furnisher simply disagree.¹⁵ The FTC staff does not intend that the pilot study resolve such items, because this study will not be used to draw conclusions about credit report accuracy. Thus, wherever appropriate, the contractor will report that there was no agreement on certain disputed items. Following completion of the pilot study, the FTC staff plans to evaluate the number and potential seriousness of unresolved disagreements in an effort to determine whether there is an appropriate methodology to assess them in a nationwide study.¹⁶

Industry commenters believe that an assessment of credit report accuracy should evaluate the materiality of errors, *i.e.*, the impact of errors in the context of decisions made by the grantors of credit.¹⁷ As a precursor to the possible study of materiality in nationwide survey, the contractor will determine the change in a commonly used credit score (the FICO score) whenever credit report information is changed by the mutual consent of the consumer and the relevant party (CRA or data furnisher).¹⁸ Some commenters are concerned that the pilot study only uses one credit score.¹⁹ Although the FTC staff

data furnishers may occur in the process of having consumers review their credit reports. 69 FR 61675.

¹⁴ See Statement of Stuart K. Pratt, CDIA, Before the Committee on Banking, Housing and Urban Affairs of the United States Senate, July 9, 2003. CDIA states that there were approximately 16 million consumer-requested credit reports from the three CRAs for year 2003. Roughly 50% of these reports did not lead to a further response from the consumer (such as a call to, or dispute with, a CRA). Regarding the remaining reports, about half of these (*i.e.*, about 4 million reports) involved questions or clarifications; the other half (roughly another 4 million reports) involved a formal dispute.

¹⁵ CDIA at 4; Equifax at 12; TransUnion at 4, 6.

¹⁶ Fair Isaac, as a member of the consortium of contractors, will calculate the potential change in a FICO score regarding information that was challenged by the consumer but not changed on the credit report. This will help FTC staff assess the potential seriousness of unresolved items.

¹⁷ CDIA at 1, 4; Equifax at 9, 16; Experian at 1–2; TransUnion at 4, 6–7.

¹⁸ See *supra* note 6 for an explanation of how the contractor will determine the change in the credit score.

¹⁹ CDIA at 4, 5; Equifax at 14–16; Experian at 2.

acknowledges that there are a variety of credit scores, *i.e.*, different scoring techniques used by the industry, that may be relevant in assessing the materiality of errors, the current pilot study is not making such an assessment because no statistically valid conclusions can be drawn from the small sample of participants.

Industry commenters question why the FTC may permit an "over-sampling" of low credit scores in the pilot study, and is thus likely to have a similar procedure for a national study.²⁰ Although over-sampling is not important for this pilot study (it involves only a small sample, and no statistical conclusions will be drawn from this study), the sampling methodology is potentially important for a nationwide study. One of the goals of the nationwide study under consideration, however ultimately executed, would be to categorize errors by their type and seriousness in terms of consumer harm (FTC December 2004 Report at 34.) In relation to this goal there is a recognized statistical procedure, called "stratified sampling," that divides a population into an array of "strata" and knowingly over-samples certain strata.²¹ A reason for over-sampling consumers that have low credit scores is that such people are likely to experience greater harm if their credit reports have errors contributing to the low score.

Industry commenters also express a number of additional concerns about the nationwide survey under consideration, which they assert should be addressed by the FTC before the pilot study begins. The FTC staff believes it is premature to resolve these concerns now because the pilot study will be used to assess the utility, costs, and design of the potential nationwide survey.

Estimated Hours of Burden

Consumer participation involves the initial screening and any subsequent time spent to understand, to review, and if deemed necessary, to dispute information in credit reports. The FTC staff estimates that up to 225 consumers may need to be screened through telephone interviews and that each screening interview may last up to 10 minutes, which totals up to 38 hours (225 contacts × (1/6) hour per contact).

²⁰ Equifax at 11; TransUnion at 6; CDIA at 3.

²¹ Textbooks in statistics explain the advantages of this method and also explain the prior knowledge about the strata that is needed to ensure the statistically reliability of the results, including the results for the population as a whole. For an elementary treatment of stratified sampling, see Harnett, Donald L., *Statistical Methods* (3rd ed.), Addison-Wesley Publishing Co., 1984 (pages 253–254).

With respect to the hours spent by study participants, in some cases the relative simplicity of a credit report may render little need for review, and the consumer's participation may only be an hour. For reports that involve difficulties, it may require a number of hours for the participant to be educated about the report and to resolve any disputed items. For items that are disputed formally, the participant must submit a dispute form, identify the nature of the problem, present verification from the participant's own records to the extent possible, and, upon furnisher response, perhaps submit follow-up information. All participants will have expert assistance available to them, and staff estimates that, on average, approximately 5 hours would be spent per participant, resulting in a total of 175 hours (5 hours × 35 participants).²² Total burden hours are thus approximately 200 hours (38 hours for screening plus 175 study participant hours).

Estimated Cost Burden

Participation by the consumer is voluntary. All participants will benefit by receiving assistance from the contractor in reviewing their credit reports, and identifying and resolving any errors. No monetary costs are involved for the consumer; specifically, participants will not pay for their credit reports.

William Blumenthal,

General Counsel.

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²² Data from the Consumer Data Industry Association (see *supra* note 14) can be used to help create an estimate of the average time spent by participants in reviewing their credit reports. This general estimate, given for the purpose of calculating burden under the Paperwork Reduction Act, is conservative and likely overestimates the amount of time that will be spent by study participants. For reports that do not require the participants to pose any questions to a CRA about their report (estimated to be 50% of reports), the FTC staff estimates the participant's time spent to be an hour or less. For reports that involve questions to a CRA but not a formal dispute (estimated to be 25% of reports), staff estimates the participant's time spent to be 2 to 3 hours. For reports that involve a formal dispute (estimated here to be 25% of consumer-requested reports), there may be significant differences for time spent by the participants, and this variation is itself one element to be discerned by the pilot study. FTC staff believes that, as a preliminary estimate, a formal dispute would not involve more than 15 hours of the participant's time, particularly in light of the fact that the participants will have expert assistance available to them, including guidance through the FCRA dispute process. Overall, the staff has calculated the average time per participant by using the weighted average over the three categories of reports: (.50 × 1 hour) + (.25 × 3 hours) + (.25 × 15 hours) = 5 hours.