

**Supplemental Supporting Statement for Final Amendments to  
Information Collection Provisions of  
the Telemarketing Sales Rule  
16 C.F.R. Part 310  
(OMB Control No. 3084-0097)**

**(1) Necessity for Collecting the Information**

The Federal Trade Commission (“FTC” or “Commission”) promulgated the Telemarketing Sales Rule (“TSR” or “Rule”) in 1995. The Rule was issued in accordance with the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”),<sup>1</sup> which sought to prevent deceptive or abusive telemarketing practices by requiring the Commission to promulgate rules regarding such telemarketing practices and by increasing the consumer fraud enforcement tools available to the FTC.<sup>2</sup>

The amended TSR addresses unlawful practices that have been occurring with increasing frequency in the telemarketing of debt relief services, including for-profit credit counseling services, debt settlement, and debt negotiation services. Based on the entire record in the proceeding, including recent law enforcement actions, staff outreach to stakeholders (see further discussion under item (8) of this Supporting Statement), analysis of complaint data, and other research, staff believes that tailoring the TSR to address law violations in the sale of debt relief services is warranted under the Telemarketing Act to enhance consumer protection.

**(2) Use of the Information**

The amendments require specific new disclosures in the sale of a “debt relief service,” as that term is defined in Section 310.2(m), which result in PRA burden for all covered entities – both new and existing respondents – that engage in telemarketing of these services. The amendments, among other things: (1) apply the TSR to *inbound* telemarketing of debt relief services<sup>3</sup>; and (2) add new required disclosures and prohibited representations to curb deceptive practices prevalent in the telemarketing of debt relief services.

These modifications provide sellers and telemarketers of debt relief services with clear requirements and expand the Commission’s ability to use the TSR – an important tool in its law enforcement arsenal – to bring law enforcement actions against, and obtain civil penalties from, debt relief service providers who prey on vulnerable consumers.

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<sup>1</sup> Public Law No. 103-297, 15 U.S.C. §§ 6101-6108.

<sup>2</sup> The Telemarketing Act specified that telemarketing sales rules issued by the Commission must include: (1) requirements prohibiting unsolicited telephone calls that reasonably might be considered to be coercive or abusive of the consumer’s right to privacy; (2) restrictions on the hours when unsolicited telephone calls may be made; (3) requirements that the telemarketer promptly and clearly disclose the purpose of the call, as well as make any other disclosures the Commission deems appropriate, including the nature and price of the goods and services; and (4) provisions defining and prohibiting deceptive telemarketing practices. The Telemarketing Act also directed the Commission to consider recordkeeping requirements in promulgating the Rule.

<sup>3</sup> While the TSR already covers outbound calls by debt relief service providers, the amendments also bring inbound calls within the TSR’s reach.

**(3) Consideration of Using Improved Information Technology to Reduce Burden**

The TSR's recordkeeping provisions permit sellers and telemarketers to keep records in whatever form, manner, format, or location they choose. Accordingly, the Rule's recordkeeping provisions are consistent with the requirements of the Government Paperwork Elimination Act ("GPEA").<sup>4</sup> The disclosures required by the TSR for the most part are made orally and, secondarily, by direct mail. Thus, electronic disclosures for purposes of implementing the provisions of the GPEA are either inapplicable or impracticable.

**(4) Efforts to Identify Duplication**

The TSR's recordkeeping requirements involve the preparation and retention of records demonstrating compliance with the Rule. Other federal and state government agencies may also require the retention of some records that the TSR requires to be retained (e.g., personnel, sales, or donation information). The amendments create a new obligation under the TSR's existing recordkeeping requirements for sellers conducting inbound debt relief telemarketing to retain electronic or other records of consumers' written agreement to receive such calls, and the scripts used in such calls.<sup>5</sup> Some state laws entail the retention of records required by the debt relief amendments, but the Commission is unaware of any federal laws that impose such requirements.<sup>6</sup> To the extent that the recordkeeping requirements of the TSR may duplicate the information collection requirements of other federal or state government agencies, the TSR does not require that any duplicate records be maintained.

Many state laws require the same or similar disclosures as those the TSR mandates. Staff knows of no instance, however, under which the TSR and any other law or regulation governing telemarketing require that a specific disclosure be made in duplicative ways to satisfy the Rule's requirements and a parallel law or regulation's requirements.

**(5) Efforts to Minimize Burden on Small Businesses**

In drafting the amended Rule, the Commission has made every effort to avoid unduly burdensome requirements for entities. The Commission believes that the amendments – including the new disclosures for debt relief services, prohibited misrepresentations, and the advance fee ban – are necessary in order to protect consumers considering the purchase of debt relief services. Similarly, the Commission is extending the coverage of the existing provisions of the Rule to inbound telemarketing of debt relief services. This amendment is designed to ensure that in telemarketing transactions to sell debt relief services, consumers receive the benefit of the Rule's protections. For each of these

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<sup>4</sup> 44 U.S.C. § 3504 note.

<sup>5</sup> 16 C.F.R. 310.5(a)(1) and (5). No specific recordkeeping requirement in the TSR applies to any other provision of the prerecorded call amendment. Telemarketers will continue to have the burden of proof to establish as an affirmative defense that they have complied with the call abandonment safe harbor, and may keep records showing that their call abandonment rates have not exceeded 3 percent over a 30-day period under the abandonment rate calculation amendment, although this is not expressly required by the TSR.

<sup>6</sup> See, e.g., Colorado Statutes § 12-15-5-203 *et seq.*

amendments, the Commission has attempted to tailor the provision to the concerns evidenced by the entire record. In fact, in determining the Final Rule's requirements, the FTC eliminated three of the disclosures initially proposed in the NPRM to reduce the burden on business, including small entities.<sup>7</sup> On balance, the Commission believes that the benefits to consumers of each of the Rule's requirements outweigh the costs to industry of implementation.

The Commission considered, but decided against, providing an exemption for small entities in the amended Rule. The protections afforded to consumers from the amendments are equally important regardless of the size of the debt relief service provider with whom they transact. Indeed, small debt relief service providers have no unique attributes that would warrant exempting them from provisions, such as the required debt relief disclosures. The information provided in the disclosures is material to the consumer regardless of the size of the entity offering the services. Similarly, the protections afforded to consumers by the advance fee ban are equally necessary regardless of the size of the entity providing the services. Thus, the Commission believes that creating an exemption for small businesses from compliance with the amendments would be contrary to the goals of the amendments because it would arbitrarily limit their reach to the detriment of consumers.

Nonetheless, the Commission has taken care in developing the amendments to set performance standards, which establish the objective results that must be achieved by regulated entities, but do not establish a particular technology that must be employed in achieving those objectives. For example, the Commission does not specify the form in which records required by the TSR must be kept. Moreover, the Rule's disclosure requirements are format-neutral; sellers and telemarketers may make the disclosures in writing or orally, as long as they are clear and conspicuous.<sup>8</sup> In sum, the FTC has worked to minimize any significant economic impact on small entities.

## **(6) Consequences of Conducting the Collection Less Frequently**

### **(a) Recordkeeping**

The TSR requires specified records to be retained for 24 months.<sup>9</sup> A record retention period of less than two-years would frustrate many investigations under the FTC's enforcement program. Consumers who complain to the FTC about transactions covered by the Rule often do not do so

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<sup>7</sup> The Commission determined, however, that one additional disclosure was necessary under the amended final Rule. Section 310.3(a)(1)(viii)(D) imposes an additional disclosure requirement on debt relief providers who request or require the customer to place money for its fee and for payment to customers' creditors or debt collectors in a dedicated bank account at an insured financial institution. These providers must disclose that the consumer owns the funds held in the account and may withdraw from the debt relief service at any time without penalty and receive all funds currently in the account. This information would be highly material to reasonable consumers in deciding whether to enroll in the service; the right to cancel and receive a refund is a key right for consumers under the Rule, but it is only meaningful if consumers know that they have the right.

<sup>8</sup> If the disclosures are made in writing, they are considered clear and conspicuous "only if they are sent close enough in time to the call so that the consumer associates the call with the written disclosures." FTC, *Complying With the Telemarketing Sales Rule* (May 2009), available at <http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtm>.

<sup>9</sup> 16 C.F.R. § 310.5.

immediately. Therefore, there may already be a substantial “lag time” between the time the alleged rule violations occur and the time the FTC learns of the alleged violations. A two-year record retention period allows Commission staff to gather the information needed to pursue enforcement actions and to identify those persons who have most recently suffered injury from the alleged deceptive or abusive telemarketing practices.

**(b) Disclosures**

All of the disclosures required by the Rule provide consumers with information necessary to make informed purchasing decisions or are essential to protect their privacy. Moreover, the Rule’s disclosure requirements address specific areas of recurring deception or abuse in telemarketing, and have been narrowly crafted to address the specific problems identified in these transactions through law enforcement efforts by the states and the FTC. The debt relief specific disclosures are narrowly crafted to address the specific problems raised by debt relief services that were identified in the rulemaking record.

**(7) Circumstances Requiring Collection Inconsistent With OMB Guidelines**

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

**(8) Consultation Outside the Agency**

Consistent with 44 U.S.C. 3506(c)(2)(B), the FTC provided an opportunity for public comment on the information collections contained in this rulemaking. See 74 Fed. Reg. 41,988 (Aug. 19, 2009). In addition to the consultation elaborated on at length in the preceding Supporting Statement submitted to OMB for the NPRM, this amended Rule is further informed by public comments received in response to this proceeding, including a forum to discuss the issues raised by the commenters.<sup>10</sup>

During the course of this rulemaking, the Commission received comments from 321 stakeholders, including representatives of the debt relief industry, creditors, law enforcement, consumer groups, and individual consumers.<sup>11</sup> Most industry commenters supported parts of the proposal but opposed the advance fee ban.<sup>12</sup> One industry member opposed virtually the entire proposal,<sup>13</sup> while a

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<sup>10</sup> The comments are available at <http://www.ftc.gov/os/comments/tsrdebtrelief/index.shtm>. A list of commenters cited in this Supporting Statement, along with the short citation names or acronyms used for them, appears as an Appendix to this document. When a commenter submitted more than one comment, the comment is also identified by date.

<sup>11</sup> These 321 commenters consist of: 35 industry representatives, 10 industry trade associations and groups, 26 consumer groups and legal services offices, six law enforcement organizations, three academics, two labor unions, the Uniform Law Commission, the Responsible Debt Relief Institute, the Better Business Bureau, and 236 individual consumers. Of these commenters, three submitted confidential data as part of their comments.

<sup>12</sup> *See, e.g.*, TASC (Oct. 26, 2009) at 2; USOBA (Oct. 26, 2009) at 3. Two industry commenters supported a partial advance fee ban allowing debt relief providers to receive fees to cover administrative expenses before

(continued...)

few supported the proposal as a whole.<sup>14</sup> In contrast, state attorneys general and regulators, consumer advocates, legal aid attorneys, and creditors generally supported the proposed amendments, including the advance fee ban.<sup>15</sup>

On November 4, 2009, the Commission held a public forum to discuss the issues raised by the commenters in this proceeding. Many of those who had filed comments on the proposed rule participated as panelists at the forum, and members of the public in attendance had the opportunity to make statements on the record. The forum was open to the public, and a transcript of the proceeding was placed on the public record.<sup>16</sup> After the forum, Commission staff sent letters to trade associations and individual debt relief providers that had submitted public comments, soliciting additional information in connection with certain issues that arose at the public forum.<sup>17</sup> Sixteen organizations responded and provided data. Finally, Commission staff met with industry and consumer representatives to discuss the issues under consideration in the rulemaking proceeding.

**(9) Payments or Gifts to Respondents**

Not applicable.

**(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature**

The collection of information in this Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2). To the extent that information covered by a recordkeeping requirement of the Rule is collected by the Commission for law enforcement purposes, the confidentiality protections of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, will apply.

**(12) Burden Estimate**

**Estimated Additional Annual Hours Burden: 43,375 hours**

As explained below, the estimated annual burden for recordkeeping attributable to the Rule amendments, averaged over a prospective three-year PRA clearance, is 29,886 hours for all industry members affected by the Rule. Although the first year of compliance will entail setting up compliant

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<sup>12</sup> (...continued)

providing the promised services. CRN (Oct. 2, 2009) at 10-11; USDR (Oct. 20, 2009) at 2.

<sup>13</sup> MD (Oct. 26, 2009) at 4.

<sup>14</sup> ACCORD (Oct. 9, 2009) at 1; FCS (Oct. 27, 2009) at 1; CareOne at 1.

<sup>15</sup> NAAG (Oct. 23, 2009) at 1; NACCA at 1; CFA at 2; SBLS at 1; QLS at 2.

<sup>16</sup> The record in this proceeding, including the transcript of the forum, is available at <http://www.ftc.gov/bcp/rulemaking/tsr/tsr-debtrelief/>. In addition, the full paper record is available in Room 130 at the FTC, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number: 202-326-2222.

<sup>17</sup> In addition to the public comments, the letters are also posted at <http://www.ftc.gov/os/comments/tsrdebtrelief/index.shtm>.

recordkeeping systems, the burden will decline in succeeding years as they will then have in place such systems. The estimated burden for the disclosures that the Rule requires, including the new disclosures relating to debt relief services, is 13,489 hours for all affected industry members, the same estimate used for the proposed rule. Thus, the total PRA burden is 43,375 hours.

#### **A. Number of Respondents**

Based on its estimate that 2,000 entities sell debt relief services, and on the assumption that each of these entities engages in telemarketing as defined by the TSR, staff estimates that 879 new respondents will be subject to the Rule as a result of the amendments. The latter figure is derived by a series of calculations, beginning with an estimate of the number of these entities that conduct inbound versus outbound telemarketing of debt relief services. This added estimate is needed to determine how many debt relief service providers are existing respondents and how many are new respondents because their respective PRA burdens will differ.

Staff is not aware of any source that directly states the number of outbound or inbound debt relief telemarketers; instead, estimates of these numbers are extrapolated from external data. According to the Direct Marketing Association (“DMA”), 21% of all direct marketing in 2007 was by inbound telemarketing and 20% was by outbound telemarketing.<sup>18</sup> Using this relative weighting, staff estimates that the number of inbound debt relief telemarketers is 1,024 ( $2,000 \times 21 \div (20 + 21)$ ) and the number of outbound telemarketers is 976 ( $2,000 \times 20 \div (20 + 21)$ ).

Of the estimated 1,024 entities engaged in inbound telemarketing of debt relief services, an estimated 217 entities conduct inbound debt relief telemarketing through direct mail; the remaining 807 entities do so through general media advertising and have been thus far largely exempt from the Rule’s current requirements.<sup>19</sup> Of the 217 entities using direct mail, staff estimates that 72, approximately one-third, make the disclosures necessary to exempt them from the Rule’s existing requirements.<sup>20</sup> Thus, an estimated 879 entities ( $807 + 72$ ) are new respondents that will be newly subject to the TSR and its PRA burden, including burden derived from the new debt relief disclosures.

The remaining 145 entities ( $217 - 72$ ) conducting inbound telemarketing for debt relief through direct mail would be existing respondents because they receive inbound telemarketing calls in response to direct mail advertisements that do not make the requisite disclosures to qualify for the direct mail

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<sup>18</sup> See *DMA Statistical Fact Book* 1, 17 (30<sup>th</sup> ed. 2008) (“DMA Statistical Fact Book”).

<sup>19</sup> According to the DMA, 21.2% of annual U.S. advertising expenditures for direct marketing is through direct mail; the remaining 78.8% is through all other forms of general media (e.g., newspapers, television, Internet, Yellow Pages). See *id.* at 11. Thus, applying these percentages to the above estimate of 1,024 inbound telemarketers, 217 entities (21.2%) advertise by direct mail, and 807 (78.8%) use general media.

<sup>20</sup> The apportionment of one-third is a longstanding assumption stated in past FTC analyses of PRA burden for the TSR. See, e.g., *Agency Information Collection Activities*, 74 Fed. Reg. 25540, 25543 (May 28, 2009); *Agency Information Collection Activities*, 71 Fed. Reg. 28698, 28700 (May 17, 2006). No comments have been received to date with an alternative apportionment or reasons to modify it.

exemption.<sup>21</sup> The estimated 976 entities conducting outbound telemarketing of debt relief services are already subject to the TSR and thus, too, would be existing respondents. Accordingly, an estimated 1,121 telemarketers selling debt relief services will be subject only to the additional PRA burden imposed by the newly adopted debt relief disclosures in amended Rule § 310.3(a)(1)(viii).

## **B. Recordkeeping Hours**

Staff estimates that in the first year following promulgation of the Final Rule, it will take 100 hours for each of the 879 new respondents identified above to set up compliant recordkeeping systems. This estimate is consistent with the amount of time allocated in other PRA analyses that have addressed new entrants, i.e., newly formed entities subject to the TSR.<sup>22</sup> The recordkeeping burden for these entities in the first year following the amended Rule's adoption is 87,900 hours (879 new respondents x 100 hours each). In subsequent years, when TSR-compliant recordkeeping systems will, presumably, have already been established, the burden for these entities should parallel the one hour of ongoing recordkeeping burden staff has previously estimated for existing respondents under the Rule.<sup>23</sup> Thus, annualized over a prospective three-year PRA clearance period, cumulative annual recordkeeping burden for the 879 new respondents will be 29,886 hours (87,900 hours in Year 1: 879 hours for each of Years 2 and 3). Burden accruing to new entrants, 100 hours apiece to set up new recordkeeping systems compliant with the Rule, has already been factored into the FTC's existing clearance from OMB for an estimated 75 entrants per year, and is also incorporated within the FTC's current clearance for the TSR under OMB Control No. 3084-0097.<sup>24</sup>

Staff believes that the 1,121 existing respondents identified above will not have recordkeeping burden associated with setting up compliant recordkeeping systems. These entities are already required to comply with the Rule, and thus should already have recordkeeping systems in place. As noted above, these existing respondents will each require approximately one hour per year to file and store records required by the TSR. Here, too, however, this recordkeeping task is already accounted for in the FTC's existing PRA clearance totals and included within the latest request for renewed OMB clearance for the TSR.<sup>25</sup>

## **C. Disclosure Hours**

Industry comments stated that in the ordinary course of business a substantial majority of sellers and telemarketers make the disclosures the Rule requires because doing so constitutes good business

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<sup>21</sup> 16 CFR 310.6(b)(6).

<sup>22</sup> See, e.g., *Agency Information Collection Activities*, 74 Fed. Reg. at 25542; *Agency Information Collection Activities*, 71 Fed. Reg. at 28699.

<sup>23</sup> *Id.*

<sup>24</sup> *Agency Information Collection Activities*, 74 Fed. Reg. at 25542 (“The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours.”). The term “new entrant” denotes an entity that has not yet, but may in the future come into being.

<sup>25</sup> *Id.*

practice.<sup>26</sup> To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute “burden.”<sup>27</sup> The Commission also streamlined the disclosures required in the final Rule by decreasing the number of required disclosures from six to four. Moreover, some state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable to the Rule is far less than the total number of hours associated with the disclosures overall. Staff continues to assume that most of the disclosures the Rule requires will be made in at least 75% of telemarketing calls even absent the Rule.<sup>28</sup>

To determine the number of outbound and inbound calls regarding debt relief services, staff has combined external data with internal assumptions. Staff assumes that outbound calls to sell and inbound calls to buy debt relief services are made only to and by consumers who are delinquent on one or more credit cards.<sup>29</sup> For simplicity, and lacking specific information to the contrary, staff further assumes that each such consumer or household will receive one outbound call and place one inbound call for these services.

The PRA analysis in the NPRM focused on the number of U.S. households having credit cards (91.1 million) as a base for further calculations. One commenter noted that both individuals and couples within a household may file for bankruptcy relief, and a large proportion of households include more than two adults.<sup>30</sup> In response, FTC staff has refocused its analysis on an estimated number of adult (ages 18 and over) decision makers within each household. With that as the revised base, staff then applies the additional calculations and assumptions presented below to project an estimated number of consumers who will receive and place a call for debt relief services in a given year.

Based on U.S. Census Bureau data,<sup>31</sup> FTC staff estimates that there are 162,769,000 decision making units. This estimate is based on the assumptions that couples constitute a single decision making unit, as are single (widowed, divorced, separated, never married) adults within each household. Using households as a proxy for individual decision makers in applying again the previously stated percentage of households (78%) that had one or more credit cards at the end of 2008,<sup>32</sup> staff further

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<sup>26</sup> See, e.g., MD (Oct. 26, 2009) at 21 & 35-37; TASC (Oct. 26, 2009) at 5 & 14-15; Franklin at 19-20; see also *Agency Information Collection Activities*, 74 Fed. Reg. at 25542.

<sup>27</sup> 16 CFR 1320.3(b)(2).

<sup>28</sup> See, e.g., *Agency Information Collection Activities*, 74 Fed. Reg. at 25543; *Agency Information Collection Activities*, 71 Fed. Reg. at 28699. Accordingly, staff has continued to estimate that the hours burden for most of the Rule’s disclosure requirements is 25% of the total hours associated with disclosures of the type the TSR requires.

<sup>29</sup> By extension upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

<sup>30</sup> RDRI at 2.

<sup>31</sup> U.S. Census Bureau, Current Population Survey, 2008 Annual Social and Economic Supplement, Internet Release Date: January 2009.

<sup>32</sup> See Ben Woolsey and Matt Schulz, *Credit card statistics, industry facts, debt statistics*, available at

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estimates that 126,959,820 consumers have one or more credit cards. This figure, in turn, is then multiplied by the most recently available Federal Reserve Board data regarding the delinquency rate for credit cards. The Federal Reserve Board reported that the delinquency rate for credit cards was 6.58% in the third quarter of 2009.<sup>33</sup> Multiplying this delinquency rate by the estimated number of consumers having one or more credit cards – 126,959,820 – results in an estimate of 8,353,956 consumers with delinquent accounts. As before, staff assumes that each of these consumers will receive and place a call for debt relief services in a given year.

Because outbound calls are already subject to the existing provisions of the TSR, each such call will entail only the incremental PRA burden resulting from the new debt relief disclosures. For inbound calls, however, there will be new respondents in addition to existing ones, and associated underlying distinctions between current exemptions applicable to direct marketing via direct mail and those for general media (discussed further below). Accordingly, separate estimates are necessary for inbound debt relief calls attributable to each.

To determine the number of inbound debt relief calls attributable to general media advertising versus direct mail advertising, staff relied upon the DMA estimate that 78.8% of direct marketing is done by general media methods<sup>34</sup> and that 21.2% of direct marketing is done by direct mail.<sup>35</sup> Applying these percentages to the above-noted estimate of 8,353,956 inbound debt relief calls translates to 6,582,917 calls resulting from general media advertising and 1,771,039 calls arising from direct mail. Staff then estimated that 1/3 of inbound direct mail debt relief calls, or 590,346 such calls, are currently exempt from the TSR because they are in response to direct mail advertising that makes the requisite § 310.3(a)(1) disclosures. The remaining 2/3, or 1,180,692 inbound direct mail calls, are non-exempt.

## **1. Existing respondents' disclosure burden**

As discussed above, the amended Rule includes a new provision, § 310.3(a)(1)(viii), which includes four disclosures specific to providers of debt relief services; moreover, the Commission eliminated three disclosures set forth in the proposed rule. Staff estimates that reciting these disclosures in each sales call pertaining to debt relief services will take 10 seconds.<sup>36</sup>

For outbound calls, the disclosure burden for existing entities from the new debt relief disclosures is 4,112 hours (5,921,500 outbound calls involving debt relief x 10 seconds each (for new debt relief disclosures) x 25% TSR burden).

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<sup>32</sup> (...continued)

<http://www.creditcards.com/credit-card-news/credit-card-industry-facts-personal-debt-statistics-1276.php>.

<sup>33</sup> FRB, *Federal Reserve Statistical Release: Charge Offs and Delinquency Rates on Loans and Leases at Commercial Banks*, available at <http://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (reporting a 6.58% delinquency rate for credit cards for the third quarter of 2009).

<sup>34</sup> *Id.*

<sup>35</sup> *DMA Statistical Fact Book* at 17.

<sup>36</sup> This estimate considers commenters' input while excluding the time pertaining to disclosures that are not invoked by the amended Rule.

Similarly, currently non-exempt inbound calls – inbound calls placed as a result of direct mail solicitations that do not include the § 310.3(a)(1) disclosures – will only entail the incremental PRA burden resulting from the new debt relief disclosures. As noted above, this totals 1,180,692 such calls each year. The associated disclosure burden for these calls will be 820 hours (1,180,692 non-exempt direct mail inbound calls x 10 seconds for debt relief disclosures x 25% burden from TSR).

Thus, the total disclosure burden under the amended Rule for all existing respondents is 4,932 hours (4,112 hours for entities conducting outbound calls + 820 hours for entities conducting inbound, non-exempt telemarketing).

## **2. New respondents' disclosure burden**

New respondents – those currently exempt from the Rule's coverage as a result of the direct mail or general media exemptions for inbound calls – will incur disclosure burden not only for the debt relief disclosures in § 310.3(a)(1)(viii), but also for the existing general disclosures for which such entities will newly be responsible.<sup>37</sup>

As noted above, inbound calls responding to debt relief services advertised in general media are currently exempt from the Rule.<sup>38</sup> The disclosure burden for these calls will be 18 seconds each (8 seconds for existing § 310.3(a)(1) disclosures + 10 seconds for debt relief disclosures). Applying this unit measure to the estimated 6,582,917 inbound debt relief calls arising from general media advertising, the cumulative disclosure burden is 8,229 hours per year (6,582,917 inbound debt relief calls in response to general media advertising x 18 seconds x 25% burden from TSR).

Applying the previously stated estimates and assumptions, the disclosure burden for new respondents attributable to currently exempt inbound calls tied to direct mail (i.e., currently exempt when the requisite § 310.3(a)(1) disclosures are made), is 328 hours per year (590,346 exempt inbound direct mail calls x 8 seconds x 25% burden from TSR).

Thus, the total disclosure burden attributable to the Final Rule is 13,489 hours (4,932 + 8,229 + 328).

## **D. Estimated Annual Labor Cost: \$945,361**

### **1. Recordkeeping**

Assuming a cumulative burden of 100 hours in Year 1 (of a prospective three-year PRA clearance for the TSR) to set up compliant recordkeeping systems for existing debt relief service providers newly subject to the Rule (879 new respondents x 100 hours each in Year 1 only), and

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<sup>37</sup> See *Agency Information Collection Activities*, 74 Fed. Reg. at 25542.

<sup>38</sup> This is so because, at present, no limitation or exemption would limit use of the general media exemption by those selling debt relief services via inbound telemarketing. See 16 CFR 310.6(b)(5) (the general media exemption, unlike the direct mail exemption, is not conditional and does not presently except from its coverage debt relief services).

applying to that a skilled labor rate of \$26/hour,<sup>39</sup> labor costs will approximate \$2,285,400 in the first year of compliance for new respondents.<sup>40</sup> As discussed above, however, in succeeding years, recordkeeping associated with the Rule will only require 879 hours, cumulatively, per year. Applied to a clerical wage rate of \$14/hour, this will amount to \$12,306 in each of those years. Thus, the estimated labor costs for recordkeeping associated with the amended Rule, averaged over a prospective three-year clearance period, is \$770,004.

## 2. Disclosure

The estimated annual labor cost for disclosures under the amended Rule is \$175,357. This total is the product of applying an assumed hourly wage rate of \$13.00<sup>41</sup> to the earlier stated estimate of 13,489 hours pertaining to general and specific disclosures in initial outbound and inbound calls.

### (13) Capital and Other Non-Labor Cost Estimate

**Estimated Annual Capital/Non-Labor Cost: \$ 58,753**

#### 1. Recordkeeping

Staff believes that the capital and start-up costs associated with the TSR's information collection requirements are *de minimis*. The Rule's recordkeeping requirements mandate that companies maintain records, but not in any particular form. While those requirements necessitate that affected entities have a means of storage, industry members should have that already regardless of the Rule. Even if an entity finds it necessary to purchase a storage device, the cost is likely to be minimal, especially when annualized over the item's useful life.

Affected entities need some storage media such as file folders, electronic storage media or paper in order to comply with the Rule's recordkeeping requirements. Although staff believes that most affected entities will maintain the required records in the ordinary course of business, staff estimates that the previously determined 879 new respondents newly subject to the final amended Rule will spend an annual amount of \$50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of \$43,950.

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<sup>39</sup> This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor released August 2009, Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages). See [http://www.bls.gov/ncs/ncswage2008.htm#Wage\\_Tables](http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables).

<sup>40</sup> As discussed above, existing respondents should already have compliant recordkeeping systems and thus are not included in this calculation.

<sup>41</sup> This rounded figure is derived from the mean hourly earnings shown for telemarketers found in the National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor released August 2009, Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages). See [http://www.bls.gov/ncs/ncswage2008.htm#Wage\\_Tables](http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables).

## 2. Disclosure

Estimated outbound disclosure hours (4,112) per above multiplied by an estimated commercial calling rate of 6 cents per minute (\$3.60 per hour) equals \$14,803 in telephone-related costs.<sup>42</sup>

### (14) Estimated Cost to the Federal Government

The Commission has also amended the TSR several times in order to impose fees on entities that must pay for access to the National Registry.<sup>43</sup> In the Do-Not-Call Registry Fee Extension Act of 2007, Congress directed the FTC to make a moderate reduction in the TSR's fees for access to the National Registry, and to expand the definition of "exempt" entities eligible to access the National Registry without charge.<sup>44</sup> Notwithstanding the recent access fee reduction, staff anticipates that there will be no annualized net cost to the Federal Government to implement and enforce the TSR during the three year period for which clearance is sought because all such costs will be offset by fee collections.

### (15) Adjustments

As noted above regarding disclosure burden hours, the PRA analysis in the NPRM focused on the number of U.S. households having credit cards (91.1 million) as a base for further calculations. Allowing for a commenter's observation that both individuals and couples within a household may file for bankruptcy relief, and a large proportion of households include more than two adults, FTC staff has refocused its analysis on an estimated number of adult (ages 18 and over) decision makers within each household. In addition, the final rule amendments, in response to public comment, has narrowed the additional new disclosures to four disclosures, rather than six, thereby reducing the cumulative burden estimates for the collective new disclosures. Finally, capital/non-labor cost estimates, though accounted for in the preceding Supporting Statement at the proposed rule stage, were inadvertently excluded from the ROCIS submission at that time.

### (16) Plans for Tabulation and Publication

Not applicable.

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<sup>42</sup> Staff believes that remaining non-labor costs would largely be incurred by affected entities, regardless, in the ordinary course of business and/or marginally exceed such costs.

<sup>43</sup> The Do-Not-Call Implementation Act enacted by Congress shortly after the Commission amended the TSR authorized the Commission to "promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR]." Pub. L. 108-10, 117 Stat. 557 (2003) at § 2. Since receiving that authority, the Commission has conducted amendment proceedings several times to set and adjust National Registry access fees. *See* 68 Fed. Reg. 45134 (July 31, 2003); 69 Fed. Reg. 45580 (July 30, 2004); 70 Fed. Reg. 43273 (July 27, 2005); 71 Fed. Reg. 43040 (July 31, 2006). Most recently, the Commission has reduced the access fees, in compliance with the Do-Not-Call Registry Fee Extension Act of 2007, Pub. L. 110-188, 122 Stat. 63573. *See* 73 Fed. Reg. 43354 (July 25, 2008).

<sup>44</sup> Pub. L. 110-188, 122 Stat. 635 (2007). Under the Act, National Registry access fees are to be increased after fiscal year 2009 by the amount by which the average monthly Consumer Price Index for urban consumers for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12 month period ending June 30, 2008, provided the increase is at least one percent.

(17) **Exceptions for the Display of the Expiration Date for OMB Approval**

Not applicable.

(18) **Exceptions to the “Certification for Paperwork Reduction Act Submissions”**

Not applicable.

## APPENDIX

### List of Commenters and Short-Names/Acronyms Cited in this Supplemental Supporting Statement for the TSR Debt Relief Final Rule

<b>Short-name/Acronyms</b>	<b>Commenter</b>
<b>ACCORD</b>	American Coalition of Companies Organized to Reduce Debt
<b>CRN</b>	Consumer Recovery Network
<b>CareOne</b>	Care One Services
<b>CFA</b>	Consumer Federation of America, Consumers Union, Consumer Action, National Consumer Law Center, Center for Responsible Lending, National Association of Consumer Advocates, National Consumers League, US Public Interest Research Group, Privacy Rights Clearinghouse, Arizona Consumers Council, Chicago Consumer Coalition, Consumer Assistance Council, Community Reinvestment Association of North Carolina, Consumer Federation of the Southeast, Grass Roots Organizing, Jacksonville Area Legal Aid, Inc., Maryland Consumer Rights Coalition, Mid-Minnesota Legal Assistance, and Virginia Citizens Consumer Council
<b>FCS</b>	Financial Consulting Services, LLC
<b>Franklin</b>	Franklin Debt Relief
<b>MD</b>	Morgan Drexen, Inc.
<b>QLS</b>	Queens Legal Services
<b>RDRI</b>	Responsible Debt Relief Institute
<b>SBLS</b>	South Brooklyn Legal Services
<b>TASC</b>	The Association of Settlement Companies
<b>USDR</b>	US Debt Resolve, Inc.