

assumes that for all entities, professional technical personnel and/or management personnel will create and implement the Program, prepare the annual report, and train employees, at an hourly rate of \$35.00.¹¹

Based on the above estimates and assumptions, the total annual labor cost for all categories of covered entities under the Red Flags and Card Issuer Rules for Section 114 is \$188,206,480 [4,165,421 hours + 1,000,251 hours + 211,656 hours) x \$35.00].

B. Section 315 - The Address Discrepancy Rule

As discussed above, the Rule's implementation of section 315 provides guidance on reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a CRA. Given the broad scope of users of consumer reports, it is difficult to determine with precision the number of users of consumer reports that are subject to the FTC's jurisdiction. As noted above, there are numerous small businesses under the FTC's jurisdiction, and there is no formal way to track them; moreover, as a whole, the entities under the FTC's jurisdiction are so varied that there are no general sources that provide a record of their existence. Nonetheless, FTC staff estimates that the Rule's implementation of section 315 affects approximately 1.66 million users of consumer reports subject to the FTC's jurisdiction.¹² Approximately 10,000 of these users will, in the course of their usual and customary business practices, have to furnish to CRAs an address confirmation upon notice of a discrepancy.¹³

FTC staff estimates that the average annual information collection burden during the three-year period for which OMB clearance is sought will be 776,334 hours. The estimated burden is \$12,421,344.

1. Estimated Hours Burden

Although section 315 created a new obligation for CRAs to provide a notice of address discrepancy to users of consumer reports, prior to the FACT Act enactment, users of consumer reports could compare the address on the consumer report to the address provided by the consumer and discern for themselves any discrepancy. As a result, FTC staff believes that many users of consumer reports have developed methods of reconciling address discrepancies, and the following estimates represent the incremental amount of time users of consumer reports may require to develop and comply with the policies and procedures for when they receive a notice of address discrepancy.

Due to the varied nature of the entities under the FTC's jurisdiction, it is difficult to determine precisely the appropriate burden estimates. Nonetheless, FTC staff estimates that it would require an infrequent user of consumer reports no more than 16 minutes to develop and comply with the policies and procedures that it will employ when it receives a notice of address discrepancy, while a frequent user might require one hour. Similarly, FTC staff estimates that, during the remaining two years of clearance, it may take an infrequent user no more than one minute to comply with the policies and procedures it will employ when it receives a notice of address discrepancy, while a frequent user might require 45 minutes. Taking into account these extremes, FTC staff estimates that, during the first year, it will take users of consumer reports under the jurisdiction of the FTC an average of 38 minutes [the midrange between 16 minutes and 60 minutes] to develop and comply with the policies and procedures that they will employ when they receive a notice of address discrepancy. FTC staff also estimates that the average recurring burden for users of consumer reports to comply with the Rule will be 23 minutes [the midrange between one minute and 45 minutes].

Thus, for these 1.66 million entities, the average annual burden for each of them to perform these collective tasks will be 28 minutes [(38 + 23 + 23) ÷ 3]; cumulatively, 774,667 hours.

For the estimated 10,000 users of consumer reports that will additionally have to furnish to CRAs an address confirmation upon notice of a discrepancy, staff estimates that these entities will require 30 minutes to develop related policies and procedures.

But, these 10,000 affected entities¹⁴ likely will have automated the process of furnishing the correct address in the first year of a three-year PRA clearance cycle. Thus, allowing for 30 minutes in the first year, with no annual recurring burden in the second and third years of clearance, yields an average annual burden of 10 minutes per entity to furnish a correct address to a CRA, for a total of 1,667 hours.

2. Estimated Cost Burden

FTC staff assumes that the policies and procedures for compliance with the address discrepancy part of the Rule will be set up by administrative support personnel at an hourly rate of \$16.¹⁵ Based on the above estimates and assumptions, the total annual labor cost for the two categories of burden under section 315 is \$12,421,344 [(774,667 hours + 1,667 hours) x \$16.00].

C. Burden Totals for Sections 114 and 315

Cumulatively, then, rounded to the nearest thousand, estimated burden is 6,154,000 hours (5,377,328 hours for section 114 and 776,334 hours for section 315) and \$200,628,000 (\$188,206,480 and \$12,421,344, respectively) in associated labor cost.

David C. Shonka,

Acting General Counsel.

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FEDERAL TRADE COMMISSION

Public Workshop: Business Opportunity Rule An FTC Workshop Analyzing Business Opportunity Disclosure Form and Other Proposed Changes to the Business Opportunity Rule

AGENCY: Federal Trade Commission

ACTION: Notice announcing public workshop, revised disclosure document, and request for public comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is planning to hold a public workshop

¹⁴ Staff further assumes that this estimate is representative of new entrants in any given three-year PRA clearance cycle.

¹⁵ Based generally on the National Compensation Survey: Occupational Earnings in the United States, 2007, U.S. Department of Labor, Bureau of Labor Statistics released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages), available at (<http://www.bls.gov/ncs/ocs/sp/nctb0300.pdf>). Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, e.g., computer operators, data entry and information processing workers.

¹¹ This estimate is based on (<http://www.bls.gov/ncs/ncswage2007.htm>) (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 ("Full-time civilian workers," mean and median hourly wages) for the various managerial and technical staff support exemplified above.

¹² This estimate is derived from an analysis of a database of U.S. businesses based on NAICS codes for businesses in industries that typically use consumer reports from CRAs described in the Rule, which total 1,658,758 users of consumer reports subject to the FTC's jurisdiction.

¹³ Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions of 2003, Federal Trade Commission, 80 (Dec. 2004) available at (<http://www.ftc.gov/reports/facta/041209factarpt.pdf>).

relating to the March 26, 2008 Revised Notice of Proposed Rulemaking (“RNPR”) that announced proposed changes to the trade regulation rule entitled “Business Opportunity Rule,” 16 CFR Part 437 (the “Rule”). The workshop will explore issues relating to the effectiveness of the proposed revised Business Opportunities Disclosure Form attached to this Notice as a means of conveying material information to prospective purchasers of business opportunities. The workshop is also anticipated to develop the record related to certain issues raised in the comments received in response to the RNPR.

DATES: The public workshop will be held on June 1, 2009, from 9:00 a.m. until 5:00 p.m. at the FTC’s Satellite Building Conference Center, located at 601 New Jersey Avenue, NW, Washington, DC. Requests to participate as a panelist must be received by May 4, 2009. Any written comments related to the agenda topics and the issues discussed by the panelists at the workshop must be received by June 15, 2009. The workshop is open to the public, and there is no fee for attendance. For admittance to the Conference Center, all attendees will be required to show valid photo identification such as a driver’s license.

ADDRESSES: Registration information can be found in Section III of this Notice. In order to facilitate the organization of comments and requests to participate, comments and requests to be panelists should respectively refer to “Business Opportunity Rule Workshop—Comment, Project No. P084405” or to “Business Opportunity Rule Workshop—Request to Participate, Project No. P084405.” A comment or request to participate as a panelist may be filed electronically or in paper form. 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 an individual’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. 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).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments and requests to participate in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-businessopportunityworkshop>) (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-businessopportunityworkshop>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. Requests to participate filed in an electronic form should be submitted by e-mail to: businessopportunityworkshop@ftc.gov. You may also visit the FTC Website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment or request to participate as a panelist filed in paper form should include the “Business Opportunity Rule Workshop—Comment, Project No. P084405” or “Business Opportunity Rule Workshop—Request to Participate, Project No. P084405” reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex S), 600 Pennsylvania Avenue, NW, Washington, DC 20580. 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.

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.shtml>). 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.shtml>).

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.

FOR FURTHER INFORMATION CONTACT: Kathleen Benway (202) 326-2024, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-286, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Commission’s overall policy of periodic review of its trade regulation rules, the Commission, in 1995, commenced a regulatory review of its Trade Regulation Rule (“TRR”) entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (the “Franchise Rule”). This Rule, as originally promulgated, covered, in a single Code of Federal Regulations part, two distinct types of offerings: franchises and business opportunity ventures. Many of the very familiar national fast-food restaurants and hotels, for example, are franchises; business opportunity ventures include vending machine routes, rack display operations, and medical billing

¹ 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).

ventures. Business opportunity ventures, unlike franchises, typically do not involve the right to use a trademark or other commercial symbol, and generally do not involve a long-term reciprocal relationship between the seller and the purchaser of the venture. Nevertheless, these ventures typically do call for the business opportunity seller to provide purchasers with locations for machines or equipment or with clients.

Much of the information revealed by the regulatory review focused on the differences between franchises and business opportunity ventures, and the distinct regulatory challenges presented by these two types of offerings. One result of the periodic review was that, based on the record amassed during the review proceeding, the Commission determined a need to create two separate rules—one covering the sale of franchises and one to govern the sale of non-franchise business opportunities. Accordingly, in February 1997, the Commission published an Advance Notice of Proposed Rulemaking soliciting comment on several proposed Rule modifications, including the creation of a separate TRR governing the sale of business opportunities.²

In 2006, the Commission published an Initial Notice of Proposed Rulemaking (“Initial NPR”) announcing its intention to proceed with its proposal for a separate Business Opportunity Rule (“Initial Proposed Business Opportunity Rule” or “IPBOR”).³ In response to the Initial NPR, the Commission received more than 17,000 comments, the overwhelming majority of which came from the multi-level marketing (“MLM”) industry.⁴ MLM companies, their representatives and trade associations, as well as individual participants in various MLM plans, expressed grave concern about the burdens the IPBOR would impose on them, and urged the Commission to narrow the scope of the IPBOR, to implement various safe

harbor provisions, and/or to reduce the required disclosures.⁵

On March 30, 2007, while the Business Opportunity proceeding was underway, the Commission published the Amended Franchise Rule that separated the Franchise Rule into two distinct CFR parts—part 436, governing the sales of business format franchises, and a new part 437, the Business Opportunity Rule, governing the sales of non-franchise business opportunities. Part 437 is identical to the original Franchise Rule, with all of the definitional elements and references regarding business format franchising deleted. Part 437 continues to govern sales of non-franchise business opportunities, pending completion of the ongoing proceedings to amend it.

After an extensive analysis of the public comments received in response to the Initial NPR and a reassessment of its law enforcement experience, the FTC, on March 26, 2008, issued a Revised Notice of Proposed Rulemaking (“RNPR”) that proposed a Revised Proposed Business Opportunity Rule (“RPBOR”) more narrowly tailored than the IPBOR. In addition to minor wording and punctuation changes to improve clarity, the RPBOR modified the IPBOR in six significant ways:

- It narrowed the scope of the proposed Rule to avoid broadly sweeping in sellers of multi-level marketing opportunities,⁷ while retaining coverage of those business opportunities sellers historically covered by the FTC’s original Franchise Rule (and by the FTC’s current Business Opportunity Rule), as well as coverage of sellers of work-at-home schemes;
- It cured a potential overbreadth problem that may have inadvertently swept in companies using traditional product distribution arrangements;
- It eliminated the previously proposed requirement that a covered

business opportunity seller disclose the number of cancellation and refund requests it received;

- It eliminated the proposed requirement to disclose litigation history of certain sales personnel (while retaining the requirement to disclose litigation history of the business opportunity seller, its principals, officers, directors, and sales managers, as well as any individual who occupies a position or performs a function similar to an officer, director, or sales manager);

- It added a proposed requirement to include a citation to the Rule in the title of the required disclosure document; and

- It added a proposed prohibition against misrepresenting that the government or any law forbids providing business opportunity prospects with a list of prior purchasers.

The RNPR sought public comment on these proposed changes and on alternatives the Commission could consider.

The RNPR also included a proposed one-page Business Opportunity Disclosure Form (“proposed Disclosure Form”) that sellers of business opportunities would be required to provide to prospective purchasers. Section 437.2 of the RPBOR would require “sellers” of covered business opportunities to provide potential purchasers with the proposed Disclosure Form at least seven calendar days before they sign a contract or pay any money toward a purchase. The proposed Disclosure Form is intended to provide prospective purchasers with material information with which to make an informed decision about the potential business opportunity, including information about earnings claims, legal actions, existence of cancellation or refund policies, and references. The RNPR announced that the Commission had engaged a consultant with expertise in document design and comprehension to evaluate the proposed Disclosure Form to ensure that it adequately conveyed to consumers information material to the prospective business opportunity, and to determine whether the overall presentation of the information in the proposed Disclosure Form could be improved to make it more useful and understandable. The RNPR also invited public comment on the proposed Disclosure Form.⁸ Following publication of the RNPR, the consultant conducted extensive consumer testing of the proposed Disclosure Form that

² 62 FR at 9115 (Feb. 28, 1997).

³ Business Opportunity Rule NPR, 71 FR 19054 (Apr. 12, 2006).

⁴ Multi-level marketing is one form of direct selling, and refers to a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors’ direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their “down lines.” See Peter J. Vander Nat & William W. Keep, *Marketing Fraud: An Approach to Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. Pub. Pol’y & Marketing (Spring 2002) at 140.

⁵ The Commission also received approximately 187 comments, primarily from individual consumers or consumer groups, in favor of the IPBOR. Only a handful of comments from non-MLM companies and industry groups expressed concerns about obligations that the IPBOR would impose upon them.

⁶ Business Opportunity Rule Revised NPR, 73 FR 16110 (Mar. 26, 2008)

⁷ The RNPR did not exempt MLMs from coverage of the RPBOR. Instead, it narrowed the scope of the IPBOR by significantly revising Section 437.1 by redefining the term “business opportunity.” The RNPR noted that while some MLMs do engage in unfair or deceptive acts or practices, including the operation of pyramid schemes or unsubstantiated earnings claims that cause consumer harm, commenters generally agreed that the IPBOR’s required disclosures would not help consumers identify a fraudulent pyramid scheme. In the RNPR, the Commission stated its belief that consumer harm flowing from deceptive practices in the MLM industry could be more effectively addressed through the use of Section 5 of the FTC Act.

⁸ In response to the RNPR, the Commission received no public comments about the language or the layout of the proposed form.

resulted in substantial improvement to both the layout and the wording of the form, *e.g.*, the consultant suggested revising the preamble to clarify that the information on the proposed Disclosure Form relates specifically to the business opportunity that the reader is being offered, and suggested adding a note below the signature line stating that the FTC requires that the business opportunity seller give the reader at least seven calendar days before asking him or her to sign a purchase contract. The format and language of the revised proposed Business Opportunity Disclosure Form ("revised proposed Disclosure Form") is set forth in Appendix A to this Notice.⁹ More information about the testing of the proposed Disclosure Form may be found at: (<http://www.ftc.gov/bcp/workshops/bizopps/disclosure-form-report.pdf>).

II. Issues for Discussion at the Workshop

The primary focus of the workshop will be on the efficacy of the revised proposed Disclosure Form to convey critical material information to prospective purchasers of business opportunities. The workshop will explore the form as a whole, as well as specific aspects or sections of the form—for example, whether the required disclosures regarding legal actions and cancellation or refund policies are adequate. The workshop also will provide participants with an opportunity to discuss some general issues raised in the comments received in response to the RNPR, including: the implications of the RPBOR for businesses and consumers; whether certain definitions proposed in the RNPR accomplish the Commission's purposes stated in the RNPR; and the RPBOR's compatibility with existing federal and state policies. A more detailed agenda will be published at a later date, in advance of the scheduled workshop.

III. Public Participation Information

A. Registration Information

The public workshop will consist of a roundtable discussion on the issues described above by those individuals selected to be panelists. A court reporter will be present to record the proceedings so that a transcription can be made for the public record. The FTC will accept pre-registration for this

workshop. Pre-registration is not necessary to attend, but is encouraged so that staff may better plan this event. To pre-register, please email your name and affiliation to businessopportunityworkshop@ftc.gov. When you pre-register, the FTC collects your name, affiliation, and e-mail address. We will use this information to estimate how many people will attend and better understand the likely audience for the workshop, and will dispose of it following the workshop. We may use your e-mail address to contact you with information about the workshop. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes. Under the Freedom of Information Act or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's privacy policy at (<http://www.ftc.gov/ftc/privacy.shtm>).

B. Requests to Participate as a Panelist

The workshop will consist of a roundtable format with participation by panelists selected by the FTC staff. Other attendees also will have an opportunity to comment and ask questions. Requests to participate as a panelist must be received on or before May 4, 2009. Persons selected as panelists will be notified on or before May 15, 2009.

Requests to participate as a panelist at the workshop should be submitted electronically to businessopportunityworkshop@ftc.gov, or, if mailed, should be submitted in the manner detailed in the ADDRESSES section of this Notice, and should be captioned "Business Opportunity Workshop—Request to Participate, Project No. P084405." Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a phone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted to Federal Trade Commission/Office of the Secretary, Room 135-H (Annex S), 600 Pennsylvania Ave, NW, Washington, DC, 20580, and must be received on or before May 4, 2009. The Commission will also accept requests to participate received at the following e-mail address: businessopportunityworkshop@ftc.gov.

C. Written and Electronic Comments

The submission of comments is not required for participation in the workshop. If a person wishes to submit written or electronic comments about the topics to be discussed at the workshop, such comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before June 15, 2009. To read the FTC's policy on how it handles the information you submit, please visit (<http://www.ftc.gov/ftc/privacy.shtm>).

By direction of the Commission.

Donald S. Clark

Secretary

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GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0014]

Information Collection; Standard Form (SF) 123, Transfer Order-Surplus Personal Property and Continuation Sheet

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding transfer order-surplus personal property and continuation sheet.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 23, 2009.

FOR FURTHER INFORMATION CONTACT: William F. Kemp, Federal Supply Services, GSA at telephone (703) 605-2879 or via e-mail to william.kemp@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat

⁹ The version of the revised proposed Disclosure Form that was tested by the expert inadvertently omitted the phrase "or pay any money" from the conclusion of the penultimate sentence of the revised proposed Disclosure Form. The expert engaged by the FTC determined that this omission had no effect on the results of its testing.