

FEDERAL TRADE COMMISSION**Agency Information Collection Activities; Submission for OMB Review; Comment Request**

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

ACTION: Notice.

SUMMARY: The FTC intends to conduct consumer survey research to advance its understanding of the experiences of consumers who interact with consumer reporting agencies (“CRAs”) following an incident of identity theft. The results of this research will inform and guide the Commission’s future enforcement and education efforts. This is the second of two notices required under the Paperwork Reduction Act (“PRA”), and the Commission seeks additional public comments on its proposed consumer research before requesting Office of Management and Budget (“OMB”) review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be filed by December 5, 2008.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Consumer Experiences with CRAs Research: FTC File No. P065405” to facilitate the organization of comments. Please note that comments 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>) — and therefore should not include any sensitive or confidential information. In particular, comments 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 secrets and commercial or financial information obtained from a person and privileged or confidential. . . .” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). 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).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-factasurvey>) (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-factasurvey>). 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](http://www.regulations.gov) forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the reference “Consumer Experiences with CRAs Research: FTC File No. P065405” both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 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.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail 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. 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>).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Pavneet Singh or Anthony Rodriguez, Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Stop NJ-3158, Washington, DC 20580, (202) 326-2252.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

On July 1, 2008, the Commission sought public comments concerning the proposed collection of information. See 73 FR 37457. The Commission received a total of six comments, five from consumers and one from the Consumer Data Industry Association (“CDIA”).

Three of the consumer comments reflected their experiences as victims of identity theft and two of the consumer comments contained general statements regarding CRAs.

CDIA’s comments acknowledged that surveying consumers is helpful, but raised concerns regarding the scope and methodology of the proposed research. Regarding the scope of the survey, CDIA stated that the FTC should also survey consumer experiences when exercising other Fair and Accurate Credit Transactions Act (“FACT ACT”) rights and not limit the survey to rights associated with CRAs. To better address the purposes of this survey, however, the FTC will focus on those rights associated with CRAs. Although a broader scope may be desirable for further study or enforcement, the FTC believes that quality of responses will be improved by focusing on a related group of rights.

CDIA also raised concerns that the research relies too much on consumer recollections that may erode over time, and that the research will measure

¹ FTC 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 FTC Rule 4.9(c), 16 CFR 4.9(c).

consumer perceptions versus actual experiences. Although consumer recollection may be imperfect, its invocation is a common and accepted practice in survey research. Moreover, the FTC is surveying consumers about their relatively recent experiences when exercising their FACT Act rights. Their recollections should be relatively fresh, and the FTC believes it is appropriate to rely on them in this consumer research.

CDIA further asserted that the FTC's reliance on consumers who have reported data to the FTC's ID theft clearinghouse will skew the results because such consumers will not be representative of the general population. The FTC believes that reliance on consumers who have previously communicated with the agency is the only economically feasible means to generate a sample of identity theft victims and to gather information. The 2006 FTC Identity Theft Survey found that 3.7% of Americans had been victims of identity theft in the previous year. In order for a survey of the general population to reliably contact 4,000 identity theft victims,² over 100,000 consumers would have to be surveyed. The cost of such a large survey would be prohibitive. Sending the survey only to consumers who have reported data to the FTC's ID theft clearinghouse allows the FTC to reach the same number of identity theft victims for a fraction of the cost.

The FTC acknowledges that the survey will not be representative of the general population, and will not attempt to project its results beyond consumers who have reported to the FTC. Instead, the Commission will use the survey to examine the kinds of problems, if any, that such consumers experience while exercising their FACTA rights. The FTC thus intends to utilize a survey sample from consumers who have previously communicated with the agency and not incur the cost and burden of finding a sample from the general population.

Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the Commission is providing this second opportunity for public comment while seeking OMB clearance for the survey. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 5, 2008.

1. Description of the collection of information and proposed use

The Fair Credit Reporting Act ("FCRA") provides identity theft

victims with certain rights, such as the ability to place fraud alerts on their credit files, designed to assist them in avoiding or mitigating the harms they suffer as a result of the crime.

The Commission intends to use consumer survey research to advance its understanding of the experiences of identity theft victims who interact with CRAs and who seek to avail themselves of their FCRA remedies. The consumer research will include focus group interviews of 30 consumers, to be followed by a pretesting phase consisting of phone interviews of another 30 consumers, and then mail surveys sent to individual consumers. The Commission seeks information from consumers who have been victims of identity theft and who have contacted one or more of the three nationwide CRAs for assistance. The information from consumers will be collected on a voluntary basis and will be kept anonymous. The FTC staff will identify consumers to be contacted for each phase of the research from a random selection of consumers who have communicated with the FTC's Identity Theft Data Clearinghouse database between January 1, 2008 and May 30, 2008. Staff is seeking approximately 1,000 returned surveys because that input would enable it to project the results from the sample to the population from which the sample was drawn with a maximum error rate of 3%. Assuming a response rate of about 25%–30%, this would require staff to mail the survey to approximately 3,000–4,000 individuals.

Questions to identify theft victims in the research will address several topics, including but not limited to: their experiences when they contacted one or more CRAs and whether they received the required notice of rights from CRAs; their access to free credit reports; and their ability to place fraud alerts on their files, dispute inaccurate information, and block information due to identity theft. The results of the focus groups and mail surveys will assist the Commission in assessing the experiences of identity theft victims when they interact with CRAs. This assessment will help to inform and guide the FTC's future efforts to enforce provisions of the FCRA and to educate consumers and the consumer reporting industry of their rights and obligations under the FCRA.

2. Estimated hours burden

Absent public comments on the FTC's previously stated burden analysis, the FTC is retaining and restating here for further comment its prior burden estimates. The FTC staff proposes to

interview 30 consumers divided into three separate focus groups of 10 persons each, and estimates that each consumer will spend approximately one hour to participate. Thus, the estimated total burden imposed by the focus groups will be approximately 30 hours. Staff estimates that respondents to the mail survey will require, on average, approximately 8 minutes to answer the survey (based on anticipated variations among consumers when they interacted with CRAs). Staff will pretest the survey through phone interviews of approximately 30 respondents to ensure that all questions are easily understood. The pretest will total approximately 4 hours cumulatively (30 respondents x 8 minutes each). For the full survey, the staff intends to mail 3,000–4,000 surveys and anticipates receiving a response rate as high as 30% of the consumer recipients (i.e., 900–1,200 responses). Assuming 1,200 consumers respond to the survey, staff further estimates the final survey will require approximately 160 hours to complete (1,200 respondents x 8 minutes each). Thus, cumulative burden hours for the clearance would total 194 hours.

3. Estimated cost burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

William Blumenthal,

General Counsel.

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FEDERAL TRADE COMMISSION

Consumer Benefits and Harms: Distinguishing Resale Price Maintenance that Benefits Consumers From Resale Price Maintenance that Harms Consumers; Public Workshops; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice of Public Workshops and Opportunity for Comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") will hold a series of public Workshop sessions at one or more locations to explore how best to distinguish between uses of resale price maintenance (RPM)¹

¹ RPM is typically an agreement between a manufacturer and retailer setting the prices at which the retailer will resell the manufacturer's goods to consumers. If the agreement requires the retailer to sell only at or above the price established by the manufacturer, it is said to be minimum RPM. Conversely, if the agreement requires the retailer to sell only at or below the price directed by the

² As explained further in the ensuing discussion of the proposed collection of information, staff anticipates mailing the survey to approximately 3,000 to 4,000 individuals.