FEDERAL TRADE COMMISSION

Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The FTC plans to ask the Office of Management and Budget ("OMB") to extend for an additional three years the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the Telemarketing Sales Rule ("TSR"). That clearance expires on August 31, 2019.

DATES: Comments must be submitted on or before July 19, 2019.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write "TSR PRA Comment, FTC File No. P094400" on your comment and file your comment online at https://www.regulations.gov by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Patricia Hsue, Staff Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC–8528, 600 Pennsylvania Ave. NW, Washington, DC 20580, or by telephone to (202) 326–3132.

SUPPLEMENTARY INFORMATION: The TSR, 16 CFR 310, TSR, (OMB Control Number 3084–0097) implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 ("Telemarketing Act"), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act"), Public Law 107056 (Oct. 25, 2001). As required by the Telemarketing Act, the TSR mandates certain disclosures for telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2003, the Commission amended the TSR to include certain new disclosure requirements and to expand the Rule in other ways. See 68 FR 4580 (Jan. 29, 2003). The Rule was amended to cover upsales 1 (not only outbound calls, but also inbound calls) and additional transactions such as solicitation by telephone of charitable donations by third-party telemarketers. The amendments established the National Do Not Call Registry ("Registry"). permitting consumers to register, via either a toll-free telephone number or the internet, their preference not to receive certain telemarketing calls.2 Accordingly, under the TSR, most sellers and telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.3 Moreover, sellers and telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.4

In 2008, the Commission amended the TSR regarding prerecorded calls, 16 CFR 310.4(b)(1)(v), and call abandonment rate calculations, 16 CFR 310.4(b)(4)(i).5 The amendment regarding prerecorded calls added additional information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2010, the Commission published additional amendments taking effect that year to require specific new disclosures in the sale of a "debt relief service," as that term is defined in Section 310.2(m) to include for-profit credit counseling services, debt settlement, and debt negotiation services. The amendments result in PRA burden for all covered entities—both new and existing respondents—that engage in telemarketing of these services.

Burden Statement

Estimated Annual Hours Burden: 1,233,817 Hours

The estimated burden for recordkeeping compliance is 14,061 hours for all industry members affected by the Rule. The estimated burden for the requisite disclosures for both live telemarketing calls and prerecorded calls is 1,219,428 hours for all affected industry members. Estimated burden for reporting requirements is 328 hours. Thus, the total PRA burden is 1,233,817 hours. These estimates are explained below.

Number of Respondents

In calendar year 2018, 18,714 telemarketing entities accessed the Do Not Call Registry; however, 561 were "exempt" entities obtaining access to data.6 Of the 18,153 non-exempt entities, 13,131 sellers and 5,022 telemarketers accessed the Registry. Of those, however, 8,447 sellers and 3,145 telemarketers obtained data for just one state. Staff assumes that these 11,592 entities are operating solely intrastate, and thus would not be subject to the collection requirements.6 Specifically, the amendment authorized sellers and telemarketers to place outbound prerecorded calls to consumers only if: (1) The seller has obtained written agreements from those consumers to receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses and provides an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.

An "upsell" is the solicitation in a single telephone call of the purchase of goods or services after an initial transaction occurs. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer ("external upsell"). Or, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer ("internal upsell").

1 An exempt entity is one that, although not engaged in telemarketing of these services, the revised standard for measuring the call abandonment rate did not impose any new or affect any existing recordkeeping, recordkeeping or third-party disclosure requirements within the meaning of the PRA. That amendment relaxed the prior requirement that the abandonment rate be calculated on a "per day per campaign" basis by permitting, but not requiring, its calculation over a 30-day period, as industry requested.

2 An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.
burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought OMB clearance, staff estimates that most of the Rule disclosures would be made in at least 75 percent of telemarketing calls even absent the Rule. Accordingly, staff has continued to estimate that the hours burden for most of the Rule’s disclosure requirements is 25 percent of the total hours.

Pre-Sale Disclosures
Consistent with its past practice, staff necessarily has made additional assumptions in estimating burden. Based on industry data and further FTC extrapolations, staff estimates that 2.3 billion outbound telemarketing calls are subject to FTC jurisdiction and attributable to direct orders, that 450 million of these calls result in direct sales, and that there are 1.8 billion inbound calls that result in direct sales.

Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds to terminate a call. Using industry information, staff estimates that just 60 percent of sales calls result in “hang-ups” before the telemarketer can make all the required disclosures and that “hang-up” calls allow for only 2 seconds of disclosures.

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer—whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls. Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell conversation before the seller or telemarketer makes the full required disclosures.

Based on the above, staff estimates that the total time associated with these pre-sale disclosure requirements is 826,389 hours per year: [(2.3 billion outbound calls \times 40\% \text{ lasting the duration } 7 \text{ seconds} \times 25\% \text{ burden}} + (1.8 billion inbound calls \times 60\% \text{ terminated prematurely \times 2 seconds \text{ of disclosures}} + 3,600 \text{ \times 25\% burden}} = 191,667 hours)] + (450 million outbound calls resulting in direct sales \times 40\% \text{ upsell conversions \times 3 seconds} \text{ of related disclosures}} + 3,600 \times 25\% \text{ burden}} = 37,500 hours)] + (1.8 billion inbound calls \times 40\% \text{ upsell conversions \times 3 seconds} + 3,600 \times 25\% \text{ burden}} = 150,000 hours = 826,389 hours).

General Sales Disclosures
The TSR also requires several general sales disclosures in telemarketing calls before the customer pays for goods or services. These disclosures include the total costs of the offered goods or services, all material restrictions, and all material terms and conditions of the seller’s refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer).

Staff estimates that the general sales disclosures for telemarketing calls require 352,513 hours annually. This figure includes the burden for written disclosures (1,005 inbound telemarketing entities estimated to use

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8 These entities would nonetheless likely be subject to the Federal Communications Commission’s (“FCC”) Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the Registry.

9 For purposes of these calculations, staff assumes that telemarketers making prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, because the latter may consume much more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

10 The recordkeeping requirements for prerecorded calls are de minimis, and are subsumed within the PRA estimates above for existing and new telemarketing entities. As in its prior estimates, staff continues to believe that any ongoing incremental burden on sellers to create and retain electronic records or agreements by new customers to receive prerecorded calls should not be material since the agreements may be obtained and recorded electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, “E-SIGN”). Although telemarketers (and teleduffers) that place prerecorded calls on behalf of sellers or charities must capture and transmit to the seller any requests they receive to place a consumer’s telephone number on the seller’s entity-specific do-not-call list, this obligation extends both to live and prerecorded telemarketing calls, and is also subsumed within the PRA estimates above.

11 78 FR at 19,485.

12 Staff employs the methodology, assumptions, and studies it has consistently used since their development for the 2003 TSR amendments to determine, indirectly from external sales data and the relative percentages of inbound and outbound calls, the number of telemarketing calls and resulting number of sales because no call or sales number totals are otherwise available. Staff relies on its own prior estimates that of the $134.7 billion of sales from outbound calls to consumers in 2012 (DMA 2013 Statistical Fact Book, at 5), 92.8% of those sales, or $125 billion, are subject to FTC jurisdiction, with the average value of a sale being $85 and 20% of outbound calls resulting in a sale.

13 For staff’s PRA burden calculations, only direct sales orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR’s recordkeeping and disclosure provisions. The direct sales transactions total of 450 million is based on an estimated 1.5 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is derived from the only known available outside direct sales data for telephone marketing to consumers. See DMA Statistical Fact Book (2001), p. 301.

14 See, e.g., 60 FR 32,682, 32,683 (June 23, 1995); 63 FR 40,713, 40,714 (July 30, 1998); 66 FR 33,701, 33,702 (June 25, 2001); 71 FR 28,698, 28,700 (May 17, 2006); 74 FR 11,952, 11,955 (Mar. 20, 2009); 78 FR at 19,485.

15 71 FR 3302, 3304 (Jan. 20, 2006); 71 FR at 28,700; 78 FR at 19,485.

16 See, e.g., 60 FR at 32,683; 78 FR at 19,485.

17 This assumption originated with industry response to the Commission’s 2003 Final Amended TSR. See 68 FR 4580, 4597 n.183 (Jan. 29, 2003). Although the comment provided an estimate specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, absent the receipt of any information to the contrary.

18 16 CFR 310.3(a)(1)(i)-(iii).
decision-making units. 25 Of these, 119,140,830 have one or more credit cards, 26 and there are 2,942,779 decision-making units with at least one delinquent credit card account. 27 Accordingly, allowing for the above-stated FTC staff estimate of eight seconds per general sales disclosures, staff estimates further that the general sales disclosure burden for inbound debt relief calls is 1,635 hours (2,942,779 inbound debt relief calls to decision-making units with at least one delinquent credit card account × 8 seconds ÷ 3,600 × 25% burden) = 352,513 hours. 21

Disclosures for Non-Exempt Inbound Calls

The TSR general sales disclosures must also be made by sellers and telemarketers for inbound calls in response to ads for investment opportunities, certain business opportunities, credit card loss protection ("CCLP"), 28 credit repair, 29 loss recovery services, 30 and advance fee loans. 31 Staff further estimates for each of these types of non-exempt inbound calls is determined by comparing the number of complaints reported to the FTC’s Consumer Sentinel system in the most recent complete year to the total number of reported fraud complaints for that year. The resulting percentage of total fraud complaints must be adjusted to reflect the fact that only a relatively small percentage of telemarketing calls are fraudulent. To extrapolate the percentage of fraudulent telemarketing calls, staff divides a Congressional estimate of annual consumer injury from telemarketing fraud ($40 billion) 32 by available data on total consumer and business-to-business telemarketing sales ($310.6 billion projected for 2016), 33 or 13%. The two percentages are then multiplied together to determine the percentage of the 1.8 billion annual inbound telemarketing calls represented by each type of fraud complaint. Thus, for the 7,631 Sentinel complaints in 2018 about investment opportunities covered by the TSR, 34 or 0.5% of the 1,427,563 total fraud complaints reported that year, 35 the general sales burden is 2,800 hours (1.8 billion inbound calls × 0.0007 ([0.005 × 0.13] × 8 seconds ÷ 3,600). Likewise, the burden for business opportunity sales (14,225 complaints), including complaints for multi-level marketing/pyramids/chain letters 36 is 4,000 hours (1.8 billion × .001 [0.01 ×

28 16 CFR 310.3(a)(1)(vi).
29 16 CFR 310.4(a)(2).
30 16 CFR 310.4(a)(3).
31 16 CFR 310.4(a)(4).
33 DMA 2013 Statistical Fact Book (January 2013) projection up through 2016, p. 5 (no associated DMA updates made or otherwise found thereafter).
35 Sentinel Data at 8.
36 Sentinel Data at 85. While this total excludes “Franchises/Distributorships” covered by the Franchise Rule and thus not subject to the TSR, the data cannot additionally be segregated to omit “Work-At-Home” opportunities now covered by the Business Opportunity Rule and thus also not subject to the TSR. Staff therefore believes this total significantly overstates the opportunities subject to the TSR.
percentage of outbound calls involving negative options | x 4 seconds | 3,600 x 25% burden | 12,500 hours | + (450 million sales transactions from outbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of outbound calls involving negative option upsells]) x 4 seconds x 25% burden x 3,600 = 1,000 hours) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of inbound calls involving negative option upsells]) x 4 seconds x 25% burden = 4,000 hours). 

Thus, the total specific transaction disclosure burden is 26,451 hours annually (22,363 for non-debt-relief calls) + 4,088 (for debt relief calls). 

Cumulatively, therefore, the total annual burden for all of the disclosures is 1,219,428 (826,389 hours pre-sale disclosures + 366,588 hours general sales disclosures + 26,451 hours specific sales disclosures).

(c) Reporting Hours

Finally, any entity that accesses the Registry must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR. As it has since the Commission’s initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information annually. Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 219 burden hours (6,561 entities x 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 109 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 328 hours per year.

Thus, total recordkeeping, disclosure, and reporting burden is 1,233,817 hours (14,061 hours + 1,219,428 hours + 328 hours).

Estimated Annual Labor Cost: $17,181,914

(a) Recordkeeping Labor Cost

As indicated above, staff estimates that existing telemarketing entities require 14,061 hours, cumulatively, to maintain compliance with the TSR’s recordkeeping provisions. Applying a clerical wage rate of $16.92/hour, recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $237,912. Assuming also from the above a cumulative burden of 7,500 hours for 75 new telemarketing entities per year to set up compliant recordkeeping systems (75 new entrants/year x 100 hours each), and applying to that a skilled labor rate of $27.86/hour, cumulative labor costs for them would approximate $209,950 yearly. Thus, the estimated labor cost for recordkeeping associated with the TSR for both new and existing telemarketing entities, including prerecorded and debt relief calls, is $446,862.

45 See 67 FR 37,366 (May 29, 2002). The two-minute estimate likely is conservative. The OMB regulation defining “information” under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, e.g., the respondent, the respondent’s address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. See 5 CFR 1320.3(h)(1).
47 This figure is derived from the mean hourly wage shown for “Computer Support Specialist.” See id.
(b) Disclosure Labor Cost

The estimated annual labor cost for disclosures for all telemarketing entities is $16,730,552. This total is the product of applying an assumed hourly wage rate of $13.72\textsuperscript{46} to the earlier stated estimate of 1,219,428 hours pertaining to the pre-sale, general and specific disclosures.

(c) Reporting Labor Cost

Estimated labor cost supplying basic identifying information to the Registry operator is $4,500 (328 hours × $13.72 per hour).

Thus, cumulatively for both new and existing telemarketing entities total labor costs are $17,181,914 [(446,862 recordkeeping) + ($16,730,552 disclosure) + ($4,500 reporting)].

Estimated Annual Non-Labor Cost: $4,717,991

(a) Recordkeeping

Staff believes that the capital and start-up costs associated with the TSR’s recordkeeping provisions are de minimis. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, consistent with its prior analyses, staff estimates that the estimated 6,561 telemarketing entities subject to the Rule continue to 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 $328,050.

(b) Disclosure

Applying the disclosure estimates of 1,219,428 hours to an estimated commercial calling rate of 6 cents per minute ($0.36 per hour), staff estimates a total of $4,389,941 in telephone charges.\textsuperscript{48}

Thus, total capital and/or other non-labor costs are $4,717,991 ($328,050 (office supplies) + $4,389,941 (telephone charges)).

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure, recordkeeping, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before July 19, 2019. Write “TSR PRA Comment, FTC File No. P094400” on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the https://www.regulations.gov website by following the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the https://www.regulations.gov website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the regulations.gov site.

If you file your comment on paper, write “TSR PRA Comment, FTC File No. P094400” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for ensuring that your comment does not include any sensitive or individually identifiable health information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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. You are also solely responsible for ensuring that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which ... is privileged or confidential”—as provided by 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)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request. The FTC Act and other laws that 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 on or before July 19, 2019. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see https://www.ftc.gov/site-information/privacy-policy.

Heather Hipsley,
Deputy General Counsel.

[FR Doc. 2019–10388 Filed 5–17–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services (HHS).

ACTION: Request for information (RFI).

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) requests

\textsuperscript{46}This figure is derived from the mean hourly wage shown for Telemarketers. See supra note 57. It is applied additionally to the ensuing calculation of reporting labor cost regarding the Registry operator.

\textsuperscript{48}Staff believes that other non-labor costs would be incurred largely by affected entities in the ordinary course of business and, beyond that, would not materially exceed those ordinary costs.