

secure.commentworks.com/ftc-TSRDebtRelief) (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-TSRDebtRelief>). If this Notice appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that 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 "Telemarketing Sales Rule - Debt Relief Amendments - R411001" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, to avoid security related delays.

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.

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.shtm>). 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.shtm>).

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. E9-24730 Filed 10-14-09; 8:45 am]

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FEDE AL T ADE COMMISSION

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IN 3084-AA94

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AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Section 205 of the Credit CARD Act of 2009 requires the Federal Trade Commission ("FTC" or "Commission") to issue a rule by February 22, 2010, to prevent deceptive marketing of 'yemmissee 2010, to preve22,

(Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the **SUPPLEMENTA Y INFO MATION** section below.

FO FU THE INFO MATION CONTACT: Katherine Armstrong, Attorney, or Steven Toporoff, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2252.

SUPPLEMENTA Y INFO MATION:

I. Background

In this Notice, the Commission is proposing to amend its Free Annual File Disclosures Rule ("Free Reports Rule" or "Rule"),¹ which went into effect in 2004. This Rule sets out the procedures that nationwide consumer reporting agencies² ("CRAs") and nationwide specialty consumer reporting agencies³ must follow to comply with section 612 of the Fair Credit Reporting Act ("FCRA"), which gives consumers the right to obtain free annual file disclosures from nationwide CRAs through a single centralized source. The Commission's proposed amendments implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Act"),⁴ which directs the Commission to promulgate a rule within nine months requiring certain disclosures in the advertising for "free credit reports" to reduce consumer confusion. The Commission also is proposing a number of changes to address certain practices that the Commission believes interfere with or detract from consumers' ability to obtain their free annual file disclosures, as well as certain technical corrections described below.

A. The Free Annual File Disclosures Rule

The Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") amended the FCRA and directed the Commission to promulgate a rule specifying the procedures for consumers

¹16 CFR Part 610.

²Section 603(p) of the FCRA defines a "nationwide consumer reporting agency" as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. At this time, there are three nationwide consumer reporting agencies - Equifax Inc., Experian, and TransUnion LLC.

³Nationwide specialty consumer reporting agencies are defined in section 603(w) of the FCRA. Specifically, section 603(w) defines "nationwide specialty consumer reporting agency" as a CRA that compiles and maintains files on consumers on a nationwide basis relating to (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history, or (5) insurance claims.

⁴Pub. L. 111-24, 123 Stat. 1734 (May 22, 2009).

ADD ESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Comments in electronic form should be submitted by using the following weblink: (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135

⁵Prior to the FACT Act, consumers could purchase file disclosures from consumer reporting agencies, but could only receive a free file disclosure under limited circumstances. For

²³ See FTC Commentary on the Fair Credit

²² Cf. Franchise Rule, 16 CFR 436.6(b) (addressing disclosures in an online environment).

disclosures can be readily understood by consumers.

a. Proposed section 610.4(c)(1):
Language usage

Proposed section 610.4(c)(1) requires that any advertising disclosure mandated by this section be provided in the same language as that principally used in the advertisement. This proposal draws from identical language in section 308.3(a)(1) of the Pay Per Call Rule.²⁵ The Commission believes that a disclosure in a language different from that which is principally used in an advertisement would be deceptive.

b. Proposed section 610.4(c)(2): Visual disclosures

Proposed section 610.4(c)(2) requires that a visual disclosure be: (1) of a color or shade that readily contrasts with the background of the advertisement; (2) in a font that is easy to read; and (3) parallel to the base of the advertisement. These proposed requirements draw from comparable provisions in the Pay Per Call Rule. Specifically, section 308.3(a)(2) of the Pay Per Call Rule provides that television, video, and print advertising disclosures be of a color or shade that readily contrasts with the background of the advertisement. The Commission believes that a contrast between the disclosure and the background on which it appears is fundamental to ensure readability.²⁶ In addition, the font used for the disclosures should be easily readable. For example, immission which it apbaFclosure of a color

advertisement); Regulation under Section 4 of the Fair Packaging and Labeling Act, 16 CFR 500.4 (requiring statement of identity for packaged goods to appear "in lines generally parallel to the base on which the packaging or commodity rests as it is designed to be displayed").

²⁸ See, e.g., *In re Kmart Corp.*, C-4197 (2007) (requiring audio disclosures to be made "in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it"); *In re Darden Restaurants, Inc.*, C-4189 (2007) (same); *In re Palm, Inc.*, C-4044 (2002) (same); Dot Com Disclosures at 14 (Audio disclosures should be "in a volume and cadence sufficient for a reasonable consumer to hear and understand it.")

²⁹ Cf. *In re Synchronal Corp.*, 116 FTC 1189 (1993) (requiring video or commercial advertisements 15 minutes or longer to disclose that program is a paid advertisement within the first 30 seconds and immediately before presentation of ordering instructions).

³⁰ Cf. Franchise Rule, 16 CFR 436.9(a) and Business Opportunity Rule, 16 CFR 437.1(a)(21) (prohibiting the making of any claim or representation, orally or visually, or in writing, that contradicts the information required to be disclosed by the Rule); Guides for Environmental Marketing Claims, 16 CFR 260.6(a) (noting that an absence of contrary claims will help make disclosures clear and prominent).

²⁵ See also 16 CFR 429.1(a) (requiring disclosure of right to cancel door-to-door sales "in the same language, e.g., Spanish, as that principally used in the oral sales presentation").

²⁶ See, e.g., *In re Tender Corp.*, C-4261 (2009); *In re Budget Rent-A-Car System, Inc.*, C-4212 (2008) (requiring disclosures to appear in "print that contrasts with the background against which it appears"); see also Federal Trade Commission Guidance, Dot Com Disclosures: Information about Online Advertising, at 12, available at (<http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf>) ("Dot Com Disclosures") ("A disclosure in a color that contrasts with the background emphasizes the text of the disclosure and makes it more noticeable. Information in a color that blends in with the background of the advertisement is likely to be missed.")

²⁷ See, e.g., *In re Swisher Int'l, Inc.*, C-3964 (2000) (requiring warnings on cigar advertisements to appear "parallel . . . to the base of the

³¹ See generally Maria Grubbs Hoy and J. Craig Andrews, *Adherence of Prime-Time Televised Advertising Disclosures to the "Clear and Conspicuous" Standard: 1990 Versus 2002*, 23 J. Mktg. Pub. Pol. 170 (2004) (citing numerous studies demonstrating that disclosures made in "dual modality" – audio and video simultaneously – are more effective at communicating information to consumers); see also *In re Kraft, Inc.*, 114 F.T.C. 40 (1991), *aff'd*, 970 F.2d 311 (7th Cir. 1992) (in which the Commission noted that "given the distracting visual and audio elements and the brief appearance of complex superscript in the middle of the commercial," it was unlikely that a visual disclosure alone would be effective as a corrective measure).

³² See 11 CFR 110.11(c)(3)(iii)(B).

³³ See 155 Cong. Rec. S6178, S6179 (June 4, 2009) (statement of Sen. Levin) (“[Section 205] will not achieve its purpose unless the mandated disclosure is made in a clear, prominent, and effective manner, a standard that disclosures in many current promotions do not achieve. The cleverly deemphasized disclosure currently on FreeCreditReport.com, for example, would not be sufficient.”); see also Robert N. Mayer and Tyler Barrick, Univ. of Utah, “Web Sites Offering ‘Free’ Credit Reports” (Apr. 26, 2007), available at (<http://www.consumerwebwatch.org/pdfs/creditsites.pdf>) (“[C]onsumers using the alternative sites because of confusion about annualcreditreport.com and its alternatives may end up paying needlessly for something they are entitled by law to receive for free.”).

³⁴ Commission precedent establishes that disclosures in fine print or buried in dense blocks of text are not prominent. The mandate that disclosures be “clear and conspicuous” or “clear and prominent” dates back more than 60 years. See, e.g., *Hillman Periodicals v. FTC*, 174 F.2d 122 (2d

Cir. 1949) (upholding Commission order that company selling shortened versions of books disclose that its publications are abridged “in immediate connection with the title and in clear, conspicuous type”).

³⁵ See *Azure v. Morton*, 514 F.2d 897, 900 (9th Cir. 1975) (“As a general rule, the use of a disjunctive in a statute indicates alternatives and requires that they be treated separately.”); see also *Garcia v. United States*, 469 U.S. 70, 73 (1984) (“Cannons of construction indicate that terms connected in the disjunctive . . . be given separate meanings.”); *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979); *FCC v. Pacifica Foundation*, 438 U.S. 726, 739-740 (1978). See also 155 Cong. Rec. at S6179 (statement of Sen. Levin) (“Section 205(b)(2)(B) . . . is intended to allow the FTC to require disclosures on an internet ad, on the website to which the ad is linked, on the ‘home’ website of the company advertising ‘free’ credit reports, or on any combination of the three.”).

³⁶ Indeed, Congress expressed concern not only with deceptive advertising that directs consumers to contact commercial websites that are unaffiliated with AnnualCreditReport.com, but with the in28 ga.r Tw(in 0 0ea general rule, the use c12.0).

³⁷ See

“any advertisement for a free credit report in any medium” includes telemarketing solicitations.

D. Elimination of Obsolete “Roll-out” Provisions of the Current Rule

Finally, the Commission proposes to eliminate from the current Rule the “roll-out” provisions contained in sections 610.2(i) and 610.3(g). When the Commission promulgated the current Rule, it provided for a structured “roll-out” of the availability of free file disclosures, beginning in the western states on December 1, 2004, and concluding with eastern states on September 1, 2005. This provision of the current Rule is now obsolete and retaining it in the amended Rule would serve no useful purpose. Accordingly, the proposed amended Rule would delete sections 610.2(i) and 610.3(g) of the current Rule.⁴⁴

III. Request for Comments

The Commission invites comment on all aspects of the proposed amendments to the Free Reports Rule and on the specific issues on which comment is solicited elsewhere in this document:

The extent to which the advertising or marketing of credit products and services through the centralized source interferes with or undermines consumers’ ability to obtain their free annual file disclosures, and whether the proposed limitation on advertising would address this concern.

Whether the Commission should adopt a ban on all advertising through the centralized source, and what the benefits and costs of such a ban would be.

Are there effective methods other than those proposed by the Commission to reduce confusing and deceptive advertising regarding “free credit reports”? How do the costs and benefits of these methods compare with those proposed by the Commission?

Whether there are additional examples of communications or instructions that may “interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source” that the Commission should consider adding to the list of examples in proposed section 610.2(g)(3).

Whether the proposed definitions of “free credit report” and “(www.AnnualCreditReport.com) and 877-322-8228” are complete and accurate, and whether there are

alternative definitions the Commission should consider.

Whether the Commission’s proposal for Internet-hosted multi-media advertising is sufficient to ensure that the Rule would continue to cover advertising for “free credit reports” in the evolving technology marketplace.

When the amendments to the Free Reports Rule should go into effect, in light of the requirement for interim advertising disclosures in section 205 of the Act? Are there particular sections of the proposed Rule amendments that require more time for covered entities to comply with the proposed Rule’s requirements?

Ways to minimize any burdens imposed by the proposed Rule, while also ensuring that consumers have unfettered access to their free file disclosures.

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Free Annual File Disclosures, Rule No. R411005” to facilitate the organization of comments. 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.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as any 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).⁴⁵

⁴⁵The 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).

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: (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>) (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 (<http://public.commentworks.com/ftc/FreeCreditReportNPRM>). If this document appears at (<http://www.regulations.gov/search/Regs/home.html#home>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (<http://www.ftc.gov>) to read the document and the news release describing it.

A comment filed in paper form should include the “Free Annual File Disclosures Rulemaking, Rule No. R411005” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 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.

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 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.shtm>). As a matter of

⁴⁴In addition to the proposed revisions and additions discussed above, proposed section 610.2(b)(2)(iv)(D) removes an erroneous reference to “national credit reporting agencies.”

⁴⁶ See 16 CFR 1.26(b)(5).

⁴⁷ 5 U.S.C. 601-612.

⁴⁸ 5 U.S.C. 603-605.

⁴⁹ Covered entities under the proposed amended Rule will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as determined by the Small Business Size Standards component of the North American

number of those, if any, that are small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments proposed in section 610.4 would set forth statutorily-mandated advertising disclosures for offering of "free credit reports" in television and radio advertisements, as well as other media, including print and Internet advertising. These proposed amendments to the Rule impose no reporting or recordkeeping obligations. The amendments proposed in section 610.2 would limit advertising on the centralized source until after consumers have obtained their free annual file disclosures, as well as prohibit practices that interfere with consumers' ability to obtain free annual file disclosures through the centralized source. As discussed more fully below in connection with the Paperwork Reduction Act, Commission staff estimates that these proposed amendments to the Rule will impose no more than a de minimis, one-time burden of 12 hours to be completed by professional technical personnel and/or management personnel.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule amendments. The Commission invites comment on this issue.

F. Significant Alternatives to the Proposed Rule Amendments

As previously noted, the proposed amendments to the Rule will affect only nationwide CRAs and their subsidiaries, as well as independent resellers of credit reports. The Commission is unaware of any nationwide CRAs or independent resellers of credit reports that are small entities and therefore it does not include any special exemptions, delayed compliance dates, or other regulatory alternatives specifically to reduce burdens on such entities. Nonetheless, the Commission seeks additional comment regarding: (1) the existence of small entities for which the proposed rule amendments would have a significant economic impact; and (2) suggested alternatives that would reduce the economic impact of the proposed rule amendments on such small entities. If the comments filed in response to this document identify any small entities that would be significantly affected by the proposed rule amendments, as well as alternatives that would reduce compliance costs on

such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into any amended final rule.

VI. Paperwork Reduction Act

The Commission is submitting this proposed amended Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501-3521. In this Notice, the Commission proposes to amend the Free Reports Rule to implement section 205 of the Act. Specifically, the amendments would require any entity engaged in the marketing of "free credit reports" to include in its advertisements prescribed disclosures appropriate for the medium in which the advertisements appear. In addition, the Commission proposes to amend the Rule to eliminate unnecessary interference with consumers' ability to obtain their annual file disclosures from the centralized source.

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will serve a useful purpose; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; de CRAs or

⁵¹ See 5 CFR 1320.3(c)(2) (excluding from the definition of "collection of information" the "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public").

1. Estimated Hours Burden and Associated Labor Cost

Commission staff believes that the above-noted proposed administrative amendments to section 610.2 will impose no more than a de minimis, one-time burden, as the three nationwide CRAs reconfigure the centralized source and their own proprietary websites. Commission staff estimates that these steps will take approximately 12 hours to complete per CRA.⁵²

Commission staff estimates labor costs by applying appropriate estimated hourly cost figures to the burden hours (12) described above. It is difficult to calculate with precision the labor costs association with the proposed Rule amendments, because they entail varying compensation levels of management (e.g., administrative services, computer and information systems, systems analysts, and network and computer system administrators). FTC staff assumes that professional technical personnel and/or management personnel will implement the amendments, at an hourly rate of \$39.42.⁵³

Based upon the above estimates and assumptions, the total labor cost for each of the three nationwide CRAs to comply with the proposed amendments to the Rule is \$473.00 (12 hours × \$39.42) or, cumulatively, \$1,419.

2. Estimated Capital/Other Non-Labor Cost Burden

Commission staff believes that the proposed Rule amendments will not impose any capital or other non-labor costs. Commission staff assumes that the nationwide CRAs will continue their current practice of using third-party contractors (instead of their own employees) to fulfill consumer requests for annual file disclosures, pursuant to the Rule. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of annual file disclosures requested by consumers. As discussed above, Commission staff believes that the proposed amendments, while making it easier for consumers to obtain their free annual file disclosures from the centralized source, will not increase the burden on industry to

supply such file disclosures, nor affect the overall number of file disclosures provided to consumers annually, because consumers will likely be redirected from websites that require consumers to pay for their “free credit report” to the centralized source.

Proposed Rule

List of Subjects in 16 CFR Part 610

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

Authority and Issuance

For the reasons discussed in the preamble, the Federal Trade Commission proposes to amend title 16, Chapter I, Subchapter F, of the Code of Federal Regulations, part 610, as follows:

1. The authority citation for part 610 is revised to read as follows:

Authority: 15 U.S.C. 1681a, g, and h; sec. 211(a) and (d), Pub. L. 108-159, 117 Stat. 1968 and 1972 (15 U.S.C. 1681j). Pub. L. 111-24.

2. Revise § 610.2 to read as follows:

§ 610.2 C r a c a c a c a c

(a) *Purpose.* The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(b) *Establishment and operation.* All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized source for the purpose described in paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumers' option:

- (i) A single, dedicated Internet website,
 - (ii) A single, dedicated toll-free telephone number; and
 - (iii) Mail directed to a single address;
- (2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with paragraph (c) of this section;

(ii) Collects only as much personally identifiable information as is reasonably

necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source website and telephone number regarding how to make a request by all request methods required under § 610.2(b)(1) of this part; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a website request method, providing access to a “help” or “frequently asked questions” screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Federal Trade Commission;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumers' identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the website or telephone number for ordering free annual credit reports as required by federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Internet website required under § 610.2(b)(1) of this part, from the centralized source required by this part. The form provided at 16 CFR Part 698, Appendix D, may be used to comply with this section.

(c) *Requirement to anticipate.* The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact

⁵²This figure derives from consultation with FTC staff experienced in web design and operations.

⁵³This estimate is based on mean hourly wages found at (http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables) (National Compensation Survey: Occupational Earnings in the United States 2008, US Department of Labor released August 2009, Bulletin 2720, Table 3) for the various managerial and technical staff support exemplified above.

the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) The extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) The extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumers' request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of § 610.2(b)(2)(i) of this part if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d) *Disclosures required.* If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, regardless of whether the consumer report is owned by that nationwide consumer reporting agency or by an associated consumer reporting

agency, that nationwide consumer reporting agency shall, upon proper identification in compliance with section 610(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. 1681h(a)(1), provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *High request volume and extraordinary request volume* – (1) *High request volume.* Provided that a nationwide consumer reporting agency has implemented reasonable procedures developed in accordance with paragraph (c) of this section, entitled “requirement to anticipate,” the nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for any period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, if the nationwide consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has implemented reasonable procedures developed in compliance with paragraph (c) of this section, entitled “requirement to anticipate,” the nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for any period of time during which a particular centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the Fair Credit Reporting Act, made through the centralized source, may be used or disclosed by the centralized source or a nationwide consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the Fair Credit Reporting Act and this part; and

(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g) *Communications provided through centralized source.*

(1) Any advertising or marketing for products or services, or any communications or instructions that advertise or market any products or services, through the centralized source must be delayed until after the consumer has obtained his or her annual file disclosure.

(i) In the case of requests made by mail or by requests made by e-mail, the delay shall be until after the consumer has obtained his or her annual file disclosure.

(i) In the case of requests made by mail or by requests made by e-mail, the delay shall be until after the consumer has obtained his or her annual file disclosure.

