

(w) Revised Reporting Requirements for 2006 Pilot Program Participants. In the Healthcare Connect Fund Order, the Commission modified the 2006 Pilot Program reporting requirements to: (1) Extend through and include the last funding year in which a Pilot project received Pilot support, or, for Pilot Projects that received large upfront payments, for the life of the supported facility; (2) file annually instead of quarterly, filing their first annual report on September 30, 2013 and submitting the report to USAC, rather than USAC and the Commission; and (3) conform their reports with the Healthcare Connect Fund annual reports for consortia, where participants will be required to submit annual reports to assist the Commission in measuring progress toward the three program goals: increase access to broadband for health care providers; develop and deploy of broadband healthcare networks; and measure the cost-effectiveness of the program.

Part 101.11: The Telecommunications, Internet Access, and 2006 Pilot Programs use forms and instructions that have been previously approved by OMB as part of this information collection. The Commission is seeking renewal of these forms and instructions.

<sup>1</sup> 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 subsequent solicitation are made by the same telemarketer ("internal upsell").

in response to the mandate of the USA PATRIOT Act. Finally, 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.<sup>2</sup> Accordingly, under the TSR, most sellers and telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.<sup>3</sup> Moreover, sellers and telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.<sup>4</sup>

In 2008, the Commission promulgated amendments to the TSR regarding prerecorded calls, 16 CFR 310.4(b)(1)(v), and call abandonment rate calculations, 16 CFR 310.4(b)(4)(i).<sup>5</sup> The amendment regarding prerecorded calls added certain information collection requirements.<sup>6</sup> Specifically, the amendment expressly authorized sellers and telemarketers to place outbound prerecorded telemarketing calls to consumers only if: (1) The seller has

16 CFR 310.4(b)(1)(iii)(B), (1)(iii)(C), (1)(iii)(D), (1)(iii)(E), (1)(iii)(F), (1)(iii)(G), (1)(iii)(H), (1)(iii)(I), (1)(iii)(J), (1)(iii)(K), (1)(iii)(L), (1)(iii)(M), (1)(iii)(N), (1)(iii)(O), (1)(iii)(P), (1)(iii)(Q), (1)(iii)(R), (1)(iii)(S), (1)(iii)(T), (1)(iii)(U), (1)(iii)(V), (1)(iii)(W), (1)(iii)(X), (1)(iii)(Y), (1)(iii)(Z), (1)(iii)(aa), (1)(iii)(ab), (1)(iii)(ac), (1)(iii)(ad), (1)(iii)(ae), (1)(iii)(af), (1)(iii)(ag), (1)(iii)(ah), (1)(iii)(ai), (1)(iii)(aj), (1)(iii)(ak), (1)(iii)(al), (1)(iii)(am), (1)(iii)(an), (1)(iii)(ao), (1)(iii)(ap), (1)(iii)(aq), (1)(iii)(ar), (1)(iii)(as), (1)(iii)(at), (1)(iii)(au), (1)(iii)(av), (1)(iii)(aw), (1)(iii)(ax), (1)(iii)(ay), (1)(iii)(az), (1)(iii)(ba), (1)(iii)(bb), (1)(iii)(bc), (1)(iii)(bd), (1)(iii)(be), (1)(iii)(bf), (1)(iii)(bg), (1)(iii)(bh), (1)(iii)(bi), (1)(iii)(bj), (1)(iii)(bk), (1)(iii)(bl), (1)(iii)(bm), (1)(iii)(bn), (1)(iii)(bo), (1)(iii)(bp), (1)(iii)(bq), (1)(iii)(br), (1)(iii)(bs), (1)(iii)(bt), (1)(iii)(bu), (1)(iii)(bv), (1)(iii)(bw), (1)(iii)(bx), (1)(iii)(by), (1)(iii)(bz), (1)(iii)(ca), (1)(iii)(cb), (1)(iii)(cc), (1)(iii)(cd), (1)(iii)(ce), (1)(iii)(cf), (1)(iii)(cg), (1)(iii)(ch), (1)(iii)(ci), (1)(iii)(cj), (1)(iii)(ck), (1)(iii)(cl), (1)(iii)(cm), (1)(iii)(cn), (1)(iii)(co), (1)(iii)(cp), (1)(iii)(cq), (1)(iii)(cr), (1)(iii)(cs), (1)(iii)(ct), (1)(iii)(cu), (1)(iii)(cv), (1)(iii)(cw), (1)(iii)(cx), (1)(iii)(cy), (1)(iii)(cz), (1)(iii)(da), (1)(iii)(db), (1)(iii)(dc), (1)(iii)(dd), (1)(iii)(de), (1)(iii)(df), (1)(iii)(dg), (1)(iii)(dh), (1)(iii)(di), (1)(iii)(dj), (1)(iii)(dk), (1)(iii)(dl), (1)(iii)(dm), (1)(iii)(dn), (1)(iii)(do), (1)(iii)(dp), (1)(iii)(dq), (1)(iii)(dr), (1)(iii)(ds), (1)(iii)(dt), (1)(iii)(du), (1)(iii)(dv), (1)(iii)(dw), (1)(iii)(dx), (1)(iii)(dy), (1)(iii)(dz), (1)(iii)(ea), (1)(iii)(eb), (1)(iii)(ec), (1)(iii)(ed), (1)(iii)(ee), (1)(iii)(ef), (1)(iii)(eg), (1)(iii)(eh), (1)(iii)(ei), (1)(iii)(ej), (1)(iii)(ek), (1)(iii)(el), (1)(iii)(em), (1)(iii)(en), (1)(iii)(eo), (1)(iii)(ep), (1)(iii)(eq), (1)(iii)(er), (1)(iii)(es), (1)(iii)(et), (1)(iii)(eu), (1)(iii)(ev), (1)(iii)(ew), (1)(iii)(ex), (1)(iii)(ey), (1)(iii)(ez), (1)(iii)(fa), (1)(iii)(fb), (1)(iii)(fc), (1)(iii)(fd), (1)(iii)(fe), (1)(iii)(ff), (1)(iii)(fg), (1)(iii)(fh), (1)(iii)(fi), (1)(iii)(fj), (1)(iii)(fk), (1)(iii)(fl), (1)(iii)(fm), (1)(iii)(fn), (1)(iii)(fo), (1)(iii)(fp), (1)(iii)(fq), (1)(iii)(fr), (1)(iii)(fs), (1)(iii)(ft), (1)(iii)(fu), (1)(iii)(fv), (1)(iii)(fw), (1)(iii)(fx), (1)(iii)(fy), (1)(iii)(fz), (1)(iii)(ga), (1)(iii)(gb), (1)(iii)(gc), (1)(iii)(gd), (1)(iii)(ge), (1)(iii)(gf), (1)(iii)(gg), (1)(iii)(gh), (1)(iii)(gi), (1)(iii)(gj), (1)(iii)(gk), (1)(iii)(gl), (1)(iii)(gm), (1)(iii)(gn), (1)(iii)(go), (1)(iii)(gp), (1)(iii)(gq), (1)(iii)(gr), (1)(iii)(gs), (1)(iii)(gt), (1)(iii)(gu), (1)(iii)(gv), (1)(iii)(gw), (1)(iii)(gx), (1)(iii)(gy), (1)(iii)(gz), (1)(iii)(ha), (1)(iii)(hb), (1)(iii)(hc), (1)(iii)(hd), (1)(iii)(he), (1)(iii)(hf), (1)(iii)(hg), (1)(iii)(hh), (1)(iii)(hi), (1)(iii)(hj), (1)(iii)(hk), (1)(iii)(hl), (1)(iii)(hm), (1)(iii)(hn), (1)(iii)(ho), (1)(iii)(hp), (1)(iii)(hq), (1)(iii)(hr), (1)(iii)(hs), (1)(iii)(ht), (1)(iii)(hu), (1)(iii)(hv), (1)(iii)(hw), (1)(iii)(hx), (1)(iii)(hy), (1)(iii)(hz), (1)(iii)(ia), (1)(iii)(ib), (1)(iii)(ic), (1)(iii)(id), (1)(iii)(ie), (1)(iii)(if), (1)(iii)(ig), (1)(iii)(ih), (1)(iii)(ii), (1)(iii)(ij), (1)(iii)(ik), (1)(iii)(il), (1)(iii)(im), (1)(iii)(in), (1)(iii)(io), (1)(iii)(ip), (1)(iii)(iq), (1)(iii)(ir), (1)(iii)(is), (1)(iii)(it), (1)(iii)(iu), (1)(iii)(iv), (1)(iii)(iw), (1)(iii)(ix), (1)(iii)(iy), (1)(iii)(iz), (1)(iii)(ja), (1)(iii)(jb), (1)(iii)(jc), (1)(iii)(jd), (1)(iii)(je), (1)(iii)(jf), (1)(iii)(jg), (1)(iii)(jh), (1)(iii)(ji), (1)(iii)(jj), (1)(iii)(jk), (1)(iii)(jl), (1)(iii)(jm), (1)(iii)(jn), (1)(iii)(jo), (1)(iii)(jp), (1)(iii)(jq), (1)(iii)(jr), (1)(iii)(js), (1)(iii)(jt), (1)(iii)(ju), (1)(iii)(jv), (1)(iii)(jw), (1)(iii)(jx), (1)(iii)(jy), (1)(iii)(jz), (1)(iii)(ka), (1)(iii)(kb), (1)(iii)(kc), (1)(iii)(kd), (1)(iii)(ke), (1)(iii)(kf), (1)(iii)(kg), (1)(iii)(kh), (1)(iii)(ki), (1)(iii)(kj), (1)(iii)(kk), (1)(iii)(kl), (1)(iii)(km), (1)(iii)(kn), (1)(iii)(ko), (1)(iii)(kp), (1)(iii)(kq), (1)(iii)(kr), (1)(iii)(ks), (1)(iii)(kt), (1)(iii)(ku), (1)(iii)(kv), (1)(iii)(kw), (1)(iii)(kx), (1)(iii)(ky), (1)(iii)(kz), (1)(iii)(la), (1)(iii)(lb), (1)(iii)(lc), (1)(iii)(ld), (1)(iii)(le), (1)(iii)(lf), (1)(iii)(lg), (1)(iii)(lh), (1)(iii)(li), (1)(iii)(lj), (1)(iii)(lk), (1)(iii)(ll), (1)(iii)(lm), (1)(iii)(ln), (1)(iii)(lo), (1)(iii)(lp), (1)(iii)(lq), (1)(iii)(lr), (1)(iii)(ls), (1)(iii)(lt), (1)(iii)(lu), (1)(iii)(lv), (1)(iii)(lw), (1)(iii)(lx), (1)(iii)(ly), (1)(iii)(lz), (1)(iii)(ma), (1)(iii)(mb), (1)(iii)(mc), (1)(iii)(md), (1)(iii)(me), (1)(iii)(mf), (1)(iii)(mg), (1)(iii)(mh), (1)(iii)(mi), (1)(iii)(mj), (1)(iii)(mk), (1)(iii)(ml), (1)(iii)(mm), (1)(iii)(mn), (1)(iii)(mo), (1)(iii)(mp), (1)(iii)(mq), (1)(iii)(mr), (1)(iii)(ms), (1)(iii)(mt), (1)(iii)(mu), (1)(iii)(mv), (1)(iii)(mw), (1)(iii)(mx), (1)(iii)(my), (1)(iii)(mz), (1)(iii)(na), (1)(iii)(nb), (1)(iii)(nc), (1)(iii)(nd), (1)(iii)(ne), (1)(iii)(nf), (1)(iii)(ng), (1)(iii)(nh), (1)(iii)(ni), (1)(iii)(nj), (1)(iii)(nk), (1)(iii)(nl), (1)(iii)(nm), (1)(iii)(nn), (1)(iii)(no), (1)(iii)(np), (1)(iii)(nq), (1)(iii)(nr), (1)(iii)(ns), (1)(iii)(nt), (1)(iii)(nu), (1)(iii)(nv), (1)(iii)(nw), (1)(iii)(nx), (1)(iii)(ny), (1)(iii)(nz), (1)(iii)(oa), (1)(iii)(ob), (1)(iii)(oc), (1)(iii)(od), (1)(iii)(oe), (1)(iii)(of), (1)(iii)(og), (1)(iii)(oh), (1)(iii)(oi), (1)(iii)(oj), (1)(iii)(ok), (1)(iii)(ol), (1)(iii)(om), (1)(iii)(on), (1)(iii)(oo), (1)(iii)(op), (1)(iii)(oq), (1)(iii)(or), (1)(iii)(os), (1)(iii)(ot), (1)(iii)(ou), (1)(iii)(ov), (1)(iii)(ow), (1)(iii)(ox), (1)(iii)(oy), (1)(iii)(oz), (1)(iii)(pa), (1)(iii)(pb), (1)(iii)(pc), (1)(iii)(pd), (1)(iii)(pe), (1)(iii)(pf), (1)(iii)(pg), (1)(iii)(ph), (1)(iii)(pi), (1)(iii)(pj), (1)(iii)(pk), (1)(iii)(pl), (1)(iii)(pm), (1)(iii)(pn), (1)(iii)(po), (1)(iii)(pp), (1)(iii)(pq), (1)(iii)(pr), (1)(iii)(ps), (1)(iii)(pt), (1)(iii)(pu), (1)(iii)(pv), (1)(iii)(pw), (1)(iii)(px), (1)(iii)(py), (1)(iii)(pz), (1)(iii)(qa), (1)(iii)(qb), (1)(iii)(qc), (1)(iii)(qd), (1)(iii)(qe), (1)(iii)(qf), (1)(iii)(qg), (1)(iii)(qh), (1)(iii)(qi), (1)(iii)(qj), (1)(iii)(qk), (1)(iii)(ql), (1)(iii)(qm), (1)(iii)(qn), (1)(iii)(qo), (1)(iii)(qp), (1)(iii)(qq), (1)(iii)(qr), (1)(iii)(qs), (1)(iii)(qt), (1)(iii)(qu), (1)(iii)(qv), (1)(iii)(qw), (1)(iii)(qx), (1)(iii)(qy), (1)(iii)(qz), (1)(iii)(ra), (1)(iii)(rb), (1)(iii)(rc), (1)(iii)(rd), (1)(iii)(re), (1)(iii)(rf), (1)(iii)(rg), (1)(iii)(rh), (1)(iii)(ri), (1)(iii)(rj), (1)(iii)(rk), (1)(iii)(rl), (1)(iii)(rm), (1)(iii)(rn), (1)(iii)(ro), (1)(iii)(rp), (1)(iii)(rq), (1)(iii)(rr), (1)(iii)(rs), (1)(iii)(rt), (1)(iii)(ru), (1)(iii)(rv), (1)(iii)(rw), (1)(iii)(rx), (1)(iii)(ry), (1)(iii)(rz), (1)(iii)(sa), (1)(iii)(sb), (1)(iii)(sc), (1)(iii)(sd), (1)(iii)(se), (1)(iii)(sf), (1)(iii)(sg), (1)(iii)(sh), (1)(iii)(si), (1)(iii)(sj), (1)(iii)(sk), (1)(iii)(sl), (1)(iii)(sm), (1)(iii)(sn), (1)(iii)(so), (1)(iii)(sp), (1)(iii)(sq), (1)(iii)(sr), (1)(iii)(ss), (1)(iii)(st), (1)(iii)(su), (1)(iii)(sv), (1)(iii)(sw), (1)(iii)(sx), (1)(iii)(sy), (1)(iii)(sz), (1)(iii)(ta), (1)(iii)(tb), (1)(iii)(tc), (1)(iii)(td), (1)(iii)(te), (1)(iii)(tf), (1)(iii)(tg), (1)(iii)(th), (1)(iii)(ti), (1)(iii)(tj), (1)(iii)(tk), (1)(iii)(tl), (1)(iii)(tm), (1)(iii)(tn), (1)(iii)(to), (1)(iii)(tp), (1)(iii)(tq), (1)(iii)(tr), (1)(iii)(ts), (1)(iii)(tt), (1)(iii)(tu), (1)(iii)(tv), (1)(iii)(tw), (1)(iii)(tx), (1)(iii)(ty), (1)(iii)(tz), (1)(iii)(ua), (1)(iii)(ub), (1)(iii)(uc), (1)(iii)(ud), (1)(iii)(ue), (1)(iii)(uf), (1)(iii)(ug), (1)(iii)(uh), (1)(iii)(ui), (1)(iii)(uj), (1)(iii)(uk), (1)(iii)(ul), (1)(iii)(um), (1)(iii)(un), (1)(iii)(uo), (1)(iii)(up), (1)(iii)(uq), (1)(iii)(ur), (1)(iii)(us), (1)(iii)(ut), (1)(iii)(uu), (1)(iii)(uv), (1)(iii)(uw), (1)(iii)(ux), (1)(iii)(uy), (1)(iii)(uz), (1)(iii)(va), (1)(iii)(vb), (1)(iii)(vc), (1)(iii)(vd), (1)(iii)(ve), (1)(iii)(vf), (1)(iii)(vg), (1)(iii)(vh), (1)(iii)(vi), (1)(iii)(vj), (1)(iii)(vk), (1)(iii)(vl), (1)(iii)(vm), (1)(iii)(vn), (1)(iii)(vo), (1)(iii)(vp), (1)(iii)(vq), (1)(iii)(vr), (1)(iii)(vs), (1)(iii)(vt), (1)(iii)(vu), (1)(iii)(vv), (1)(iii)(vw), (1)(iii)(vx), (1)(iii)(vy), (1)(iii)(vz), (1)(iii)(wa), (1)(iii)(wb), (1)(iii)(wc), (1)(iii)(wd), (1)(iii)(we), (1)(iii)(wf), (1)(iii)(wg), (1)(iii)(wh), (1)(iii)(wi), (1)(iii)(wj), (1)(iii)(wk), (1)(iii)(wl), (1)(iii)(wm), (1)(iii)(wn), (1)(iii)(wo), (1)(iii)(wp), (1)(iii)(wq), (1)(iii)(wr), (1)(iii)(ws), (1)(iii)(wt), (1)(iii)(wu), (1)(iii)(wv), (1)(iii)(ww), (1)(iii)(wx), (1)(iii)(wy), (1)(iii)(wz), (1)(iii)(xa), (1)(iii)(xb), (1)(iii)(xc), (1)(iii)(xd), (1)(iii)(xe), (1)(iii)(xf), (1)(iii)(xg), (1)(iii)(xh), (1)(iii)(xi), (1)(iii)(xj), (1)(iii)(xk), (1)(iii)(xl), (1)(iii)(xm), (1)(iii)(xn), (1)(iii)(xo), (1)(iii)(xp), (1)(iii)(xq), (1)(iii)(xr), (1)(iii)(xs), (1)(iii)(xt), (1)(iii)(xu), (1)(iii)(xv), (1)(iii)(xw), (1)(iii)(xx), (1)(iii)(xy), (1)(iii)(xz), (1)(iii)(ya), (1)(iii)(yb), (1)(iii)(yc), (1)(iii)(yd), (1)(iii)(ye), (1)(iii)(yf), (1)(iii)(yg), (1)(iii)(yh), (1)(iii)(yi), (1)(iii)(yj), (1)(iii)(yk), (1)(iii)(yl), (1)(iii)(ym), (1)(iii)(yn), (1)(iii)(yo), (1)(iii)(yp), (1)(iii)(yq), (1)(iii)(yr), (1)(iii)(ys), (1)(iii)(yt), (1)(iii)(yu), (1)(iii)(yv), (1)(iii)(yw), (1)(iii)(yx), (1)(iii)(yy), (1)(iii)(yz), (1)(iii)(za), (1)(iii)(zb), (1)(iii)(zc), (1)(iii)(zd), (1)(iii)(ze), (1)(iii)(zf), (1)(iii)(zg), (1)(iii)(zh), (1)(iii)(zi), (1)(iii)(zj), (1)(iii)(zk), (1)(iii)(zl), (1)(iii)(zm), (1)(iii)(zn), (1)(iii)(zo), (1)(iii)(zp), (1)(iii)(zq), (1)(iii)(zr), (1)(iii)(zs), (1)(iii)(zt), (1)(iii)(zu), (1)(iii)(zv), (1)(iii)(zw), (1)(iii)(zx), (1)(iii)(zy), (1)(iii)(zz)

<sup>2</sup> 68 FR 4580 (Jan. 29, 2003). The Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third-party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It does not limit calls by political organizations, charities, or telephone surveyors.

<sup>3</sup> 16 CFR 310.4(b)(1)(iii)(B).

<sup>4</sup> 16 CFR 310.4(b)(3)(iv). Effective January 1, 2005, the Commission amended the TSR to require telemarketers to access the Registry at least once every 31 days. 69 FR 16368 (Mar. 29, 2004).

<sup>5</sup> 73 FR 51164 (Aug. 29, 2008).

<sup>6</sup> By contrast, the revised standard for measuring the call abandonment rate did not impose any new or affect any existing reporting, 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.

<sup>7</sup> The prerecorded call amendment provided the first ever explicit authorization in the TSR for sellers and telemarketers to place prerecorded telemarketing calls to consumers. The pre-amendment call abandonment prohibition of the TSR implicitly barred such calls by requiring that all telemarketing calls be connected to a sales representative, rather than a recording, within two seconds of the completed greeting of the person who answers. The requirements apply not only to prerecorded calls that are answered by a consumer, but also to prerecorded messages left on consumers' answering machines or voicemail services.

<sup>8</sup> 73 FR 51164, 51166.

<sup>9</sup> While the TSR already covered outbound calls by debt relief service providers, the amendments also brought inbound debt-relief calls within the TSR's reach.

<sup>10</sup> Telemarketers and telefundraisers must comply, however, with the abandoned call provisions of the TSR and the opt-out requirements of the 2008 amendments.

<sup>11</sup> For the sake of simplicity and to err conservatively, FTC staff's burden estimates for provisions less likely to be applicable to telefundraisers (e.g., prize promotion disclosure obligations for outbound live calls, under 16 CFR 310.4(d)) will not be reduced by a separate estimate for the subset of

telemarketers that are telefundraisers. Conversely, estimates of the number of new-entrant telemarketers will incorporate new-entrant telefundraisers.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> This figure includes new entrants making prerecorded calls and offering debt relief services, based on prior estimates that neither would require more than 100 hours to comply with those requirements. 74 FR 11952, 11954 n.17 (Mar. 20, 2009); 75 FR 48458, 48504 (Aug. 10, 2010).

<sup>16</sup> The recordkeeping requirements for prerecorded calls are also included, and are subsumed within the PRA estimates above for existing and new telemarketing entities. As in its prior estimates,

Staff believes that in the ordinary course of business, the burden of creating and retaining electronic records of written 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 telefundraisers) 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.

staff continues to believe that any ongoing incremental burden on sellers to create and retain electronic records of written 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 telefundraisers) 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.

<sup>17</sup> 75 FR 48504; 74 FR 11954.

<sup>18</sup> While staff does not have information directly stating the number of inbound telemarketers, data last appearing in the DMA 2009 Statistical Fact Book (February 2009), p. 18, shows that 17% of all direct marketing in 2008 was by inbound telemarketing and 20% was by outbound telemarketing. Accordingly, based on such relative weighting, staff estimates that the number of inbound telemarketers is approximately 3,726  $((8,110 \times 17) \div (17 + 20))$ .

<sup>19</sup> Some exceptions to this broad exemption exist, including solicitations regarding prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, advertisements involving goods or services described in 310.3(a)(1)(vi), advertisements involving goods or services described in 310.4(a)(2)–(4); and any instances of upselling included in such telephone calls.

<sup>20</sup> Since only "sellers," and not "telemarketers," would make the written disclosures, and this estimate includes both, it conservatively overstates the number of entities subject to the requirement.

<sup>21</sup> 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 484 million is based on an estimated 1.6 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 most recent available direct sales data for telephone marketing to consumers. *See* DMA Statistical Fact Book (2001), p. 301.

<sup>22</sup> *See*, e.g., 60 FR 32682, 32683 (June 23, 1995); 63 FR 40713, 40714 (July 30, 1998); 66 FR 33701, 33702 (June 25, 2001); 71 FR 28698, 28700 (May 17, 2006); 74 FR 11952, 11955 (Mar. 20, 2009).

<sup>23</sup> 71 FR 3302, 3304 (Jan. 20, 2006); 71 FR 28698, 28700.

<sup>24</sup> *See*, e.g., 60 FR 32683.

<sup>25</sup> 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 it was posited specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, barring the receipt of any information to the contrary.

<sup>26</sup> 16 CFR 310.3(a)(1)(i)-(iii).

<sup>27</sup> See text preceding note 20.

<sup>28</sup> FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff believes this estimate remains reasonable.

<sup>29</sup> The percentage and unit of time measurements are FTC staff estimates.

<sup>30</sup> 75 FR 48504-05.

<sup>31</sup> Debt relief sales in outbound calls have always been subject to the general sales disclosure requirements, and are subsumed in the outbound general sales disclosure totals.

<sup>32</sup> By extension upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

complaints), 844 hours (1.9 billion  $\times$  0.0002 [0.002  $\times$  0.12]  $\times$  8 seconds + 3,600); and 422 hours for loss recovery services (612 complaints) (1.9 billion  $\times$  0.0001 [0.001  $\times$  0.12]  $\times$  8 seconds + 3,600). The exemptions therefore add an additional 30,820 hours to the general sales disclosure burden. Altogether, the general sales disclosure burden thus is 410,492 hours (377,949 for outbound sales + 1,723 for debt relief inbound sales + 30,820 for non-exempt inbound sales).

Additional specific disclosures are required if the call involves a prize promotion,<sup>47</sup> the sale of credit card loss protection products,<sup>48</sup> an offer with a negative option feature,<sup>49</sup> or the sale of a debt relief service.<sup>50</sup> Staff estimates that the specific sales disclosures other than for debt relief services will require 23,971 hours annually [(484 million calls  $\times$  5% [estimate for outbound calls involving prize promotions]  $\times$  3 seconds  $\times$  25% burden = 5,042 hours) + (484 million calls  $\times$  0.1% [estimate for outbound calls involving CCLP]  $\times$  4 seconds  $\times$  25% burden = 134 hours) + (484 million calls  $\times$  40% upsell conversions  $\times$  20% sales conversions  $\times$  0.1% [estimate for outbound calls involving CCLP upsells]  $\times$  4 seconds  $\times$  25% burden = 11 hours) + (1.9 billion inbound calls  $\times$  40% upsell conversion  $\times$  20% sales conversion  $\times$  0.1% [estimate for inbound calls involving CCLP upsells]  $\times$  4 seconds  $\times$  25% burden = 42 hours) + (484 million calls  $\times$  10% [estimate for outbound calls involving negative options]  $\times$  4 seconds  $\times$  25% burden = 13,444 hours) + (484 million calls  $\times$  40% upsell conversion  $\times$  20% sales conversions  $\times$  10% [estimate for outbound calls involving negative option upsells]  $\times$  4 seconds  $\times$  25% burden = 1,076 hours) + (1.9 billion inbound calls  $\times$  40% upsell conversions  $\times$  20% sales conversions  $\times$  10% [estimate for inbound calls involving negative option upsells]  $\times$  4 seconds  $\times$  25% burden = 4,222 hours).

Staff estimates that reciting the debt relief disclosures in each sales call will take ten seconds, and therefore the disclosure burden associated with the debt relief disclosures is 4,308 hours (3,101,581 outbound debt relief calls  $\times$  10 seconds  $\times$  25% burden = 2,154 hours) + (3,101,581 inbound debt relief calls  $\times$  10 seconds  $\times$  25% burden = 2,154 hours). Thus, the total specific sales disclosure burden is 28,279 hours annually (23,971 for non-debt-relief calls) + 4,308 (for debt relief calls).

Cumulatively, therefore, the total annual burden for all of the sales disclosures is 438,771 hours (410,492 general + 28,279 specific sales disclosures) or, by rough approximation (allowing that some entities conducting inbound telemarketing will be exempt from oral disclosure if making certain written disclosures), 54 hours annually per firm (438,771  $\div$  8,110).

Finally, any entity that accesses the Registry, regardless whether it is paying for access, 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.<sup>51</sup> Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 270 burden hours (8,110 entities  $\times$  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 135 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 405 hours per year.

Cumulatively of the foregoing components, disclosure burden for new and existing telemarketing entities,

including those making prerecorded calls,<sup>52</sup> is 1,304,374 hours (865,333 [pre-sale disclosures] + 410,492 [general sales disclosures] + 28,279 [specific sales disclosures] + 270 [Registry access]). Thus, the total recordkeeping and disclosure burden is 1,319,983 hours (15,610 + 1,304,374).

\$15,593,528.

\$5,101,246.

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sampose a 4Annu-e-12 (13)Tj /4 Tw 865,333 [pre-  
Fonc.ie.,7 (86), 54 hours annualletting entities,

<sup>52</sup>The required opt-out disclosure for all prerecorded calls mandated by the 2008 amendments would not require any material time expenditure, and arguably less time than a pre-existing and now identical FCC disclosure requirement. In any event, because the "opt-out" disclosure applies only to prerecorded calls, which are fully automated, no additional manpower hours would be expended in its electronic delivery.

<sup>53</sup>This rounded figure is derived from the mean hourly wage shown for Computer Support Specialists in the U.S. Department of Labor, Bureau of Labor Statistics, 2011

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<sup>54</sup>This rounded figure is derived from the mean hourly wage shown for Office Clerks, General.

<sup>47</sup> 16 CFR 310.3(a)(1)(iv)-(v).

<sup>48</sup> 16 CFR 310.3(a)(1)(vi).

<sup>49</sup> 16 CFR 310.3(a)(1)(vii).

<sup>50</sup> 16 CFR 310.3(a)(1)(viii).

<sup>51</sup> See 67 FR 37366 (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).

