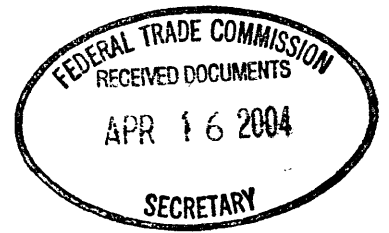


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April 15, 2004



Federal Trade Commission/Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: COMMENTS ON FREE ANNUAL FILE DISCLOSURES

Dear Sir or Madam:

These comments are submitted by MIB Group, Inc. ("MIB"), a non-stock, not-for-profit membership association of life insurance companies with approximately 500 members. MIB was founded in 1902. MIB's role in the insurance industry was then and is today to detect and deter fraud in the procurement of life, health, and disability insurance by conducting a confidential exchange of information between its member companies. MIB members underwrite over 95% of all individually underwritten life insurance and over 80% of all individually underwritten health insurance in the United States and Canada.

MIB is a nationwide specialty consumer reporting agency under § 603(w) of the FCRA, 15 U.S.C. § 1681a(w) because it compiles and maintains files on consumers on a nationwide basis relating to the individual's personal medical records and insurance records.

MIB supports the objectives espoused by the Federal Trade Commission's proposed regulations, but is gravely concerned that unless revised, or favorably interpreted, they will limit the ability of MIB to fulfill its mission of fraud prevention as well as limiting the ability of the insurance companies to efficiently and fairly underwrite and issue their products.

The comments herein are limited to those provisions of the regulations that most directly affect MIB, its operations, and its member life insurance companies.

Fraud in the procurement of life, health, or disability insurance is a serious problem. It is an industry wide problem that needs an industry wide solution. If insurance companies do not have an effective and cost efficient method to screen for omissions or material misrepresentations at time of application, they become targets of "anti-selection."¹ The result is real financial harm to applicants for insurance, to existing

¹ Anti-selection is defined as the tendency of people who suspect or know they are more likely than average to experience loss to apply for or renew insurance to a greater extent than are people who lack such

policyholders, and to insurance companies. Applicants are harmed by having to pay higher premiums to cover the company's higher mortality experience. Existing policyholders are harmed by not realizing the amount of dividends that had been expected. The insurance company is harmed by higher losses and lower profitability, making it less competitive than other companies that had been able to avoid the anti-selection related problems. MIB improves conditions for the honest consumers of life, health, and disability insurance by lowering the cost of industry products.²

MIB's role in the underwriting process is often misunderstood. It serves the specific, but limited, purpose of alerting a member company to possible omissions or material misrepresentations by applicants on the insurance application. Because of MIB's role in fraud and abuse detection, its process for accepting consumer requests is necessarily different from other credit reporting agencies.

For example, MIB's database and method of referencing and searching for records is different. MIB's database contains sensitive medical information, and consists entirely of records on individuals who have applied for individual life, health and disability policies. Pursuant to Section 605(a)(5) of the FCRA, MIB records are deleted after 7 years.

MIB does *not* use social security numbers or current addresses as "personal identifiers" or to reference records. MIB does use an individual's surname, middle initial and first name, date of birth, place of birth, territory letter, and occupation, to reference records. MIB searches for an individual's records based upon the above-listed identifiers and its search system uses algorithms to search for matches. Because MIB uses the above-listed identifiers, multiple records may be found (e.g., several John Does and Jon Does may be found). The fact that MIB has elected not to use the most "common" personal identifier, an individual's social security number, which the misuse thereof has been related to various forms of frauds and identity theft, in some ways creates a slightly less efficient means of locating the specific individual's record. Furthermore, due to the heightened sensitivity of the information MIB deals with, MIB is obligated to ensure the information requested is placed with the correct party. Thus, in order to ensure that the correct record is given to the requestor, MIB must take additional steps to verify the identity of a requestor.

knowledge of probable loss. **Source:** Jane Lightcap Brown, "Insurance Administration", LOMA, 1997: 15-16.

² A recent protective value study conducted by an independent actuarial firm found that MIB saves the insurance industry in excess of a billion dollars a year through their fraud and abuse detection and deterrence programs. Consequently, consumers save money on insurance premiums. Without this cost savings, many individuals would not be able to afford insurance products.

The whole point of MIB is to prevent insurance fraud and help with fraud detection. Therefore, using identifiers other than social security numbers provides more accuracy and more protection from unlawful or inappropriate disclosure of sensitive medical information.

Because of this, MIB's method of identity confirmation must be different from other credit reporting agencies. If an apparent match is found, MIB sends a signed copy of the individual's request for an MIB report to the original insurance company that underwrote the insurance to get confirmation of identity of the requestor of the report. The insurance company then compares the signature on the request form with the signature on the insurance application. Due to the sensitivity of the medical information, MIB does not use the Internet to send a signature to an insurance company for confirmation. MIB's identity confirmation process takes more time than the process used by most, if not all, § 603(w) and § 603(p) organizations.

Additionally, MIB's method of providing reports is different. The only address that MIB has for a consumer is the address provided by the consumer at the time of the request for disclosure. MIB members that provide information to MIB do not include the consumers' address when submitting reports to MIB. As a result, MIB cannot mail disclosure reports to the consumer at the last address given by an information furnisher; MIB can only mail disclosure reports to the address given by the consumer. This requires MIB to take additional measures to ensure that the information being disclosed pertains to the consumer requesting disclosure, all of which add time to the disclosure process.

MIB does not maintain as many records as other § 603(w) and § 603(p) organizations. MIB does not have records on an individual if he or she has not applied for insurance within the seven years prior to making a request for a report. Only about 15 to 18% of individuals have records with MIB. Of approximately 16 million insurance applications a year, only about 2.5 to 3 million result in reports to MIB each year, resulting in only about 16 million names in MIB's database each year. Approximately 2.5 to 3 million of these names roll off of MIB's database each year after the expiration of seven years.

The number of requests for reports MIB receives is different. MIB receives, on average, about 56,000 requests for disclosure each year. Of those 56,000 requests, only about 35,000 individuals complete the disclosure form and return it to MIB. Of those 35,000 requests, 26,000 individuals do not have MIB records/reports. Therefore, only about 9,000 individuals who request reports have records with MIB. Currently, it takes MIB an average of 18 business days to make disclosures for the 9,000 individuals.

The FTC predicts that § 603(p) and § 603(w) organizations will receive about 35.1 million requests for free reports; MIB currently handles only 56,000 requests per year and could not process 35.1 million requests.

MIB recognizes that maintaining the privacy of individuals' personal health information is extremely important. MIB employs extensive policies and procedures to insure that personal health information is disseminated in an appropriate and protected manner. In addition to the policies and procedures mandated by law, MIB voluntarily adheres to standards that are designed to protect individuals' privacy. MIB believes that there is little it can do to speed up or streamline the current disclosure process while still ensuring confidentiality of sensitive medical information and verifying identity. Because MIB's reports contain sensitive and private medical information and to prevent liability for inappropriate disclosure of medical information, MIB takes these extra steps to confirm a requestor's identity.

MIB also recognizes the very important goal of free annual disclosure to consumers. However, MIB does not feel that the regulations promulgated by the Federal Trade Commission properly take into account the unique nature of § 603(w) organizations, particularly MIB. MIB believes that the regulations in their current form will lead to faster disclosures, at the expense of increased inadvertent disclosure of sensitive medical information.

I. Comments concerning the effective date of December 1, 2004

As permitted by the Act, the FTC could provide that the effective date is 9 months after the date on which such regulations are issued in final form. However, the proposed rulemaking provides for an effective date of December 1, 2004 for § 603(w) organizations.³

This effective date should be extended to take advantage of the full nine months for three reasons. First, as explained above, MIB is in a unique position of having to provide reports in less time while still maintaining its high standards of identity confirmation. While MIB does not believe this can be done under its current process, MIB requests the full amount of time to be able to further study the issue and attempt to develop a more workable solution. For MIB, the implementation process is more than getting an 800 number.

³ It should be noted that some new obligations under the Fair and Accurate Credit Transactions Act scheduled to take effect December 1, 2004, may be delayed, according to statement made April 1 by Andrew Smith, assistant to FTC director Timothy Muris. According to Smith, several new provisions of the law—such as those addressing identity theft, fraud, and the accuracy of information in credit reports—were scheduled to take effect December 1, 2004 and are likely to be delayed. In light of the issues raised herein, the discussed free report requirements should be considered for such a delay as well.

Second, if the effective date for § 603(w) organizations is after the effective date for § 603(p) organizations, it may help to reduce the anticipated surge. Most likely, there will be a large amount of press coverage of the availability of free reports. If free reports may be obtained from § 603(w) organizations beginning December 1, 2004, it is likely that press reports will mention this fact along with the free availability of reports from § 603(p) organizations. Based on MIB's past experience, when consumers hear that there is an organization which may have a medical report on them, they will request a report from MIB to see what information MIB has about them. Therefore, while MIB only has records on about 16 million people, it could receive requests from over 35 million people.

Third, because MIB only has records on about 16 million people, delaying the effective date will not impact a majority of Americans.

For all of the above stated reasons, MIB respectfully requests that the FTC delay the effective date for the full nine months after the regulations are issued in final form.

II. Comments Concerning the Streamlined Process

The proposed regulations provide that any § 603(w) organization have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process requires a toll-free telephone number that enables a consumer to request an annual file disclosure.

MIB does not take issue with the requirement of providing a toll-free telephone number. However, this requirement does not streamline the process. Currently, a consumer can call or write to MIB to request a form, or download the request form from the Internet and send it in to MIB. However, without a signature, MIB is unable to confirm the identity of the requestor. Therefore, while the toll-free number may be a convenient way to request a form, it does not speed up the process; in fact, it is slower than if the consumer downloaded the form and mailed it in because after the phone request, MIB has to mail out the form for signature.

While using social security numbers for confirmation of identity may streamline the process, this is not a current option for MIB. MIB is not in a position to re-engineer its database to use and collect social security numbers as a method of referencing individuals (assuming that could even be done before December 1, 2004). Since consumers can refuse to provide their social security numbers, and because MIB's database includes records on Canadians, to which different laws on disclosure and use regarding identification numbers apply, MIB would need to have two different identity confirmation processes.

III. Comment Regarding “Free Report” Timing

As explained above, MIB’s purpose, process and manner of cataloging information are unique in the known world of reporting and in many ways the information it is dealing with is particularly sensitive in comparison to the “traditional” reported information (e.g., credit, financial).

In light of the heightened sensitivity of the information and the need for accuracy by MIB, MIB believes 15 days to respond to a requesting party is too little time.

Thus MIB has the following suggestions:

- Define the 15-day requirement in terms of an average – § 603(w) organizations could meet the 15-day requirement if their average response time is 15 days.
- In the alternative, define the 15-day requirement in terms of business days.
- Provide for a waiver of liability if § 603(w) organizations are absolutely required to provide reports within 15 calendar days and a report is sent to the wrong person in good faith.

IV. Comments Concerning the Unequal Application of Regulation between 603(p) and 603(w) Organizations

The implementation of the proposed regulations differentiate between 603(p) organizations and 603(w) significantly. The regulations as promulgated establishes a “rolling” rollout process for 603(w) organizations starting on the West coast and moving to the East coast over a nine month period. This implementation process does not appear to apply to 603(w) organizations. The fact that MIB’s database contains fewer names than the databases of 603(p) organizations does not necessarily mean that MIB can expect to receive fewer requests for disclosure. It has been MIB’s experience over the past 20 years that the number requests for disclosures increase significantly following press or media coverage about MIB. As stated above, the press coverage anticipated in connection with the implementation of the free annual disclosures will significantly impact MIB’s ability to comply with the regulations. To ensure equal protection and fairness, the FTC should extend the “rolling” rollout process to 603(w) organizations.

Conclusion

MIB is an association of life insurance companies that operates an interchange of information among members that is invaluable as an alert to detect and deter fraud. This interchange of information improves conditions for insurers and for the consumers of life, health, or disability insurance. MIB supports the goal of providing free annual reports while protecting individuals' rights to privacy when health information is disclosed. However, MIB believes at a minimum that § 603(w) organizations should be given the full nine months to implement the final regulations, and respectfully requests the FTC to give favorable consideration to its suggestion that the final regulations measure disclosures based on average times.

Respectfully submitted,



James S. Corbett
Vice President & General Counsel