Comment #: 6


**Peter L. McCorkell**
Senior Counsel

**Law Department**
633 Folsom Street
Seventh Floor
San Francisco, CA 94107
415-396-0940
415-975-7863

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**VIA ELECTRONIC MAIL**

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex S)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
FCRAnotices@ftc.gov

Re: Summaries of Rights and Notices of Duties Under the Fair Credit Reporting Act
FACTA Notices, Matter No. R411013

Dear Ladies and Gentlemen:

Wells Fargo & Company ("Wells Fargo"), on behalf of itself and its affiliated companies is pleased to comment on the Federal Trade Commission's ("FTC") proposed revisions to the to the two summaries of rights under the Federal Credit Reporting Act ("FCRA") and two notices of duties under the FCRA as required under FCRA sections 609 and 607 respectively.

Wells Fargo is a financial holding company that has subsidiary banks in 23 mid-western and western states. Wells Fargo is actively engaged in consumer lending through its bank and nonbank subsidiaries.

Wells Fargo generally supports the FTC's proposed summaries of rights and notices of duties as required by FCRA sections 609 and 607. However, the minor changes to the proposed summaries and notices would improve their clarity and accuracy.

**Appendix E to Part 698 – Summary of Consumer Identity Theft Rights - Remedying the Effects of Identity Theft: Summary of the Consumer Rights Under the Fair Credit Reporting Act**

The first sentence of the second paragraph states, "The Fair Credit Reporting Act (FCRA) governs the collection and the use of information about you . . ." This should be modified to state "governs the collection and the use of *certain* information" to add clarity.

Section 1 states "You have the right to a free copy of your consumer report if you believe it has inaccurate information due to fraud or identity theft." This sentence should be amended as follows to be clear to the consumer: "You have the right to a free copy of your consumer report *from a credit reporting agency* if you believe it has inaccurate information due to fraud or identity theft." Without the italicized information, the consumer may believe that a report may be obtained from a reporting business by simply requesting the information by telephone.

Section 2 provides that a consumer *may* place a fraud alert on an account by calling one of the three reporting agencies. This is inaccurate. A consumer may contact by telephone the three reporting agencies only to place an "initial alert" on an account. For an "extended fraud alert" the consumer may not call, but instead must file an identity theft report. Under section 111 of the FACT Act, an identity theft report requires that the consumer sign their name to allegations of identity theft, and that the consumer be subject criminal penalties if the report is false. To avoid consumer confusion, consumers should be informed of the differences in the fraud alerts, that only an initial fraud alert may be made by contacting the credit reporting agencies by telephone and that criminal penalties are attached to false identity theft reports. The industry has an interest in limiting the number of false identity theft reports, so it is important the consumer be informed of the criminal penalties.

Section 3 states "The business may ask you for proof of your identity, a police report and an affidavit before it gives you the documents." This should be amended to clarify the documents the business may request from the consumer. A consumer often refuses to provide information that will be helpful to resolve their concerns due to fears of additional identity theft. Therefore, the sentence should read as follows to clarify to the consumer their rights in resolving identity theft issues: "The business may ask you for proof of your identity, ***such as your driver's license number and/or your Social Security number before it gives you the documents.*** The business also may ask for a police report and affidavit before it gives you the documents."

Section 3 should be clarified so that the consumer understands that requests for documentation from a business or other creditor must be in writing in accordance with section 609(e)(3) of the FCRA as amended by the FACT Act section 151. The following sentence should be added: You must make your request for business records in writing to an address established by the creditor or other business.

Section 4 is redundant with section 3 and therefore could be confusing to the consumer. Section 4 can be eliminated if the following change is made to the second sentence in section 3: "A creditor, ***collector*** or other business must give you copies of applications and other business records ***or information*** relating to a transaction or account in your name that you believe was the result of identity theft."

Section 6 is inconsistent with Section 3. The last sentence (which now reads: "You may do so by submitting an identity theft report.") should be deleted and replaced with the following language: "*The business may ask you for proof of your identity, such as your driver's license number and/or your social security number before prevents any such*

*reporting. The business also may ask for an identity theft report, a police report and/or affidavit before it prevents any such reporting.*"

**Appendix F to Part 696 – General Summary of Consumer Rights – A summary of Your Rights Under the Fair Credit Reporting Act**

The section entitled "You have a right to know your credit score." needs to be clarified for the consumer. In particular the sentence stating, "For a fee, you may get your credit score. . ." should be modified as follows: "For a fee, you may get your credit score *from a consumer reporting agency*." Without the added language, the consumer may believe the company who took adverse action must provide the credit score.

The section entitled, "You may seek damages from violators," is overbroad in its application of FCRA sections 616 and 617 in conjunction with the potential liability of users of consumer reports. As proposed, this section states that, "If a consumer reporting agency, a user of consumer reports, or, in some cases, a furnisher of information to a consumer reporting agency violates the FCRA, you may sue them in State or Federal court." While it is the true that there are instances in which FCRA sections 616 and 617 do not apply to a furnisher of information, there also are circumstances in which sections 616 and 617 do not apply to users of consumer reports. For example, users of consumer reports are not liable under sections 616 and 617 for violation of risk-based pricing notices. Therefore, this section should be revised to read, "If a consumer reporting agency *or, in some cases*, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may sue them in State or Federal court."

**Appendix G to Part 698 –Notice of Furnishers Responsibilities – Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA**

The section entitled, "Duties of Financial Institutions When Reporting Negative Information," does not adequately reflect the Federal Reserve Board's ("FRB") prescribed model notices for the reporting of negative information under 12 C.F.R. part 222, Appendix B. As proposed, this section indicates that furnishers must notify consumers in writing if they "furnish negative information to a CRA," and that the FRB has "prescribed a model disclosure."[1] Pursuant to the FRB's final rule on negative information model notices, furnishers have the option of providing a one-time notice in advance of providing negative information to a CRA or within 30 days after providing negative information. Therefore, to accurately reflect this information, this section should read, "Furnishers who are financial institutions must notify consumers in writing if they *may* furnish *or have furnished* negative information to a CRA." In addition, this section should indicate that, "The Federal Reserve Board has prescribed <u>two</u> model notices for this purpose."

**Appendix H to Part 698 – Notice of User Responsibilities – Notice of Consumer Reports: Obligations of Users Under the FCRA**

**Section I: Obligations Of All Users of Consumer Reports**

Under subsection A entitled, "Users Must Have a Permissible Purpose," the list of permissible purposes listed in the notice is not complete. The notice indicates that one such permissible purpose includes "the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account." However, FCRA section 604(a)(3)(A) is not limited to only those credit transactions where a consumer applies for credit but, rather, includes credit transactions that simply involve a consumer. Accordingly, the third bullet under subsection A should be revised to read, "For the extension of credit as a result of an application from a consumer, *a credit transaction involving the consumer*, or the review or collection of a consumer's account."

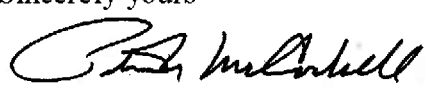
**Section II: Creditors Must Make Additional Disclosures**

The proposed language presumes the outcome of with the risk based pricing rules including the "risked-based model" have not been jointly promulgated by the Federal Trade Commission and the Federal Reserve Board. As proposed, the notice states that if a creditor makes an offer to a consumer on materially less favorable terms than the most favorable terms offered to a substantial proportion of the consumers section 615(h) of the FCRA requires the credit grantor to "disclose this fact to the consumer and to provide certain information. Consumers who receive a notice will be entitled to a free copy of their consumer report."

The FTC and FRB are still considering the ability of creditors to provide the required notice in advance of the final credit decision. Such notice could not "disclose the fact" because the event leading to "this fact" will not yet have occurred. In addition, we do not believe consumers who receive a notice under 615(h) are entitled to an additional free copy of their credit report because of receipt of that notice. Consumers may receive a free copy of their consumer report from the nationwide CRA repository on an annual basis or in other certain situations. Until the FTC and FRB jointly release their final rule regarding risked-based pricing, this section should be revised to read, " . . . Section 615(h) of the FCRA requires the creditor grantor to comply with the notice requirements jointly prescribed by the Federal Trade Commission and the Federal Reserve Board." This will provide for consistency with the FTC and FRB joint promulgations.

Wells Fargo is grateful for the opportunity to comment on the Proposed Rule. If you have any questions regarding our comments, please contact the undersigned at (415) 396-0940 or mccorkpl@wellsfargo.com.

Sincerely yours



Peter L. McCorkell