



August 16, 2004

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex Q)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACTA Notices, Matter No. R411013

Ladies and Gentlemen:

The American Financial Services Association appreciates the opportunity to comment on the proposed summaries of rights and the notices of duties under the Fair Credit Reporting Act ("FCRA") as required by FCRA Sections 609 and 607 respectively. AFSA is the national trade association for consumer credit providers. The credit products offered by AFSA's members include personal loans, first and second mortgage loans, home equity lines of credit, credit card accounts, retail sales financing and credit insurance.

A. The Commission Should Avoid Creating a Gap Between the Receipt of the Summaries of Rights by Consumers and the Effectiveness of the Rights Described in the Summaries.

We encourage the Commission to consider carefully the effective date of the summaries of identity theft rights in Appendix E and the summary of FCRA rights in Appendix F. The Request for Public Comment indicates that the requirement to distribute the summary of identity theft rights will become effective sixty (60) days after the Commission issued the summary in final form. We would like to offer a comment that the Commission is probably already considering: if the Commission issues the two summaries in final form more than sixty (60) days before the underlying rights become effective, consumers may believe that they can avail themselves of the summarized rights before consumer reporting agencies ("CRAs") and lenders have procedures in place to respond to consumers' requests. For instance, if the compliance date for a particular legal obligation is December 1, 2004, the Commission should not make the summary of identity theft rights effective until at least October 2, 2004. A similar analysis applies to the reference to active duty alerts in Appendix F.

Another important and slightly different example of this timing issue is the right of consumers to receive a free annual credit report. The Commission's final rule in this regard indicates that certain consumers will not be able to obtain a free annual credit report until September 2005. While it is unlikely that the Commission could delay the effective date of the summary in Appendix E to account for the staggered implementation of this obligation, we believe the Commission should revise Appendix E to reflect that consumers will not necessarily have a right to receive a free annual credit report when they receive the summary of identity theft rights from a CRA.

B. The Summary of Litigation Rights in Appendix F Overstates Applicable Law and Could Discourage Consumers from Using More Effective Processes to Correct Inaccurate Credit Reporting.

We believe that the summary of civil liability rights in Appendix F overstates the law and as a result could encourage consumers to pursue litigation when it may not be the most effective tool to resolve a reporting error or identity theft. Without additional qualifying language, we believe the proposed summary would create a false expectation that a consumer could resolve certain disputes in court, and it could encourage consumers to pursue litigation rather than dispute processes that will more effectively resolve reporting errors. For instance, although the FCRA imposes specific standards of accuracy and completeness on those who furnish information to consumer reporting agencies, a damaged consumer may not make a claim for furnisher liability under the FCRA, except for claims relating to the furnisher's failure to properly reinvestigate disputes conveyed by reporting agencies. In other words, furnishers may only be sued for failing to properly reinvestigate disputes and correct the disputed information. FCRA further limits furnisher liability by preempting the enforcement of FCRA furnisher requirements even under state laws. To educate consumers about this requirement, the proposed statement that a consumer may sue a furnisher "in some cases" should be qualified in some manner, such as including an explicit reference to the dispute procedure required by section 611 of the FCRA.

This section is also overbroad in its application of FCRA sections 616 and 617 to users of credit reports. While it is true that there are instances in which those sections of the FCRA do not apply to a furnisher, there are also 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. To address this concern, we recommend that the Commission revise this section of the summary of identity theft rights 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."

* * *

Conclusion

We appreciate the opportunity to comment on the Proposal and again thank the FTC for their efforts. Should you have any questions about this letter, please do not hesitate to contact the undersigned at (202) 466-8606.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert E. McKew". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Robert McKew
Senior Vice President and General Counsel
American Financial Services Association