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FEDERAL TRADE COMMISSION

16 CFR Part 698

RIN 3084-AA94

Summaries of Rights and Notices of Duties under the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Publication of proposed guidance for forms, and request for public comment.

SUMMARY: The Federal Trade Commission (Commission) is publishing for public comment two summaries of rights under the Fair Credit Reporting Act (FCRA) and two notices of duties under the FCRA as required by FCRA Sections 609 and 607 respectively. Consumer reporting agencies (CRAs) will distribute these documents. The first summary is a summary of rights of identity theft victims required by Section 609(d) of the FCRA, which was added to the FCRA by the recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The Commission issued the other summary and the two notices in 1997 and is proposing revisions because of the extensive changes made to the FCRA in the FACT Act. These are a general summary of consumer rights under the FCRA, a notice of responsibilities under the FCRA of persons that furnish information to consumer reporting agencies, and a notice of responsibilities under the FCRA of persons that obtain consumer reports from consumer reporting agencies.

DATES: Written comments will be accepted until August 16, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "FACTA Notices, Matter No. R411013" to facilitate the organization of comments. A comment filed in paper form should include this 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-159 (Annex S), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Commenters seeking confidential treatment for any portion of their comments must file their comments in paper form. An electronic comment can be filed using e-mail at “FCRAnotices@ftc.gov.”

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions. Such comments should also be sent to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex S), 600 Pennsylvania Avenue N.W., Washington, D.C. 20580.

The Federal Trade Commission Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC 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.htm>.

FOR FURTHER INFORMATION CONTACT: For the summary of identity theft rights, contact Monique Einhorn, Attorney, Division of Planning and Information, Federal Trade Commission, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, DC 20580, 202-326-3228; for the general summary of consumer rights and the furnisher and user notices, contact William Haynes, Attorney, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, DC 20580, 202-326-3224.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Federal Trade Commission is issuing for public comment two proposed summaries of consumer rights under the FCRA and two notices of duties under the FCRA, 15 U.S.C. 1681 *et seq.* CRAs will distribute these documents. The first summary is a summary of the rights of identity theft victims under the FCRA that the Commission is required to issue by Section 609(d)

of the FCRA. The second summary is a summary of general consumer rights under the FCRA that the Commission is required to issue by Section 609(c) of the FCRA. The two notices are (1) a notice of the FCRA duties of furnishers of information to CRAs and (2) a notice of the FCRA duties of users of information from CRAs. Section 607(d) requires the Commission to issue these notices.

The requirement that the Commission issue the identity theft rights summary was added to the FCRA by the FACT Act, Pub. L. 108-159, 117 Stat. 1952. The remaining three documents are revised versions of documents first prescribed by the Commission in 1997. The Commission is issuing revised versions to reflect changes made to the FCRA by the FACT Act.

II. Overview of Proposed Summaries and Notices

The FACT Act, which was signed into law on December 4, 2003, amends the FCRA in a number of significant ways. The Act contains provisions intended to reduce the occurrence of identity theft and confers certain rights on the victims of identity theft to assist them in resolving the problems caused by identity theft. The Act also contains provisions designed to increase the accuracy of consumer reports and to protect the rights of consumers whose personal information is collected by consumer reporting agencies and by businesses. Finally, the Act establishes uniform national standards in certain key areas. The summaries and notices being published for comment by this notice reflect the changes to the FCRA made by the FACT Act.

A. Summary of Rights of Identity Theft Victims (Appendix E)

The FACT Act added Section 609(d) to the FCRA. This provision requires the Commission to issue a summary of the rights of fraud or identity theft victims under the FCRA that will be distributed by CRAs to victims of fraud or identity theft. This summary will

complement the various new provisions relating to identity theft added to the FCRA by the FACT Act.

The proposed summary, which will be Appendix E to 16 C.F.R. 698, discusses the major identity theft rights that consumers have under the FCRA. These are: the right to file fraud alerts (Section 605A); the right to block the reporting of information resulting from identity theft in the files of consumer reporting agencies (Section 605B); the right to prevent persons who furnish information to the CRAs from reporting information that is the result of identity theft (Section 623(a)(6)(B)); the right to obtain free file disclosures (Sections 612(c)(3) and 612(d)); and the right to obtain documents or information relating to accounts opened in the consumer's name or transactions made in the consumer's name (Sections 609(e) and 615(g)(2)). In addition, the summary informs consumers that a creditor may not sell, transfer, or place for collection a debt if the creditor has been notified that the debt is the result of identity theft (Section 615(f)(1)). The Commission has consulted with the Federal banking regulators and the National Credit Union Administration in crafting the proposed summary as required by Section 609(d).

The only identity theft-specific rights that are not discussed in the proposed summary are duties that are directed at the business community. These are: the duty of debt collectors to notify the original creditor or owner of the debt if the debt collector is notified that information in the file of a consumer may be the result of identity theft (Section 615(g)(1)); the duty of CRAs to notify the furnisher that information in the file of the consumer may be the result of identity theft and that a block has been requested (Section 605B(b)); and the duty of furnishers of information to CRAs to have in place procedures to prevent the re-furnishing of information which has been blocked under section 605B (Section 623(a)(6)(A)). Because these duties do not

require any action by consumers in addition to the steps outlined in the proposed notice, the Commission believes that it is appropriate not to include these items. These duties are set forth in the “furnisher” and “user” notices discussed below. A discussion of these rights will also be on the Commission’s website, to which the consumer summary will refer consumers.

Finally, Section 609(d) of the FACT Act requires that any summary distributed by a CRA contain “all of the information required by the Commission.” The Commission reads the statute as providing CRAs with flexibility in creating summaries of identity theft rights and is proposing that any summary issued by a CRA display the Commission-mandated information “clearly and prominently” in a form substantially similar to the Commission’s model summary.

B. General Summary of Consumer Rights (Appendix F)

As added to the FCRA in 1996, Section 609(c) required the Commission to issue a model summary of consumer rights under the FCRA. The summary had to include the following: (1) a description of the FCRA and all rights of consumers under the law; (2) an explanation of how a consumer could exercise his or her rights; (3) a list of all Federal agencies responsible for enforcing the FCRA and their addresses and telephone numbers; (4) a statement that the consumer might have additional rights under State law; and (5) a statement that CRAs are not required to remove current, accurate derogatory information from consumers’ files. The 1996 amendments to the FCRA required CRAs to distribute consumer rights summaries that were “substantially similar” to the summary created by the Commission. The Commission issued its general summary of consumer rights in July 1997. 62 Fed. Reg. 35586 (1997)

The recently enacted FACT Act amended Section 609(c) in a number of ways. This provision now requires that the Commission prepare a model summary of consumer rights, and

mandates that the summary include an explanation of the following: (1) the consumer's right to obtain a free file disclosure each twelve months under Section 612(a) of the FCRA; (2) the frequency and circumstances under which a consumer may receive additional free disclosures under the FCRA; (3) the right of consumers to dispute incorrect or outdated information in their files; and (4) the right of consumers to obtain credit scores for a fee.

As amended by the FACT Act, Section 609(c) continues to require that CRAs notify consumers that they may have additional rights under state law and that the FCRA does not require accurate, current derogatory information to be removed from consumers' files. CRAs also must provide consumers with the list of Federal agencies responsible for enforcing the FCRA. These items are, however, no longer required to be included in the summary of rights prescribed by the Commission. Nonetheless, the Commission believes that including this information in its proposed summary would be helpful to consumers by providing in one place a description of consumer rights and the list of agencies charged with enforcing these rights. CRAs may, however, disclose the list of addresses and the two statements separately from the Commission's summary.

The Commission's proposed summary, which will be Appendix F to 16 C.F.R. 698, refers consumers to the FCRA portion of the Commission's website ("www.ftc.gov/credit") where a more extensive discussion of the various provisions of the FCRA and consumers' rights will be set forth. The summary also provides an address where consumers may request a written copy of this additional information if they do not have access to a computer.

Another issue raised by the FACT Act amendments is whether CRAs must distribute the summary in the exact form prescribed by the Commission. The 1996 amendments required only

that CRAs distribute a summary “substantially similar” to the Commission’s model. Although Section 609(c), as amended by the FACT Act, no longer contains the “substantially similar” language, the provision now characterizes the Commission-prescribed disclosure as a “model” summary of rights. As a result, the Commission continues to read the statute to provide CRAs with flexibility to structure the disclosure as necessary and appropriate. Because the Commission’s prescribed disclosure is simply a “model,” CRAs need not adhere to it in every detail, and a summary that is “substantially similar” to the Commission’s model summary complies with the statutory requirement.

In addition, the Commission believes that all information must be clearly and prominently displayed. Finally, the Commission realizes that some information in the summary may change over time – for example, the permissible charges for file disclosures and the addresses and telephone numbers of the federal agencies. The Commission will periodically update this information on its website, and considers all notices with updated information to be in compliance with Section 609(c).

C. Notice of Duties of Furnishers and Notice of Duties of Users (Appendix G and Appendix H)

The FACT Act did not amend Section 607(d), which requires the Commission to issue a notice setting forth the duties of furnishers of information to CRAs, and a notice outlining the duties of users of consumer reports.

The FACT Act did, however, amend Section 623 of the FCRA to add a number of new furnisher duties, including requiring compliance with “accuracy” guidelines to be issued by the Commission and the banking and credit union regulators, procedures that must be followed to assist in preventing and correcting identity theft, and procedures relating to the furnishing of

negative information and medical information. The Commission has revised the furnisher notice, which will be Appendix G to 16 C.F.R. 698, to reflect these changes.

The FACT Act also amended many provisions of the FCRA that affect users. The most significant changes relate to the use of consumer reports for employment purposes, the use of medical information, the duties of resellers of consumer reports, and the procedures to be followed to protect against identity theft. The Commission has revised the user notice, which will be Appendix H to 16 C.F.R. 698, to reflect these changes. The "users" of consumer reports fall into a number of categories, and the duties imposed by the FCRA vary by user category. The Commission is proposing a single notice to be sent to all users, which specifies the general responsibilities that apply to all users of consumer reports from a CRA (Part I), and lists the responsibilities that are specific to the following categories of users: creditors and mortgage grantors (Part II); users of reports for employment purposes (Part III); users of investigative consumer reports (Part IV); users of medical information (Part VI); users of "prescreened" lists (Part VII); and users who are resellers (Part VIII).

Section 607(d) of the FCRA requires CRAs to provide to furnishers and users a notice of "such person's responsibilities." The Commission interprets this provision as giving CRAs the option of providing notices that only list the duties that specifically apply to a particular furnisher or user. CRAs may, however, elect to provide the Commission's furnisher or user notices in their entirety to all furnishers and users.

Section 607(d) also requires that CRAs provide furnishers and users notices that are "substantially similar" to the notices prescribed by the Commission. The Commission believes

that the changes made to furnisher and user duties by the FACT Act are significant, and render the existing furnisher and user notices obsolete. Accordingly, the Commission concludes that CRAs will need to provide revised notices to all furnishers and users in order to comply with the statutory requirement that they provide to furnishers and users a notice that is substantially similar to the notice prescribed by the Commission.

D. Distribution of Summaries and Notices

With respect to the general summary of rights, Section 609(c) makes clear that it must be provided every time a CRA makes a written file disclosure. The Commission will post minor changes in addresses, telephone numbers, and the cost of consumer reports on its website. CRAs may modify the summaries they distribute to reflect these changes.

Section 609(d) requires that the summary of identity theft rights be provided when consumers contact CRAs to report fraud or identity theft. The statute requires CRAs to begin distributing the summary of identity theft rights 60 days after the Commission issues the summary in final form.

The furnisher and user notices are required by Section 607(d) to be distributed on a one-time basis by CRAs. The Commission believes that the changes made by the FACT Act to the FCRA are so substantial that CRAs must distribute the revised user and furnisher notices to all current users and furnishers, as well as to all entities that become users or furnishers in the future. **III. Invitation to Comment**

The Commission invites interested members of the public to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Specific issues that the Commission suggests be addressed are set forth in Part VII below. Written comments must be

received on or before August 16, 2004. Comments should refer to “FACTA Notices, Matter No. R411013 ” to facilitate the organization of comments. A comment filed in paper form should include this 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-159 (Annex S), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Commenters seeking confidential treatment for any portion of their comments must file their comments in paper form. An electronic comment may be filed by e-mail by sending the comment to “FCRAnotices@ftc.gov.”

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions. Such comments should also be sent to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex S), 600 Pennsylvania Avenue N.W., Washington, D.C. 20580.

The Federal Trade Commission Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the

extent practicable, at www.ftc.gov. As a matter of discretion, the FTC 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.htm>.

IV. Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

V. Review under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1) (PRA), the Commission reviewed the general summary of rights and the furnisher and user notices for compliance with the PRA when it issued the summary and notices in 1997. At that time, the Commission concluded that the summary and notices consist of information that is supplied by the federal government. Accordingly, the Commission determined that these do not constitute a "collection of information" as this term is defined in the regulations implementing the PRA, nor do the financial resources expended in relation to the distribution of these documents constitute a paperwork burden. See 5 CFR 1320.3(c)(2). The Commission has reviewed the new identity theft summary of rights, as well as the changes to the existing summary and notices that are mandated by the FACT Act amendments to the FCRA. The Commission has concluded, consistent with its analysis in 1997, that the proposed summaries and notices do not fall within the definition of "collection of information" covered by

the PRA because they are "[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public...." 5 C.F.R. 1320.3(c)(2).

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with any action that may constitute a rule unless the Commission certifies that the action will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603-605. The Commission concludes that the proposed summaries and notices will not have a significant economic impact on a substantial number of small entities, as discussed below. Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect.

To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed notices will have a significant impact on a substantial number of small entities, including specific information on the number of entities that will be covered by the proposed rules, the number of these entities that are "small" (i.e., have average annual receipts of less than \$6 million), and the average annual burden for each entity. The Commission has prepared the following analysis:

A. Description of the Reasons that Action by the Agency Is Being Taken.

The agency has undertaken this proceeding to implement several provisions of the FCRA, as amended by the FACT Act. Specifically, Section 609(c) of the FCRA requires the Commission to prepare a summary of the general rights that consumers have under the FCRA (general summary of consumer rights); Section 609(d) requires the Commission to prepare a

model summary of the rights of consumers under the FCRA that relate to identity theft; and Section 607(d) requires the Commission to issue notices of the duties under the FCRA of persons that furnish information to CRAs and of persons that use information obtained from CRAs. All of these documents will be distributed by CRAs.

B. The Proposal's Objectives and Legal Basis.

The objective of the Commission's action is the issuance of proposed summaries and notices to educate consumers, furnishers of information to CRAs, and users of information from CRAs as to their rights or duties under the FCRA. As noted earlier, the legal bases for the proposed notices are Sections 607(d) (notices of duties of users and furnishers), 609(c) (general summary of consumer rights), and 609(d) (summary of identity theft rights) of the FCRA.

C. Small Entities to Which the Proposed Rule Will Apply.

The proposed summaries and notices are to be distributed by CRAs. The definition of a "small" CRA is currently one with less than \$6 million in average annual receipts (see www.sba.gov/size).

The consumer reporting industry is composed primarily of "nationwide" CRAs and "nationwide specialty" CRAs, as defined in FCRA Sections 603(p) and 603(w), respectively. The Commission estimates, based on its own experience and knowledge of industry practices and members, that there are three nationwide CRAs and fewer than 50 nationwide specialty CRAs currently doing business in the U.S. The Commission believes that none of the nationwide CRAs are "small" entities. Further, the Commission believes it is likely, but has been unable to confirm, that none of the nationwide specialty CRAs are small entities.

There are, however, small CRAs associated with the nationwide CRAs, and there are

small independent CRAs. Based on the membership of the major CRA trade associations, the Commission believes that the total universe of entities potentially covered by the requirement to distribute summaries and notices is between 1000 and 1400. As is discussed below, the Commission believes that the nationwide and nationwide specialty CRAs will be responsible for much of the distribution of the summaries and notices. The Commission invites comments on the number of “small” entities that will be affected by its proposal.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements.

The proposed rule would impose no reporting or recordkeeping requirements. CRAs will be required, however, to distribute the prescribed summaries and notices. The summary of identity theft rights (Section 609(d)) will be distributed to all consumers who contact the CRAs to report that they may be the victim of fraud or identity theft. The general summary of consumer rights (Section 609(c)) will be distributed with each written disclosure made by CRAs. Both of these summaries will be distributed to large numbers of consumers each year. By contrast, the notices of user and furnisher duties (Section 607(d)) need be distributed only on a one-time basis to all of the entities that furnish information to a CRA or use information obtained from a CRA.

As discussed above, CRAs have distributed the general summary of rights and the furnisher and user notices since 1997. The revised general summary and the revised furnisher and user notices will simply maintain, and not increase in any significant way, the burdens already imposed on CRAs by these notice requirements. The additional requirement to distribute a summary of identity theft rights, however, will impose some new burdens and costs on CRAs, although the Commission believes they will be minimal.

CRA's must provide the required summary of identity theft rights to consumers when they contact CRA's to report fraud or identity theft. There should be few instances, however, in which this summary will be the only information the CRA is distributing to consumers. Rather, in most cases, when consumers report fraud or identity theft, CRA's will be responding either by sending a copy of their file or engaging in other ongoing communications with consumers in an attempt to resolve their identity theft problems. CRA's may be reasonably expected to economize on the costs of transmitting the required summary of identity theft rights to consumers by including the summary as part of such communications with consumers.

Thus, the Commission believes that the distribution costs for the identity theft rights summaries are likely to be a small increment to the overall cost of handling fraud and identity theft complaints from consumers. Moreover, because the Commission is providing the language for the summary, businesses need not incur legal or other professional costs to develop any written material. The cost of training employees, if any, should be minimal. When the document is distributed electronically, the Commission believes that the distribution costs will be negligible. The cost of distributing the summary will be greatest where the summary is mailed. Even here, however, the cost will be a small increment to the costs associated with handling the contact with the consumer, as explained earlier. The Commission estimates that the incremental cost of including the document in other material that is mailed to a consumer will be \$.25 for each mailing, because including the summary with other material should require little clerical effort and no additional postage. In the rare instance where the summary is the only item mailed to the consumer, the Commission estimates the incremental cost at \$.50 per mailing because of the cost of handling and postage. This estimate assumes that little staff time will be

required to provide summaries in addition to the staff time that will be devoted to dealing with each consumer's problem. The Commission believes that the cost of preparing and printing notices will be minimal because the notice is very short and the content is being provided by the Commission.

With respect to small entities, the total annual cost of complying with the requirement to distribute the summary of identity theft rights will ultimately depend upon the number of summaries that are distributed each year by "small" CRAs. The Commission is currently unaware of any comprehensive data showing how frequently consumers contact the small CRAs regarding fraud, identity theft, or other matters. Even without such data, however, the Commission believes that, overall, the burden of providing these summaries will fall upon the nationwide and nationwide specialty CRAs. In that regard, most of the government's consumer education efforts to date, as well as the Commission's proposed summary of identity theft rights, explains that the FCRA requires the nationwide CRAs, not the "small" CRAs, to place fraud alerts on consumers' files when consumers are victims of identity theft. As a result, the Commission believes that most consumers who suspect fraud or identity theft are likely to contact the nationwide CRAs, rather than the "small" CRAs. In those cases, the nationwide CRAs, which are not "small" for purposes of this analysis, would be providing consumers with their required summary of identity theft rights.¹

Accordingly, the Commission believes that the total incremental cost of the distribution

¹Many local or regional CRAs are associated with the nationwide CRAs identified in the proposed summary of identity theft rights. It is possible some nationwide CRAs by contract may pass on to the small associated CRAs some or all of the cost of distributing summaries to consumers whose records are controlled by the small CRA. The Commission invites comments and information on this topic.

of the consumer summary for small CRAs will be relatively minimal. These costs may be incurred by small CRAs associated with nationwide CRAs where, for some reason, the consumer contacts the small CRA and not the nationwide CRA, by resellers of reports from the nationwide CRAs, and by small regional or local entities providing criminal records, driving records, and tenant screening services. The Commission invites comments on its analysis and on the costs imposed on small entities by the requirement to distribute summaries of identity theft rights.

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 notices. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule.

In some situations, the Commission has considered adopting a delayed effective date for small entities subject to new regulation in order to provide them with additional time to come into compliance. In this case, however, small entities will be given the texts of the proposed summaries and notices to be distributed. In the case of the summary of identity theft rights, the distribution of which is a new burden being imposed on small entities, the Commission believes that the impact of the distribution will be minimal. The Commission, however, seeks comment and information with regard to (1) the existence of small business entities for which distribution of the required summaries and notices would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the requirements of this proceeding on these entities. If the comments filed in response to this notice identify small entities that are significantly

affected, as well as alternative methods of compliance that would reduce the economic impact on such entities, the Commission will consider the feasibility of such alternatives.

VII. Questions for Comment on the Proposed Summaries and Notices

The Commission seeks comment on the proposed summaries and notices. The Commission is particularly interested in comments in the following areas:

A. Summary of Identity Theft Rights of Consumers (Appendix E)

1. Completeness and Reference to Commission Websites. The Commission has sought to include enough information in the summary to effectively assist consumers who are the victims of identity theft and to refer consumers to the Commission's website for more information. Is it appropriate and useful to refer consumers to the Commission's websites for more information?

2. Statutorily-Required Items. Section 609(d) states only that the Commission must issue a model summary of rights, but does not identify specific items to be included. Has the Commission included all of the rights that should be included in the summary?

3. Understandability of Summary. Since the identity theft summary is intended for consumers, the Commission has tried to use, as much as possible, non-technical terms that will be understood by consumers. Has the Commission succeeded? Are there areas where the understandability of the summary may be improved?

B. General Summary of Consumer Rights (Appendix F)

1. Effectiveness of Current Notice. The current summary of consumer rights has been in place for nearly seven years. The Commission welcomes any comments as to whether the summary has been effective in informing consumers about their rights under the FCRA, and

whether the effectiveness of the summary may be improved.

2. Completeness and Reference to Commission Website. The Commission's goal is to have a summary that is both informative and user friendly for consumers. The proposed summary refers consumers to the Commission's website for additional information. An address is also provided for consumers to request additional information if they do not have access to a computer. Does the proposed summary meet the Commission's goal? Please identify any specific sections of the proposed summary that are too brief or incomplete to be understood by consumers. Is it useful to provide references to the Commission's website for more detailed information, and to provide an address to write to in order to request more information? Does this approach disadvantage any significant group of consumers? What alternative approaches are available?

3. Statutorily-Required Items. Section 609(c) was significantly modified by Congress in the FACT Act. Some items of information that were required in the pre-FACT Act disclosure are no longer required to be included in the Commission's model summary, but CRAs nonetheless must continue to disclose this information. In addition, Congress required new items of information to be included in the Commission's model summary. The Commission has elected to include the new information required by the FACT Act in the proposed summary and to retain all of the information in the existing summary – even though some of the information may now be disclosed separately. Is this approach appropriate?

4. Understandability of Notice. Because the summary is a document intended for consumers, the proposal is written in non-technical language. Are there sections that can be improved by simplifying the presentation to make it easier for consumers to understand? Are there sections where the language does not accurately convey the substance of the provision?

How could such sections be improved? Should more information be included in the notice?

5. Form and Distribution. Section 609(c)(2) requires CRAs to provide with each written file disclosure the Commission's summary of rights. The goal is to create a notice that sets forth all statutorily required items in a form that is readable, understandable, and attractive.

Generally, is there a format that would better convey the same information to consumers? If so, what is it and what costs would it entail? Is there a format that would convey the same information to consumers in a less expensive manner? If so, what is it and what cost savings would it achieve?

C. Furnisher Notice (Appendix G)

1. Content of Notice. The proposed furnisher notice summarizes the responsibilities imposed upon furnishers of information to CRAs by Section 623 of the FCRA. Is the presentation accurate and understandable? In what ways can it be improved? Is it sufficient for the notice to refer furnishers to the complete text of the FCRA at the Internet website maintained by the Commission? Would the notice be improved if the Commission added the complete text of Section 623?

2. Terminology. The Commission's proposed notice is written in non-technical language, but with the expectation that most regular providers of information to CRAs will be relatively sophisticated and will be able to understand both the language of the statute and the description of duties. Is the description accurate and understandable for this audience? What improvements can be made?

D. User Notice (Appendix H)

1. Number of Notices. The Commission is proposing the content of a notice to be sent

by CRAs to all users of information. CRAs will have the option of sending the notice in the form published by the Commission or sending a notice that lists only the duties of the user that will receive the notice. Should this procedure be followed? Can CRAs easily determine through the certifications they receive from users which portions of the proposed notice are applicable to which users?

2. Content of Notice. The proposed notice discusses the principal portions of the FCRA that impose obligations upon all those who receive consumer reports. Should additional information be included in the notice? Will the length of the notice impose substantial burdens upon CRAs in distributing the notice? Are there ways to modify the notice to reduce this burden?

3. Terminology. The Commission expects that user notices will be sent to a wide range of users and that these persons will have varying degrees of legal sophistication. Are the duties set forth in the proposed notice clear and understandable? Can the description of the duties be improved?

List of Subjects in 16 CFR Part 698

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

Accordingly, pursuant to 15 U.S.C. 1681e, 1681g, and 1681j, and Pub. L. 108-159, sec. 211(d), the Federal Trade Commission hereby proposes to amend Part 698 of subchapter F of chapter I of title 16, Code of Federal Regulations (which was added at 69 FR 35500 (June 24, 2004), and which becomes effective on December 1, 2004), as follows:

1. Revise the authority to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681s, and 1681j; 117 Stat. 1952; Pub. L. 108-159,

sections 151, 153, 211(c) and (d), 213, and 311.

2. Revise the heading of Part 698 to read as follows:

PART 698 -- SUMMARIES OF CONSUMER RIGHTS, NOTICE OF USER RESPONSIBILITIES, AND NOTICE OF FURNISHER RESPONSIBILITIES UNDER THE FAIR CREDIT REPORTING ACT

3. Revise section 698.1 to read as follows:

§ 698.1 Authority and purpose.

(a) Authority. This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended by the Consumer Credit Reporting Reform Act of 1996 (Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997), Pub. L. 104-208, 110 Stat. 3009-426 (Sept. 30, 1996), and the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, 117 Stat. 1952 (Dec. 4, 2003).

(b) Purpose. The purpose of this part is to comply with sections 607(d), 609(c), 609(d), and 612(a) of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and Section 211 of the Fair and Accurate Credit Transactions Act of 2003.

4. Revise section 698.2 to read as follows:

§ 698.2 Legal effect.

The issuance of the summaries and notices set forth below carries out the directive in the statute that the FTC prescribe these summaries and notices. Consumer reporting agencies that distribute summaries and notices as set forth below will be in compliance.

5. Add Appendices E through H to read as follows:

Appendix E to Part 698 - Summary of Consumer Identity Theft Rights

The prescribed form for this summary is a disclosure that clearly and prominently contains the information set forth in the Commission’s model summary. A summary may accurately reflect changes to those items (such as telephone numbers) that may change over time and remain in compliance.

[Insert from pages 25A through 25B]

Appendix F to Part 698 - General Summary of Consumer Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Commission’s model summary with all information clearly and prominently displayed. A summary may accurately reflect changes to those items that may change over time (e.g., dollar amounts, or phone numbers and addresses of federal agencies) and remain in compliance.

[Insert from pages 26A through 26B]

Appendix G to Part 698 - Notice of Furnisher Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Commission’s notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

[Insert from pages 27A through 27C]

Appendix H to Part 698 - Notice of User Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Commission’s notice with all information clearly and prominently displayed. Consumer

reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

[Insert from pages 28A through 28H]

By direction of the Commission

Donald S. Clark,
Secretary