



August 16, 2004

Donald S. Clark
Secretary
Federal Trade Commission
Office of the Secretary
Room H-159 (Annex S)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20850

Re: FACTA Notices, Matter No. R411013

Dear Mr. Clark:

The Consumer Data Industry Association (“CDIA”) respectfully submits the following comments on the Federal Trade Commission’s (“Commission”) proposed Summaries of Rights and Notices of Duties under the Fair Credit Reporting Act (“FCRA”).¹

The Commission proposes a new summary of rights under the FCRA and revisions to an existing summary of rights and two existing notices of duties under the FCRA. The new summary is the summary of rights of identity theft victims required by the recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the FCRA.² The Commission issued the existing summary and two notices in 1997 and now proposes revisions because of extensive changes made to the FCRA in the FACT Act. The proposed revisions provide a general summary of consumer rights under the FCRA,³ a notice of responsibilities under the FCRA of persons that furnish information to consumer reporting agencies,⁴ and a notice of responsibilities under the FCRA for users of consumer reports.⁵

¹ 69 Fed. Reg. 42616 *et seq.* (July 16, 2004).

² *See* FCRA § 609(d); 15 U.S.C. §1681g(d).

³ *See* FCRA § 609(c); 15 U.S.C. §1681g(c).

⁴ *See* FCRA § 607(d)(1)(A); 15 U.S.C. §1681e(d)(1)(A).

⁵ *See* FCRA § 607(d)(1)(B); 15 U.S.C. §1681e(d)(1)(B).

CDIA is an international trade association representing the consumer reporting industry. CDIA's members include the nationwide consumer reporting agencies,⁶ the nationwide specialty consumer reporting agencies,⁷ as well as many smaller consumer reporting agencies. *All* of CDIA's consumer reporting agency members are required to distribute these summaries and notices. Consumers and industry members look to the summaries and notices for information as to their respective rights and responsibilities. Because these summaries and notices will affect all consumer reporting agencies in their dealings with consumers and with industry furnishers and users of consumer report information, CDIA's members have a significant interest in the content of these notices.

Summary

As a result of the new obligations under the FACT Act, consumer reporting agencies are in continual discussions with data furnishers and users of consumer reports with their respective compliance obligations under the FCRA. These discussions reveal that industry members are well aware of the new requirements. Accordingly, CDIA does not believe it is necessary, as the Commission suggests, to *require* that consumer reporting agencies redisclose the notices to current furnishers and users, although they may choose to do so voluntarily. CDIA believes that the FCRA does not support such a requirement and that Congress did not authorize the Commission to impose it. Moreover, CDIA is also concerned that the Commission's analysis and conclusions under the Regulatory Flexibility Act understate the burden on the consumer reporting industry with respect to the proposed requirement that consumer reporting agencies redisclose the notices to all current furnishers and users. For these reasons, CDIA asks the Commission to make clear that there is *no requirement* to disclose the revised notices to current furnishers and users, as long as they have previously received disclosures that were in effect at the time they received them.

CDIA appreciates the difficulty in summarizing the intricate provisions of the FCRA that create the rights and duties described in the summaries and notices. CDIA believes that the summaries and notices generally reflect the applicable provisions. CDIA also believes that it is imperative that the summaries and notices precisely describe the provisions they summarize because consumers and industry will look to them. Moreover, if the summaries and notices are not consistent with the statutory provisions, courts may not give them proper deference. For these reasons, CDIA offers a number of suggested changes to the summaries and notices, as described below.

Requirement to Provide Revised Notices to Current Furnishers and Users

FCRA § 607(d) requires the Commission to issue a notice setting forth the duties of furnishers of information to consumer reporting agencies, and a notice outlining the duties of users of consumer reports. This section also requires consumer reporting

⁶ See FCRA § 603(p); 15 U.S.C. § 1681a(p).

⁷ See FCRA § 603(w); 15 U.S.C. § 1681a(w).

agencies to provide these notices to furnishers and users. As the Commission observed, the FACT Act did not amend Section 607(d). Nonetheless, the Commission believes that, because of the significant changes made to furnisher and user duties by the FACT Act, the existing furnisher and user notices are obsolete. The Commission, therefore, seeks to update the notices. While Congress did not specifically authorize the Commission to revise the notices, its doing so is consistent with the legislative purpose that the notices communicate the duties of furnishers and users under this law. CDIA agrees that it is appropriate for the Commission to publish revised notices that accurately reflect the current furnisher and user duties.

The Commission also states that it “believes that the changes made by the FACT Act to the FCRA are so substantial that consumer reporting agencies 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.”⁸ CDIA respectfully urges the Commission to reconsider this requirement. As a result of the FACT Act amendments, CDIA members are working with data furnishers and users to implement procedures and systems that will assure compliance with their respective obligations. Based on this experience, CDIA members believe that furnishers and users are very knowledgeable about their responsibilities under the FCRA, including their new obligations under the FACT Act amendments. Moreover, consumer reporting agencies have already sent the FCRA-mandated notices to furnishers and users. If any current users or data furnishers request copies of the notices, consumer reporting agencies will provide them, as they have in the past. There is no need to impose a requirement on consumer reporting agencies to redisclose the notices to all current users and data furnishers, and doing so would be redundant and burdensome.

While CDIA members may voluntarily distribute the revised notices to current and furnishers, there is no statutory basis for a legal requirement that they do so. As the Commission recognizes, the FCRA requires that consumer reporting agencies provide the notices of furnisher and user duties only once.⁹ The law requires only that the notices that consumer reporting agencies provide pursuant to Section 607(d) be “substantially similar” to the notices prescribed by the Commission.¹⁰ Consumer reporting agencies have met this requirement since 1997 and will meet this requirement in the future because their notices have been, and continue to be, “substantially similar” to the Commission’s prescribed notices. Once the revised notices are in effect, consumer reporting agencies will continue to provide furnishers and users with notices that are “substantially similar” to those prescribed by the Commission. The FCRA requires nothing more.

CDIA respectfully suggests that, to the extent that the Commission proposes to impose a *redisclosure* requirement for consumer reporting agencies with respect to furnishers and users to whom the agencies have already provided notices under Section 607(d), the Commission engages in unauthorized rulemaking. Congress authorized the

⁸ *Id.*

⁹ 69 Fed. Reg at 42618.

¹⁰ FCRA § 607(d); 15 U.S.C. § 1681e(d).

Commission to prescribe the content of the summaries and notices. The statute alone determines the circumstances under which the notices should be given. The attempted rulemaking is particularly troublesome, because the proposed requirement is not supported by the plain language of the FCRA and would create retroactive requirements where Congress clearly intended only prospective application. For all these reasons, CDIA urges the Commission to make clear that consumer reporting agencies comply with their FCRA § 607(d) obligations when they provide notices to furnishers and users that are substantially similar to the Commission’s prescribed notices that are in effect at the time the notices are given.

Regulatory Flexibility Analysis

In the Supplementary Information, the Commission opined that the proposal will not “increase in any significant way the burdens already imposed on consumer reporting agencies by the requirements” for the general summaries of consumer rights and the furnisher and user summaries.¹¹ For this reason, the Commission’s Regulatory Flexibility Act analysis serves as the FTC’s certification to the Small Business Administration of “no impact” on small entities.¹² The Commission states, “[a]s 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.”¹³ However, that discussion relates only to the summaries of consumers’ rights or the rights of identity theft victims. The Commission does not discuss the impact on small businesses of its proposed requirement that consumer reporting agencies redisclose the revised notices of obligations to all current users and furnishers. CDIA believes that such a requirement would have a substantial impact on small entities and that such an impact is an additional reason why the Commission should not impose the redisclosure requirement.

Legal Effect of the Summaries and Notices

The Commission’s authority to prescribe the content of the notices to users and furnishers and the summaries of consumers’ rights appears in the text of the FCRA itself. The FCRA provides that the Commission:

- (1) “shall prepare a model summary of rights of consumers under this title;”¹⁴
- (2) “shall prepare a model summary of rights under this title with respect to the procedures for remedying the effects of fraud or identity theft;”¹⁵ and
- (3) “shall prescribe the content of notices [to users and furnishers].”¹⁶

¹¹ 69 Fed. Reg. at 42619.

¹² *Id.*

¹³ *Id.*

¹⁴ FCRA § 609(c)(1)(A); 15 U.S.C. § 1681g(c)(1)(A).

¹⁵ FCRA § 609(d)(1); 15 U.S.C. § 1681g(d)(1).

The FACT Act does not require the Commission to engage in a rulemaking proceeding to prescribe the content of the summaries and notices. These publications are, therefore, different from “rules” that the Commission must publish for comment under the Administrative Procedures Act.¹⁷ The Commission’s proposal is consistent with this result because it states under “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.”¹⁸ Because they do not have the legal effect of rules, but do encompass the Commission’s understanding of the applicable FCRA provisions, the notices and summaries are akin to agency interpretations or guidelines.

The U.S. Supreme Court has held that such interpretations or guidelines do not have the force of law and “do not warrant *Chevron*-style deference” as they might if they were published following “a formal adjudication or notice-and-comment rulemaking.”¹⁹ Rather, the judicial approach “has been to tailor deference to variety.”²⁰

This acceptance of the range of statutory variation has led the [U.S. Supreme] Court to recognize more than one variety of judicial deference, just as the Court has recognized a variety of indicators that Congress would expect *Chevron* deference.²¹

Federal courts applying the Supreme Court’s flexible deference approach have concluded that:

[C]ourts do not face a choice between *Chevron* deference and no deference at all. Administrative decisions not subject to *Chevron* deference may be entitled to a lesser degree of deference; the agency position should be followed *to the extent persuasive*. [citations omitted].²²

According to the Supreme Court:

The fair measure of deference to an agency administering its own statute has been understood to vary with the circumstances, and the courts have looked to the agency’s care, its consistency, formality, and relative expertise and to the persuasiveness of the agency’s position.

* * *

The weight [accorded to an administrative] judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later

¹⁶ FCRA § 607(d)(2); 15 U.S.C. § 1681e(d)(2).

¹⁷ 5 U.S.C. § 511 *et seq.*

¹⁸ 69 Fed. Reg. at 42621.

¹⁹ *Christensen v. Harris County*, 529 U.S. 576, 587, 120 S.Ct. 1655, 1662 (2000);

²⁰ *U.S. v. Mead Corp.*, 533 U.S. 218, 236, 121 S.Ct. 2164, 2176 (2001).

²¹ *Id.*, at 236-37, 121 S.Ct. at 2176.

²² *Scharpf v. AIG Marketing, Inc.*, 242 F.Supp.2d 455, 465 (W.D.Ky. 2003) (emphasis added).

pronouncements, and all those factors which give it power to persuade, if lacking power to control.²³

Because they are not published in the context of a formal rulemaking, the Commission's notices and summaries will receive deference only to the extent that the circumstances justify such deference. Where the notices and summaries reflect inadequate consideration, invalid reasoning, or inconsistency with the statute providing the Commission's authority, courts will not give them deference.

Although courts may not always defer to the Commission's summaries and notices, consumers and industry look to them with respect to their rights and duties under the FCRA. For this reason, it is imperative that the summaries and notices be fully consistent with the language and the Congressional intent of the provisions they explain. To the extent that the summaries and notices *do* reflect adequate consideration and understanding of the statutory provisions involved, the courts will be more inclined to agree with the interpretations they reflect, and the public reliance upon them will be justified. It is for this reason that CDIA offers a number of suggested revisions to the summaries and notices.

Comments on Specific Summaries and Notices

CDIA offers the following suggestions and comments on each of the proposed summaries and notices. The suggested changes are reflected in the attached redlined versions of the summaries and notices (Appendices E through H).

1. Summary of Consumer Rights for Remediating the Effects of Identity Theft Appendix E

The summary begins with a definition of identity theft. This definition contains an essential element, found in the FCRA's definition of this term -- that the third party use the consumer's identifying information "without lawful authority." CDIA urges the Commission to retain this necessary element of the definition in the final version.

The second paragraph also summarizes the FCRA, stating that it "governs the collection and use of information about you, including how you pay your bills. Consumer reporting agencies, such as credit bureaus, collect this information and provide it to your creditors and other persons who have the right to this information." This summary is not entirely correct, and it may be misleading. It inaccurately implies that the FCRA governs all information about consumers' bill payments. Moreover, creditors do not have a "right" to receive consumer reports; they may have only a permissible purpose, and the consumer reporting agency requires certain FCRA and contractual requirements to be in place before it agrees to sell the reports to creditors or other users. In addition, there is much more to the FCRA than the summary indicates. It should also be noted that this summary of rights will be given to consumers who notify consumer

²³ *Mead*, 533 U.S. at 228, 121 S.Ct. at 2171-72.

reporting agencies that they may be identity theft victims; these consumers presumably know that these agencies report information on them to creditors, among other users. Accordingly, the information contained in the FTC's proposed summary may not help consumers, and it may detract from the important information in this notice. For these reasons, CDIA suggests that the Commission replace this summary with one similar to that found at the beginning of the summary of consumer rights: "The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies."

CDIA suggests that the summaries may be easier to follow if they used more conversational terms such as "your" referring to consumer and "us" or "we" when referring to a consumer reporting agency (as the agency will provide the notice to the consumer).

This summary contains some inaccurate statements. Under the first heading, the summary states "[y]ou have a right to a free copy of your consumer report, if you believe it has inaccurate information due to fraud or identity theft." This statement confuses a consumer report with information disclosed to a consumer from his or her file at a consumer reporting agency. Consumer reports are different from file disclosures. A "consumer report" is what a consumer reporting agency provides to a third party user. *See* FCRA § 603(d). When consumers obtain disclosures from consumer reporting agencies under FCRA § 609(a), they obtain "all the information in the consumer's file" at the agency. This information includes not only that which may be reported in a consumer report to a third party, but also recent inquiries on the consumer's file. The Commission's summaries should accurately describe what consumers receive from consumer reporting agencies. The attached redline version suggests changes to accomplish this result.

In addition, in the sentence "[y]ou have a right to a free copy of your consumer report [sic], if you believe it has inaccurate information due to fraud or identity theft," the reference to "or identity theft" should be stricken. The statute provides for a free file disclosure only if the consumer believes it has inaccurate information *due to fraud*. *See* FCRA § 612(c)(3). Identity theft may include fraud, but it is broader. Although an identity theft victim may also obtain free file disclosures if the consumer places a fraud alert or an extended alert on his or her file, that right is predicated upon the consumer meeting the requirements to effectuate these alerts. Moreover, they are discussed in the next section of the summary.

The summary should omit the next sentence under the first heading: "This report is in addition to the free report all consumers may obtain every twelve months under another provision of the FCRA. [sic]" That right has nothing to do with identity theft. Moreover, the summary of identity theft rights must be given by all consumer reporting agencies, whereas the right to a free file disclosure applies only to the nationwide consumer reporting agencies and the nationwide specialty consumer reporting agencies.

The proposal states "You have a right to place a 'fraud alert' on your consumer report." In fact, the consumer's right to place such a fraud alert in the consumer's file is limited to the nationwide consumer reporting agencies. Moreover, as noted above, it is not accurate to state that the fraud alert would be on the "consumer report." The right is

to an alert *in the consumer's file* at those agencies. The attached redlined version of this paragraph contains other changes to conform the notice to this suggested change.

Under the heading “You have the right to place a ‘fraud alert’ on your consumer report” [sic], the sentence with respect to the consumer’s right to two free reports should be clarified. The sentence currently implies that the consumer would receive two free file disclosures indefinitely, while the statute specifically provides that these disclosures are available only upon request within a twelve month period after the consumer places the extended alert on the file. *See* FCRA § 605A(b)(2)(A). Other suggested changes to this paragraph in the attached redlined version conform to this change.

CDIA also suggests a change to the proposed summary in the heading under “You have the right to obtain documents relating to accounts opened in your name.” This change makes clear that the consumer’s right to obtain this information is predicated upon the consumer’s request for such information.

CDIA also offers a number of suggestions in numbered paragraph 5, relating to the blocking of consumer report information resulting from identity theft. These changes, which are shown in the attached redlined version, conform to the statutory requirements.

The paragraph under paragraph number 6 (which states: “You can learn more about identity theft and how to undo the effects of this fraud at the FTC’s identity theft website at www.consumer.gov/idtheft”) appears designed to meet the FACT Act requirement that the summary contain information on how to contact the Commission. This paragraph should also contain the Commission’s address and telephone contact information. Information limited to the Commission’s website may not suffice because not all consumers will be able to contact the FTC via its website.

Finally, in the box at the end of page two, the proposal refers to the consumer’s right to a free “consumer report” every “year.” As discussed above, the right is to a free file disclosure from a nationwide consumer reporting agency or a nationwide specialty consumer reporting agency every twelve months. The attached redlined version contains suggested changes for accuracy. CDIA notes, however, that the FCRA does not require that the information in this box be included in this summary of rights for identity theft victims. For this reason, the final version should make clear that its inclusion is voluntary.

2. Summary of Consumers’ Rights under the FCRA – Appendix F

As the Commission observed in the Supplementary Information, the FACT Act amendments to section 609(c) of the FCRA resulted in different requirements for the Commission’s prescribed summary under that section. As amended in 1996, the FCRA 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 consumer reporting agencies are not required to remove current, accurate derogatory information from consumers' files. 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: (1) the consumer's right to obtain a file disclosure under Section 609(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; (4) the right of consumers to obtain credit scores for a fee; (5) the method by which consumers can receive a free file disclosure every twelve months from the nationwide consumer reporting agencies and (6) the method by which consumers can receive a free file disclosure every twelve months from the nationwide specialty consumer reporting agencies.²⁴

As amended by the FACT Act, Section 609(c)(2) continues to require that consumer reporting agencies 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. Consumer reporting agencies 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.

The Commission nonetheless concludes 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. The Commission also states that consumer reporting agencies may disclose the list of addresses and the two statements separately from the Commission's summary. CDIA agrees with the Commission's observations and conclusions. CDIA suggests that the final version of the summary make clear that consumer reporting agencies will have this flexibility.

As the Commission also observed, the FACT Act amendments raise an issue as to whether CRAs must distribute the summary in the exact form prescribed by the Commission. The 1996 amendments required that consumer reporting agencies provide a summary that was "substantially similar" to the Commission's form. Although Section 609(c), as amended by the FACT Act, no longer contains the "substantially similar" language, the provision now characterizes the Commission's prescribed form as a "model" summary of rights.²⁵ The Supplementary Information states that "[a]s 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,' consumer reporting agencies need not adhere to it in every detail, and a summary that is 'substantially similar' to the Commission's model summary

²⁴ FCRA § 609(c)(1)(B); 15 U.S.C. 1681g(c)(1)(B).

²⁵ FCRA § 609(c)(1)(A); 15 U.S.C. 1681g(c)(1)(A).

complies with the statutory requirement.²⁶ CDIA also agrees with these observations and conclusions. CDIA observes, however, that the proposal states under “Legal effect,” “[C]onsumer reporting agencies that distribute summaries and notices as set forth below will be in compliance.”²⁷ CDIA suggests that the final version should make clear that consumer reporting agencies will comply if their summaries are “substantially similar” to the Commission’s versions. Therefore, this sentence should provide: “[C]onsumer reporting agencies that distribute summaries and notices that are substantially similar to those set forth below will be in compliance.”

The proposed paragraph describing the consumer’s ability to obtain information from his or her file should be revised. As in the case of the previous summary, for identity theft victims, the paragraph confuses a consumer report with information from a consumer’s file at a consumer reporting agency. When consumers obtain their file disclosures from consumer reporting agencies under FCRA § 609(a), they obtain “all the information in the consumer’s file” at the agency as well as the recent inquiries on the consumer’s file. That is different from a consumer report, which is what a consumer reporting agency provides to a user of the report.

The paragraph also explains that consumers will be asked to provide proper identification in order to obtain their file disclosures and that this information may include the Social Security number. CDIA applauds this information, as consumers need to understand that, without Social Security numbers, consumer reporting agencies may be unable to meet their statutory obligation to obtain the consumer’s proper identification before providing the Section 609(a) file disclosures.²⁸

CDIA notes that this paragraph does not describe the circumstances under which a consumer reporting agency may charge for disclosing the file information to the consumer. As in the summary for identity theft victims, this paragraph inaccurately states that a consumer may obtain a free file disclosure if the consumer is a victim of identity theft. That statement should be omitted. The attached redlined version reflects the suggested changes to this paragraph,

The paragraph under the heading “you have the right to know your credit score,” needs to make clear that the consumer may obtain the credit score “upon request.” The paragraph should also state that you [the consumer] may receive disclosure of *a* credit score, rather than you may get *your* credit score. Because consumers’ scores vary over time and from consumer reporting agency to agency, the summary should not imply that there is any one score for the consumer. Moreover, it should be clear that consumer will receive the credit score information in some mortgage transactions “from the mortgage lender.”

The paragraph relating to the requirement that a consumer reporting agency remove or correct inaccurate information should be modified to more fully describe the

²⁶ 69 Fed. Reg. at 42617.

²⁷ 69 Fed. Reg. at 42621.

²⁸ See FCRA § 610(a)(1); 15 U.S.C. § 1681h(a)(1).

circumstances under which a consumer reporting agency must remove or correct information and the circumstances under which a consumer reporting agency may continue to report accurate information. Many of these suggested changes (which are reflected in the redlined version) are taken from the current version of the summary of consumers' rights.

There should be a short paragraph regarding limits on the use of medical information from a consumer reporting agency. The redlined version of the summary suggests some language.

In the paragraph involving consumer reports provided to employers, it should be clear that the consumer's written consent for such disclosures is given to the employer (and not the consumer reporting agency).

The paragraph concerning the consumer's right to sue for violations of the FCRA should *not* state that the consumer may sue in state court. If a consumer files a lawsuit under the federal FCRA in state court, that suit would be removed to federal court. Therefore, consumers should not be directed to file these lawsuits in state court.

Although the redlined version of the summary is three pages long, when the changes are incorporated into the document, it is just two pages long. CDIA believes that the two-page length will provide consumers with sufficient information about their rights under the FCRA, but not be so long as to discourage consumers from reading it.

3. Notice of Furnishers' Obligations – Appendix G

The first paragraph gives the US Code cite, but all of the references are to the section numbers of the FCRA. We suggest that, at the beginning, the summary cross-reference section 623 with the relevant US Code cite.

The first paragraph also states, "State law may impose additional requirements." However, the FCRA preempts all states laws that impose requirements relating to the responsibilities of furnishers, with the exception of two laws (certain provisions of Massachusetts and California law as in effect on September 30, 1996).²⁹ The FTC's summary should accurately reflect this preemption.

The draft notice refers to some regulations that the federal agencies are required to promulgate under the FCRA. Although these regulations have not yet been published in final form, the notice should refer to these regulations in the present tense, because when consumer reporting agencies begin providing the notices to furnishers, these regulations will be in final form. In addition, the notice refers only to the FTC's website for the regulations. Many furnishers of information to consumer reporting agencies are within the jurisdiction of the federal banking agencies or the NCUA, rather than the FTC. The notice should include the websites where these other federal agencies' regulations may be found.

²⁹ FCRA §§ 625(b)(1)(F) and 615(5)(F); 15 U.S.C. §§ 1681(u)(b)(1)(F) and 1681(u)(b)(5)(F).

Under the paragraph entitled “Duties after Notice of Dispute from Consumer,” the revised notice deletes a paragraph that is in the current version of the notice. This paragraph summarizes the provisions of Section 623(a)(1)(B). Although the FACT Act created new provisions with respect to duties after notice of dispute directly from consumers, the provisions of Section 623(a)(1)(B) are still in effect and should be included in the notice.

We suggest that the paragraph labeled “Duties when furnishing medical information” be renamed: “Duties of Medical Information Furnishers.” That paragraph should not state that the consumer reporting agencies will comply with the duties under Section 604(g) only when they are notified by a medical information furnisher of that status. Instead, the consumer reporting agencies are in compliance if their detection procedures are reasonable.

The paragraph entitled “Duties When ID Theft Occurs” should include a sentence regarding the furnisher’s duty, under Section 623(a)(2), to correct inaccurate information due to identity theft and to notify the consumer reporting agency(ies) to which the inaccurate information has been furnished. The redlined version suggests some language.

Finally, the proposed revisions include changes for clarity. These are reflected in the attached redlined version.

4. Notice of Obligations of Users of Consumer Reports – Appendix H

As in the case of the notice to furnishers, the first paragraph of the users’ notice gives the US Code citations, but all of the references are to the section numbers of the FCRA. We suggest that, at the beginning, the notice cross-reference the FCRA section numbers with the US Code citations. Moreover, in the users’ notice, it is not necessary to continue to refer to the sections “of the FCRA.” That should be obvious from the context. We also suggest moving the FCRA section citations to the end of each paragraph, as is done in the furnishers’ notice.

The last two sentences in paragraph C.3. (Adverse Actions Based on Information Obtained from Affiliates) state: “(Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and information from a consumer report obtained from an affiliate are not covered by Section 615(b)(2). If consumer report information is used, the procedures discussed above for consumer reports apply.)” These sentences are unclear and may confuse consumer report users. The first of these two sentences should either be deleted or revised to reflect the language of the FCRA. The second sentence appears designed to address the circumstances where the exception to the definition of consumer report for information shared among affiliates would not apply (such as where the consumer did not receive advance notice that the information may be shared). However, in context, the sentence appears to contradict the preceding requirements with respect to affiliate sharing of information that is discussed above. Because paragraph C.1 discusses the requirements

for information that is a consumer report, this last sentence is unnecessary. For these reasons, CDIA suggests that this sentence be stricken.

Under paragraph D (users' obligations when fraud and active duty military alerts are in the files), the summary should make clear that only a nationwide consumer reporting agency has an obligation to place a consumer's fraud alert or active duty alert on the file. Moreover, as discussed above, the consumer places the alert in the agency's file, not on a consumer report. That alert is then reflected in the consumer report provided by the consumer reporting agency. The summary should reflect this distinction.

Under paragraph E (users' obligations when notified of an address discrepancy), a consumer reporting agency's files may contain more than one address for a consumer. If the consumer reporting agency notifies the user that the address provided by the user is not one of the addresses in the consumer's file, that notice triggers the user's obligations under the act. The attached redlined version contains suggested revisions to reflect this point.

The first paragraph under II (additional disclosures of creditors) inaccurately summarizes the provisions of FCRA § 615(h). At this juncture, we do not know what the agencies' rules will provide. For that reason, the summary paragraph should reflect the statutory language. The statement incorrectly states that the user of a consumer report must "disclose this fact [that creditor offered less favorable material terms to the consumer than are offered to a substantial portion of the creditor's customers] to the consumer." There is *no* such required disclosure in the statute. Unless it is provided for in the regulations, it should not be in this summary. Moreover, under the statute, the receipt of the notice by the consumer entitles the consumer to a free report *only* from the consumer reporting agency that provided the report that the creditor used in setting the material terms that triggered the notice. The summary should make this clear. The attached redlined version suggests language to accurately summarize this statutory provision. It also makes clear that there is no requirement to provide the notice until the Commission and the Federal Reserve Board promulgate a joint rule under this section.

Paragraph VI (obligations of users of medical information) should be revised to reflect the fact that the banking and credit union regulators have issued regulations that provide for circumstances where creditors may use medical information in credit underwriting decisions. The suggested revision to this paragraph also makes clear that when the consumer gives consent for the use of medical information in the report, that consent is given to the user of the report.

Under VII (obligations of users of prescreened list), the paragraph states that the Federal Trade Commission will establish rules concerning the format, type size, etc. of the disclosure. By the time this notice is to be provided to the user of the consumer report, the FTC must, under the FACT Act, have already prescribed the new rules. For that reason the notice should state that the FTC has issued the rules and should provide the website address where the rules may be found.

Under VIII B (reinvestigations by resellers), the paragraph needs to be revised to make clear the reinvestigation is of “disputes” and not “errors.” CDIA also suggests that the heading be changed to “Reinvestigations by Reseller Consumer Reporting Agencies” in order to make clear that the obligations discussed in this paragraph apply only to those resellers that meet the FCRA’s definition of resellers. Entities that resell consumer reports are not resellers unless they are also consumer reporting agencies.

Finally under paragraph IX (liability for violations of the FCRA) the word “government” should be added after “federal” and before “enforcement” to make clear that the referenced state enforcement actions are state *government* actions.

The suggested revisions in the attached redlined version also include some changes for clarity, which, given the many, intricate requirements, may assist small users.

CDIA appreciates the opportunity to comment on these important summaries and notices.

Sincerely yours,

Stuart K. Pratt
President

Appendix E

Remedying the Effects of Identity Theft: Summary of Consumer Rights Under the Fair Credit Reporting Act

You are receiving this ~~information- notice~~ because you have notified a consumer reporting agency that you believe you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other **personal** identifying information, without lawful authority, to commit fraud, such as opening a credit card account or obtaining a loan in your name. For more information, visit www.consumer.gov/idtheft and www.ftc.gov/credit.

~~The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. The Fair Credit Reporting Act (FCRA) governs the collection and use of information about you, including how you pay your bills. Consumer reporting agencies, such as credit bureaus, collect this information and provide it to your creditors and other persons who have a right to the information.~~ In 2003, Congress amended the FCRA to give you specific rights when you are, or **reasonably** believe that you are, the victim of identity theft. These rights are intended to help you recover from identity theft.

Here's a brief overview of the FCRA rights, **which are** designed to help you deal with the problems that identity theft can cause:

1. You have the right to a free **file disclosure copy of your report** if you believe it has inaccurate information due to fraud ~~or identity theft~~. ~~This report is in addition to the free report all consumers may obtain every twelve months under another provision of the FCRA.~~ See www.ftc.gov/credit.

2. You have the right to **request place** a "fraud alert" on your ~~consumer report file at the nationwide consumer reporting agencies~~. A fraud alert tells ~~to let~~ potential creditors and others ~~know~~ that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts on your ~~files with them credit report~~.

- Equifax: 1-800-525-6285; www.equifax.com
- Experian: 1-888-397-3742; www.experian.com
- TransUnion: 1-800-680-7289; www.transunion.com

An initial fraud alert stays in your file for 90 days and entitles you to a free ~~file disclosure copy of your consumer report~~. An extended alert stays in your file for seven years, prevents you from receiving firm offers of credit and insurance for 5 years, and entitles you to two free file disclosures consumer reports within a the 12-month period after you place the extended alert on your file. The additional consumer reports may help you detect signs of fraud, like such as whether additional fraudulent accounts have been opened in your name or whether someone has reported a change in your address. A consumer reporting agency will require appropriate proof of your identity, which may include your Social Security number, to place either of these alerts on your report file. In addition, you must provide an identity theft report - a copy of a report filed by you with a federal, state, or local law enforcement agency-- to place an extended alert in your credit

~~file on your consumer report.~~ Your request must ~~Be sure to~~ include as many details as you can provide, such as dates, account numbers, or any relevant details, if known to you, that would help document the suspected fraud.

3. You have the right to obtain documents relating to accounts opened in your name. At your request, a creditor or other business must give you copies of applications and other business records relating to a transaction, or account in your name that you believe was the result of identity theft. The business may ask you for proof of your identity, a police report, and an affidavit before it gives you the documents.

4. You have the right to obtain information from a debt collector. If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief – like the name of the creditor and the amount of the debt.

5. You have the right to block information from appearing in your credit file your consumer report ~~if the information that~~ relates to identity theft accounts an identity thief opened in your name. An identity thief may run up bills in your name and not pay them. If that happens, information about the unpaid bills may appear in on your file consumer report. You can ask a consumer reporting agency to block this information from appearing ~~on in~~ your file and subsequent consumer reports. To do so, you must identify which information resulted from identity theft to block, and provide the consumer reporting agency with proof of your identity and a copy of the report you filed with law enforcement officials (the identity theft report). The consumer reporting agency may ask you for more detailed information about the fraud and may confirm the content of any report you filed with a law enforcement agency. You must also provide a written statement state that the information does not relate to any transaction by you or authorized by you. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide have the necessary supporting documentation; ~~or where~~ the block results from an error or a material misrepresentation of fact made by you; or you obtained goods, services or money as a result of the blocked transaction. If the agency declines or rescinds the block, it will must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. You also may prevent businesses from reporting information to the consumer reporting agencies about an account in your name opened by an identity thief. To do so, you must send a request to the address specified by the business reporting that reports the information to the consumer reporting agency. The business will expect you to document that you are an identity theft victim. You may do so by submitting an identity theft report.

You can learn more about identity theft and how to undo the effects of this fraud at the FTC's identity theft website at www.consumer.gov/idtheft or by writing to the FTC at _____ or calling 1-800-_____.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has a host of other important protections. Described in more detail at www.ftc.gov/credit, these include the right to dispute inaccurate information with a consumer reporting agency; the right to have inaccurate information corrected or removed from your file at a consumer reporting agency deleted from your consumer report; the right to know your credit score; the right to a free file disclosure every twelve months from each of the nationwide credit

bureaus and from some specialty consumer reporting agencies ~~consumer report every year~~; and the right to receive additional free file disclosures in certain other situations ~~consumer reports when appropriate~~. You will receive a summary of these rights from a consumer reporting agency every time you receive ~~a consumer report~~ your file disclosure from that agency.

Appendix F

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus that gather and sell information about your creditworthiness to creditors, employers, landlords, and other businesses. The FCRA gives you specific rights, which are summarized below. You may have additional rights under state law. For more information, go to www.ftc.gov/credit, or write to: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

You must be told if information in your file has been used against you. Anyone who uses information from a consumer reporting agency to deny your application for credit, insurance, or employment – or take another adverse action against you – must tell you and give you the name, address, and phone number of the agency that provided the information.

You can find out what is in your file. ~~At a~~Any time you ask, a consumer reporting agency must disclose to give you the information in your file and a list of everyone who has requested it recently. ~~you may request and obtain your report from a consumer reporting agency.~~ You will be asked to provide proper identification, which may include your Social Security number. You are entitled to one free file disclosure upon request every twelve months from each of the nationwide credit bureaus and from some specialty consumer reporting agencies. See www.ftc.gov/credit for details about how to obtain your free file disclosures from these agencies. ~~In many cases the report will be free. You are entitled to free reports.~~ In addition, you may receive free file disclosure this information for free if a person has taken adverse action against you because of information in a consumer report and you request the disclosure within 60 days of receiving the notice of adverse action; if you are the victim of identify theft; if you are the victim of fraud resulting in inaccurate information in your file; if you are on public assistance; ~~or~~ if you are unemployed but expect to apply for employment within 60 days; ~~or if you place a fraud alert or extended alert on your file at a nationwide consumer reporting agency.~~ In addition, you are entitled to one free report every twelve months from each of the nationwide credit bureaus and from some specialized consumer reporting agencies. See www.ftc.gov/credit for details about how to obtain your free report. ~~Otherwise, a consumer reporting agency may charge you for providing your file disclosure this information.~~

You have a right to know your obtain a credit score. Credit scores are numerical summaries of a consumer's creditworthiness based on information from their consumer credit reports ~~reports~~. ~~Upon your request, For a fee, you may receive disclosure of~~ may get your a credit score for a fee. For more information, click on www.ftc.gov/credit. In some mortgage transactions, you will get credit score information without charge from the mortgage lender.

You can dispute inaccurate information with the consumer reporting agency. If you identify to tell a consumer reporting agency information in your file you feel is that your file has inaccurate information, the agency must ~~take certain steps to~~ investigate unless your dispute is frivolous. For an explanation of dispute procedures, go to www.ftc.gov/credit.

Inaccurate information must be corrected or deleted. A consumer reporting agency, based on its investigation, ~~or furnisher~~ must correct or remove ~~remove or correct~~ inaccurate or unverified ~~verified as inaccurate~~, usually within 30 days after you dispute it. However, a consumer reporting agency may continue to report accurate negative information from your file unless it is outdated (as described below) or cannot be verified ~~negative data that it verifies as being accurate~~. Also, a consumer reporting agency can reinsert deleted information from your file if the furnisher of that information certifies to that agency that the information is correct.

Outdated negative information may not be reported. In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

The use of medical information is limited. Federal rules restrict the ability of creditors, insurers and employers to use medical information obtained from consumer reporting agencies without your consent (other than payment information in a coded form).

Access to your file is limited. A consumer reporting agency may provide information about you only to people with a valid need as determined by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.

Your consent is required for reports that are provided to employers. A consumer reporting agency may not give out information about you to your employer, or potential employer, without your written consent to the employer. Blanket consent may be given at the time of employment or later.

You may choose to remove your name from consumer reporting agency lists for unsolicited credit and insurance offers. These offers must include a toll-free phone number you can call if you choose to take your name and address off lists in the future. You may opt-out at the major nationwide credit bureaus by calling 1-800-XXXXXXX.

You may seek damages from violators. If any person, including 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.

Identity theft victims and active duty military personnel have additional rights. Victims of identity theft have additional new rights under the FCRA. Active-duty military personnel who are away from their regular duty station may file “active duty” alerts to help prevent identity theft. For more information, visit www.ftc.gov/credit.

The FCRA gives several federal agencies authority to enforce the FCRA:

TO COMPLAIN AND FOR INFORMATION:

PLEASE CONTACT:

Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4367 (Toll-Free)
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator – GIPSA Washington, DC 20250 202-720-7051

Appendix G

NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), ~~15, 15~~ 15 U.S.C. 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). ~~Most of T~~ Most of these responsibilities are found in Section 623 of the FCRA (15 U.S.C. 1681s-2). ~~State law may impose additional requirements.~~ All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The full text of the FCRA is found set forth in full at the Federal Trade Commission's (FTC's) Internet web site at www.ftc/credit.

Section 623 imposes the following duties upon furnishers:

Accuracy Guidelines

The banking and credit union regulators and the ~~Federal Trade Commission~~ (FTC) ~~have will~~ promulgated guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. The regulations and guidelines ~~issued by the FTC will be are~~ available at www.ftc.gov/credit ~~when they are issued~~. Section 623(e).

General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

Duties After Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified by the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

The federal banking and credit union regulators and the FTC ~~have issued will issue~~ regulations that ~~will~~ identify when an information furnisher must investigate a

dispute made directly to the furnisher by a consumer. ~~Once these regulations are issued,~~ ~~F~~urnishers must comply with ~~these regulations~~ and complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a “credit repair” organization. The FTC regulations ~~are will be~~ available at www.ftc.gov/credit. ~~Section 623(a)(8).~~

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

Duties After Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).

- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(c) and (b)(1)(D).

- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).

- Promptly modify or delete the information, or block its future transmission ~~in the future~~. Sections 623(b)(1)(E).

- ~~Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).~~

Duty to Report Voluntary Closing of Credit Accounts

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnishes information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).

Duty to Report Dates of Delinquencies

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the

year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Debt collectors that report information to CRAs will comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) if they report the same delinquency date previously reported by the creditor. If they do not have this date, they will comply with the FCRA if they establish reasonable procedures to obtain and report delinquency dates, or, if the delinquency dates cannot be reasonably obtained, they follow reasonable procedures to ensure that the dates reported precede the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

Duties of Financial Institutions When Reporting Negative Information

Furnishers who are financial institutions must notify consumers in writing if they furnish negative information to a CRA. Section 623(a)(7). The Federal Reserve Board has prescribed a model disclosure, 12 CFR Part 222, App. B. [website address for this notice?]

Duties of ~~When Furnishing~~ Medical Information Furnishers

A furnisher whose primary business is providing medical services, products, or devices (and the furnisher's agents or assignees) is a "medical information furnisher" under for the purposes of the FCRA and must notify all CRAs to which it furnishes information of that status that it reports to of this fact. Section 623(a)(9). This notice will enable help CRAs to comply with their duties under Section 604(g) when reporting medical information.

Duties When ID Theft Occurs

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft and to prevent refurnishing the information in the future. Furnishers must also establish procedures when consumers notify them directly about so that information reported directly to the furnisher by consumers about accounts that are linked to identity theft. These procedures should prevent furnishing information about these accounts will not be furnished to any CRA unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623(a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify the consumer reporting agency(ies) to which the information has been furnished and must correct the information furnished in the future. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher may not sell, transfer, or place for collection the debt. Section 615(f).

Appendix H

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), ~~15, 15~~ U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The full text of the FCRA is ~~foundset forth in full~~ at the Federal Trade Commission's (FTC's) Internet web site at www.ftc.gov/credit.

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. FCRA Sectionsection 604 of the FCRA contains a list of describes the permissible purposes ~~under the law~~. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)(2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)
- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information through “prescreening” for the purpose of making unsolicited offers of credit or insurance. Section 604(c). The particular obligations involving prescreening of users of “prescreened” information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) ~~of the FCRA~~ prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person ~~has certified~~ certifies to the CRA (by a general or specific certification, as appropriate) the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose(s).

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603 ~~of the FCRA~~. "Adverse actions" includes all business, credit, and employment actions affecting consumers that can be considered to have a negative impact -- such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, offering credit on less favorable terms than requested, or denying employment or promotion.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, Section 615(a) requires the user ~~is required by Section 615(a) of the FCRA~~ to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer requests the disclosure report within 60 days.

- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) ~~of the FCRA~~ requires that the user clearly and accurately disclose to the consumer his or her right to ~~obtain disclosure of~~ be told the nature of the information ~~that was~~ relied upon if the consumer makes by making a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time after receiving following the ~~consumer's~~ written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The ~~notice notification~~ must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the ~~adverse action~~ notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the written request. (Section 615(b)(2) does not cover information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and or information from a consumer report obtained from an affiliate are not covered by Section 615(b)(2). If consumer report information is used, the procedures discussed above for consumer reports apply.)

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert in his or her file at a nationwide CRA consumer report, Section 605A(h) imposes ~~obligations limitations~~ on consumer report users ~~that receive these alerts of the reports~~. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

~~CRA will notify~~ If a users that requests a reports report with when the addresses for a consumer provided by the user in requesting the report is that are substantially different from the addresses in the consumer's file, the CRA will notify the user of the discrepancy. When this occurs, the user Users must comply with regulations specifying the procedures under regulations to be followed when this occurs to be issued by the Federal Trade Commission FTC and the banking and credit union regulators. The Federal Trade Commission FTC's regulations are will be available at "www.ftc.gov/credit."

F. Users Have Obligations When Disposing of Records

Section 628 of the FCRA requires that all users of consumer report information maintain have in place procedures to properly dispose of records containing this information. The Federal Trade Commission FTC, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Federal Trade Commission FTC's regulations may be found at www.ftc.gov/credit. The other agencies' regulations are available at [websites]

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

Under Section 615(h), If a person makes credit decisions using a risk-based model—i.e., the if a credit grantor offers some consumers interest rates and or other material terms that are materially less favorable than those offered to other a substantial proportion of the credit grantor's consumers based on the consumer's credit risk profile derived using consumer report information, and makes a credit offer to a consumer "on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers," Section 615(h) of the FCRA requires the credit grantor must give the consumer a notice telling the consumer that the terms offered are based on information in a consumer report and provide the name and contact information of the consumer reporting agency that provided the report used in setting the credit terms. to disclose this fact to the consumer and to provide certain information. The notice must also state that the consumer may receive Consumers who receive a notice will be entitled to a free file disclosure eopy of their consumer report from that consumer reporting agency. Users are not required to give a notice until the The Federal Trade Commission FTC and the Federal Reserve Board will jointly prescribe rules implementing this provision implementing Section 615(h).

Section 609(g) requires a certain disclosures to consumers by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons credit grantors must provide credit scores and other information about credit scores to applicants and make the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain the consumer's prior written authorization ~~from the consumer.~~ (It may be blanket authorization.)
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- Before taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and post-employment misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such

reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 ~~of the FCRA~~ requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 ~~of the FCRA~~. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) ~~of the FCRA~~ provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) ~~of the FCRA~~ limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report ~~consent to the furnishing of the report~~ or the information must be coded. If the report is to be used for employment purposes or in connection with a credit transaction, except as otherwise provided in regulations issued by the banking and credit union regulators, the consumer must provide specific written consent to the user of the report, and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order). ~~The banking and credit union regulators have authority to issue regulations in this area.~~

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(l), 604(c), 604(e), and 615(d). This practice is known as "prescreening" and typically involves obtaining a list from a CRA of consumers ~~from a CRA~~ who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer ~~and~~ to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

The ~~Federal Trade Commission~~ FTC has issued rules that will by rule establish the format, type size, and manner of the disclosure required by Section 615(d). ~~The FTC's regulations will be at www.ftc.gov/credit~~. There also are special procedures that must be followed with when using information obtained from affiliates. These procedures are found in Section 624 ~~of the FCRA and rules promulgated under that section~~. The FTC's regulations are at www.ftc.gov/credit.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) ~~of the FCRA~~ requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.

- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
 - (1) the identity of all end-users;
 - (2) certifications from all users of each purpose for which reports will be used; and
 - (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers Consumer Reporting Agencies

Section 611(f) exempts resellers from the general reinvestigation duties that apply to CRAs, but requires resellers to investigate disputes involving information errors for which they are responsible and to refer other disputes errors to the consumer reporting agencies- agency(ies) that provided the reseller with the disputed information, ~~that is the subject of the dispute~~. When any of those CRAs notify the reseller of the results of their investigation, the reseller must shall immediately reconvey the information to the consumer.

C. Fraud Alerts and Resellers

Under Sectionsection 605A(f) ~~requires a~~ resellers ~~who that~~ receives fraud alerts or active duty alerts from another consumer reporting agency must -to include these in their its reports.

IX.IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.