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Summaries of Rights and Notices of Duties Under the Fair Credit Reporting Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 601 and 698

RIN 3084–AA94

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

AGENCY: Federal Trade Commission.

ACTION: Final Guidance on Model Disclosures.

SUMMARY: The Federal Trade Commission is publishing in final form a number of documents that it is required to issue by the Fair Credit Reporting Act (FCRA), which was significantly amended by the recently enacted Fair and Accurate Credit Transactions Act. These are: A summary of the rights under the FCRA of victims of identity theft; a general summary of consumer rights under the FCRA; a notice of the duties of persons that furnish information to consumer reporting agencies; and a notice of the duties of users of information obtained from consumer reporting agencies. These documents will be distributed by consumer reporting agencies and others to consumers and to businesses that either use information obtained from consumer reporting agencies or furnish information to consumer reporting agencies.

DATES: *Effective Date:* January 31, 2005.

FOR FURTHER INFORMATION CONTACT: For the summary of identity theft rights, contact Monique Einhorn, Attorney, Division of Planning and Information, Federal Trade Commission, 600 Pennsylvania Ave. NW., 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. NW., Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is issuing in final form four documents that describe rights and duties under the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.* The Commission is issuing these documents because of changes to the FCRA made by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or Act), Public Law 108–159, 117 Stat. 1952, which was signed into law on December 4, 2003.

The FACT Act amendments directed the Commission to issue, for the first time, a summary of the rights of identity theft victims. The changes made to the FCRA by the FACT Act also rendered obsolete three documents that the Commission issued in 1997: A general summary of the rights of consumers under the FCRA; a notice of the duties under the FCRA of persons that furnish information to consumer reporting agencies; and a notice of the duties under the FCRA of persons that use information obtained from consumer reporting agencies. 62 FR 35586 (1997).

The Commission published proposed versions of all four documents for public comment on July 16, 2004. 69 FR 42616 (2004). The Commission has received numerous comments from consumers and from the following: organizations representing consumer interests (''consumer group commenters''); banks, credit unions, and associations of banks (''finance commenters''); business entities and groups (''business commenters''); and consumer reporting industry members and associations (''industry commenters'').[1] Because many commenters in a particular group raised the same or similar issues, we will refer in this discussion to the commenters by group (*e.g.*, ''finance commenters,'' ''industry commenters'') unless it is useful to identify a commenter by name. Persons interested in reviewing the comments may go to the Commission's Web site (*www.ftc.gov/os/comments/FACTA-summaries/index.htm*).

II. The Summary of Identity Theft Rights

A. Background

Section 609(d) of the FCRA requires the Commission, in consultation with the Federal banking agencies[2] and the National Credit Union Administration, to prepare a model summary of the rights of consumers ''with respect to the procedures for remedying the effects of fraud or identity theft.'' This model summary must be distributed by consumer reporting agencies to any consumer who ''contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft.'' Section 609(d)(2) provides that consumer reporting agencies' obligation to distribute this summary begins 60 days after the date on which the model summary of rights is prescribed in final form by the Commission.

The proposed summary discussed the major rights of identity theft victims under the FCRA to remedy the effects of fraud or identity theft. These include: the right to obtain free file disclosures, the right to file fraud alerts, the right to obtain documents or information relating to transactions involving the consumers' personal information, the right to block the reporting of information by consumer reporting agencies resulting from identity theft, and the right to prevent persons who furnish information to consumer reporting agencies from reporting information that is the result of identity theft. In preparing both the proposed model summary and the final one, the Commission consulted with the federal banking agencies and the National Credit Union Administration, in accordance with the requirements of Section 609(d).

B. General Issues Raised by Commenters

1. The Distribution of a ''Substantially Similar'' Summary

Section 609(d) requires the Commission to issue a ''model'' summary and requires the consumer reporting agencies to distribute a summary containing ''all of the information required by the Commission.'' In the July 16, 2004, **Federal Register** notice the Commission indicated that summaries issued by consumer reporting agencies would be compliant if they displayed ''the Commission-mandated information 'clearly and prominently' in a form substantially similar to the Commission's model summary.'' 69 FR 42616, 42617.

Consumer group commenters expressed great concern regarding the apparent flexibility permitted under a ''substantially similar'' approach. They suggested that even slight deviations in wording or placement of the rights within a document could allow the meaning of important rights to lose their prominence or lack the required context

[1] Among the commenters were the following: *consumer commenters*—the Consumer Federation of America, Consumers Union, the Electronic Privacy Information Center, the Identity Theft Resource Center, the National Association of Consumer Advocates, the National Consumer Law Center, the National Council of La Raza, the Privacy Rights Clearinghouse, and the U.S. Public Interest Research Group; *finance commenters*—Independent Community Bankers of America, the American Financial Services Association, MBNA, the Mortgage Bankers Association, Visa, MasterCard International, Wells Fargo, the American Bankers Association, America's Community Bankers; *business commenters*—ACA International, the Coalition to Implement the FACT Act (which includes banks, insurance companies, the National Retail Federation, Fannie Mae, and Fair Isaac & Co.); *industry commenters*—the Consumer Data Industry Association, Equifax, Experian, Trans Union, and USIS Commercial Services, Inc.

[2] The Federal banking agencies are: the Federal Reserve Board of Governors, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

to make them most apparent to the consumer.

Section 609(d)(2) requires that the identity theft summary provided to consumers by the consumer reporting agencies must contain all of the information contained in the Commission's prescribed summary. Pursuant to this statutory direction, consumer reporting agencies may not eliminate any part of the summary of identity theft rights. By specifying that summaries must be ''substantially similar'' to the Commission's prescribed form, the Commission intends only that consumer reporting agencies have the leeway to make minor changes without being in violation of the FCRA. The Commission has added a definition of ''substantially similar'' to 16 CFR 698.3.[3]

2. Understandability and Outreach

Consumer group commenters suggested that for some consumers (especially those for whom English is not their primary language) the information and procedures discussed in the model summary may be difficult to comprehend. These commenters also pointed to the need for Commission outreach efforts to educate consumers.

The Commission has tried, as much as possible, to use plain language in the summary but agrees that the notices need to be supplemented by outreach efforts and intends to do so. In addition, to better serve that portion of the population that is Spanish-speaking, the Commission has added a Spanish language statement at the top of the summary informing Spanish-speaking consumers where they can obtain more information in Spanish. In addition, the Commission will provide a Spanish translation of the summary, which will be available at the Commission's identity theft Web site, along with other information in Spanish. The Commission has added language to Appendix E of 16 CFR part 698 stating that accurate translations of the identity theft summary for use in providing the summary to speakers of Spanish or another language will be compliant with the disclosure requirement. The Commission will also implement a media and education campaign to inform the public how to prevent identity theft, as required by Section 151(b) of the FACT Act.

C. Specific Issues Raised by Commenters

1. Introductory Paragraph

In the introduction to the proposed summary, the Commission included contact information referencing only the Commission's identity theft Web site address. In response to suggestions from commenters, a Commission mailing address has been added to the introduction of the final summary for consumers who prefer to contact the agency via postal mail, or who do not have Web access. In response to industry, business, and finance commenters, and to improve clarity while maintaining brevity, the Commission also has shortened the general discussion of the FCRA in the introduction. Finally, to reflect changes in the definition of ''identity theft'' made by the Commission's final Identity Theft Rule, the term ''lawful'' has been stricken from the introductory paragraph. See 69 FR 63922, 63924–25.

2. Fraud Alerts

The first section of the final summary (''You have the right to ask that nationwide consumer reporting agencies place ''fraud alerts'' in your file''), discusses the specific procedures that apply when fraud alerts are placed in consumers' files.[4] The language of the Commission's proposal raised a few issues for commenters. One finance commenter suggested that the discussion be clarified to make clear that consumers may request only the initial fraud alert by telephone from the nationwide consumer reporting agencies because the extended alert requires submission of an identity theft report, and thus cannot be requested by telephone. The Commission has declined to adopt this suggestion. Although different procedures may have to be implemented by the nationwide consumer reporting agencies to accommodate the identity theft report requirement for the extended alert, Section 605A(d) requires ''[e]ach consumer reporting agency described in Section 603(p)'' to establish ''procedures that allow consumers and active duty military consumers to request initial, extended, or active duty alerts * * * in a simple and easy manner, including by telephone.''

The Commission has, however, clarified the discussion of fraud alerts to make clear that consumers must contact the ''nationwide consumer reporting agencies'' to request fraud alerts and that the initial alert stays in the consumer's file for ''at least'' 90 days. The summary also contains a fuller explanation of the identity theft report requirement and refers consumers to the Commission's identity theft Website for more detailed information.

The Commission has revised the summary to include placeholders (''1–800–XXX–XXXX'') for nationwide consumer reporting agencies'' toll-free telephone numbers, rather than the current numbers used by those agencies. Although the summary must include these toll-free telephone numbers, they are subject to change, and the Commission thought it advisable to include the placeholders rather than the actual numbers to clarify that the summary must include up-to-date telephone numbers.[5] The Commission notes that the names, Web site addresses, number, and identity of the nationwide consumer reporting agencies also are subject to change over time. To remain in compliance, the summary must accurately reflect changes to information that may change over time.

3. Free File Disclosures from Consumer Reporting Agencies

The discussion of free file disclosures (''You have the right to free copies of the information in your file'') has been modified in response to industry comments that the use of the term ''consumer report'' should be replaced by the term ''file disclosure'' to be more technically precise.

In addition, industry and business commenters and the banking agencies that the Commission consulted suggested that the discussion of free file disclosures in the proposed summary was confusing. In order to resolve any confusion, the Commission has consolidated the discussion of free file disclosures in the second section of the summary: the new Section 605A rights to free file disclosures and the preexisting Section 612(c)(3) right to a free file disclosure now are discussed together.

The Commission has also clarified the discussion to make clear that an extended alert at a nationwide

[3] The Commission has defined ''substantially similar'' to mean ''that all information in the Commission's prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Commission. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Commission's prescribed model.'' 16 CFR 698.3.

[4] As proposed in the July 16 **Federal Register** notice, this was the second section of the summary. To improve the clarity of the summary, however, the Commission has moved this discussion to the first section of the final summary, and has consolidated the discussion of free file disclosures in the second section.

[5] This same approach is taken in the general summary of consumer rights with respect to the nationwide consumer reporting agencies' toll-free telephone number for accepting consumers' prescreen opt-out elections under FCRA Section 604(e).

consumer reporting agency entitles the consumer to two free file disclosures in a 12-month period ''following the placing of the alert.'' Finally, this section has also been modified to make clear that consumers have the ability to obtain additional free file disclosures under other provisions of the FCRA. Consumers are directed to *www.ftc.gov/credit* for more detailed information.

4. Obtaining Applications and Business Records Resulting From Identity Theft

The Commission has made a number of modifications to section three of the summary (''You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information''). In response to industry, finance, and business commenters, the Commission has added language to this section that tracks the requirements of Section 609(e) and clarifies that the consumer's request for documents should be in writing, that a business may specify an address for consumers to submit their written requests, and that a business, under certain circumstances, may refuse to provide this material.[6]

5. Blocking Information Relating to Identity Theft in Consumers' Files

The Commission made one substantive change to the fifth section (''If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file''). In response to an industry commenter, the Commission has added language to make clear that the block covers any information (not just accounts) in the consumer's file, if the information results from identity theft. This same industry commenter suggested that the Commission expand the discussion of the identity theft report in this section. The Commission has added information about the identity theft report earlier in the summary in the discussion of fraud alerts where the term is first introduced, and has italicized the term ''identity theft report'' throughout the summary for readers'' ease of reference and to make clear that it is a term of art. See *supra*, II.C.2. Because ''identity theft report'' is a complicated definition subject to Commission rulemaking, consumers are further referred to the FTC's Web site for more information.

6. Preventing Businesses From Furnishing Information Resulting From Identity Theft

In response to business and finance commenters, the Commission has added a statement to the sixth section (''You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft'') explaining that consumers must identify for the furnisher the specific information it should cease reporting.

7. State Laws

Many states have enacted laws relating to identity theft. In the Commission's identity theft publications and in its public outreach efforts, the Commission informs consumers of this fact and suggests that consumers contact the appropriate state and local agencies for more information. Consumer group commenters suggested that the Commission include a statement in the model summary informing consumers that they may have additional rights related to identity theft under state law. The Commission agrees. Accordingly, in the penultimate paragraph of the summary, there is now the statement: ''You may have additional rights under state law. For more information, contact your local consumer protection agency or your state attorney general.''

8. Concluding Paragraphs

In the proposed summary, the Commission included a final section cross-referencing the general FCRA consumer rights. The Commission added this section to provide identity theft victims notice of the broader range of rights provided to them by the FCRA. Consumer group commenters commended the Commission for including a cross-reference to general FCRA rights in the identity theft summary and for cross-referencing identity theft rights in the general summary. Industry and business commenters, however, suggested that the cross-reference to other FCRA rights went beyond the scope of Section 609(d) in discussing more rights than just those that address procedures for remedying fraud or identity theft. The Commission agrees with consumer group commenters that a cross-reference is necessary to ensure that consumers are aware of their full range of rights, and further believes that these more general rights may also be relevant to identity theft victims. Thus, this cross-reference has been retained, but in the final summary the discussion has been shortened. As proposed, the cross-reference briefly enumerated five of consumers' specific rights under the FCRA; it now reads simply: ''In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at *http://www.ftc.gov/credit*.'' Identity theft victims who need more information on their general rights under the FCRA will be able to obtain it on the Web site. Moreover, identity theft victims who receive a file disclosure from a consumer reporting agency—*e.g.*, after placing a fraud alert or requesting a free file disclosure under FCRA Section 612(c)(3)—will receive a copy of the general summary of consumer rights that describes these provisions in more detail.

III. The General Summary of Consumer Rights

A. Background

Section 609(c) of the FCRA requires the Commission to issue a general summary of consumer rights. This provision was added to the FCRA in the 1996 amendments. After a period for public comment, the Commission issued the general summary in 1997 as a two-page document. 62 FR 35586 (1997).

Section 211(c) of the FACT Act amended Section 609(c) of the FCRA to require the Commission to include in the summary information about consumers' new rights. Section 211(c) also eliminated the requirement that the summary include a number of disclosures such as a list of federal agencies that enforce the FCRA, the statement that the consumer may have additional rights under state law, and the statement that accurate derogatory information does not have to be removed from reports unless it is outdated or cannot be verified. (Consumer reporting agencies now have an independent obligation to provide this information.) Given these changes, the existing general summary is outdated.

Accordingly, the Commission published for comment a substantially revised general summary. The Commission elected to include in the proposed summary the list of federal agencies and the other items of information that are no longer mandated because it believes that this information is helpful to consumers and should be available in one place. In general, industry, finance, and consumer group

[6] FCRA Section 609(e)(5) provides that a business may decline to provide the requested information if, among other things, it does not have ''a high degree of confidence'' that it knows the requester's identity, the request is based on a ''misrepresentation of fact'' by the requester, or the information requested pertains to a person's visit to a Web site or online service.

commenters support the Commission's decision to include these items of information. A number of industry and finance commenters also state that the current version of the summary, which the Commission largely followed in crafting its proposed new general summary, has worked well.

B. General Issues Raised by Commenters

1. FACT Act Mandates

The FACT Act requires the Commission and the banking and credit union regulators to issue rules to implement many of its provisions. Most of these rules have not yet been issued or will not be fully implemented until next year. A number of the rules will provide significant rights to consumers, such as the right to obtain a free file disclosure every twelve months, the right to receive a notice when creditors make decisions based on a risk-based pricing model, and the right to file a dispute directly with a business about information the business has furnished to a consumer reporting agency. The Commission did not include a discussion of these prospective rights in the proposed general summary. The proposed summary, instead, referred consumers to the Commission's Web site for more information.

Consumer group commenters and some finance commenters questioned the Commission's decision not to include a discussion of the prospective rights. The Commission believes that it is difficult to explain these rights briefly and coherently, particularly since the rules implementing these rights are not yet final. Although the Commission has made some minor modifications to the general summary in response to the concerns raised by commenters—including adding a reference to ''additional rights'' at the beginning of the summary that refers consumers to the Commission's Web site—the Commission has decided not to add a detailed discussion of the prospective rights but plans to revise the general summary to reflect these new rights once they are in effect.

2. Length of Consumer Summary and Reference to Web Site

In 1997, the Commission elected to limit the length of the general summary of consumer rights to two pages because a briefer and more pointed summary is more useful to, and more easily understood by, most consumers. In addition, because the two-page summary can be printed on a single sheet of standard-size paper when distributed in paper form, it has helped to control the cost of distribution. Where consumers need more detailed information about specific rights, the Commission has always provided additional resources.

The Commission took the same approach with the proposed revised general summary. A number of industry and finance commenters report that this approach has worked well. Commenters representing consumer groups, however, believe that the proposed summary is dense, lacks detailed information about some rights, and lacks extensive guidance as to how consumers may exercise their rights. These commenters also expressed concern that the reference to the Commission's Web site for more information would be a problem for those consumers without ready access to the Internet.

The Commission will mail all of its relevant credit-related publications to any consumer upon request. The Commission has modified the summary to explain how consumers without access to the Internet may request this information. In addition, the Commission intends to revise the summary once the new FACT Act regulations are in place, and will revisit the length of the consumer summary at that time.

3. Understandability of the General Summary

Although some commenters—particularly business, industry, and finance commenters—believed that the format of the proposed general summary is useful and understandable, the commenters representing consumer groups raised questions about its understandability. Some of these concerns may be the result of the fact that the **Federal Register** did not publish the general summary in the format approved by the Commission. This notice contains the summary formatted correctly.

Although the Commission has tried to use plain language and to express the legal concepts embodied in the FCRA as simply as possible, the Commission intends to publish on its Website an expanded version of the summary of rights that will give more information to consumers. To better serve Spanish-speaking consumers, the Commission's Web site will also include a Spanish translation of the summary, along with other Spanish-language materials, such as an expanded discussion of consumer rights under the FCRA. A statement now appears in Spanish at the top of the summary directing consumers to the FTC to obtain Spanish language information. In addition, the Commission encourages those businesses serving Spanish-speaking consumers to provide the summary in Spanish. Accordingly, the Commission has added language to Appendix F of 16 CFR part 698 stating that accurate translations of the general summary for use in providing the summary to consumers who use Spanish or another language will comply with the disclosure requirement.

4. The Distribution of a ''Substantially Similar'' Summary

As added to the FCRA in the 1996 amendments, Section 609(c) required the Commission to ''prescribe'' the form and content of the general summary and stated that consumer reporting agencies were in compliance if they provided summaries ''substantially similar'' to the Commission's model. As amended by the FACT Act, Section 609(c) requires the Commission to issue a ''model'' summary and requires consumer reporting agencies to distribute the Commission's summary.

Although there is no ''substantially similar'' language in Section 609(c) as amended, the Commission included in the **Federal Register** notice of July 16 a statement that it would consider ''substantially similar'' summaries to be compliant. The Commission interprets the term ''model'' to mean a notice that need not be adhered to in every detail, and does not believe that consumer reporting agencies should be subject to litigation because of minor variations from the model.

Consumer group commenters expressed concern that the inclusion of the ''substantially similar'' language may create a loophole by permitting consumer reporting agencies to remove references to specific rights or to modify the summary in such a way that important rights may be buried in fine print. Such changes would not be acceptable. All of the information in the general summary must be included in order for any summary to comply with the law, and consumer reporting agencies do not have the authority to eliminate or to substantially alter any part of the general summary. By specifying that general summaries must be issued in a form ''substantially similar'' to the Commission's prescribed form, the Commission intends only that consumer reporting agencies have the leeway to make minor changes without being in violation of the FCRA. The Commission has added a definition of ''substantially similar'' to 16 CFR 698.3.

The Commission, has, however, decided to adopt the suggestion of an industry commenter that consumer reporting agencies be permitted to disclose the list of federal regulators

separately if they do so in a ''clear and conspicuous'' way. This approach may benefit consumers by, for example, permitting the general summary to be printed in larger type. The Commission has added a discussion to Appendix F to 16 CFR part 698 stating that the list of federal regulators may be disclosed separately.

5. State Law Rights and Enforcement

Another issue raised by commenters concerns the statement in the general summary that consumers may have additional rights under state law. Consumer group commenters expressed the belief that this statement should be emphasized, while a number of industry and finance commenters took the position that the rights should be downplayed because Section 625 of the FCRA preempts many state laws.

The Commission believes that the additional rights that consumers have under state law and state enforcement of the FCRA are important. Section 609(c) specifically requires that consumers be informed that they have additional rights under state law and that they may wish to contact their state or local consumer protection agency or their state attorney general. Moreover, where state laws provide additional protections to consumers, these may be significant. The Commission has revised the summary by adding (before the box on the second page containing information about federal enforcement agencies) in bold type the following: ''States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state attorney general.''

Industry and finance commenters also expressed the belief that the Commission should delete the statement in the proposed summary that consumers may sue in state court as well as federal court because of the fact that state court lawsuits may be transferred to the federal court system. The Commission has not accepted this suggestion. The FCRA specifically permits lawsuits in any court of competent jurisdiction, including state courts.

6. Outreach and Education Efforts

A number of consumer group and finance commenters raised the issue that a stand-alone summary of rights will not be particularly helpful to many consumers who find the legal concepts embodied in the FCRA difficult to understand, who lack basic financial literacy, or who find it intimidating to deal with consumer reporting agencies. The Commission recognizes that education and outreach efforts are needed to enable consumers to understand fully their rights under the FCRA. Section 513 of the FACT Act itself includes the Financial Literacy and Education Improvement Act, which establishes the Financial Literacy and Education Commission (''FLEC''). A Commission representative serves on the FLEC, and the Commission will work with the FLEC to educate consumers.

In addition, the Commission is taking a number of steps to educate and to help consumers. The Commission's Web site has been reorganized so that consumers can easily reach credit material (*www.ftc.gov/credit*). Information on how to contact consumer reporting agencies and state agencies will be on the Web site, and many materials will be translated into Spanish. The Commission also intends to conduct outreach to educate the business community about the FCRA.

C. Specific Issues Raised by Commenters

A number of commenters suggested that the summary should be more technically precise, and, in response, the final summary uses the term ''file disclosure'' in place of ''consumer report'' when describing the right of consumers to see the information about them in the files of consumer reporting agencies. In addition, the introductory paragraph to the summary has been modified to incorporate the suggestion that the summary refer to ''specialty'' agencies instead of ''specialized'' agencies and to explain more fully what specialty agencies are.

In response to the issues raised by consumer group commenters, there is now a statement in Spanish at the very top of the summary directing Spanish-speaking consumers to a Spanish version of the summary. In addition, because the model does not summarize every right afforded to consumers by the FCRA, the revised summary states that consumers' ''major rights'' are contained in the summary and that ''additional rights'' are available on the Web site or by writing to the Commission. Finally, the sentence in the introductory paragraph stating that consumers may have additional rights under state law has been moved to the end of the summary where there is now a more detailed discussion of state enforcement.

In the first substantive paragraph (''You must be told if information in your file has been used against you''), the reference to ''consumer reporting agency'' has been modified to more fully explain that credit reports or other consumer reports may be the basis for adverse actions.

The heading of the second paragraph (''You have the right to know what is in your file'') has been modified to aid in comprehension. In addition, a number of commenters felt that the language of this paragraph was too imprecise. It has been modified to express precisely the circumstances in which a consumer may obtain a disclosure of the information in his or her file, and the various rights to free file disclosures are now expressed as separate bulleted paragraphs. The discussion of free file disclosures was modified to state that file disclosures under the Commission's Free Annual File Disclosures Rule, 16 CFR part 610, will not be available for all consumers until September of 2005.

The heading and text of the third paragraph (''You have the right to ask for a credit score'') have also been modified to be more precise. Business, industry, and finance commenters did not like the use of the term ''your credit score'' given the fact that consumers are entitled under Section 609(f) of the FCRA only to an educational score, which may not be the same as the score provided to any particular creditor or other user. The Commission also modified the last sentence to make clear that mortgage lenders (and not consumer reporting agencies) will give consumers credit score information in some circumstances.

The fourth paragraph (''You have the right to dispute incomplete or inaccurate information'') has been expanded to make clear that consumers may dispute both ''incomplete'' and ''inaccurate'' information, and the heading has been revised to aid in comprehension. The fifth paragraph (''Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information'') has been similarly modified. One industry commenter, the Consumer Data Industry Association, suggested adding to this paragraph a discussion of the fact that information removed because it cannot be verified may be reinserted if the furnisher certifies to the consumer reporting agency that the information is correct. Because of its interest in keeping the general summary to two pages, the Commission has decided not to add this reinsertion information to the general summary at this time, but this will be discussed on the Commission's Web site.

The headings of the sixth (''Consumer reporting agencies may not report outdated negative information'') and seventh (''Access to your file is

limited'') paragraphs have been modified to enhance readability, but no substantive changes have been made. An industry commenter suggested that the Commission include in the discussion of access in the seventh paragraph a statement that consumers' rights are limited in certain employee misconduct investigations. Because the exemption in Section 603(x) is narrow and will affect consumers only in limited circumstances, the Commission has determined that it will not address this matter in the general summary, but will make that exception clear in its general consumer education efforts.

The heading of the eighth paragraph (''You must give your consent for reports to be provided to employers'') has been revised, and the paragraph now makes clear that consent is to be given to the employer. A statement has been added at the end of this paragraph pointing out the exception to the requirement for ''written'' permission that applies to the trucking industry. In addition, the reference to ''blanket'' permission has been removed, because the Commission believes that this is a complicated concept to explain to consumers in a concise manner. Additional information is available in the Commission's consumer education publications, and the issue continues to be discussed in the notice of user duties.

The heading of the ninth paragraph (''You may limit 'prescreened' offers of credit and insurance you get based on information in your credit report'') has been modified to improve readability, and the paragraph now makes clear that the opt-out number in the paragraph is only for ''nationwide'' agencies. The tenth paragraph (''You may seek damages from violators'') also has been modified. A number of finance and industry commenters objected to the Commission's proposed language because furnishers and users have limited liability to consumers under the FCRA. The Commission has adopted wording proposed by commenter American Banking Association: ''If a consumer reporting agency, or, in some cases, a user of consumer reports or furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.'' The Commission believes that this accurately reflects the statute. As discussed above, the Commission has not adopted the suggestion of a number of industry and finance commenters that the reference in this paragraph to lawsuits in state courts be eliminated.

The discussion of identity theft and active duty military rights in what is now the eleventh paragraph has been shortened to save space. Consumers are referred to the Commission's Web site for more information. Finally, at the bottom of the second page of the summary, the Commission has made significant changes. In response to consumer group commenters who expressed concern that the proposed summary did not adequately alert consumers to rights that they have under state laws, the Commission moved the statement concerning state law rights from the introductory paragraph to this location, added a reference to the fact that states may enforce the FCRA, and now directs consumers to contact their state attorney general or regulator as well as the appropriate federal regulator if they believe law violations have occurred.

IV. Furnisher and User Notices

A. Background

Section 607(d)(1) of the FCRA, which was added in the 1996 amendments to the FCRA, requires consumer reporting agencies to distribute to each person that regularly furnishes information to the agency or that receives information from the agency a notice of the person's responsibilities under the FCRA. The statute requires the Commission to ''prescribe'' the content of model notices that can be used to comply with Section 607(d)(1). In 1997, the Commission issued both the notice explaining the duties of persons furnishing information to consumer reporting agencies (''furnisher notice'') and the notice explaining the duties of persons using information obtained from consumer reporting agencies (''user notice''). 62 FR 35586 (1997).

The FACT Act did not amend Section 607(d), but it did alter in significant ways the duties of furnishers and users. As a result, the Commission published revised furnisher and user notices for comment in the **Federal Register** on July 16. 69 FR 42616 (2004). The comments received by the Commission raised a number of major issues that are discussed below.

B. General Issues Raised by Commenters

1. Distribution of Furnisher and User Notices

The July 16 **Federal Register** notice set forth the Commission's initial position that the revisions to the FCRA by the FACT Act are so significant that consumer reporting agencies must distribute new furnisher and user notices. An industry commenter and some finance commenters objected to this position, primarily citing the cost of providing revised notices.

Consumer reporting agencies are required under Section 607(d) to provide to furnishers and users a complete description of their duties under the FCRA. Section 607(d)(2) provides that they may comply with this obligation by providing furnishers and users with a notice ''substantially similar'' to the model prescribed by the Commission.[7] That is, the Commission's notices are a ''safe harbor.'' The Commission is now substantially changing its model notices, and it believes that consumer reporting agencies wishing to avail themselves of the statute's safe harbor should provide the revised notices to users and furnishers.

The FCRA, as amended by the FACT Act, contains substantial new obligations that have not yet been implemented by rules of the Commission and other agencies. As a result, the Commission intends to revise the model notices again when the relevant rulemaking proceedings are complete. Until that time, the Commission believes that consumer reporting agencies may take advantage of the Section 607(d)(2) safe harbor by delivering the revised ''interim'' notices only to those new users and furnishers who have never before received the notices. Of course, all furnishers and users must comply with every new duty as it becomes effective, without regard to whether they have been notified of the duty by a consumer reporting agency.

2. Information on Rules That Are Not Yet Complete

At the suggestion of business, finance, and industry commenters, the Commission has added a box at the top of both notices that alerts users and furnishers to the fact that some of the regulations required by the FACT Act and discussed in the notice were not issued when the notice was prescribed. Recipients of the notices are directed to the Commission's Web site, where the Commission maintains updated information about the status of the regulations. Furnishers and users regulated by other entities are directed to contact those entities for information about any relevant regulations implementing the FACT Act.

3. Additional Resources

At the suggestion of an industry commenter and for the convenience of users and furnishers, the Commission has added to both notices (1) a list of the United States Code citations that correspond to the FCRA sections discussed in the notice, and (2) a

[7] The Commission has added a definition of ''substantially similar'' to 16 CFR 698.3.

reference to the Commission's Web site for more information about the FCRA, including publications for businesses.

B. Specific Issues Raised by Commenters

The Commission has made a number of other additions and revisions to the furnisher and user notices to reflect suggestions made by commenters. The following discussion describes the significant changes made to the proposed notices.

1. Furnisher Notice

A number of business, finance, and industry commenters suggested that the Commission revise the introductory paragraph of the furnisher notice to identify the specific states (California and Massachusetts) whose ''furnisher'' laws are not preempted by the FCRA. The Commission has not made this change because the preemption provision is unchanged since 1997 and the language in the introductory paragraph has not caused confusion.

In the fourth section (''Duties After Notice of Dispute from Consumer''), the Commission, at the suggestion of several industry and finance commenters, has added a discussion of Section 623(a)(1)(B), which describes the general ''accuracy'' duties that furnishers have when consumers notify them of inaccurate information. ACA International, a major association of debt collectors, requested in its comments that the Commission include a statement that contacts with consumers by debt collectors undertaken in compliance with Section 623(a)(8) (the provision governing consumer disputes made directly to information furnishers) are not communications or attempts to collect debts under the Fair Debt Collection Practices Act, 15 U.S.C. 1601 *et seq.* ACA International is concerned that debt collectors may not be registered to do business in states where consumers who dispute information are located, and that the contacts involved in handling these disputes will trigger state debt collection laws. Because furnishers' new obligations to accept consumer disputes are dependent on rules that have not yet been drafted, it would be premature to address this issue.

The fifth section (''Duties After Notice of Dispute From Consumer Reporting Agency'') has been slightly modified to reflect the statutorily mandated timeline. The seventh section (''Duty to Report Dates of Delinquencies''), which previously referred to ''debt collectors,'' now makes clear that ''any person'' who acquires or is collecting a delinquent debt must comply with the reporting requirements of Section 623(a)(5). This section also has been revised to more closely track the statutory language.

The eighth section (''Duties of Financial Institutions When Reporting Negative Information'') has been revised to make clear that the provision only applies to persons that furnish information to ''nationwide'' consumer reporting agencies as defined in Section 603(p). The reference to the Federal Reserve Board regulations has been revised to reflect the fact that the Board has issued two model disclosures.

The Commission has revised the tenth section (''Duties When ID Theft Occurs'') to include a discussion of Section 623(a)(2), which requires each furnisher to notify all agencies to which it reports when it learns it has furnished inaccurate information. At the suggestion of a number of finance and industry commenters, the last sentence in this paragraph also has been modified to make clear that the prohibition upon selling debts that are linked to identity theft does not apply in certain limited circumstances involving repurchase, securitization, and transfers as the result of corporate mergers, acquisitions, or asset sales.

2. User Notice

The introductory paragraphs of the user notice have been slightly modified by adding, at the suggestion of an industry commenter, a statement directing readers to the end of the notice where there is now a list of the sections of the FCRA with parallel citations to the United States Code. Readers are also referred to the Commission's Web site, where the full text of the FCRA is available.

A number of finance commenters suggested that the statement in the third bullet of Part I.A. (''Users Must Have a Permissible Purpose''), discussing the credit permissible purpose in FCRA Section 604(a)(3)(A), should be broadened to include any credit transaction ''involving'' a consumer. The Commission believes that the only situations where consumer reports may be obtained under this subsection occur when consumers apply for credit, or where a creditor obtains consumer reports for the review or collection of consumers' accounts. Accordingly, the Commission has not changed this section of the notice.

A significant change has been made in the introductory paragraph of Part I.C. (''Users Must Notify Consumers When Adverse Actions Are Taken''). A number of business and finance commenters expressed concerns that the Commission's description of adverse actions did not adequately explain that no adverse action occurs in a credit transaction when a user makes a counteroffer that is accepted by the consumer. The Commission has shortened the explanatory text as a result of these comments, has added ''as defined by Section 603(k) of the FCRA'' in the second sentence, and has added a statement that no adverse action occurs for the purposes of the FCRA where a creditor makes, and the consumer accepts, a counteroffer. Similar changes were made in the first sentence of Part I.C.1.

The discussion in Part I.C.3. (''Adverse Actions Based on Information Obtained From Affiliates'') also has been modified. At the suggestion of industry and finance commenters, who found the discussion confusing, the Commission has eliminated the portion of the parenthetical discussion at the end of the paragraph that discussed the sharing of non-consumer report information among affiliates. This issue is discussed in more detail on the Commission's Web site.

The discussion in Part I.D. (''Users Have Obligations When Fraud and Active Duty Military Alerts are in Files'') has been slightly modified to emphasize that the limitations imposed on users apply only in certain circumstances. Part I.E. (''Users Have Obligations When Notified of an Address Discrepancy''), discussing duties where the user has an address that differs from the address(es) in the information obtained from the consumer reporting agency, has been expanded to make clear that these duties apply only to users who receive address discrepancy notices from nationwide consumer reporting agencies.

The proposed notice included in Part II a description of the requirement in Section 615(h) that users who are creditors must provide a notice to consumers when risk-based pricing systems are used. This statement generated a considerable response from business, industry, and finance commenters. There is no obligation under Section 615(h) until it is implemented by a joint rule of the Federal Reserve Board and the Commission. The Commission has revised this section to include a simple recitation of the statutory language, and will defer consideration of how best to describe this new obligation until the joint rule is complete.

Finally, some minor changes have been made in Parts III.A. (''Employment Other Than in the Trucking Industry'') and VI (''Obligations of Users of Medical Information'') in response to industry and finance commenters. The

discussion of user duties in employment situations in Part III.A. has been expanded to make clear that consumers may give blanket authorization to employers for consumer reports to be obtained during the term of employment. And the discussion in Part VI of the obligations of users of medical information has been revised slightly to specify that regulations issued by the banking and credit union regulators will affect the use of medical data.

V. Repeal of Existing Summaries and Notices

The existing model Summary of Consumer Rights, Notice of Furnisher Duties, and Notice of User Duties are codified at 16 CFR part 601. The Commission is reorganizing Subchapter F of Title 16 of the Code of Federal Regulations to reflect its substantial new rulemaking and other responsibilities under the FACT Act and FCRA. As a part of this general organizational scheme the Commission plans to codify all guidance on model forms and disclosures, including the model Summaries of Rights and Notices of Duties, at 16 CFR part 698. Accordingly, it is repealing the existing notices at 16 CFR part 601, but is reserving that Part for future use. The new and revised model Summaries of Rights and Notices of Duties will be codified at 16 CFR part 698, Appendices E, F, G, and H.

VI. Effective Date

The Commission is setting an effective date for the model summaries and notices of sixty days after publication in the **Federal Register**. The consumer reporting agencies may, of course, begin using the model summaries and notices earlier than that, but the Commission expects that it will take a certain amount of time for the consumer reporting agencies to have their summaries and notices printed and ready for distribution. In addition, the FACT Act specifically states that the consumer reporting agencies have sixty days after the model summary for identity theft rights is prescribed in final form to begin distributing such a summary. Consequently, for ease of administration and convenience, the Commission is establishing one, uniform effective date for all of the summaries and notices.

VII. Final 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 and a final Regulatory Flexibility Analysis (''FRFA'') with the final action, unless the Commission certifies that its action will not have a significant economic impact on a substantial number of small entities (*i.e.*, those with less than $6,000,000 in average annual receipts). 5 U.S.C. 603–605. The Commission stated in its IRFA that it had concluded that this matter will not have a significant economic impact on a substantial number of small entities. The Commission, however, did request public comment on this issue. As discussed below, only one comment specifically addressed the RFA. The Commission hereby certifies that this matter will not have a significant economic impact on a substantial number of small entities.

A. Need for and Objectives of Proceeding

The Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952, substantially amended the FCRA. The FACT Act added Section 609(d) of the FCRA, which requires the Commission to prescribe a summary of the rights that identity theft victims have under the FCRA. The FACT Act also amended Section 609(c), which was added in the 1996 amendments to the FCRA and which requires the Commission to prescribe a general summary of consumer rights under the FCRA. Finally, the FACT Act extensively amended many other provisions of the FCRA. As a result, the notices of user and furnisher duties that the Commission is required to prescribe by Section 607(d) of the FCRA are outdated. The Commission is now prescribing all four of these documents in accordance with the requirements of the FCRA as amended by the FACT Act.

B. Significant Issues Raised by Public Comment

The Commission received only one comment specifically focused on the IRFA published by the Commission on July 16. This came from industry commenter Consumer Data Industry Association (CDIA). In its proposal the Commission stated that it believed that the FACT Act's amendments to the FCRA were significant enough to require that revised furnisher and user notices be distributed by consumer reporting agencies to all persons that furnish information to them and that obtain information from them. CDIA stated that it would be burdensome for consumer reporting agencies to have to distribute revised notices to furnishers and users that had already received the Commission's 1997 versions of these documents. CDIA, however, did not provide any information on the number of small entities that would be affected or the costs imposed upon these entities. A number of other commenters, while not directing their comments to the Commission's IRFA, also questioned whether consumer reporting agencies should have to distribute revised furnisher and user notices. As discussed above, the Commission believes that consumer reporting agencies need deliver these ''interim'' revised user and furnisher notices only to new users and furnishers. Existing users and furnishers can be provided new notices when the Commission makes final revisions to the notices, following completion of the FACT Act rulemaking proceedings.

C. Small Entities to Which the Rule Will Apply

The proposed summaries and notices are to be distributed by consumer reporting agencies. The definition of a ''small'' consumer reporting agency is currently one with less than $6 million in average annual receipts (*see http://www.sba.gov/size*). The consumer reporting industry is primarily composed of large national consumer reporting agencies, including the so-called ''nationwide'' consumer reporting agencies and ''nationwide specialty'' consumer reporting agencies, as defined in FCRA Sections 603(p) and 603(w), respectively. The Commission believes that none of these nationwide agencies are ''small'' entities. There are, however, small consumer reporting agencies associated with the nationwide consumer reporting agencies, and there are small independent consumer reporting agencies. Based on the membership of the major consumer reporting agency 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 discussed below, the Commission believes that the large nationwide entities will be responsible for much of the distribution of the summaries and notices. The Commission received no comments on the number of small entities that will be affected.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission's proposal will impose no specific reporting or recordkeeping requirements. Consumer reporting agencies are required by statute, 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 agencies 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 file disclosure made by the agencies. 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 consumer reporting agency or use information obtained from an agency.

The Commission does not believe that the requirements mandated by the FACT Act and discussed in detail in the IRFA analysis will increase in any significant way the burdens already imposed by the FCRA on consumer reporting agencies. Because the Commission is providing the language for the summaries and notices, 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 Commission believes that the major burden of providing the new summary of identity theft rights will fall upon the nationwide consumer reporting agencies that are not small entities. The Commission received no comments on this issue.

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 received no comments on this issue.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities

The Commission invited comment on suggested alternative methods of compliance. While no commenter specifically addressed this issue, a number of industry and finance commenters expressed concerns that it would be burdensome to redistribute the furnisher and user notices. As discussed above, the Commission believes that consumer reporting agencies need deliver these ''interim'' revised user and furnisher notices only to new users and furnishers. Existing users and furnishers can be provided new notices when the Commission makes final revisions to the notices, following completion of the FACT Act rulemaking proceedings.

VIII. Paperwork Reduction Act

In its initial review of the proposed summaries and notices, the Commission considered whether it was ''sponsoring or conducting'' any ''collection[s] of information'' that would trigger the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Commission concluded that it was not and that the proposed summaries and notices fell within the exception to the definition of a ''collection of information'' as ''[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.'' 5 CFR 1320.3(x)(2). Nonetheless, the Commission requested public comment on this matter. No comments were received. Accordingly, the Commission has determined that its actions in this matter will not implicate the Paperwork Reduction Act.

IX. Final Guidance on Model Disclosures

List of Subjects in 16 CFR Parts 601 and 698

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

■ Accordingly, for the reasons set forth above, the FTC amends title 16, Code of Federal Regulations, as follows:

PART 601—[REMOVED AND RESERVED]

■ 1. Part 601 is removed and reserved.

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

PART 698—MODEL FORMS AND DISCLOSURES

■ 3. The authority for Part 698 is revised to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m, and 1681s; section 211(d), Pub. L. 108–159, 117 Stat. 1952.

■ 4. Revise §§ 698.1 and 698.2 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), Public Law 104–208, 110 Stat. 3009–426 (Sept. 30, 1996), and the Fair and Accurate Credit Transactions Act of 2003, Public Law 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.

§ 698.2 Legal effect.

These model forms and disclosures prescribed by the FTC do not constitute a trade regulation rule. The issuance of the model forms and disclosures set forth below carries out the directive in the statute that the FTC prescribe these forms and disclosures. Use or distribution of these model forms and disclosures will constitute compliance with any section or subsection of the FCRA requiring that such forms and disclosures be used by or supplied to any person.

■ 5. Add new § 698.3 to read as follows:

§ 698.3 Definitions.

As used in this part, unless otherwise provided:

(a) *Substantially similar* means that all information in the Commission's prescribed model is included in the document that is distributed, and that the document distributed is formatted in a way consistent with the format prescribed by the Commission. The document that is distributed shall not include anything that interferes with, detracts from, or otherwise undermines the information contained in the Commission's prescribed model.

■ 6. Amend part 698 to add a new Appendix E as follows:

Appendix E to Part 698—Summary of Consumer Identity Theft 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 should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Commission's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

BILLING CODE 6750–01–P

Para informacion en espanol, visite www.consumer.gov/idtheft o escribe a la FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue, N.W. Washington, D.C., 20580.

Remedying the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumer.gov/idtheft or write to: FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue, N.W. Washington, D.C., 20580.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. **You have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file** 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 just 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 in your file.

   - Equifax: 1-800-XXX-XXXX; www.equifax.com
   - Experian: 1-800-XXX-XXXX; www.experian.com
   - TransUnion: 1-800-XXX-XXXX; www.transunion.com

   An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an *identity theft report.* An *identity theft report* includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the *identity theft report*, visit www.consumer.gov/idtheft.

2. **You have the right to free copies of the information in your file (your "file disclosure").** An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your address. Once a year, you also have the right to a free copy of the information in your file

at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.ftc.gov/credit.

3. **You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It also may specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumer.gov/idtheft.

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. **If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your *identity theft report*. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it 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 about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an *identity theft report*.

To learn more about identity theft and how to deal with its consequences, visit www.consumer.gov/idtheft, or write to the FTC. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state attorney general.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.ftc.gov/credit.

■ 7. Amend part 698 to add a new Appendix F as follows:

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. The list of federal regulators that is included in the Commission's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (*e.g.*, dollar amounts, or telephone numbers and addresses of federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Commission's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

BILLING CODE 6750–01–P

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

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 and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, 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 a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** 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.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-800-XXX-XXXX.
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
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 Complaints 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 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
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

■ 8. Amend Part 698 to add a new Appendix G as follows:

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 model 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.

All furnishers subject to the Federal Trade Commission's jurisdiction must comply with all applicable regulations, including regulations promulgated after this notice was prescribed in 2004. Information about applicable regulations currently in effect can be found at the Commission's Web site, www.ftc.gov/credit. Furnishers who are not subject to the Commission's jurisdiction should consult with their regulators to find any relevant regulations.

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

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C. 1681s-2. State law may impose additional requirements on furnishers. 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 text of the FCRA is set forth in full at the Website of the Federal Trade Commission (FTC): www.ftc.gov/credit. A list of the sections of the FCRA cross-referenced to the U.S. Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

Accuracy Guidelines

The banking and credit union regulators and the FTC will promulgate guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. The regulations and guidelines issued by the FTC will be 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 promptly 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 for 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).

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).

The federal banking and credit union regulators and the FTC 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, furnishers must comply with them 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 will be available at www.ftc.gov/credit. Section 623(a)(8).

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 reporting. Section 623(b)(1)(E).

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).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes 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

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The Federal Reserve Board has prescribed model disclosures, 12 CFR Part 222, App. B.

Duties When Furnishing Medical Information

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable 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. A furnisher may not furnish information that a consumer has identified as resulting from identity theft 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 each consumer reporting agency of the correct information and must thereafter report only complete and accurate information. 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 except in certain limited circumstances. Section 615(f).

The FTC's Web site, www.ftc.gov/credit, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681*l*	Section 629	15 U.S.C. 1681y

■ 9. Amend Part 698 to add a new Appendix H as follows:

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.

All users subject to the Federal Trade Commission's jurisdiction must comply with all applicable regulations, including regulations promulgated after this notice was prescribed in 2004. Information about applicable regulations currently in effect can be found at the Commission's Web site, www.ftc.gov/credit. Persons not subject to the Commission's jurisdiction should consult with their regulators to find any relevant regulations.

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

The Fair Credit Reporting Act (FCRA),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 text of the FCRA is set forth in full at the Federal Trade Commission's Website at www.ftc.gov/credit. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Commission's Web site. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

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. Section 604 contains a list of 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 for the purpose of making "prescreened" unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user 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 makes a request 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) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time 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 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 request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

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 with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. 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

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Federal Trade Commission and the banking and credit union regulators. The Federal Trade Commission's regulations will be available at www.ftc.gov/credit.

F. Users Have Obligations When Disposing of Records

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

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations to be jointly prescribed by the Federal Trade Commission and the Federal Reserve Board.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must

provide credit scores and other information about credit scores to applicants, including 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 from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- 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 employee 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 by an entity or person that is a consumer reporting agency. 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 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) 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) 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 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 provided in regulations issued by the banking and credit union regulators) – the consumer must provide specific written consent 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).

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 from a CRA a list of consumers 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.

In addition, once the Federal Trade Commission by rule has established the format, type size, and manner of the disclosure required by Section 615(d), users must be in compliance with the rule. The FTC's regulations will be at www.ftc.gov/credit.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) 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

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government 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.

The FTC's Web site, www.ftc.gov/credit, has more information about the FCRA including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681
Section 603	15 U.S.C. 1681a
Section 604	15 U.S.C. 1681b
Section 605	15 U.S.C. 1681c
Section 605A	15 U.S.C. 1681cA
Section 605B	15 U.S.C. 1681cB
Section 606	15 U.S.C. 1681d
Section 607	15 U.S.C. 1681e
Section 608	15 U.S.C. 1681f
Section 609	15 U.S.C. 1681g
Section 610	15 U.S.C. 1681h
Section 611	15 U.S.C. 1681i
Section 612	15 U.S.C. 1681j
Section 613	15 U.S.C. 1681k
Section 614	15 U.S.C. 1681*l*
Section 615	15 U.S.C. 1681m
Section 616	15 U.S.C. 1681n
Section 617	15 U.S.C. 1681o
Section 618	15 U.S.C. 1681p
Section 619	15 U.S.C. 1681q
Section 620	15 U.S.C. 1681r
Section 621	15 U.S.C. 1681s
Section 622	15 U.S.C. 1681s-1
Section 623	15 U.S.C. 1681s-2
Section 624	15 U.S.C. 1681t
Section 625	15 U.S.C. 1681u
Section 626	15 U.S.C. 1681v
Section 627	15 U.S.C. 1681w
Section 628	15 U.S.C. 1681x
Section 629	15 U.S.C. 1681y

By direction of the Commission.

Donald S. Clark,

Secretary.

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