

13. Alex S. Konigsberg, QC ("Konigsberg"), Lapoint Rosenstein
14. Andrew P. Loewinger ("Loewinger"), Abraham Pressman & Bauer
15. H. Bret Lowell ("Lowell"), Brownstein Zeidman & Lore
16. John Melle ("Melle"), Office of U.S. Trade Representative
17. Raymond L. Miolla ("Miolla"), Burger King Corp.
18. Alec Papadakis ("Papadakis"), Hurt Sinisi Papadakis
19. Matthew R. Shay ("Shay"), International Franchise Association ("IFA")
20. Neil A. Simon ("Simon"), Hogan & Hartson
21. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
22. Greg L. Walther ("Walther"), Outback Steakhouse International
23. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
24. Erik B. Wulff ("Wulff"), Hogan & Hartson
25. Philip F. Zeidman ("Zeidman"), Brownstein Zeidman & Lore
26. Carl Zwisler ("Zwisler"), Keck, Mahin & Cate
- Public Participants
1. Jeff Brams ("Brams"), Sign-A-Rama and Shipping Connection
2. Pamela Mills ("Mills"), Baker & McKenzie
- Attachment 3—Table of Commenters
- Comment 1. Robert E. Mulloy, Jr. ("Mulloy")
- Comment 2. Stanley M. Dub ("Dub"), Dworken & Bernstein
- Comment 3. Marvin J. Migdol ("Migdol"), Nationwide Franchise Marketing Services
- Comment 4. SCPromotions, Inc. ("SCPromotions")
- Comment 5. R. Dana Pennell ("Pennell")
- Comment 6. Robin Day Glenn ("Glenn")
- Comment 7. Jack McBirney ("McBirney"), McGraw Consulting
- Comment 8. SRA International ("SRA International")
- Comment 9. Harold Brown ("Brown"), Brown & Stadfeld
- Comment 10. Ronald N. Rosenwasser ("Rosenwasser")
- Comment 11. Louis F. Sokol ("Sokol")
- Comment 12. J. Howard Beales III ("Beales"), Professor, George Washington University
- Comment 13. Peter Lagarias ("Lagarias")
- Comment 14. Harold L. Kestenbaum ("Kestenbaum")
- Comment 15. Walter D. Wilson ("Wilson"), Better Business Bureau of Central Georgia, Inc.
- Comment 16. Connie B. D'Imperio ("D'Imperio"), Color Your Carpet, Inc.
- Comment 17. Q.M. Marketing, Inc. ("Q.M. Marketing")
- Comment 18. David Gurnick ("Gurnick"), Kindel & Anderson
- Comment 19. U-Save Auto Rental ("U-Save Auto Rental")
- Comment 20. The Longaberger Co. ("Longaberger")
- Comment 21. Direct Selling Association ("DSA")
- Comment 22. American Bar Association, Section of Antitrust Law ("ABA AT")
- Comment 23. Dennis E. Wieczorek ("Wieczorek"), Rudnick & Wolfe
- Comment 24. Real Estate National Network ("RENN") (representing Better Homes and Gardens Real Estate Service; Century 21 Real Estate Corp.; Coldwell Bankers Residential Group; Electronic Realty Associates ("ERA"); Realty World Corp.; Re/Max International; and The Prudential Real Estate Affiliates)
- Comment 25. Attorney General Jim Ryan ("General Ryan"), State of Illinois
- Comment 26. Alan S. Nopar ("Nopar"), Bosco, Blau, Ward & Nopar
- Comment 27. Snap-On, Inc. ("Snap-On")
- Comment 28. Steven Rabenberg ("Rabenberg"), Explore St. Louis
- Comment 29. Douglas M. Brooks ("Brooks"), Martland & Brooks
- Comment 30. Robert N. McDonald ("Commissioner McDonald"), Securities Commissioner, State of Maryland
- Comment 31. Little Caesars ("Little Caesars")
- Comment 32. International Franchise Association ("IFA")
- Comment 33. Brownstein Zeidman & Lore ("Brownstein Zeidman")
- Comment 34. Jere W. Glover ("Glover"), Counsel for Advocacy, U.S. Small Business Administration ("SBA Advocacy")
- Comment 35. Jan Meyers ("Representative Meyers"), Chair, House Committee on Small Business
- Comment 36. Neil A. Simon ("Simon"), Hogan & Hartson
- Comment 37. Deborah Bortner ("Bortner"), Washington State Department of Financial Institutions, Securities Division
- Comment 38. American Franchise Association ("AFA")
- Comment 39. American Association of Franchisees & Dealers ("AAFD")
- Comment 40. Warren Lewis ("Lewis"), Lewis & Trattner
- Comment 41. Century 21 Real Estate Corp. ("Century 21")
- Comment 42. John Hayden ("Hayden")
- Comment 43. North American Securities Administrators Association, Inc. ("NASAA")
- Comment 44. Robert L. Perry ("Perry")
- Comment 45. The State Bar of California, Business Law Section ("CA BLS")
- Comment 46. Mike Gaston ("Gaston"), Barkley & Evergreen
- Comment 47. The Southland Corporation ("Southland")
- Comment 48. Medicap Pharmacies, Inc. ("Medicap")
- Comment 49. Rochelle B. Spandorf ("Spandorf"), ABA Forum on Franchising, Andrew C. Selden ("Selden"), David J. Kaufmann ("Kaufmann")
- Comment 50. Joyce G. Mazer ("Mazer"), Locke Purnell Rain Harrell
- Comment 51. Mark B. Forseth ("Forseth"), Locke Purnell Rain Harrell
- Comment 52. Forte Hotels ("Forte Hotels")
- Comment 53. R.A. Politte ("Politte")
- Comment 54. Politte (*see supra*, Comment 53)
- Comment 55. Brown (*see supra*, Comment 9)
- Comment 56. Wieczorek (*see supra*, Comment 23)
- Comment 57. Scott Shane ("Shane"), Georgia Institute of Technology
- Comment 58. Friday's
- Comment 59. Carl E. Zwisler ("Zwisler"), Keck, Mahin & Cate
- Comment 60. Wieczorek (*see supra*, Comment 23)
- Comment 61. Enrique A. Gonzalez ("Gonzalez"), Gonzalez Calvillo Y Forastiere
- Comment 62. Pepsico Restaurants International ("Pepsico")
- Comment 63. IFA (*see supra*, Comment 32)
- Comment 64. Atlantic Richfield Company ("ARCO")
- Comment 65. David Clanton ("Clanton")
- Comment 66. Leonard Swartz ("Swartz"), Arthur Andersen & Co.
- Comment 67. John R.F. Baer ("Baer"), Keck, Mahin & Cate
- Comment 68. Lynn Scott ("Scott")
- Comment 69. Eversheds ("Eversheds")
- Comment 70. Brownstein Zeidman (*see supra*, Comment 33)
- Comment 71. Penny Ward ("Ward"), Baker & McKenzie
- Comment 72. Matthias Stein ("Stein")
- Comment 73. Byron Fox ("Fox"), Hunton & Williams
- Comment 74. Papa Johns Pizza ("Papa Johns")
- Comment 75. Harold L. Kestenbaum (*see supra*, Comment 14)

[FR Doc. 97-4988 Filed 2-27-97; 8:45 am]

BILLING CODE 6750-01-P

**16 CFR Part 601****Proposed Notices of Rights and Duties Under the Fair Credit Reporting Act****AGENCY:** Federal Trade Commission.**ACTION:** Publication of proposed guidance for forms, and request for public comment.

**SUMMARY:** The Federal Trade Commission is publishing for public comment three notices that it is required to prescribe under recent amendments to the Fair Credit Reporting Act. Under those amendments, which become effective September 30, 1997, consumer reporting agencies will be required to provide: A summary of rights under the law to consumers; a notice of responsibilities under the law to parties who regularly furnish such agencies with consumer information, and a notice of responsibilities under the law to parties who obtain consumer reports from the agency. Under the statute, a consumer reporting agency will be in compliance with these requirements if it provides notice forms substantially similar to those prescribed by the Commission.

**DATES:** Comments must be received on or before March 31, 1997.**ADDRESSES:** Comments should be addressed to: Office of the Secretary,

Federal Trade Commission, Room H-159, Sixth Street and Pennsylvania Avenue NW, Washington, DC 20580. Submissions should be marked "Proposed Notices of Rights and Duties under the Fair Credit Reporting Act, 16 CFR Part 601—Comment."

**FOR FURTHER INFORMATION CONTACT:** Clarke Brinckerhoff or William Haynes, Attorneys, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, 202-326-3224.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

A major revision of the Fair Credit Reporting Act ("FCRA") was included in the Omnibus Consolidated Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208), signed by the President on September 30, 1996. The revisions of the FCRA are set forth in a portion of the omnibus bill (Title II, Subtitle D, Chapter 1), the "Consumer Credit Reporting Reform Act of 1996" (CCRRA). The provisions discussed in this publication become effective on September 30, 1997.

The amended FCRA requires each consumer reporting agency ("CRA," usually a credit bureau) to provide certain notices, and mandates that the Federal Trade Commission ("Commission" or "FTC") prescribe the content of all three notices and the form of one notice.

The FCRA amendments require each CRA to provide as part of its file disclosure to consumers a written summary of consumer rights ("summary" or "consumer summary") under the FCRA (CCRRA Section 2408(d), FCRA Section 609(c)).<sup>1</sup> Section 2408(d)(1) of the CCRRA adds a new Section 609(c) to the FCRA that describes the required summary of consumer rights and the FTC's mandate with respect to it. The new section specifies certain items that must be in the summary, requires the Commission to prescribe the form and content of the disclosure, and states that the provision will not take effect until the Commission has prescribed the summary.

Each CRA must also provide a notice of responsibilities under the FCRA to persons who buy consumer information from the CRA ("user notice"), and a notice of responsibilities under the FCRA to persons who regularly furnish

consumer information to the CRA ("furnisher notice") (CCRRA Section 2407(b), FCRA Section 607(d)(1)). The amended law states that the "Commission shall prescribe the content of the notices" to be provided (FCRA Section 607(d)(2)).

For each of the three required disclosures, a CRA complies with the law if it provides the applicable person with a notice that is substantially similar to that prescribed by the Commission (FCRA Sections 607(d)(2) and 609(c)(3)).

**II. Opportunity for Public Comment**

The Commission welcomes comments related in any way to the proposed consumer summary, user notice, or furnisher notice. The Commission is particularly interested in comments in the following areas.

**A. Consumer Summary**

**1. Balancing brevity and completeness**

The statute gives conflicting guidance as to whether the summary should be brief or comprehensive. It is described as a "summary of all the rights the consumer has under" the FCRA (Section 609(c)(1)(A)) that includes "a brief description of \* \* \* all rights of consumers" provided by that law (Section 609(c)(2)(A)). Arguably, no document that is actually a "summary"—or that constitutes a "brief description" of FCRA consumer rights—could literally include "all" of them. The proposal seeks to meet these various statutory goals by prescribing a summary that is both reasonably comprehensive and user friendly for consumers. Is the proposed notice too long in any way to be effective as a summary, and if so, how should it be abbreviated? Conversely, are there important consumer rights that are not included in the proposed form or are discussed too briefly? Please identify any specific sections of the proposed summary that are viewed as too lengthy or incomplete.

**2. Statutorily-required items**

Section 609(c)(2) mandates that the summary include an explanation of how the consumer may assert his or her rights, list all federal agencies with administrative authority under the FCRA in a form that will help consumers find the appropriate agency, and include specific statements concerning (1) state laws and authorities that may assist consumers, and (2) the fact that verifiable accurate information that is not outdated under Section 605 need not be removed. Are the statutorily-required items accurately

and understandably presented? In what way, if any, could they be improved? Specifically, the Commission has drafted the table of federal agencies at the end of the summary to comply literally with Section 609(c)(2)(C) by including all agencies granted enforcement authority by Section 621(b)(1). Is what way, if any, could this table be shortened or made more understandable?

**3. Terminology**

Because the summary is a document intended to inform consumers, the proposal is written in non-technical language, to the extent it is possible to do so and also include in sufficient detail the large number of important consumer rights conferred by the FCRA. Are there sections which can be improved by simplifying the presentation to make it easier for consumers to understand? Are there sections where the language does not accurately convey the substance of the provision? How could such sections be improved?

**4. Form issues**

The Commission is required to "prescribe the form and content of" the consumer summary (Section 609(c)(3)) (emphasis added). The goal is to create a notice that sets forth all statutorily required items in a form that is readable, understandable, and attractive. The Commission proposes to prescribe that the text be provided on paper no smaller than 8½x11 inches in size, in type size no smaller than 12-point type (8-point for the chart of federal agencies), in a document separate from the consumer report. Generally, is there a format that would better convey the same information to consumers? If so, what is it and what costs would it entail? Is there a format that would convey the same information to consumers in a less expensive manner? If so, what is it and what cost saving would it achieve?

**5. Numeric changes**

The Commission realizes that some of the numbers in the notice may change over time. For example, the permissible charges for file disclosures or telephone numbers of agencies may change. Such changes will be incorporated in any revisions to the summary the Commission may prescribe from time to time. In addition, the Commission proposes that all notices issued prior to such revisions that contain accurate and updated information concerning numeric changes will be considered "substantially similar" to the prescribed notice as to those items. Is there a better way to accommodate such changes?

<sup>1</sup> The CRA must also provide the consumer summary to any party to whom it provides a consumer report for employment purposes (CCRRA Section 2403(b), FCRA Section 604(o)(1)(B)), and the employer must in turn provide the report and the summary to the consumer before taking adverse action against him or her (FCRA Section 604(o)(3)).

## B. Furnisher Notice

### 1. Content of notice

The proposed notice summarizes the responsibilities imposed upon furnishers of information to CRAs by Section 623 of the FCRA. Are all statutory obligations of furnishers included? Is the presentation accurate and understandable? In what way can it be improved? Is it sufficient for the notice to refer furnishers to the complete text of the FCRA at the Internet web site maintained by the Commission, or would the notice be improved if it was expanded to add the complete text of Section 623?

### 2. Scope of notice

The FCRA directs the Commission to prescribe a notice setting forth the responsibilities of any party "who regularly and in the ordinary course of business furnishes (consumer) information to the agency" and requires each CRA to provide the notice to all such parties (CCRRA Section 2407(b), FCRA Section 607(d)). Two of the listed duties apply only to parties who furnish information to CRAs regularly, and thus by inference, not to occasional information providers. Would some CRAs send these notices to occasional as well as regular furnishers? If so, would addition of a reference to the duties of occasional, as well as regular, providers be helpful?

### 3. Terminology

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

## C. User Notice

### 1. Number of Notices

The "users" of consumer reports fall into a number of categories, and the duties imposed by the FCRA vary by user category. Accordingly, CRAs could send out one notice to all users setting forth all of the user requirements of the FCRA or they could send out notices that contain only those responsibilities that pertain to the particular user. The Commission is proposing a single notice, which first specifies the general responsibilities that apply to all users of consumer reports from a CRA (Part I). The proposed notice then lists the responsibilities that are specific to

certain categories of users: users of consumer reports for employment purposes (Part II); users of investigative consumer reports (Part III); users of medical information (Part IV); users of "prescreened" lists (Part V); and users who are resellers (Part VI). Should there be a single notice or multiple notices? If multiple notices are appropriate, which types of users should receive particularized notices? Can CRAs easily determine through the certifications they receive from users which portions of the proposed notice are applicable to which users?

### 2. Content of notice

The proposed notice discusses the principal portions of the FCRA that impose specific obligations upon all those who receive consumer reports and has included these in the six parts of the proposed notice. Are there other statutory requirements that should be included? Should additional information be included in the notice? Will the length of the notice impose substantial burdens upon CRAs? Are there ways to modify the notice to reduce this burden?

### 3. Terminology

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

## D. Timing of Distribution of Notices

With respect to the consumer summary, Section 609(c) makes clear that it must be provided every time a CRA makes a written file disclosure under the section. With respect to the furnisher and user notices, however, Section 607(d) provides no specific guidance. Is there a need for advice from the Commission about the timing of the distribution of furnisher and user notices to ensure that the documents are distributed in such a way that they are meaningful and effective? If so, when should the notices be distributed? Should the distribution of the user notice vary based on the recipient's status (e.g., regular and occasional users)?

## E. Impact on Small Businesses

The Commission is seeking comments on the impact that its prescription of these notices will have on small entities and for suggestions as to any ways in which the Commission can both meet its obligations under the FCRA and, if possible, lessen any burden imposed on small businesses.

The FCRA itself requires three types of notices containing specified types of information, and also specifies how one type (the consumer notices) must be distributed. Accordingly, this discussion does not cover the necessity for any of the notices or the distribution requirements for the consumer notices.

The Commission is prescribing these notices at the direction of Congress. The purpose of these notices is described in section I above. There is no requirement that the notices used be exactly as prescribed by the Commission. Rather, there is a presumption of compliance with the FCRA if notices are used that are substantially similar to those prescribed by the Commission. (FCRA Sections 607 and 609).

A search of proprietary data bases has revealed approximately 500 consumer reporting agencies that have sales of \$5 million or less per year—the threshold for "small" credit reporting businesses as defined by the Small Business Administration. However, because the consumer reporting industry is dominated by a number of large companies who provide most of the information sold by smaller entities in the industry, the Commission believes that most of these 500 companies either are affiliated, or have contractual arrangements, with one of the large consumer reporting agencies in the industry. These large agencies, as well as industry trade associations, may make information about the notice requirements and the Commission's prescribed forms available to the smaller entities. The Commission's staff plans to make information about complying with the new FCRA requirements available through various means, including placing the prescribed forms on the Commission's Internet home page.

The FCRA imposes no specific record keeping or reporting requirements directly tied to the use of the notices prescribed by the Commission. In addition, there are no federal rules or regulations that conflict with or duplicate the notices prescribed by the Commission.

In these circumstances, the Commission does not believe that the prescription of the notices will have a significant economic impact upon small business. In fact, the Commission's "prescription" of these notices may lessen the burden on small businesses, since these entities can—but need not—adopt the Commission's forms and thereby avoid the risk and expense of developing their notices independently. To ensure that no significant economic impact is overlooked, however, the Commission seeks comments on this issue. The Commission also seeks

comments on possible alternatives to the language of the proposed notices to accomplish the stated objectives within the statutory framework. Specifically, what benefits and costs to consumers and businesses would result from the proposed notices? Would the proposed notices have a significant economic impact on a substantial number of small business entities? If so, explain the nature of any such impact.

#### F. Firm Timetable for Comments

The FTC intends to move promptly in order to allow time for (1) the staff to review and consider comments on the proposed summary and notices, (2) the agency to prescribe them in final form, and (3) the industry to prepare and use the final versions of the documents when the amendments take effect on September 30, 1997. The public should therefore anticipate no extension of the 30-day comment period.

### III. Review under the Paperwork Reduction Act

The FTC has reviewed the three notices that the FCRA amendments require it to prescribe—the Summary of FCRA Rights, the Notice of User Obligations, and the Notice of Furnisher Obligations—for the purpose of determining whether the agency will “conduct or sponsor” any “collection(s) of information” as these terms are defined in the OMB regulation that implements the Paperwork Reduction Act (44 U.S.C. Chapter 35) (“PRA”), 5 C.F.R. Part 1320.

#### A. Conduct or Sponsor

The purpose of the PRA is to minimize the Federal paperwork burden that agencies impose on individuals, businesses, State and local governments, and others by collecting unnecessary or duplicative information. 44 U.S.C. Section 3501; 5 C.F.R. § 1320. Thus, an agency must seek and obtain clearance from OMB before it “conducts or sponsors” a “collection of information” from ten or more persons during a 12 month period. 44 U.S.C. Section 3507; 5 C.F.R. 1320.5.

The FCRA amendments require the credit reporting agencies to provide relevant parties with a Notice of User Obligations and a Notice of Furnisher Obligations that describe certain investigation, disclosure, and recordkeeping requirements. The amendments further require the FTC to prescribe the “content” of the notices. So doing will not trigger the application of the PRA. The PRA is triggered when an agency “conduct[s] or sponsor[s]” a collection of information. The investigation, disclosure, and

recordkeeping requirements described in the User and Furnisher Notices are imposed by the statute and the notices merely describe the requirements of the new FCRA. Further, the requirements contained in the notices become effective on October 31, 1997, regardless of whether the FTC has provided the language for these forms by that time.

The FCRA amendments also require the Commission to prescribe the content and form of a new Summary of Consumer Rights that must be provided to consumers. Because the amended FCRA further provides that: “[n]o disclosures shall be required under this subsection [discussing the Summary of Consumer Rights] until the date on which the Federal Trade Commission prescribes the form and content of such disclosures \* \* \*,” it could be argued that the Commission’s actions in prescribing the manner and content of the Summary of Consumer Rights may be considered to “require” or “cause” the disclosures to occur. Nevertheless, as discussed below, we have determined that none of these notices constitute a “collection of information.”

#### B. Collection of Information

Because the three notices to be prescribed by the Commission contain information that must be distributed to third parties, these documents involve public disclosures that would otherwise constitute “collections of information” under the PRA. However, OMB has recognized that some disclosures do not entail the “collection of information” and are thus outside the Act’s paperwork control provisions. Specifically relevant here is OMB’s determination that a disclosure requirement is not a “collection of information” when the information to be disclosed is supplied by the government. 5 C.F.R. 1320.3(c)(2). In such a situation, a mandate to disclose does not impose any requirement to collect the information to be disclosed.

The information in the proposed FCRA notices will be supplied by the government. The proposed notices supply all the information that subject firms will be required to disclose. The FCRA requires credit reporting agencies to provide these (or substantially similar) notices. FCRA Sections 607(d)(2) and 609(c)(3). The latitude provided by the statute to use language other than the precise language prescribed by the FTC does not undercut this concept because the consumer reporting agencies can simply adopt these notices for distribution without any change to the language. We have concluded therefore that these notices do not fall within the definition

of “collection of information” because they are “[t]he public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public \* \* \*” 5 C.F.R. § 1320.3(c)(2). Thus, the PRA does not apply.

#### List of Subjects in 16 CFR Part 601

Credit, Trade practices.

Pursuant to 15 U.S.C. 1681g and 1681s, the FTC hereby proposes to add to Subchapter F of Chapter I of 16 CFR a new Part 601 to read as follows:

### **PART 601—SUMMARY OF CONSUMER RIGHTS, NOTICE OF USER RESPONSIBILITIES, AND NOTICE OF FURNISHER RESPONSIBILITIES UNDER THE FAIR CREDIT REPORTING ACT**

Sec.

601.1 Authority and purpose.

601.2 Legal effect.

Appendix A to Part 601—Prescribed

Summary of Consumer Rights

Appendix B to Part 601—Prescribed Notice of Furnisher Responsibilities

Appendix C to Part 601—Prescribed Notice of User Responsibilities

Authority: 15 U.S.C. 1681g and 1681s.

#### **§ 601.1 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 most recently 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)).

(b) *Purpose.* The purpose of this part is to comply with sections 607(c) and 609(c) of the Fair Credit Reporting Act, as amended. Section 609(c)(3) directs the FTC to prescribe the form and content of a summary of consumers’ legal rights under the FCRA that the amended law requires each consumer reporting agency to provide when disclosing the information in its file to consumers, and section 609(c)(4) provides that the summary need not be provided until the FTC has in fact prescribed its form and content. Section 607(d)(2) directs the FTC to prescribe the content of notices that consumer reporting agencies are required to provide to parties that supply information to, or purchase consumer reports from, the agency. These notices will set forth the responsibilities under the FCRA of all persons who furnish information to consumer reporting agencies or use information subject to the FCRA.

**§ 601.2 Legal effect.**

The forms prescribed by the FTC do not constitute a trade regulation rule. They carry out the directive in the statute that the FTC prescribe the summary and notices. A consumer reporting agency that provides notices substantially similar to those prescribed by the FTC will be in compliance with

Section 607(d) or 609(c) of the FCRA, as applicable.

**Appendix A to Part 601—Prescribed Summary of Consumer Rights**

The prescribed form for this summary is as a separate document, on paper no smaller than 8½x11 inches in size, with text no less than 12-point type (8-point for the chart of federal agencies), in bold or capital letters as indicated. The form in this appendix

prescribes both the content and the sequence of items in the required summary. A consumer reporting agency that is not required by law to have a toll-free number may omit the sentence inviting consumers to call that number. A summary may accurately reflect changes in numerical items that change over time (e.g., dollar amounts, or phone numbers and addresses of federal agencies), and remain in compliance.

**BILLING CODE 6750-01-P**

### **A Summary of Your Rights Under the Fair Credit Reporting Act**

The Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as where you work and live, if you pay your bills on time, and whether you've been sued, arrested, or filed for bankruptcy -- to creditors, employers, and other businesses. The FCRA gives you specific rights in dealing with CRAs, and requires them to provide you with a summary of these rights as listed below. You can find the complete text of the FCRA, 15 U.S.C. 1681 et seq., at the Federal Trade Commission's web site (<http://www.ftc.gov>).

- ◆ **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must give you the name, address, and phone number of the CRA that provided the report.
- ◆ **You can find out what is in your file.** A CRA must give you all the information in your file, and a list of everyone who has requested it recently. However, you are not entitled to a "risk score" or a "credit score" that is based on information in your file. There is no charge for the report if your application was denied because of information supplied by the CRA, and if you request the report within 60 days of receiving the denial notice. You are also entitled to one free report a year if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you a fee of up to eight dollars.
- ◆ **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must reinvestigate the items (usually within 30 days) unless your dispute is frivolous. The CRA must pass along to its source all relevant information you provided. The CRA also must supply you with written results of the investigation and a copy of your report, if it has changed. If an item is altered or deleted because you dispute it, the CRA cannot place it back in your file unless the source of the information verifies its accuracy and completeness, and the CRA provides you a written notice that includes the name, address and phone number of the source.
- ◆ **Inaccurate information must be deleted.** A CRA must remove inaccurate information from its files, usually within 30 days after you dispute its accuracy. The largest credit bureaus must notify other national CRAs if items are altered or deleted. However, the CRA is not required to remove data from your file that is accurate unless it is outdated or cannot be verified.
- ◆ **You can dispute inaccurate items with the source of the information.** If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, they may not continue to report it if it is in fact an error.
- ◆ **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.

- ◆ **Access to your file is limited.** A CRA may provide information about you only to those who have a need recognized by the FCRA -- usually to consider an application you have submitted to a creditor, insurer, employer, landlord, or other business.
- ◆ **Your consent is required for reports that are provided to employers or that contain medical information.** A CRA may not report to your employer, or prospective employer, about you without your written consent. A CRA may not divulge medical information about you without your permission.
- ◆ **You can stop a CRA from including you on lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free number for you to call and tell the CRA if you want your name and address excluded from future lists or offers. If you notify the CRA through the toll-free number, it must keep you off the lists for two years. If you request and complete the CRA form provided for this purpose, you can have your name and address removed indefinitely.
- ◆ **You may seek damages from violators.** You may sue a CRA or other party in state or federal court for violations of the FCRA. If you win, the defendant may have to pay damages and reimburse you for attorney fees. If you lose and the court specifically finds you sued in bad faith, you or your attorney may have to pay the defendant's fees.

You may have additional rights under state law. You may wish to contact a state or local consumer protection agency or a state attorney general to learn those rights.

If you have questions or believe your file contains errors, call our toll-free number \_\_\_\_\_

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

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, creditors and others not listed below	Federal Trade Commission Bureau of Consumer Protection - FCRA Washington, DC 20580 * 202-326-xxxx
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 * 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 * 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 * 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 * 703-518-6360
Banks that are state-chartered, or are not Federal Reserve System members	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 * 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 * 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 * 202-720-7051

## **Appendix B to Part 601 - Prescribed Notice of Furnisher Responsibilities**

The appendix prescribes the content of the required notice.

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

The Fair Credit Reporting Act (FCRA) has been amended to impose responsibilities on all persons who furnish information to consumer reporting agencies. These responsibilities are found in Section 623 of the FCRA. All information furnishers should become familiar with the law and may want to consult with their counsel to ensure that they are in compliance. The FCRA, 15 U.S.C. 1681 et seq., is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>). Section 623 imposes the following duties:

#### **General Prohibition on Reporting Inaccurate Information:**

The FCRA prohibits information furnishers from providing information to a consumer reporting agency (CRA) that they know (or consciously avoid knowing) is inaccurate. However, if a furnisher clearly and conspicuously discloses an address to consumers to which disputes may be directed, the furnisher is not subject to this general prohibition. *Sections 623(a)(1)(A) and (a)(1)(C)*

#### **Duty to Correct and Update Information:**

If at any time a furnisher determines that information provided to a CRA is not complete or accurate, the furnisher must provide complete and accurate information to that agency. 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 the address specified by the furnisher for such notices, that specific information is inaccurate, and the information is in fact inaccurate, the furnisher must thereafter report the correct information to CRAs. *Section 623(a)(1)(B)*

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

#### **Duties After Notice of Dispute from Consumer Reporting Agency:**

If a CRA notifies a furnisher that a consumer disputes 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. *Sections 623(b)(1)(A) and (b)(1)(B)*

- Report the results to the CRA, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs that received the information and that compile and maintain files on a nationwide basis. *Sections 623(b)(1)(C) and (b)(1)(D)*
- Do the above within the time period set in the FCRA for the CRA itself to review and correct any inaccuracies, which is 30 days (unless the consumer provides relevant additional information during the 30 days, in which case the time period is 45 days). *Section 623(b)(2)*

**Duty to Report Voluntary Closing of Accounts:**

When a consumer voluntarily closes an account, the furnisher 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, provide the CRA with the month and the year that the delinquency commenced so that the agency will know how long to keep the information in the consumer's file. *Section 623(a)(5)*

## Appendix C to Part 601 - Prescribed Notice of User Responsibilities

The appendix prescribes the content of the required notice.

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

The Fair Credit Reporting Act (FCRA) requires that this notice be sent to inform users of consumer reports of their legal obligations. The following is a summary of the responsibilities imposed by the FCRA. The FCRA, 15 U.S.C. 1681 et seq., is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

#### 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 of the FCRA contains a list of the permissible purposes under the law. These are:

- As permitted by order of a court or a federal grand jury subpoena. *Section 604(a)(1)*
- For any purpose if the consumer gives permission 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 of, or an assessment of, the credit or repayment 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 unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.

### **B. Users Must Provide Certifications**

Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person certifies 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 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact -- such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, and denying employment or promotion.

#### **1. Adverse Actions Based on Consumer Reports**

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

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

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

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

If a person takes an adverse action in connection with a credit transaction for personal, family, or household purposes that is based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making 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 credit, insurance, or employment 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 notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. (Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and information obtained in a consumer report from an affiliate are not covered by Section 615(b)(2).)

## **II. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES**

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 prior written authorization from the consumer.
- 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 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, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

### **III. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS**

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer 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 must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)

- 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 that was requested. 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.

### **IV. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION**

Section 604(g) of the FCRA prohibits consumer reporting agencies from providing consumer reports that contain medical information for employment purposes, or in connection with credit or insurance transactions, without the specific prior consent of the consumer who is the subject of the report. In the case of medical information being sought for employment purposes, the consumer must explicitly consent to the release of the medical information in addition to authorizing the obtaining of a consumer report generally.

## V. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. *Sections 603(l), 604(c), 604(e), and 615(d)* This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and 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 the consumer's 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 is not able to 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. This statement must include the address and toll-free telephone number of the appropriate notification system.

## VI. OBLIGATIONS OF RESELLERS

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

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

---

## VII. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal 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*

By direction of the Commission.

Donald S. Clark,

*Secretary.*

[FR Doc. 97-4987 Filed 2-27-97; 8:45 am]

BILLING CODE 6750-01-C