

Federal Trade Commission

§ 609.2

1022.3, “Fair Credit Reporting (Regulation V).”

PART 604—FAIR CREDIT REPORTING ACT RULES

AUTHORITY: Pub. L. 108–159, secs. 3, 111, 112, 114, 151, 153, 211, 212, 213, 214, 216, 311, 315; 15 U.S.C. 1681s.

SOURCE: 69 FR 29063, May 20, 2004, unless otherwise noted.

§ 604.1 Severability.

All parts and subparts of this subchapter are separate and severable from one another. If any part or subpart is stayed or determined to be invalid, the Commission intends that the remaining parts and subparts shall continue in effect.

PART 609—FREE ELECTRONIC CREDIT MONITORING FOR ACTIVE DUTY MILITARY

Sec.

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AUTHORITY: 15 U.S.C. 1681c–1(k).

SOURCE: 84 FR 31191, July 1, 2019, unless otherwise noted.

§ 609.1 Scope of regulations in this part.

This part implements Section 605A(k)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681c–1(k)(2), which requires consumer reporting agencies that compile and maintain files on consumers on a nationwide basis to provide a free electronic credit monitoring service to active duty military consumers that, at a minimum, notifies them of any material additions or modifications to their files.

§ 609.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Active duty military consumer* means:

(1) A consumer in military service as defined in 15 U.S.C. 1681a(q)(1); or

(2) A member of the National Guard as defined in 10 U.S.C. 101(c).

(b) *Appropriate proof of identity* has the meaning set forth in 12 CFR 1022.123.

(c) *Consumer* has the meaning provided in 15 U.S.C. 1681a(c).

(d) *Consumer report* has the meaning provided in 15 U.S.C. 1681a(d).

(e) *Contact information* means information about a consumer, such as a consumer’s first and last name and email address, that is reasonably necessary to collect in order to provide the electronic credit monitoring service.

(f) *Credit* has the meaning provided in 15 U.S.C. 1681a(r)(5).

(g) *Electronic credit monitoring service* means a service through which nationwide consumer reporting agencies provide, at a minimum, electronic notification of material additions or modifications to a consumer’s file and following a notification, access to all information in the consumer’s file at the nationwide consumer reporting agency at the time of the notification, in accordance with 15 U.S.C. 1681g(a).

(h) *Electronic notification* means:

(1) A notice provided to the consumer via:

- (i) Mobile application;
- (ii) Email; or
- (iii) Text message;

(2) If the notice in paragraph (h)(1) of this section does not inform the consumer of the specific material addition or modification that has been made, such notice must link to a website that provides that information.

(i) *File* has the meaning provided in 15 U.S.C. 1681a(g).

(j) *Firm offer of credit* has the meaning provided in 15 U.S.C. 1681a(l).

(k) *Free* means provided at no cost to the consumer.

(l) *Material additions or modifications* means significant changes to a consumer’s file, including:

(1) New accounts opened in the consumer’s name, including new collection accounts;

(2) Inquiries or requests for a consumer report;

(i) However, an inquiry made for a prescreened list obtained for the purpose of making a firm offer of credit or

insurance as described in 15 U.S.C. 1681b(c)(1)(B) or for the purpose of reviewing or collecting an account of the consumer shall not be considered a material addition or modification.

(ii) [Reserved]

(3) Material changes to a consumer's address;

(4) Changes to credit account limits of \$100 or greater; and

(5) Negative information.

(m) *Nationwide consumer reporting agency* has the meaning provided in 15 U.S.C. 1681a(p).

(n) *Negative information* means accounts furnished to the nationwide consumer reporting agencies as more than 30 days delinquent, accounts furnished to the nationwide consumer reporting agencies as being included in bankruptcy petition filings, and new public records, including, but not limited to, bankruptcy filings, civil court judgments, foreclosures, liens, and convictions.

§ 609.3 Requirement to provide free electronic credit monitoring service.

(a) *General requirements.* Nationwide consumer reporting agencies must provide a free electronic credit monitoring service to active duty military consumers.

(b) *Determining whether a consumer must receive electronic credit monitoring service.* Nationwide consumer reporting agencies may condition provision of the service required under paragraph (a) of this section upon the consumer providing:

(1) Appropriate proof of identity;

(2) Contact information; and

(3) Appropriate proof that the consumer is an active duty military consumer.

(c) *Appropriate proof of active duty military consumer status.* (1) A consumer's status as an active duty military consumer can be verified through:

(i) A method or service approved by the Department of Defense; or

(ii) A certification of active duty military consumer status approved by the nationwide consumer reporting agency.

(2) Provided, however, that the procedures a nationwide consumer reporting agency uses to determine appropriate

proof of active duty military consumer status must include methods that allow all eligible consumers to enroll. A nationwide consumer reporting agency shall be deemed in compliance with paragraph (c) of this section if it provides free electronic credit monitoring services to:

(i) Consumers who self-certify active duty status, as defined in 10 U.S.C. 101(d);

(ii) Consumers who self-certify that they are a reservist performing duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13); and

(iii) Consumers who self-certify that they are a member of the National Guard, as defined in 10 U.S.C. 101(c).

(3) A nationwide consumer reporting agency's verification of active duty military consumer status is valid for two years. After the expiration of the two-year period, the nationwide consumer reporting agency may require the consumer to provide proof that the consumer continues to be an active duty military consumer in accordance with paragraphs (c)(1) and (2) of this section.

(d) *Information use and disclosure.* Any information collected from consumers as a result of a request to obtain the service required under paragraph (a) of this section, may be used or disclosed by the nationwide consumer reporting agency only:

(1) To provide the free electronic credit monitoring service requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for the free electronic credit monitoring service;

(3) To comply with applicable legal requirements; or

(4) To update information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e) *Communications surrounding enrollment in electronic credit monitoring service.* (1) Once a consumer is in the process of accessing the ability to enroll in the service required under paragraph (a) of this section and only during the enrollment process, any advertising or marketing for products or services, or any communications or instructions that advertise or market any products and services, must be delayed until after the consumer has enrolled in that service.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of providing a free electronic credit monitoring service to active duty military consumers that notifies them of any material additions or modifications to their files.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) Materials that represent, expressly or by implication, that an active duty military consumer must purchase a paid product or service in order to receive the service required under paragraph (a) of this section; or

(ii) Materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of the free electronic credit monitoring service, such as identity theft insurance, is free, or that fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(f) *Other prohibited practices.* A nationwide consumer reporting agency shall not ask or require an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service, other than those terms or conditions required to comply with applicable legal requirements.

§ 609.4 Timing of electronic credit monitoring notices.

The notice required in § 609.3(a) must be provided within 48 hours of any material additions or modifications to a consumer's file.

§ 609.5 Additional information to be included in electronic credit monitoring notices.

(a) The notice required in § 609.3(a), or the first page within the electronic credit monitoring service to which the notice may direct the consumer, shall include a hyperlink to a summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

(b) The nationwide consumer reporting agency shall provide to a consumer, with each file disclosure provided in § 609.3(a), the summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

§ 609.6 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed, or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 610—FREE ANNUAL FILE DISCLOSURES

AUTHORITY: 15 U.S.C. 1681a, g, and h; sec. 211(a) and (d), Pub. L. 108-159, 117 Stat. 1968 and 1972 (15 U.S.C. 1681j); Pub. L. 111-24.

SOURCE: 77 FR 22203, Apr. 13, 2012, unless otherwise noted.

§ 610.1 Cross-reference.

The rules formerly at 16 CFR part 610 have been republished by the Consumer Financial Protection Bureau at 12 CFR 1022.130, "Fair Credit Reporting (Regulation V)."

PART 611—PROHIBITION AGAINST CIRCUMVENTING TREATMENT AS A NATIONWIDE CONSUMER REPORTING AGENCY

AUTHORITY: Pub. L. 108-159, sec. 211(b); 15 U.S.C. 1681x.

SOURCE: 77 FR 22203, Apr. 13, 2012, unless otherwise noted.