

person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

2002—Subsec. (h). Pub. L. 107-306 designated existing provisions as par. (1) and added par. (2).

2001—Pub. L. 107-56, §505(c), which directed amendment of section 624 of the Fair Credit Reporting Act, was executed by making the amendment to this section to reflect the probable intent of Congress and the renumbering of section 624 as 625 by section 358(g)(1)(A) of Pub. L. 107-56. See below.

Subsec. (a). Pub. L. 107-56, §505(c)(1), inserted “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director” after “Investigation, or the Director’s designee” and substituted “in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” for pars. (1) and (2) requiring determination in writing that the information requested is necessary for the conduct of an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe that the consumer is a foreign power or a person who is not a United States person and is an official of a foreign power, or that the consumer is an agent of a foreign power and is engaging or has engaged in an act of international terrorism or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

Subsec. (b). Pub. L. 107-56, §505(c)(2), inserted “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director” after “signed by the Director or the Director’s designee” and substituted “in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” for pars. (1) and (2) requiring determination in writing that the information requested is necessary to the conduct of an authorized counterintelligence investigation and that there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power.

Subsec. (c). Pub. L. 107-56, §505(c)(3), inserted “in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director” after “designee of the Director” and substituted “in camera that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” for pars. (1) and (2) requiring a showing in camera that the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation and there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought is an agent of a foreign power and is engaging or has engaged in an act of international terrorism or in clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 358(g)(1)(A) of Pub. L. 107-56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107-56, set out as a note under section 1829b of this Title 12, Banks and Banking.

§ 1681v. Disclosures to governmental agencies for counterterrorism purposes

(a) Disclosure

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer’s file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency’s conduct or such investigation, activity or analysis and that includes a term that specifically identifies a consumer or account to be used as the basis for the production of such information.

(b) Form of certification

The certification described in subsection (a) shall be signed by a supervisory official designated by the head of a Federal agency or an officer of a Federal agency whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate.

(c) Prohibition of certain disclosure

(1) Prohibition

(A) In general

If a certification is issued under subparagraph (B) and notice of the right to judicial review under subsection (d) is provided, no consumer reporting agency that receives a request under subsection (a), or officer, employee, or agent thereof, shall disclose or specify in any consumer report, that a government agency described in subsection (a) has sought or obtained access to information or records under subsection (a).

(B) Certification

The requirements of subparagraph (A) shall apply if the head of the government agency described in subsection (a), or a designee, certifies that the absence of a prohibition of disclosure under this subsection may result in—

- (i) a danger to the national security of the United States;
- (ii) interference with a criminal, counterterrorism, or counterintelligence investigation;
- (iii) interference with diplomatic relations; or
- (iv) danger to the life or physical safety of any person.

(2) Exception

(A) In general

A consumer reporting agency that receives a request under subsection (a), or officer, employee, or agent thereof, may disclose information otherwise subject to any applicable nondisclosure requirement to—

- (i) those persons to whom disclosure is necessary in order to comply with the request;
- (ii) an attorney in order to obtain legal advice or assistance regarding the request; or
- (iii) other persons as permitted by the head of the government agency described in subsection (a) or a designee.

(B) Application

A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request under subsection (a) is issued in the same manner as the person to whom the request is issued.

(C) Notice

Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

(D) Identification of disclosure recipients

At the request of the head of the government agency described in subsection (a) or a designee, any person making or intending to make a disclosure under clause (i) or (iii) of subparagraph (A) shall identify to the head or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(d) Judicial review

(1) In general

A request under subsection (a) or a nondisclosure requirement imposed in connection with such request under subsection (c) shall be subject to judicial review under section 3511 of title 18.

(2) Notice

A request under subsection (a) shall include notice of the availability of judicial review described in paragraph (1).

(e) Rule of construction

Nothing in section 1681u of this title shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

(f) Safe harbor

Notwithstanding any other provision of this subchapter, any consumer reporting agency or

agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a government agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(g) Reports to Congress

(1) On a semi-annual basis, the Attorney General shall fully inform the Committee on the Judiciary, the Committee on Financial Services, and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary, the Committee on Banking, Housing, and Urban Affairs, and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to subsection (a).

(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 3106 of title 50.

(Pub. L. 90-321, title VI, § 627, formerly § 626, as added Pub. L. 107-56, title III, § 358(g)(1)(B), Oct. 26, 2001, 115 Stat. 327; renumbered § 627 and amended Pub. L. 108-159, title II, § 214(a)(1), (c)(3), Dec. 4, 2003, 117 Stat. 1980, 1983; Pub. L. 108-458, title VI, § 6203(l), Dec. 17, 2004, 118 Stat. 3747; Pub. L. 109-177, title I, §§ 116(c), 118(b), Mar. 9, 2006, 120 Stat. 214, 217; Pub. L. 109-178, § 4(c)(2), Mar. 9, 2006, 120 Stat. 280; Pub. L. 114-23, title V, §§ 501(d), 502(d), 503(d), June 2, 2015, 129 Stat. 282, 286, 290.)

Editorial Notes

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-23, § 501(d), substituted “analysis and that includes a term that specifically identifies a consumer or account to be used as the basis for the production of such information.” for “analysis.”

Subsec. (c). Pub. L. 114-23, § 502(d), added subsec. (c) and struck out former subsec. (c) which related to confidentiality.

Subsecs. (d) to (g). Pub. L. 114-23, § 503(d), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

2006—Subsec. (c). Pub. L. 109-177, § 116(c), amended subsec. (c) generally. Prior to amendment, text read as follows: “No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a) of this section.”

Subsec. (c)(4). Pub. L. 109-178 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “At the request of the authorized Government agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting official that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109-177, § 118(b), added subsec. (f).

2004—Subsec. (e). Pub. L. 108-458 substituted “government agency” for “governmental agency”.

2003—Subsec. (d). Pub. L. 108-159, § 214(c)(3), made technical amendment to reference in original act which appears in text as reference to section 1681u of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-458 effective as if included in Pub. L. 107-56, as of the date of enactment of such Act, see section 6205 of Pub. L. 108-458, set out as a note under section 1828 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-159 subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108-159, set out as a note under section 1681 of this title.

EFFECTIVE DATE

Section applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107-56, set out as an Effective Date of 2001 Amendment note under section 1829b of this Title 12, Banks and Banking.

§ 1681w. Disposal of records

(a) Regulations

(1) In general

The Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies, and the National Credit Union Administration, with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title, and in coordination as described in paragraph (2), shall issue final regulations requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

(2) Coordination

Each agency required to prescribe regulations under paragraph (1) shall—

(A) consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such agency are consistent and comparable with the regulations by each such other agency; and

(B) ensure that such regulations are consistent with the requirements and regulations issued pursuant to Public Law 106-102 and other provisions of Federal law.

(3) Exemption authority

In issuing regulations under this section, the agencies identified in paragraph (1) may exempt any person or class of persons from application of those regulations, as such agency deems appropriate to carry out the purpose of this section.

(b) Rule of construction

Nothing in this section shall be construed—

(1) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or

(2) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

(Pub. L. 90-321, title VI, § 628, as added Pub. L. 108-159, title II, § 216(a), Dec. 4, 2003, 117 Stat. 1985; amended Pub. L. 111-203, title X, § 1088(a)(12), (13), July 21, 2010, 124 Stat. 2091, 2092.)

Editorial Notes

REFERENCES IN TEXT

Public Law 106-102, referred to in subsec. (a)(2)(B), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203, § 1088(a)(12), substituted “The Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal banking agencies, and the National Credit Union Administration, with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title,” for “Not later than 1 year after December 4, 2003, the Federal banking agencies, the National Credit Union Administration, and the Commission with respect to the entities that are subject to their respective enforcement authority under section 1681s of this title, and the Securities and Exchange Commission.”.

Subsec. (a)(3). Pub. L. 111-203, § 1088(a)(13), substituted “the agencies identified in paragraph (1)” for “the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section subject to joint regulations establishing effective dates as prescribed by Federal Reserve Board and Federal Trade Commission, except as otherwise provided, see section 3 of Pub. L. 108-159, set out as an Effective Date of 2003 Amendment note under section 1681 of this title.

§ 1681x. Corporate and technological circumvention prohibited

The Commission shall prescribe regulations, to become effective not later than 90 days after December 4, 2003, to prevent a consumer reporting agency from circumventing or evading treatment as a consumer reporting agency described in section 1681a(p) of this title for purposes of this subchapter, including—

(1) by means of a corporate reorganization or restructuring, including a merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) by maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 1681a(p) of this title, in the manner described in section 1681a(p) of this title.