

COMMENTS

Of

Consumer Federation of America
Consumers Union
Electronic Privacy Information Center
Identity Theft Resource Center
National Association of Consumer Advocates
National Consumer Law Center
on behalf of its low income clients
National Council of La Raza
Privacy Rights Clearinghouse
U.S. Public Interest Research Group

To the

Federal Trade Commission
Regarding the Summaries of Rights and Notices of Duties under the Fair Credit
Reporting Act
FACTA Notices, Matter Number R411013

August 16, 2004

Introduction

The Consumer Federation of America¹, Consumers Union², Electronic Privacy Information Center³, Identity Theft Resource Center⁴, National Association of Consumer Advocates⁵, National Consumer Law Center⁶, on behalf of its low income clients,

¹ The **Consumer Federation of America** is a nonprofit association of some 300 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

² **Consumers Union**, the nonprofit publisher of Consumer Reports magazine, is an organization created to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications, and noncommercial contributions, grants and fees. Consumers Union's publications carry no advertising and receive no commercial support.

³ The **Electronic Policy Information Center** (EPIC) is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.

⁴ The **Identity Theft Resource Center** (ITRC), is a nonprofit, nationally respected program dedicated exclusively to identity theft. It provides consumer and victim support and advises governmental agencies, legislators and companies about this evolving and growing crime.

⁵ The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

National Council of La Raza⁷, Privacy Rights Clearinghouse⁸, and the U.S. Public Interest Research Group⁹ submit these comments regarding the proposed summaries of rights and notices of duties under the Fair Credit Reporting Act.

The general summary of rights and the summary of identity theft rights prepared by the FTC will be among the most important tools to implement the changes enacted through the Fair and Accurate Credit Transactions Act of 2003. These model summaries of rights must be designed to reach consumers who are most likely to have problems or be motivated to understand their rights. These models prepared by the FTC will also set the standards for efforts by media and non-governmental organizations to educate consumers in general about their credit reporting rights. Based on our review of the Commission's proposed model summaries we have the following concerns:

- The summaries are not currently designed to be accessible and helpful to consumers through a variety of channels.
- The summaries are not in an easily readable format, nor do they contain clear and plain language that is understandable by unsophisticated consumers or those whose first language is not English.
- The model summaries fail to include important new rights created by the FACT Act.
- The summaries do not include several important details about key rights, and rely too heavily on the FTC website to provide consumers with essential information.
- The summaries do not give prominence to the most important rights.
- The summaries appropriately include information about how to file a complaint, but this should be expanded.
- The Commission should provide consumers access to the summaries of furnisher and user responsibilities.

⁶ **The National Consumer Law Center** is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys around the country, representing low-income and elderly individuals, who request our assistance with the analysis of credit transactions to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen numerous examples of invasions of privacy, embarrassment, loss of credit opportunity, employment and other harms that have hurt individual consumers as the result of violations of the Fair Credit Reporting Act. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. *Fair Credit Reporting* (5th ed. 2002) and *Credit Discrimination* (3rd ed. 2002) are two of the eighteen practice treatises that NCLC publishes and annually supplements.

⁷ **The National Council of La Raza** - the largest national constituency-based Hispanic organization and the leading voice in Washington, DC for the Hispanic community - is a private, nonprofit, nonpartisan, tax-exempt organization established to reduce poverty and discrimination and improve life opportunities for Hispanic Americans.

⁸ **The Privacy Rights Clearinghouse** is a nonprofit consumer information and advocacy organization based in San Diego, CA, and established in 1992. The PRC advises consumers on a variety of informational privacy issues, including financial privacy. It represents consumers' interests in legislative and regulatory proceedings on the state and federal levels. www.privacyrights.org

⁹ **The U.S. Public Interest Research Group** is the national lobbying office for state PIRGs, which are non-profit, non-partisan consumer advocacy groups with half a million citizen members around the country.

Each of these issues is addressed in detail below.

In general, the model summaries should be easily understood by all consumers including those with limited education or those for whom English is not a first language, offer complete information about their rights, including sufficient explanations of how consumers may exercise those rights, and be formatted to highlight the most important rights. Only with such changes and inclusion of this fundamental and important information will the model summaries meet the legislative objectives of properly informing consumers of their rights with respect to credit reporting and identity theft problems. We plan to submit to the Commission by September 3, 2004 a supplement to these comments which will include alternative proposed model summaries that would meet these goals.

The summaries should be designed to be accessible and helpful to consumers who will receive them through a variety of channels.

As the Commission notes, a primary channel for these summaries to reach consumers is distribution by consumer reporting agencies in connection with their credit report (the disclosures required by section 609 of the FCRA). The FCRA facilitates consumers' review of their files by requiring them to be disclosed free of charge in a number of circumstances where consumers have a particular interest in exercising their rights regarding the information maintained about them. Consumers may review their files when they have become, or have reason to believe they will become, victims of identity theft, suffer an adverse action related to a range of applications (for credit, employment, insurance, other services for which creditworthiness is a factor), are charged a higher rate or offered less favorable terms because of risk, are unemployed and seeking work, receive public assistance, or are exercising their right to a review of their own record under federal or state law.¹⁰ In each of these circumstances, a consumer who requests a copy of the information in his or her file has a vested interest in understanding what the law permits them to do in order to safeguard their information against identity theft, inaccuracies, incompleteness, misuse, and excessive distribution. Because the summaries are required to be provided to consumers who receive a copy of their files, the summaries must be easily understood, complete, and highlight the rights of interest to such consumers.

While many consumers will receive these summaries through consumer reporting agencies, that is not the only distribution channel. In addition, consumers will receive the summary of rights directly from the FTC. Under the FCRA, the FTC has an obligation to publicize and distribute this summary of rights. The Commission is required to actively publicize the availability of the summary of rights in general, as well as conspicuously post the availability of the summary on its Internet website, and promptly make the summary available to consumers who request a copy.¹¹ The model summary must be

¹⁰ 15 U.S.C. § 1681g, as amended.

¹¹ *Ibid.*

drafted to ensure that it is useful to consumers who receive it without the additional disclosures that CRAs are required to make in connection with the summary. We agree with the approach the Commission has taken by including several items that are required to be distributed by CRAs in connection with the notice, specifically the statement regarding additional rights under state law, the list of agencies to whom a consumer can submit a complaint, and a notice that a CRA does not have to remove accurate negative information from a credit report. However, we believe that the proposed model summaries do not include all the information that would fulfill the goal of this approach. Including this information in the model summary notice would serve consumers by ensuring consistency in the notices regardless of the channel through which a consumer receives them.

The official FTC summary of rights will be distributed by entities with an interest in educating consumers other than the FTC. This underscores the need for the model summary to be comprehensive and accessible. There is a high level of interest in issues related to the FCRA, including identity theft, the accuracy and completeness of credit reports, and the impact of credit reports on the cost of credit and other services. Because of the Commission's status as the primary consumer protection agency at the federal level, media organizations, non-governmental organizations who educate consumers about credit, and perhaps even financial institutions will likely distribute the FTC summary of rights to consumers with the belief that it is comprehensive. If the summary omits important rights, consumers will be poorly informed.

The model notices should be revised to an easily readable format, and they should contain clear and plain language that is understandable by unsophisticated consumers or those whose first language is not English.

The format and language in the model summaries are difficult to read, especially for unsophisticated consumers. For example, the paragraphs are too long and complicated for consumers with limited education to understand and read. A better format would provide clear headings and bulleted points with respect to each of the rights within the summaries. Readability of the model summaries is vital to informing consumers of their rights with respect to identity theft and consumer reports, especially those consumers who may not be familiar with the terms of the financial services world. Although the proposed model notices contain important information, as they are currently written they are not easy to understand. Moreover, the formatting is not easy to read and it does not direct the reader to the important rights within the notice.

The model notice must be direct, concise and clearly state the specific rights that consumers have under the FCRA, as amended by the FACT Act. Without such clarity and directness, the model notices will leave consumers with more questions, cause confusion and be ineffective to accomplish the goal of informing consumers about their important rights under the FCRA.

The summaries should be easily understood by all consumers including those with limited education or for whom English is not their primary language. We recommend

conducting testing of the summaries with experts in readability before the summaries are finalized. In any case, the rights summarized should be described as discrete items rather than combined into paragraph form to the greatest extent possible. Also, the summaries should be clearer about what to do if there are inaccuracies or other problems that require consumer action and vigilance.

These summaries of rights should be available in the five to ten non-English languages with the largest number of speakers in the U.S. At a minimum, however, they should be provided to consumers whose primary language is Spanish. According to the 2000 Census, among respondents 18 to 64 years of age, nearly 19.6 million speak Spanish. One third of the Spanish speaking population speaks English “not well” or “not at all.” Therefore access to bilingual information is especially important to those persons whose dominant or sole language is Spanish. As noted above, the model summaries prepared by the FTC will also likely be widely distributed by other groups. Therefore the benefits of efforts taken by the FTC to prepare Spanish language versions will be amplified by the activities of such groups. At minimum, the FTC should provide a Spanish-language summary on the FTC website and over the phone with Spanish-speaking operators on hand in addition to other existing distribution channels used by the Commission, and the English language summaries should be required to include information in Spanish explaining how to request the Spanish-language version via toll free number or via the web.

The model summaries should include important new rights not explained on proposed summaries.

The request for comment asks if the summaries include all the information consumers need to understand their rights. We believe the model summaries fail to meet this objective of including all information since there are several new rights that are not explained in these summaries. Consumers are likely to need the most assistance understanding new rights, and the summary should be designed to help increase awareness of these new rights and how to exercise them. We strongly believe that the general summary and the summary of rights for victims of identity theft must include information about the following rights:

General Summary:

- Risk Based Pricing Notice. The summary should include the right to a Risk Based Pricing Notice and free consumer report when offered a higher price based on risk reflected in a consumer report. This right is included in the summary of obligations of users of consumer reports, but it is omitted from the summary for consumers. This new and important right must be explained to consumers. Furthermore, because the risk based pricing notice entitles consumers to request a consumer report free of charge, the summary that omits this right but lists all other circumstances when a consumer can receive a free report, would likely confuse consumers and undermine the usefulness of the summary. While the

statute only requires the summary to list the circumstances outlined in section 612, we strongly recommend including a summary of this right and how to exercise it.

- Right to dispute inaccurate information with furnishers. The summary of rights includes information about the right to dispute with a consumer reporting agency, but it omits a description of consumers' rights to dispute directly with the furnisher of information. The summary should describe both the right consumers now have to dispute directly with the furnisher, as well as the longstanding right to dispute with the consumer reporting agency. The description of the right to dispute with the furnisher directly should also include a statement that says that when a furnisher is alerted of inaccurate or incomplete information, they must update their own records and stop reporting inaccurate or incomplete information.

For both summaries, include full statement of additional rights under state law:

- Both the general summary of rights and the summary of identity theft rights should include a statement that the consumer has additional rights under state law, and that they may wish to contact a State or local consumer protection agency or a State attorney general to learn of those rights.

As outlined above, the consumers who will see these summaries are likely to be highly concerned about protecting their information from inaccuracies, incompleteness, and identity theft. These consumers should be told of all possible means available to protect their information. Consumer rights under state law can contain important additional protections, and omitting mention of these additional rights would undermine the effectiveness of the summary of rights. The proposed general sample summary of consumer rights rightly mentions that a consumer may have additional rights under state law, but does not include the statement that a consumer may contact a state or local consumer protection agency or a state attorney general to learn those rights.¹² Furthermore, the notice with respect to state law protections is not included in the summary of identity theft rights. The notice regarding additional rights under state law should be expanded to be complete in the new general summary and added to the summary of identity theft rights.

The mandate for the Commission is to provide a summary of rights under the Fair Credit Reporting Act¹³. Because the Act specifically mentions a number of state laws that are grandfathered, these state laws are integrated in a significant way into the Act itself. A summary of a consumer's rights

¹² Appendix A to Part 601 available at www.ftc.gov/os/statutes/2summary.htm

¹³ 15 U.S.C. § 1681g, as amended.

under this Act that fails to highlight these additional rights would be incomplete and misleading to consumers.

The FACT Act requires any consumer reporting agency to provide consumers with “a statement that the consumer may have additional rights under state law, and that they may wish to contact a state or local consumer protection agency or a State attorney general (or equivalent thereof) to learn of those rights”.¹⁴ Including this statement in the model summary of rights would provide consistency and coherence for consumers. In addition, if the notice of additional rights under state law is contained in the summary itself, consumers who do not receive the summary from a CRA will receive the same, complete summary. For example, consumers would receive the same summary of rights if they receive it from a CRA, receive it directly from the FTC webpage, or receive it through an intermediary such as a credit counselor who may distribute the FTC summary to clientele.

The proposed guidance for forms includes two other types of information that are also required for a CRA to distribute, namely the list of Federal agencies responsible for enforcement of the FCRA, and that statement regarding removal of accurate information. We support including this information as it serves the same goal of consistency outlined above. However we believe that including a statement regarding additional rights under state law in a document titled “A Summary of Your Rights Under the Fair Credit Reporting Act” is at least as important if not more so. Furthermore, the general summary of rights and the summary of rights for remedying the effects of identity theft include cross-references that will help make consumers aware of their full range of rights. An additional reference to rights under state law would be appropriate and consistent.

The summaries should clarify and include important details about key rights missing from the proposed language and should not rely on the FTC website to provide consumers with essential information.

The information about several important rights in the proposed summaries is incomplete and should be expanded to provide consumers with sufficient explanations to understand both their rights and how to exercise those rights. In addition, the FTC should require a stronger standard for what will be acceptable versions of the model summary than the requirement that they be “substantially similar” in form but must always include a description of all rights listed in the model. At a minimum, the Commission must prevent the model summaries from being modified in any way that diminishes their clarity and effectiveness or reduces the prominence of any of the important rights contained within them, whether through changes in order, formatting, by removing text,

¹⁴ 15 U.S.C. § 1681g (c)(2)(D), as amended.

