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August 16, 2004

By electronic delivery

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex S)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: RIN 3084-AA94
Request for comment on Forms under the Fair
Credit Reporting Act
69 *Federal Register* 42616, 16 July 2004

Dear Sir or Madam,

The American Bankers Association (“ABA”) respectfully submits our comments to the Federal Trade Commission’s (“Commission”) proposed summaries and notices related to rights and responsibilities under the Fair Credit Reporting Act (“FCRA”). Specifically, the Commission is requesting comment on proposals to:

- Appendix E, a new summary of consumer identity theft rights that consumer reporting agencies (“CRAs”) must distribute when a consumer contacts it to report fraud or identity theft.
- Amendments to Appendix F, a general summary of consumer FCRA rights, which is being modified to take into account new consumer rights conveyed by the Fair and Accurate Credit Reporting Act (“FACT Act”). CRAs must provide this summary each time they make a written file disclosure.
- Amendments to Appendix G, a notice setting forth duties of furnishers of information to CRAs, which CRAs must provide to furnishers on a one-time basis. It is being modified to take into account FACT Act amendments.
- Amendments to Appendix H, a notice setting forth the duties of users of consumer reports which CRA must provide to users on a one-time basis. It is being modified to take into account FACT Act amendments.

ABA's comments address the effective date and several provisions in the consumer summaries of rights.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Effective date.

When determining the mandatory effective date of the summaries and notices, the Commission should take into account the effective dates of the provisions underlying the rights and duties described in the summaries and notices. This is particularly important for the summaries of consumer rights because if they are provided prior to the effective date of the provisions conveying the new consumer rights, consumers will be misled into believing that they have rights not yet in effect and for which CRAs, furnishers, and users are not yet prepared. Thus, if the effective date of a particular provision is December 1, the Commission should not require that the summary be provided prior to that date. The Commission should also revise the summary that advises consumers of their right to an annual free report to reflect the staggered implementation schedule of this right.

Appendix E – Summary of Consumer Identity Theft Rights

Paragraph 6 of the proposed summary of identity theft rights informs consumers that they may prevent a business from reporting information to the CRA about an account opened by an identity thief. The summary notes that the business reporting information will expect consumers to document that they are identity theft victims. It adds, "You may do so by submitting an identity theft report." This suggests that the business may not insist on an identity theft report and that consumers may choose, at their discretion, to use other means of proof. However, section 623(a)(6)(B) of FCRA permits the business to require submission of an identity theft report. Accordingly, to avoid consumer confusion and frustration, the Commission should delete, "You may do so by submitting an identity theft report," and inserting, "The business may require you to provide an identity theft report."

The Commission has included in this notice a reference to its identity theft website and has asked whether this is appropriate and useful. We believe that the Commission's identity theft website provides an excellent resource to victims of identity theft and encourage its retention in this summary.

Appendix F – Summary of Rights Under FCRA

After listing consumers’ general rights under FCRA, the proposed summary includes a paragraph headed, “You may seek damages from violators.” It notes that if a “consumer reporting agency, user of consumer reports, or in some cases, a furnisher of information violates the FCRA,” the consumer “may sue them in State or Federal court.” We believe that this overstates the consumers’ rights and may mislead them.

For example, the proposed summary states that consumer may sue users for violation. However, users of consumer reports are not subject to liability under section 616 and 617 for violations of section 615(h) related to risk-based pricing notices. In addition, we do not believe that the phrase “in some cases” is adequate to alert the consumer that a lawsuit is not always an option for furnisher violations. While it is not feasible or desirable to list all the provisions under which the consumer may bring a lawsuit, the statement could be revised to more accurately reflect their options. The sentence should be rewritten to reflect that the consumer cannot necessarily sue the user of a report and to insert the words “be able” after “you may.” The sentence would then read, “If a consumer reporting agency, or, in some cases, a user of consumer reports or furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue them in State or Federal court.”

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ABA appreciates the opportunity to submit our comments on the proposed summaries and notices. We are happy to provide additional information.

Regards,



Nessa Eileen Feddis