

The Federal Trade Commission's Rights and Duties under the Fair Credit Reporting Act

16 CFR Part 601

Notices of Rights and Duties under the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Publication of guidance for prescribed notice forms.

SUMMARY: The Federal Trade Commission is publishing three notices that it is required to prescribe under recent amendments to the Fair Credit Reporting Act (FCRA). These are: A summary of consumer rights under the FCRA; a notice setting forth the responsibilities under the FCRA of those who regularly furnish consumer report information to consumer reporting agencies; and a notice setting forth the duties of any person who uses information covered by the FCRA. These notices must be distributed by consumer reporting agencies once the amendments to the FCRA become effective on September 30, 1997. A consumer reporting agency will be in compliance with the FCRA if it provides notices substantially similar to those prescribed by the Commission.

DATES: The amendments become effective September 30, 1997.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Federal Trade Commission, Washington, DC 20580

SUPPLEMENTARY INFORMATION:

The Fair Credit Reporting Act (FCRA), originally enacted in 1970,(1) was extensively amended in 1996. Most of the amendments to the law, including those discussed in this notice, go into effect on September 30, 1997.

As amended, the FCRA requires each consumer reporting agency ("CRA," usually a credit bureau) to distribute three types of notices in order to better educate consumers, furnishers and users of consumer report information as to their rights or duties under the law. Section 609(c) of the amended FCRA mandates that each CRA provide, as part of its file disclosure to consumers, a written summary of consumer rights ("summary" or "consumer summary") under the FCRA. Section 607(d) requires each CRA to provide a notice to persons who buy consumer information from the CRA of their responsibilities under the FCRA ("user notice"), and a notice to persons who regularly furnish consumer information to the CRA of their responsibilities under the FCRA ("furnisher notice"). The Federal Trade Commission ("Commission") is required to prescribe the content of the notices, and, in the case of the consumer summary, the form as well. A CRA complies with the law if it provides the applicable party with a summary or notice that is substantially similar to the one prescribed by the Commission.

On February 28, 1997, the Commission published for comment proposed versions of the three notices (collectively, "the notices"). The discussion accompanying the proposed notices outlined in detail the relevant FCRA sections, and set forth a number of questions designed to facilitate public comment on the proposals. 62 Fed. Reg. 9123 (1997).

The comment period closed on March 31, 1997. The Commission received 28 comments from credit bureaus and other CRAs, creditors (and other parties that make use of consumer reports and/or furnish information to CRAs), consumers and their representatives, regulatory authorities, and other interested parties. Although the Commission stated that it was requesting comments until March 31, 1997, comments received after that date were taken into account.

This document highlights the principal areas in which the Commission revised the proposed versions of the notices or decided not to do so.

I. Consumer Summary

The comments overwhelmingly supported the content and organization of the proposed summary. Many commenters praised the Commission's effort in offering a proposal that was thorough, understandable, succinct, and user-friendly. None suggested any major revision to the overall presentation. Accordingly, the basic framework of the notice remains unchanged -- a two-page document that starts with an introductory paragraph explaining the FCRA very generally, features ten "bullet" sections to describe significant consumer FCRA rights, and includes the required list of the federal agencies with FCRA enforcement authority at the end.

A. Principal Revisions Based on Public Comments

1. Additions and deletions. The amended FCRA provides conflicting guidance as to whether the consumer summary should be brief or comprehensive. The law mandates a "summary of all the rights the consumer has under" the FCRA (Section 609(c)(1)(A)). The law also requires "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" consumer rights.

The Commission specifically asked for suggestions as to areas in which the proposed form was too long to be effective as a summary, or, conversely, had omitted something important to consumers. 62 Fed. Reg. 9123, 9124 (1997). The Commission has deleted three items from the proposed form that were persuasively cited by commenters as unnecessary or not helpful to the goal of educating consumers about their FCRA rights:

The sentence noting that a CRA is not required to include a "risk score" or "credit score" in disclosures to consumers of their credit histories. The Commission included the sentence in the proposed summary to try to answer a question that consumers would otherwise ask of CRAs. Upon review of the diverse comments,(2) the Commission now believes that the reference would be more hindrance than help, and accordingly has deleted it.

A discussion of FCRA litigants' ability to obtain attorney's fees from one another. The comments made it clear that the topic cannot be covered both briefly and precisely, because of the complexity of this portion of the amended FCRA.(3) For that reason, and because the issue is ancillary to the consumer's right to sue for damages that continues to be emphasized in this portion of the summary, the Commission decided not to retain the discussion of attorney's fees.

The reference to a toll-free number in the case of nationwide CRAs. National CRAs are required to include this number in their file disclosures; however (as noted by one such CRA), it need not be part of the summary.(4)

Conversely, other commenters noted that the summary needed more discussion of the rights of consumers who dispute file data with CRAs. These rights, which are central to the FCRA and provide important protections for consumers, are found in Section 611.(5) Accordingly, the Commission has added a discussion of

(1) the right provided consumers by Section 611(b) to add a brief statement to their files when they continue to dispute information that the CRA has investigated and concluded to be accurate, and (2) the right of consumers under Section 611(d) to have revised reports provided to all recent recipients of information from their files.(6)

2. Editorial revisions. The Commission's most significant editorial revisions to the summary are two adjustments in the opening paragraph to avoid misleading consumers about the range of parties covered by the FCRA, and to emphasize consumer rights under state law. In the first case, a major credit bureau asserted that the proposed summary focused on CRAs to a degree that is unwarranted in view of the fact that the amended FCRA also imposes substantial duties on users and furnishers of CRA data. The Commission therefore revised the text to eliminate the unnecessary reference to FCRA rights "in dealing with CRAs (which must) provide you with a summary of these rights as listed below"(7) that preceded the body of the summary. In the second case, state regulatory authorities asserted that the discussion of state law, which is specifically required by Section 609(c)(2)(D), should be featured more prominently. Accordingly, the Commission increased the emphasis by moving the reference to the opening paragraph. The Commission did not intend the proposed notice to single out CRAs, or to give short shrift to state law; these two revisions to the opening paragraph of the prescribed summary should make that clear.

The Commission also adopted some suggestions for stylistic or technical changes where the Commission believed the change would make the summary appreciably more precise or useful for consumers. For example, in the second sentence of the introductory paragraph, the Commission added an example of consumer report users (landlords) that a state regulator recommended as useful and deleted a type of CRA information (where consumers work and live) that industry representatives cited as a poor example for a summary. Also, the Commission revised a sentence, formerly in the fourth (now in the third) bullet, to make it clear that national CRAs are not required to report erroneous information to one another; rather, furnishers must report to them any disputed data that they find to be inaccurate or incomplete, a task made easier by an automated system to be created by national CRAs.

The Commission also made some minor changes to improve the technical legal accuracy of the summary. The heading to the fourth bullet was expanded ("Inaccurate information must be corrected or deleted") to describe precisely a CRA's options when its investigation shows that disputed information is not accurate.(8) Similarly, the statement of consumers' right to sue violators has been amended to state that furnishers can be sued only "in some cases" because the amended FCRA limits the situations in which consumers are authorized to sue directly for damages.(9)

B. Principal Public Comments Not Adopted

Commenters made suggestions for stylistic revisions of the consumer summary, many of which were adopted because they improved the clarity or comprehensibility of the summary. However, the Commission could not make all of these changes without unduly lengthening the document.

Because of the large volume of suggested wording and other changes contained in more than 170 pages of comments received by the Commission, it is not feasible to discuss them all in this notice. This section is intended to identify some of the more significant comments that are not reflected in the finally-prescribed consumer summary.

1. Form of the summary. The principal credit bureau trade association expressed the view that the Commission specifications for the form of the summary were unduly "rigid" in two ways. First, the Commission proposed that the summary be on paper no smaller than 8 x 11 inches in size. The commenter noted that continuous feed forms are not always perforated as 8 x 11-inch sheets, and that the requirement that the summary be "on paper" would inhibit the possibility of electronic disclosures. Second, the Commission proposed that the notice be in 12-point type (8-point for the table at the end). The commenter stated that type sizes may vary based on the font being used.

Section 609(c)(3) of the amended FCRA specifically states that the "Commission shall prescribe the form and substance of" the summary (emphasis added). The Commission is required by law to prescribe a format that ensures that consumers will receive a summary that is readable and useful, and believes that the format prescribed in the proposal is appropriate for that purpose. However, the Commission does not intend to impose an absolutely "rigid" standard, which would be inappropriate under the statute. Section 609(c)(3) requires only that a summary be "substantially similar" (i.e., not identical) to the Commission-prescribed version. Therefore, a format that approximates that published by the Commission as "Appendix A" (which meets the type size requirements and can be printed, with comfortable margins, on two 8 x 11-inch pages) will comply, even if the print is technically not 12-point in size because of a different font, or it is provided on computer paper that is slightly smaller in size. Similarly, an electronic submission that normally allows the recipient to receive it in a format similar to the prescribed version will also comply.(10) Such summaries will not result in the consumer receiving a form that is harder to read or use than the exact prescribed version.(11)

2. Items required by Section 609(c)(2). The Commission received a number of comments relating to each of three sections the amended FCRA requires be included in the summary: (1) a reference to rights provided by state law, (2) a statement that the CRAs are not required to delete accurate data that is not obsolete under Section 605, and (3) a list of federal agencies that have authority to enforce the FCRA. The Commission made few additions or deletions in these areas, because Congress has given precise instructions. This section describes the nature of those comments and the basis for the Commission's decision in most cases not to change the proposed form.

State regulators suggested a substantial expansion of the reference to state law required by Section 609(c)(2)(D), including multiple references to state and local authorities, and more detailed instructions on how to reach them. As noted above (I-A-2), the Commission has decided to feature the statutorily-required section more prominently in the summary. However, the Commission does not believe the section should be expanded because it currently uses the language prescribed by Congress.

Several commenters offered revisions of the sentence, required by Section 609(c)(2)(E), reminding consumers in bold letters that they cannot require CRAs to remove information that is accurate and not outdated. The Commission adopted a suggestion by a CRA trade association to add a parenthetical cross-reference to clarify that "outdated" means the FCRA's seven year period (ten for bankruptcies), a change that made the bold statement more precise. It did not adopt suggestions for change that were not specifically authorized by the statute.(12)

Similarly, the Commission did not adopt suggestions by commenters to reduce the list of federal agencies with regulatory authority. Section 609(c)(2)(C) requires that the summary include "a list of all federal agencies responsible for enforcing [the FCRA] and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency." Suggestions for pruning this section involved using a narrative to replace the required "list," reducing the list from "all" agencies by eliminating those deemed to be of low interest to consumers, and other revisions that would delete or reduce the jurisdictional summaries designed to "assist the consumer in selecting the appropriate agency." The comments appeared well-intended, but the Commission concluded that the summary should reflect the specific instructions of Congress on this point.

3. Use of "CRA" as an acronym. A number of commenters from different sectors asserted that "CRA" is an awkward acronym for "consumer reporting agency; most of them suggested that "credit bureau" would be more easily understood. Some opined that "CRA" is too easily confused with a common acronym for the Community Reinvestment Act.

The term "credit bureau" is certainly known to more consumers than "CRA," but it has major drawbacks that the

Commission believes make its use inappropriate here. The FCRA unquestionably applies to all consumer reporting agencies, a universe that includes more than credit bureaus (e.g., specialized CRAs that report only on mortgage or tenant applications, or only on consumers' check writing habits). It thus would be legally inaccurate to use "credit bureau" as a replacement. In addition, it would make the summary confusing to a consumer who receives it from a CRA that is not a credit bureau. While some commenters who are knowledgeable about financial laws may be accustomed to "CRA" as an acronym for the Community Reinvestment Act, only a small fraction of consumers who get this summary may make such a connection.(13)

II. Notices to Furnishers and Users

The furnisher and user notices occasioned relatively few comments, and thus are little changed from the proposed versions. The Commission, responding to a suggestion by state regulators, added a sentence to each notice referring to the possible applicability of state law. With the exception of a few subjects discussed in the following sections on each of these notices, the only changes were revisions that were very slight adjustments that the Commission believes, based on the comments, would make the notice more clearly reflect the FCRA and be of assistance to the recipients.

The Commission specifically asked whether the public wanted guidance as to the timing and frequency of notice distribution, in view of the amended FCRA's silence on the point. 62 Fed. Reg. 9123, 9125 (1997). The overwhelming majority of the commenters did not address the issue, and those who commented gave very different views -- a comment from state regulators advocated requiring frequent notices, two furnishers/users asked for a ruling limiting or not requiring multiple notices, and a CRA trade association urged that the marketplace be allowed to work its will in light of the FCRA's silence. Based on the limited number of (and wide disagreement among) commenters, formal guidance on these issues at this early stage seems unwise. If experience after the amendments become effective indicates a need for such action, the Commission can revisit the issue.

A. Furnisher Notice

The one significant change in the furnisher notice is the addition of a reference to the fact that two of the sections apply only to parties that furnish information to CRAs regularly and in the ordinary course of their business.(14) The Commission specifically asked for public comment on this issue. 62 Fed. Reg. 9123, 9125 (1997). There was a consensus among the commenters that the notice should be revised to include reference to the different standards that apply to occasional users.

Representatives of different furnishers suggested two additions that the Commission did not adopt. First, credit card issuers advocated adding a section spelling out the limitations on consumers' ability to sue furnishers, a topic that seemed inappropriate for a Commission-prescribed notice of duties to furnishers. Second, debt collectors and creditors urged that the notice specify that a furnisher's duty to report an item as "disputed" lasts only while it is investigating the dispute. This point involves an issue of statutory interpretation that is more appropriately resolved in another forum.

Finally, the Commission asked for comments on whether the prescribed form should include the text of Section 623. 62 Fed. Reg. 9123, 9125 (1997). The Commission has not included the text, because the commenters generally stated that it was unnecessary. However, a CRA form that does so will be "substantially similar" and thus in compliance with Section 609(c).

B. User Notice

The Commission asked for comment as to whether it should prescribe separate notices for different types of specialized users (62 Fed. Reg. 9125). The overwhelming majority of the commenters stated that a single notice (as the Commission proposed) was best.

One commenter representing specialized reporting services, while agreeing that a single notice is appropriate for most CRAs, stated that its members' business activities are so focused that the information provided to their clients would never relate to some of the points in the comprehensive notice. As an example, the commenter asserted that the portions of the proposed notice concerning employment reports (section II of the Notice), investigative reports (section III), medical information (section IV) or prescreened lists (section V) might not be pertinent to purposes of any clients of a mortgage reporting company. Similarly, it noted that a different set of sections might not be relevant to the purposes of any customers of a CRA that provides reports only for employment or tenant screening uses. The Commission agrees that a CRA may delete sections of the notice that are irrelevant to the business purposes for which any user is contractually authorized to purchase consumer reports from the CRA, in the same fashion that a creditor may omit inapplicable sections of prescribed forms under other statutes.(15)

The only significant addition to the user notice is in Section I-B of the notice, concerning the certification of

permissible purpose that users must provide to CRAs that sell consumer reports to them. Several parties advocated that the Commission expand this Section to account for the possibility of a general certification, as permitted by Section 604(f). The Commission has done so, but added the words "as appropriate" to make it clear that some consumer report users whose activities involve both permissible and impermissible purposes,(16) or who have given the CRA reason to believe they have violated a general certification, must be required to provide individual certifications for each consumer report.

III. Impact on Small Businesses

In publishing the proposed notices, the Commission stated that the notices would not have a significant economic impact on a substantial number of small entities. The Commission explained that it is prescribing the notices at the direction of Congress, so that any economic costs imposed on small entities by the required dissemination of the notices are in fact imposed by statute. The Commission noted further that its publication of forms for the proposed notices could be said to lessen the burden on small businesses, since the entities can -- but need not -- adopt the Commission's forms, and thereby avoid the risk and expense of developing their notices independently. The Commission nevertheless requested comments in order to ensure that it did not overlook any substantial economic impact on small businesses.

The Commission received four comments addressing the question of the notices' economic impact on small businesses. Two commenters agreed that the Commission's publication of the notices would not have a significant economic impact on a substantial number of small businesses. One commenter disagreed, but provided data supporting the conclusion that the statutory requirement would create a significant economic impact, rather than any evidence that the Commission's publication of the model forms for the notices would do so. Finally, one commenter stated that small businesses would be significantly burdened if the Commission were to require repeated distribution of the notices. As stated in the second paragraph of Section II above, the Commission has determined not to impose any requirements concerning the timing and frequency of dissemination of the notices at this time. Accordingly, the Commission has determined that public comments and information before the Commission do not alter the conclusion that its publication in final form of the models for the prescribed notices will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In its initial review of the proposed notices, the Commission considered whether it was "sponsoring or conducting" any "collection[s] of information" that would trigger the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. In this regard, the Commission observed that the notices contain only statutorily imposed investigation, disclosure, and recordkeeping requirements; the FTC introduces no additional elements. Further, two of the notices will become effective on September 30, 1997, regardless of whether the FTC has provided the language for these forms by that time. In this situation, the Commission does not "require" or "cause" the disclosures to occur.

The Commission also observed that the three notices contain all the information that subject firms will be required to disclose to third parties. The reporting agencies can simply adopt these notices for distribution without any change to the language. Therefore, the three notices fall within an exception to the definition of a "collection of information" as being "[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). Accordingly, none of the three require approval by OMB. Nonetheless, the Commission requested public comment on this matter. No comments were received.

List of Subjects in 16 CFR Part 601

Credit, Trade practices.

Pursuant to 15 U.S.C. 1681g and 1681s, the FTC hereby adds 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

Appendix B to Part 601 - Prescribed Notice of Furnisher Responsibilities

Appendix C to Part 601 - Prescribed Notice of User Responsibilities

By direction of the Commission.

Donald S. Clark,
Secretary.