

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 2:10-cv-169

v.

Judge Marbley

CREDIT BUREAU COLLECTION SERVICES,
an Ohio corporation, also d/b/a
CBCS and CBCS NATIONAL,

Magistrate Judge King

LARRY EBERT, individually
and as an officer of the corporation, and

BRIAN STRIKER, individually
and as an officer of the corporation,

Defendants.

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendant Credit Bureau Collection Services, Inc., also doing business as CBCS and CBCS National (“CBCS”), Defendant Larry Ebert (“Ebert”), and Defendant Brian Striker (“Striker”), have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the Complaint to the date of entry of the Decree and without Defendants admitting any of the matters alleged in the Complaint other than jurisdictional facts;

THEREFORE, on the joint motion of the Plaintiff and Defendants, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a); the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681-1681x; and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p.
3. Venue in this district is proper under 28 U.S.C. § 1391(b-c) and 1395(a) and 15 U.S.C. § 53(b).
4. The activities of the Defendants are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. For purposes of this Consent Decree (“Decree”), the definitions set forth in the FCRA, 15 U.S.C. § 1681a, and the FDCPA, 15 U.S.C. § 1692a, shall apply.
6. Defendants have entered into this Decree freely and without coercion. Defendants further acknowledge that they have read the provisions of this Decree and are prepared to abide by them.
7. Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Decree resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Decree.
8. By entering into this Decree, Defendants do not admit to the allegations set forth in the Complaint.

9. All parties waive all rights to seek appellate review or otherwise challenge or contest the validity of this Decree. Defendants further waive and release any claim they may have against the FTC, its employees, representatives, or agents.

10. Defendants agree that this Decree does not entitle them to seek or obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 100 Stat. 847, 863-64 (1996), and further waive any right to attorneys' fees that may arise under said provision of law.

11. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

12. Entry of this Decree is in the public interest.

DEFINITIONS

For purposes of this Decree, the following definitions shall apply:

1. **"Commission"** or **"FTC"** means the Federal Trade Commission.
2. **"Corporate Defendant"** means Credit Bureau Collection Services, Inc., also doing business as CBCS and CBCS National ("CBCS"), and their successors and assigns.
3. **"Defendants"** means all of the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.
4. **"Individual Defendants"** means Larry Ebert ("Ebert") and Brian Striker ("Striker").
5. **"Plaintiff"** means the United States of America.
6. **"Debt Collection"** means any activity the principal purpose of which is to collect, or attempt to collect, directly or indirectly, debts owed, or asserted to be owed, or due, regardless of whether collection of the debt is governed by the FDCPA.

ORDER

I. CIVIL PENALTY

A. Defendant CBCS shall pay to the Plaintiff, pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), and Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), a civil penalty in the amount of one million, ninety-five thousand dollars (\$1,095,000).

B. Defendant CBCS shall make the payment required by this Paragraph on or before the tenth day following entry of this Decree. Such payment shall be made by electronic fund transfer in accordance with procedures specified by the Office of Consumer Litigation, Civil Division, United States Department of Justice, Washington, D.C. 20530.

C. In the event of default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid amount, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

D. This judgment represents a civil penalty owed to the United States Government and is not compensation for actual pecuniary loss. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent litigation filed by or on behalf of the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Decree, including a nondischargeability complaint filed in any bankruptcy case.

E. Proceedings initiated under this Paragraph are in addition to, and not in lieu of, any other civil or criminal penalties that may be provided by law, including any other proceedings the Plaintiff may initiate to enforce this Decree.

II. INJUNCTION AGAINST VIOLATIONS OF THE FTC ACT

Defendants CBCS, Ebert, and Striker, and each of their officers, agents, servants, employees, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, in connection with collecting or attempting to collect debts, are hereby permanently restrained and enjoined from taking the following actions:

A. Making any material misrepresentation, expressly or by implication, to collect or to attempt to collect a debt or obtain information concerning a consumer; and

B. Making any material representation, expressly or by implication, that a consumer owes a debt or as to the amount of a debt, unless, at the time of making the representation, Defendants have a reasonable basis for making such representation. Provided that, in those instances in which Defendants (a) are required by Section III. A. of this Decree to conduct an investigation, (b) have done so, and (c) have reasonably concluded that the information on which Defendants rely to collect or attempt to collect the debt is accurate and complete, the conclusions of the investigation shall constitute a reasonable basis.

Provided that in making representations concerning a debt, Defendants can reasonably rely on the representations by their clients concerning the accuracy and completeness of the debts in the absence of a reasonable indication that such representations are unreliable. A “reasonable indication” shall take into account the reliability and source of the information, but shall not require any of the Part III investigational procedures outlined below, other than taking into account the reliability and source of the information.

III. DUTY TO CONDUCT A REASONABLE INVESTIGATION

- A. After the effective date of this Decree, in each and every instance in which:
1. a consumer, at any time, questions, disputes, or challenges the accuracy or completeness of the information on which Defendants are relying to make any representation that the consumer owes a debt or as to the amount of a debt; or
 2. a person acting reasonably would question, dispute, or challenge the material accuracy or completeness of the information on which Defendants are relying to make any representation that a consumer owes a debt or as to the amount of a debt;

Defendants shall either close the account and permanently terminate collection efforts or conduct a reasonable investigation into the accuracy or completeness of such information. If such disputes are raised during a telephone call with the consumer, Defendants may reasonably provide responsive information or pose reasonable questions to the consumer, in a manner that complies with applicable law, in an effort to resolve any such disputes raised by the consumer. If the consumer continues to question, dispute, or challenge the debt, Defendants shall make no further attempt to collect the debt or report it to a consumer reporting agency (CRA) until they have completed an investigation and have reasonably concluded that the information is accurate and complete. *Provided* that, if as a result of their decision to permanently terminate collection efforts or if following a reasonable investigation, Defendants cannot substantiate that the consumer owes the debt, Defendants cannot sell the debt or provide it to any other corporate entity other than the client from which it obtained the debt.

Provided further that nothing in Sections II and III shall require Defendants to conduct an investigation into the accuracy or completeness of the information on which Defendants are relying if Defendants determine that the consumer's question, dispute, or challenge is frivolous or irrelevant, or to the extent no new material evidence or information has been provided, has already been the subject of a reasonable investigation. Notwithstanding any other provision in this Decree, the Decree shall not restrict or prohibit Defendants from complying with any federal or state law requirements, so long as such state law requirements are not inconsistent with federal law.

Provided further that if a consumer initiates contact with Defendants by any means, Defendants may respond to the consumer prior to the completion of the investigation.

B. For purposes of this Decree, a "reasonable investigation" shall mean an investigation in which Defendants objectively evaluate and weigh the relevant information and circumstances, including but not limited to:

1. the reliability of the information on which Defendants rely in collecting or attempting to collect the debt, including the credibility of the source of that information;
2. the accuracy and completeness of any information received directly from their client, taking into account the reliability and source of the information;
3. the accuracy and completeness of any information Defendants have obtained or may obtain from third party sources, including data aggregators, brokers or CRAs;
4. the strength and credibility of any information provided by the consumer questioning, disputing, or challenging the accuracy or

completeness of such information or otherwise obtained by Defendants and the responsiveness of the consumer to reasonable requests for information;

5. with respect to information obtained from the consumer, the methods used by Defendants to collect the information. These methods used by Defendants to obtain information shall be in compliance with applicable laws; and
6. any other reliable information that contradicts or calls into question the accuracy or completeness of such information.

C. Subsections A and B of this Section do not affect the Defendants' obligations to comply with all applicable provisions of the FDCPA or FCRA. A "dispute" under this Section does not necessarily constitute a "dispute" for FDCPA or FCRA purposes.

D. Compliance with this Section III is effective November 13, 2009. Commission staff has authority to make reasonable requests for updates on Defendants' progress toward setting up mechanisms to comply with provisions of this Section prior to November 13, 2009.

IV. INJUNCTION AGAINST FCRA VIOLATIONS

Defendant CBCS, and its officers, agents, servants, employees and all persons or entities in active concert or participation with any of them, who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from taking the following actions:

A. Furnishing information to any consumer reporting agency ("CRA") relating to any consumer when the consumer has notified them at the address specified by them of the inaccurate

information and the information is, in fact, inaccurate, as prohibited by Section 623(a)(1)(B) of the FCRA, 15 U.S.C. § 1681s-2(a)(1)(B);

B. Failing to investigate consumer disputes, as required by Section 623(b) of the FCRA, 15 U.S.C. § 1681s-2(b), when CRAs refer disputes to them pursuant to Section 611(a)(2), 15 U.S.C. § 1681i(a)(2);

C. Reporting information to any CRA without reporting the information as “disputed,” as required by Section 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)(3), when consumers dispute to Defendants the completeness or accuracy of any information furnished to a CRA;

D. Re-reporting any information to a CRA that it reported prior to December 1, 2008; and

E. Failing to comply in any other respect with the FCRA, see Exhibit A attached, and as hereafter amended.

V. INJUNCTION AGAINST FDCPA VIOLATIONS

Defendants CBCS, Ebert, and Striker, and each of their officers, agents, servants, employees and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a “debt collector” in the collection of a “debt” from a “consumer” as those terms are defined in Section 803(6), (5), and (3) of the FDCPA, 15 U.S.C. § 1692a(6), (5), and (3), are hereby permanently restrained and enjoined from taking the following actions:

A. Using false, deceptive, or misleading representations or means in connection with the collection of any debt, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including, but not limited to, the following:

1. Using false representations concerning the character, amount, or legal status of any debt, in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A); or
2. In connection with a debt reported by them to any CRA, failing to promptly communicate to such CRA that such debt has been disputed, if and when such debt is disputed, either orally or in writing, by a consumer to them, in violation of Section 807(8) of the FDCPA, 15 U.S.C. § 1692e(8); and

B. Failing to comply in any other respect with the FDCPA, see Exhibit B attached, and as hereafter amended.

VI. NOTICE REQUIREMENTS

A. For a period of five (5) years from the date of entry of this Decree, Defendants and each of their officers, agents, servants, employees and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business, entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a “debt collector” in the collection of a “debt” from a “consumer,” as those terms are defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(6), (5), and (3), shall make the following disclosure clearly and conspicuously on each written collection communication that is sent to a consumer for the purpose of collecting a debt:

Federal law prohibits certain methods of debt collection, and requires that we treat you fairly. You can stop us from contacting you by writing a letter to us that tells us to stop the contact. Sending such a letter does not make the debt go away if you owe it. Once we receive your letter, we may not contact you again, except to let you know that there won't be any more contact or that we intend to take a specific action.

If you have a complaint about the way we are collecting this debt, please write to us at [current physical address], email us at [current email address], or call us toll-free at [current phone number] between 9:00 A.M. and 5:00 P.M. Eastern Standard Time, Monday - Friday.

The Federal Trade Commission enforces the Fair Debt Collection Practices Act (FDCPA). If you have a complaint about the way we are collecting your debt, please contact the FTC online at www.ftc.gov; by phone at 1-877-FTC-HELP; or by mail at 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

The above disclosure shall be given in the languages which appear in such communications sent to consumers.

B. Defendants, and each of their officers, agents, servants and employees and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with acting as a “debt collector” in the collection of a “debt” from a “consumer,” as those terms are defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(6), (5), and (3), shall provide a copy of the following notice to all officers, servants, agents, and employees having responsibility with respect to the collection of consumer debts, within thirty (30) days of the date of entry of this Decree, and to each officer, servant, agent, and employee hired for a period of five (5) years after that date, no later than the time the officer, servant, agent, and employee assumes responsibility with respect to the collection of such debts, and shall secure from each such person, within thirty (30) days of delivery, a signed and dated statement acknowledging receipt of a copy of the notice:

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from consumers.

In particular, Section 805 of the Act says that you may not contact a consumer at work if you know or should know it is inconvenient for the consumer, and that you may not communicate with any person other than the consumer in connection with the collection of a debt, for any purpose other than to obtain location information about the consumer.

In addition, Section 806 of that Act states that you may not engage in any conduct the natural consequences of which is to harass, oppress or abuse any person in connection with the collection of a debt, including, but not limited to, using language the natural consequence of which is to abuse the hearer or reader.

Furthermore, Section 807 of that Act prohibits the use of any false, deceptive or misleading representation or means in connection with the collection of any debt, including, but not limited to, communicating or threatening to communicate to a consumer reporting agency information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

Individual debt collectors may be financially liable for their violations of the Act.

VII. DISTRIBUTION OF CONSENT DECREE, NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA, AND THE FDCPA BY DEFENDANTS

For a period of three (3) years from the date of entry of this Decree,

A. **CBCS:** Corporate Defendant shall provide copies of this Decree, Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA, 16 C.F.R. Part 698, Appendix G, and the FDCPA to all of its principals, officers, directors, and managers. Defendant CBCS must also deliver copies of this Decree, Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA, 16 C.F.R. Part 698, Appendix G, and the FDCPA to all of its employees, agents and representatives who engage in conduct related to the subject matter of this Decree. For current personnel, delivery shall be within five (5) days of service of this Decree upon Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.

B. **Individual Defendant as control person:** For any business which involves Debt Collection that an Individual Defendant controls, directly or indirectly, or in which the Defendant has a majority ownership interest, the Defendant must deliver a copy of this Decree to (1) all principals, officers, directors, and managers of that business; and (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Decree. For current personnel, delivery shall be within five (5) days of service of this Decree upon such Defendant. For new personnel, delivery shall occur prior to their assuming responsibilities.

C. **Individual Defendant as employee or non-control person:** For any business where an Individual Defendant is not a controlling person of that business but otherwise engages in Debt Collection, the Defendant must deliver a copy of this Decree to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated statement acknowledging receipt of this Decree, Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA, 16 C.F.R. Part 698, Appendix G, and the FDCPA, within thirty (30) days of delivery, from all persons receiving copies of such documents, pursuant to this Paragraph.

VIII. RECORD KEEPING PROVISIONS

For a period of six (6) years from the date of entry of this Decree, Defendants, in connection with any business where (1) such Defendant is the majority owner or otherwise controls, directly or indirectly, the business and (2) the business is engaged in or assists others in the conduct related to the subject matter of this Decree, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Decree by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the revenues generated in connection with the collection of debts, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity in connection with the collection of debts, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for that person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts or debt owed, records of collection activity, and amounts collected;

D. For every consumer complaint, whether received directly, indirectly, or through a third party, records that include:

1. Any complaint and the date received, and the nature of the complaint as reflected in any notes, logs, or memoranda, including a description of the conduct alleged; and
2. The basis of the complaint, including the names of any debt collectors or supervisors complained about; the nature of any investigation conducted concerning the validity of any complaint; all documents relating to the disposition of the complaint, including records of all contacts with the consumer, the response to the complaint and the response date, whether the complaint was actually resolved, and the date of resolution; and any action taken to correct the alleged conduct that violates the FCRA, the FDCPA, or the FTC Act;

E. Copies of all scripts, training materials, advertisements, or other promotional or marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Decree, including, but not limited to, copies of acknowledgments of receipt of notices given to employees, required by Paragraph VI.B, copies of acknowledgments of receipt of this Decree, Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA, 16 C.F.R. Part 698, Appendix G, and the FDCPA, required by Paragraph VII.D, and all reports submitted to the FTC pursuant to Paragraph IX.

IX. COMPLIANCE REPORTING BY DEFENDANTS

In order that compliance with the provisions of this Decree be monitored:

- A. For a period of three (3) years from the date of entry of this Decree,
1. The Individual Defendants shall notify the Commission of the following:
 - a. Any changes in residence, mailing address, and telephone numbers of such Defendant within ten (10) days of the date of such change;
 - b. Any changes in employment status (including self-employment), and any change in such Defendant's ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and

- c. Any change in such Defendant's name or use of any aliases or fictitious names; and
2. Defendants shall notify the Commission of any changes in the corporate structure of Corporate Defendant CBCS, or any business entity that any Individual Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under the Decree, including but not limited to a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent or affiliate that engages in any acts or practices subject to this Decree; the filing of any bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change; *provided* that, with respect to any proposed change in the corporation about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as practicable after obtaining such knowledge.

B. Within one hundred eighty (180) days of the date of entry of this Decree, and once each year thereafter for three (3) years, on the anniversary of that date, Defendants each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Decree. This report shall include, but not be limited to:

1. For Individual Defendants:
 - a. The then-current residence address, mailing address, and telephone number of such Defendant;
 - b. The then-current employment and business address and telephone numbers of such Defendant, a description of the business activities of each such employer or business, and the title and responsibilities for each such Defendant for each such employer or business; and
 - c. Any other changes required to be reported pursuant to subsection A above.
2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of employee notice obtained pursuant to Paragraph VI.B of this Decree;
 - b. A copy of each acknowledgment of receipt of this Decree, Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA, 16 C.F.R. Part 698, Appendix G, and FDCPA obtained pursuant to Paragraph VII.D of this Decree; and
 - c. Any other changes required to be reported pursuant to subsection A above.

C. For purposes of this Decree, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to:

ASSOCIATE DIRECTOR
DIVISION OF ENFORCEMENT
BUREAU OF CONSUMER PROTECTION
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20580

Re: *United States of America v. Credit Bureau Collection Services, Inc.*,
Civil Action No. _____

D. For purposes of the compliance reporting and monitoring required by this Decree, Plaintiff is authorized to communicate directly with Defendants provided a copy of any written communication shall be sent to then-current counsel of record.

X. COMPLIANCE MONITORING

For the purpose of monitoring and investigating compliance with any provision of this Decree:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants shall each submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Decree by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person without further leave of court, using the procedures described by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. Posing as consumers and suppliers to: Defendants, Defendants' employees, or any other entity managed or controlled in whole or in

part by any Defendant, without the necessity of identification or prior notice.

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent or employee who has agreed to such an interview, relating in any way to any conduct subject to this Decree. The person interviewed may have counsel present.

Provided, however, that nothing in this Decree shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

XI. ACKNOWLEDGMENT OF RECEIPT OF CONSENT DECREE

Within five (5) business days of receipt of this Decree as entered by the Court, each Defendant shall submit to the Commission a truthful sworn statement acknowledging receipt of this Decree.

XII. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter for the purposes of construction, modification, and enforcement of this Decree.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

DATED: _____

UNITED STATES DISTRICT JUDGE

THE PARTIES, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

**FOR PLAINTIFF
UNITED STATES OF AMERICA:**

TONY WEST
Assistant Attorney General
Civil Division
United States Department of Justice

CARTER M. STEWART
United States Attorney
Southern District of Ohio

s/ Mark T. D'Alessandro
MARK T. D'ALESSANDRO (0019877)
Assistant United States Attorney
Southern District of Ohio
303 Marconi Boulevard, Suite 200
Columbus, OH 43215
614-469-5715
mark.dalessandro@usdoj.gov

EUGENE M. THIROLF
Director
Office of Consumer Litigation

KENNETH L. JOST
Deputy Director
Office of Consumer Litigation

s/ John W. Burke
JOHN W. BURKE
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
PO Box 386
Washington, D.C. 20044
202-353-2001
josh.burke@usdoj.gov

**FOR THE UNITED STATES
FEDERAL TRADE COMMISSION:**

FOR THE UNITED STATES
FEDERAL TRADE COMMISSION:




JON MILLER SPEIGER
Acting Director
East Central Region

LARISSA L. BUNGO (Ohio 0066148)
Attorney
East Central Region
Federal Trade Commission
Eaton Center, Suite 200
1111 Superior Avenue
Cleveland, Ohio 44114
Phone 216-263-3403 / Fax 216-263-3426
Email: lbungo@ftc.gov

Dated: 10/24/09

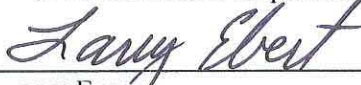
FOR DEFENDANTS
CREDIT BUREAU COLLECTION SERVICES,
INC., an Ohio corporation, also d/b/a
CBCS and CBCS NATIONAL

By: 

Larry Ebert, President

Dated: 9-4-09

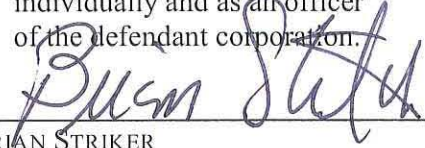
LARRY EBERT,
individually and as an officer
of the defendant corporation.



LARRY EBERT

Dated: 9/4/09

BRIAN STRIKER,
individually and as an officer
of the defendant corporation.



BRIAN STRIKER

Dated: 9-4-09

COUNSEL FOR DEFENDANTS



DAVID MEDINE
Wilmer, Cutler, Pickering, Hale and Dorr,
LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Phone 202-663-6220 / Fax 202-663-6363
david.medine@wilmerhale.com

Dated: 9-8-09

F AIR

C REDIT

R EPORTING

A CT

As a public service, the staff of the Federal Trade Commission (FTC) has prepared the following complete text of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq. Please note that the format of the text differs in minor ways from the U.S. Code (and West's U.S. Code Annotated). For example, this version uses FCRA section numbers in the headings. In addition, the relevant U.S. Code citation is included with each section heading and each reference to the FCRA in the text. Although the staff has made every effort to transcribe the statutory material accurately, this compendium is intended as a convenience for the public and not a substitute for the text in the U.S. Code.

This version of the FCRA includes the amendments to the FCRA set forth in:

- the Consumer Credit Reporting Reform Act of 1996;
- section 311 of the Intelligence Authorization for Fiscal Year 1998;
- the Consumer Reporting Employment Clarification Act of 1998;
- section 506 of the Gramm-Leach-Bliley Act;
- sections 358(g) and 505(c) of the USA PATRIOT Act;
- the Fair and Accurate Credit Transactions Act of 2003 (FACT Act);
- section 719 of the Financial Services Regulatory Relief Act of 2006;
- the Credit and Debit Card Receipt Clarification Act of 2007; and
- sections 205 and 302 of the Credit CARD Act of 2009.

The provisions added to the FCRA by the FACT Act became effective at different times. In some cases, the provision includes its own effective date. In other cases, the FACT Act provides that the effective dates be prescribed by the FTC and Federal Reserve Board. See 16 CFR Part 602.

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§ 601. Short title

This title may be cited as the “Fair Credit Reporting Act”.

§ 602. Congressional findings and statement of purpose

15 U.S.C. § 1681

(a) *Accuracy and fairness of credit reporting.* The Congress makes the following findings:

- (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.
- (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
- (3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
- (4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.

(b) *Reasonable procedures.* It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

§ 603. Definitions; rules of construction

15 U.S.C. § 1681a

- (a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.
- (b) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

- (c) The term “consumer” means an individual.
- (d) Consumer Report
- (1) *In general.* The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for
- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under section 604 [§ 1681b].
- (2) *Exclusions.* Except as provided in paragraph (3), the term “consumer report” does not include
- (A) subject to section 624, any
- (i) report containing information solely as to transactions or experiences between the consumer and the person making the report;
- (ii) communication of that information among persons related by common ownership or affiliated by corporate control; or
- (iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

- (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
 - (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [§ 1681m]; or
 - (D) a communication described in subsection (o) or (x).
- (3) *Restriction on sharing of medical information.* Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is--
- (A) medical information;
 - (B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or
 - (C) an aggregate list of identified consumers based on payment transactions for medical products or services.
- (e) The term “investigative consumer report” means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of

the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

- (f) The term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- (g) The term “file,” when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.
- (h) The term “employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.
- (i) The term “medical information” --
 - (1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to--
 - (A) the past, present, or future physical, mental, or behavioral health or condition of an individual;
 - (B) the provision of health care to an individual; or
 - (C) the payment for the provision of health care to an individual.
 - (2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer’s residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) Definitions Relating to Child Support Obligations

- (1) The “overdue support” has the meaning given to such term in section 666(e) of title 42 [Social Security Act, 42 U.S.C. § 666(e)].
- (2) The term “State or local child support enforcement agency” means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) Adverse Action

(1) *Actions included.* The term “adverse action”

(A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and

(B) means

- (i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
- (ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
- (iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [§ 1681b]; and
- (iv) an action taken or determination that is
 - (I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii)[§ 1681b]; and
 - (II) adverse to the interests of the consumer.

- (2) *Applicable findings, decisions, commentary, and orders.* For purposes of any determination of whether an action is an adverse action under paragraph (1) (A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Board of Governors of the Federal Reserve System or any court shall apply.
- (l) The term “firm offer of credit or insurance” means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:
 - (1) The consumer being determined, based on information in the consumer’s application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established
 - (A) before selection of the consumer for the offer; and
 - (B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.
 - (2) Verification
 - (A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or
 - (B) of the information in the consumer’s application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.
 - (3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was

- (A) established before selection of the consumer for the offer of credit or insurance; and
 - (B) disclosed to the consumer in the offer of credit or insurance.
- (m) The term “credit or insurance transaction that is not initiated by the consumer” does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of
- (1) reviewing the account or insurance policy; or
 - (2) collecting the account.
- (n) The term “State” means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.
- (o) *Excluded communications.* A communication is described in this subsection if it is a communication
- (1) that, but for subsection (d)(2)(D), would be an investigative consumer report;
 - (2) that is made to a prospective employer for the purpose of
 - (A) procuring an employee for the employer; or
 - (B) procuring an opportunity for a natural person to work for the employer;
 - (3) that is made by a person who regularly performs such procurement;
 - (4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and
 - (5) with respect to which
 - (A) the consumer who is the subject of the communication
 - (i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;
 - (ii) consents orally or in writing to the making of the communication to a prospective

- employer, before the making of the communication; and
- (iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;
- (B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and
- (C) the person who makes the communication
- (i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and
 - (ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).
- (p) The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to

third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

- (1) Public record information.
 - (2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.
- (q) Definitions relating to fraud alerts.
- (1) The term "active duty military consumer" means a consumer in military service who--
 - (A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and
 - (B) is assigned to service away from the usual duty station of the consumer.
 - (2) The terms "fraud alert" and "active duty alert" mean a statement in the file of a consumer that--
 - (A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and
 - (B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.
 - (3) The term "identity theft" means a fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation.
 - (4) The term "identity theft report" has the meaning given that term by rule of the Commission, and means, at a minimum, a report--
 - (A) that alleges an identity theft;

See also
16 CFR Part 603.2
69 Fed. Reg. 63922
(11/03/04)

- (B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and
 - (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.
- (5) The term “new credit plan” means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.
- (r) Credit and Debit Related Terms
 - (1) The term “card issuer” means--
 - (A) a credit card issuer, in the case of a credit card; and
 - (B) a debit card issuer, in the case of a debit card.
 - (2) The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.
 - (3) The term “debit card” means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.
 - (4) The terms “account” and “electronic fund transfer” have the same meanings as in section 903 of the Electronic Fund Transfer Act.
 - (5) The terms “credit” and “creditor” have the same meanings as in section 702 of the Equal Credit Opportunity Act.
- (s) The term “Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.
- (t) The term “financial institution” means a State or National bank, a State or Federal savings and loan association, a

mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

- (u) The term “reseller” means a consumer reporting agency that--
 - (1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and
 - (2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.
- (v) The term “Commission” means the Federal Trade Commission.
- (w) The term “nationwide specialty consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to--
 - (1) medical records or payments;
 - (2) residential or tenant history;
 - (3) check writing history;
 - (4) employment history; or
 - (5) insurance claims.
- (x) Exclusion of Certain Communications for Employee Investigations
 - (1) A communication is described in this subsection if--
 - (A) but for subsection (d)(2)(D), the communication would be a consumer report;
 - (B) the communication is made to an employer in connection with an investigation of--
 - (i) suspected misconduct relating to employment; or
 - (ii) compliance with Federal, State, or local laws and regulations, the rules of a self-

- regulatory organization, or any preexisting written policies of the employer;
- (C) the communication is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and
 - (D) the communication is not provided to any person except--
 - (i) to the employer or an agent of the employer;
 - (ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;
 - (iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;
 - (iv) as otherwise required by law; or
 - (v) pursuant to section 608.
- (2) *Subsequent disclosure.* After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.
- (3) For purposes of this subsection, the term "self-regulatory organization" includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

§ 604. Permissible purposes of consumer reports

15 U.S.C. § 1681b

- (a) *In general.* Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:
- (1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.
 - (2) In accordance with the written instructions of the consumer to whom it relates.
 - (3) To a person which it has reason to believe
 - (A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or
 - (B) intends to use the information for employment purposes; or
 - (C) intends to use the information in connection with the underwriting of insurance involving the consumer; or
 - (D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or
 - (E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
 - (F) otherwise has a legitimate business need for the information
 - (i) in connection with a business transaction that is initiated by the consumer; or

- (ii) to review an account to determine whether the consumer continues to meet the terms of the account.
- (4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that
 - (A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;
 - (B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);
 - (C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and
 - (D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.
- (5) To an agency administering a State plan under Section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.
- (6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable Federal or State law, or in connec-

tion with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

- (b) Conditions for Furnishing and Using Consumer Reports for Employment Purposes.
- (1) *Certification from user.* A consumer reporting agency may furnish a consumer report for employment purposes only if
- (A) the person who obtains such report from the agency certifies to the agency that
- (i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and
- (ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and
- (B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by the Federal Trade Commission under section 609(c)(3) [§ 1681g].
- (2) Disclosure to Consumer.
- (A) *In general.* Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless--
- (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

- (ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.
- (B) *Application by mail, telephone, computer, or other similar means.* If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application--
 - (i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3); and
 - (ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.
- (C) *Scope.* Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if--
 - (i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and
 - (ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been

by mail, telephone, computer, or other similar means.

- (3) Conditions on use for adverse actions.
- (A) *In general.* Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates--
- (i) a copy of the report; and
 - (ii) a description in writing of the rights of the consumer under this title, as prescribed by the Federal Trade Commission under section 609(c)(3).¹
- (B) Application by mail, telephone, computer, or other similar means.
- (i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 615(a), within 3 business days of taking such action, an oral, written or electronic notification--
 - (I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

¹ The references in Sections 604(b)(3)(A) and 604(b)(3)(B) should be to Section 609(c)(1), not (c)(3) that no longer exists as the result of Congress' re-organization of Section 609(c) in 2003 (FACT Act).

- (II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);
 - (III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and
 - (IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.
- (ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Federal Trade Commission under section 609(c)(3).
- (C) *Scope.* Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if--
- (i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section

- 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and
- (ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.
- (4) Exception for national security investigations.
- (A) *In general.* In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—
- (i) the consumer report is relevant to a national security investigation of such agency or department;
 - (ii) the investigation is within the jurisdiction of such agency or department;
 - (iii) there is reason to believe that compliance with paragraph (3) will—
 - (I) endanger the life or physical safety of any person;
 - (II) result in flight from prosecution;
 - (III) result in the destruction of, or tampering with, evidence relevant to the investigation;
 - (IV) result in the intimidation of a potential witness relevant to the investigation;
 - (V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

- (B) *Notification of consumer upon conclusion of investigation.* Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made--
- (i) a copy of such consumer report with any classified information redacted as necessary;
 - (ii) notice of any adverse action which is based, in part, on the consumer report; and
 - (iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.
- (C) *Delegation by head of agency or department.* For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.
- (D) *Report to the Congress.* Not later than January 31 of each year, the head of each agency and department of the United States Government that exercised authority under this paragraph during the preceding year shall submit a report to the Congress on the number of times the

department or agency exercised such authority during the year.

(E) *Definitions.* For purposes of this paragraph, the following definitions shall apply:

- (i) The term “classified information” means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.
- (ii) The term “national security investigation” means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

(c) Furnishing reports in connection with credit or insurance transactions that are not initiated by the consumer.

- (1) *In general.* A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a) (3) in connection with any credit or insurance transaction that is not initiated by the consumer only if
- (A) the consumer authorizes the agency to provide such report to such person; or
 - (B)
 - (i) the transaction consists of a firm offer of credit or insurance;
 - (ii) the consumer reporting agency has complied with subsection (e);
 - (iii) there is not in effect an election by the consumer, made in accordance with subsection (e), to have the consumer’s name and address excluded from lists of names provided by the agency pursuant to this paragraph; and
 - (iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the

date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.

- (2) *Limits on information received under paragraph (1) (B).* A person may receive pursuant to paragraph (1) (B) only
 - (A) the name and address of a consumer;
 - (B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and
 - (C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.
- (3) *Information regarding inquiries.* Except as provided in section 609(a)(5) [§1681g], a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.
- (d) Reserved.
- (e) Election of consumer to be excluded from lists.
 - (1) *In general.* A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) in connection with a credit or insurance transaction that is not initiated by the consumer, by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.
 - (2) *Manner of notification.* A consumer shall notify a consumer reporting agency under paragraph (1)
 - (A) through the notification system maintained by the agency under paragraph (5); or

- (B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.
- (3) *Response of agency after notification through system.* Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall
- (A) inform the consumer that the election is effective only for the 5-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and
 - (B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.
- (4) *Effectiveness of election.* An election of a consumer under paragraph (1)
- (A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);
 - (B) shall be effective with respect to a consumer reporting agency
 - (i) subject to subparagraph (C), during the 5-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or
 - (ii) until the consumer notifies the agency under subparagraph (C), in the case of an

election for which a consumer notifies the agency in accordance with paragraph (2) (B);

- (C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and
 - (D) shall be effective with respect to each affiliate of the agency.
- (5) Notification System

(A) *In general.* Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer, shall

- (i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and
- (ii) publish by not later than 365 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency
 - (I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and
 - (II) the address and toll-free telephone number for consumers to use to

notify the agency of the consumer's election under clause (I).

- (B) *Establishment and maintenance as compliance.* Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.
- (6) *Notification system by agencies that operate nationwide.* Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.
- (f) *Certain use or obtaining of information prohibited.* A person shall not use or obtain a consumer report for any purpose unless
- (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and
 - (2) the purpose is certified in accordance with section 607 [§ 1681e] by a prospective user of the report through a general or specific certification.
- (g) *Protection of Medical Information*
- (1) *Limitation on consumer reporting agencies.* A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6)) about a consumer, unless--
 - (A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;
 - (B) if furnished for employment purposes or in connection with a credit transaction--

- (i) the information to be furnished is relevant to process or effect the employment or credit transaction; and
 - (ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or
 - (C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).
- (2) *Limitation on creditors.* Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical contact information treated in the manner required under section 605(a)(6)) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.
- (3) *Actions authorized by federal law, insurance activities and regulatory determinations.* Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed--
- (A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

- (B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106-102; or
 - (C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).
- (4) *Limitation on redisclosure of medical information.* Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.
- (5) Regulations and Effective Date for Paragraph (2)
- (A) *Regulations required.* Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

See also
12 CFR Parts 41/222/
232/334/571/717
70 Fed. Reg. 70664
(11/22/05)

(B) *Final regulations required.* The Federal banking agencies and the National Credit Union Administration shall issue the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.

(6) *Coordination with other laws.* No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

15 U.S.C. §1681c § 605. Requirements relating to information contained in consumer reports

- (a) *Information excluded from consumer reports.* Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:
- (1) Cases under title 11 [United States Code] or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.
 - (2) Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
 - (3) Paid tax liens which, from date of payment, antedate the report by more than seven years.
 - (4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.²
 - (5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.²

² The reporting periods have been lengthened for certain adverse information pertaining to U.S. Government insured or guaranteed student loans, or pertaining to national direct student loans. See sections 430A(f) and 463(c)(3) of the Higher Education Act of 1965, 20 U.S.C. 1080a(f) and 20 U.S.C. 1087cc(c)(3), respectively.

- (6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless--
 - (A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or
 - (B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.
- (b) *Exempted cases.* The provisions of paragraphs (1) through (5) of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with
 - (1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;
 - (2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or
 - (3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more.
- (c) *Running of Reporting Period*
 - (1) *In general.* The 7-year period referred to in paragraphs (4) and (6)³ of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately

³ This provision, added in September 1996, should read “paragraphs (4) and (5)....” Prior Section 605(a)(6) was amended and re-designated as Section 605(a)(5) in November 1998. The current Section 605(a)(6), added in December 2003 and now containing no reference to any 7-year period, is obviously inapplicable.

preceded the collection activity, charge to profit and loss, or similar action.

- (2) *Effective date.* Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996.
- (d) Information Required to be Disclosed
- (1) *Title 11 information.* Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11, United States Code, shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11, United States Code, is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.
 - (2) *Key factor in credit score information.* Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(f)(2)(B)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. This paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.
- (e) *Indication of closure of account by consumer.* If a consumer reporting agency is notified pursuant to section 623(a)(4) [§ 1681s-2] that a credit account of a consumer was voluntarily closed by the consumer, the agency shall

indicate that fact in any consumer report that includes information related to the account.

- (f) *Indication of dispute by consumer.* If a consumer reporting agency is notified pursuant to section 623(a)(3) [§ 1681s-2] that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

(g) Truncation of Credit Card and Debit Card Numbers

- (1) *In general.* Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

- (2) *Limitation.* This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

- (3) *Effective date.* This subsection shall become effective--

- (A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

- (B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

(h) Notice of Discrepancy in Address

- (1) *In general.* If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request

includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

See also

16 CFR Part 641

72 Fed. Reg. 63771-72

(11/09/07)

74 Fed. Reg. 22640-41

(05/14/09)

(2) Regulations

- (A) *Regulations required.* The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).
- (B) *Policies and procedures to be included.* The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report--
- (i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and
 - (ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.

§ 605A. Identity theft prevention; fraud alerts and active duty alerts 15 U.S.C. §1681c-1

(a) One-call Fraud Alerts

(1) *Initial alerts.* Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 603(p) that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall--

(A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, for a period of not less than 90 days, beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose; and

(B) refer the information regarding the fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

(2) *Access to free reports.* In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall--

(A) disclose to the consumer that the consumer may request a free copy of the file of the consumer pursuant to section 612(d); and

(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

(b) Extended Alerts

- (1) *In general.* Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who submits an identity theft report to a consumer reporting agency described in section 603(p) that maintains a file on the consumer, if the agency has received appropriate proof of the identity of the requester, the agency shall--
 - (A) include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, during the 7-year period beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of the identity of the requester for such purpose;
 - (B) during the 5-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or such representative requests that such exclusion be rescinded before the end of such period; and
 - (C) refer the information regarding the extended fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).
- (2) *Access to free reports.* In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall--
 - (A) disclose to the consumer that the consumer may request 2 free copies of the file of the consumer pursuant to section 612(d) during the 12-month

period beginning on the date on which the fraud alert was included in the file; and

- (B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

- (c) *Active duty alerts.* Upon the direct request of an active duty military consumer, or an individual acting on behalf of or as a personal representative of an active duty military consumer, a consumer reporting agency described in section 603(p) that maintains a file on the active duty military consumer and has received appropriate proof of the identity of the requester shall--

See also
16 CFR Part 613.1
69 Fed. Reg. 63922
(11/03/04)

- (1) include an active duty alert in the file of that active duty military consumer, and also provide that alert along with any credit score generated in using that file, during a period of not less than 12 months, or such longer period as the Commission shall determine, by regulation, beginning on the date of the request, unless the active duty military consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose;
- (2) during the 2-year period beginning on the date of such request, exclude the active duty military consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer requests that such exclusion be rescinded before the end of such period; and
- (3) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

- (d) *Procedures.* Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with this section, including procedures that inform consumers of the availability of initial, extended, and active duty alerts and procedures that allow consumers and active duty military consumers to request initial, extended, or active duty alerts (as applicable) in a simple and easy manner, including by telephone.
- (e) *Referrals of alerts.* Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert or active duty alert from another consumer reporting agency pursuant to this section shall, as though the agency received the request from the consumer directly, follow the procedures required under--
- (1) paragraphs (1)(A) and (2) of subsection (a), in the case of a referral under subsection (a)(1)(B);
 - (2) paragraphs (1)(A), (1)(B), and (2) of subsection (b), in the case of a referral under subsection (b)(1)(C); and
 - (3) paragraphs (1) and (2) of subsection (c), in the case of a referral under subsection (c)(3).
- (f) *Duty of reseller to reconvey alert.* A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.
- (g) *Duty of other consumer reporting agencies to provide contact information.* If a consumer contacts any consumer reporting agency that is not described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this section.
- (h) *Limitations on Use of Information for Credit Extensions*
- (1) Requirements for initial and active duty alerts-

(A) *Notification.* Each initial fraud alert and active duty alert under this section shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B).

(B) Limitation on Users

- (i) *In general.* No prospective user of a consumer report that includes an initial fraud alert or an active duty alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.
- (ii) *Verification.* If a consumer requesting the alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension described in clause (i) in the name of such consumer, a user of such consumer report shall contact the consumer using that telephone number or take reasonable steps to verify the consumer's

identity and confirm that the application for a new credit plan is not the result of identity theft.

(2) Requirements for Extended Alerts

- (A) *Notification.* Each extended alert under this section shall include information that provides all prospective users of a consumer report relating to a consumer with—
- (i) notification that the consumer does not authorize the establishment of any new credit plan or extension of credit described in clause (i), other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (B); and
 - (ii) a telephone number or other reasonable contact method designated by the consumer.
- (B) *Limitation on users.* No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended fraud alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method described in subparagraph (A)(ii) to confirm that the application for a new credit plan or increase in credit limit, or request for

an additional card is not the result of identity theft.

§ 605B. Block of information resulting from identity theft

15 U.S.C. §1681c-2

- (a) *Block.* Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 4 business days after the date of receipt by such agency of—
- (1) appropriate proof of the identity of the consumer;
 - (2) a copy of an identity theft report;
 - (3) the identification of such information by the consumer; and
 - (4) a statement by the consumer that the information is not information relating to any transaction by the consumer.
- (b) *Notification.* A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a)--
- (1) that the information may be a result of identity theft;
 - (2) that an identity theft report has been filed;
 - (3) that a block has been requested under this section; and
 - (4) of the effective dates of the block.
- (c) *Authority to Decline or Rescind*
- (1) *In general.* A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that--
 - (A) the information was blocked in error or a block was requested by the consumer in error;
 - (B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the con-

- sumer relevant to the request to block; or
- (C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.
- (2) *Notification to consumer.* If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 611(a)(5)(B).
 - (3) *Significance of block.* For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.
- (d) Exception for Resellers
- (1) *No reseller file.* This section shall not apply to a consumer reporting agency, if the consumer reporting agency--
 - (A) is a reseller;
 - (B) is not, at the time of the request of the consumer under subsection (a), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and
 - (C) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.
 - (2) *Reseller with file.* The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if--
 - (A) the consumer, in accordance with the provisions of subsection (a), identifies, to a consumer reporting agency, information in the file of

the consumer that resulted from identity theft;
and

- (B) the consumer reporting agency is a reseller of the identified information.
- (3) *Notice.* In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.
- (e) *Exception for verification companies.* The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 4 business days after receipt of information described in paragraphs (1) through (3) of subsection (a), a check services company shall not report to a national consumer reporting agency described in section 603(p), any information identified in the subject identity theft report as resulting from identity theft.
- (f) *Access to blocked information by law enforcement agencies.* No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.

§ 606. Disclosure of investigative consumer reports

15 U.S.C. § 1681d

- (a) *Disclosure of fact of preparation.* A person may not procure or cause to be prepared an investigative consumer report on any consumer unless
- (1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made, and such disclosure

- (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and
 - (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section and the written summary of the rights of the consumer prepared pursuant to section 609(c) [§ 1681g]; and
- (2) the person certifies or has certified to the consumer reporting agency that
 - (A) the person has made the disclosures to the consumer required by paragraph (1); and
 - (B) the person will comply with subsection (b).
- (b) *Disclosure on request of nature and scope of investigation.* Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.
- (c) *Limitation on liability upon showing of reasonable procedures for compliance with provisions.* No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.
- (d) Prohibitions
 - (1) *Certification.* A consumer reporting agency shall not prepare or furnish investigative consumer report

unless the agency has received a certification under subsection (a)(2) from the person who requested the report.

- (2) *Inquiries.* A consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable Federal or State equal employment opportunity law or regulation.
- (3) *Certain public record information.* Except as otherwise provided in section 613 [§ 1681k], a consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.
- (4) *Certain adverse information.* A consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless
 - (A) the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information; or
 - (B) the person interviewed is the best possible source of the information.

§ 607. Compliance procedures

15 U.S.C. § 1681e

- (a) *Identity and purposes of credit users.* Every consumer reporting agency shall maintain reasonable procedures

designed to avoid violations of section 605 [§ 1681c] and to limit the furnishing of consumer reports to the purposes listed under section 604 [§ 1681b] of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604 [§ 1681b] of this title.

- (b) *Accuracy of report.* Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.
- (c) *Disclosure of consumer reports by users allowed.* A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.
- (d) *Notice to Users and Furnishers of Information*
 - (1) *Notice requirement.* A consumer reporting agency shall provide to any person
 - (A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or
 - (B) to whom a consumer report is provided by the agency;a notice of such person's responsibilities under this title.
 - (2) *Content of notice.* The Federal Trade Commission shall prescribe the content of notices under paragraph

See also
16 CFR 698, App G-H
69 Fed. Reg. 69776
(11/30/04)

(1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Federal Trade Commission prescription under this paragraph.

(e) Procurement of Consumer Report for Resale

(1) *Disclosure.* A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 604 [§ 1681b] for which the report is furnished to the end-user of the report (or information).

(2) *Responsibilities of procurers for resale.* A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 604 [§ 1681b], including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person

(i) identifies each end user of the resold report (or information);

(ii) certifies each purpose for which the report (or information) will be used; and

(iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

- (3) *Resale of consumer report to a federal agency or department.* Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if—
- (A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 604(b)(4)(E)(i)); and
- (B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department.

15 U.S.C. § 1681f § 608. Disclosures to governmental agencies

Notwithstanding the provisions of section 604 [§ 1681b] of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

15 U.S.C. § 1681g § 609. Disclosures to consumers

- (a) *Information on file; sources; report recipients.* Every consumer reporting agency shall, upon request, and subject to 610(a)(1) [§ 1681h], clearly and accurately disclose to the consumer:
- (1) All information in the consumer's file at the time of the request except that--
- (A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclo-

sure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

- (B) nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.
- (2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually use for no other purpose need not be disclosed: Provided, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.
- (3) (A) Identification of each person (including each end-user identified under section 607(e)(1) [§ 1681e]) that procured a consumer report
- (i) for employment purposes, during the 2-year period preceding the date on which the request is made; or
 - (ii) for any other purpose, during the 1-year period preceding the date on which the request is made.
- (B) An identification of a person under subparagraph (A) shall include
- (i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and
 - (ii) upon request of the consumer, the address and telephone number of the person.
- (C) Subparagraph (A) does not apply if--
- (i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of

the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 604(b)(4)(E)(i)); and

- (ii) the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).
- (4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.
 - (5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.
 - (6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.
- (b) *Exempt information.* The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.
 - (c) Summary of Rights to Obtain and Dispute Information in Consumer Reports and to Obtain Credit Scores
 - (1) Commission Summary of Rights Required
 - (A) *In general.* The Commission shall prepare a model summary of the rights of consumers under this title.
 - (B) *Content of summary.* The summary of rights prepared under subparagraph (A) shall include a description of—
 - (i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

See also
16 CFR Part 698,
App F
69 Fed. Reg. 69776
(11/30/04)

- (ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 612;
 - (iii) the right of a consumer to dispute information in the file of the consumer under section 611;
 - (iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;
 - (v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Commission prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and
 - (vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 603(w), as provided in the regulations of the Commission prescribed under section 612(a)(1)(C).
- (C) *Availability of summary of rights.* The Commission shall--
- (i) actively publicize the availability of the summary of rights prepared under this paragraph;
 - (ii) conspicuously post on its Internet website the availability of such summary of rights; and
 - (iii) promptly make such summary of rights available to consumers, on request.
- (2) *Summary of rights required to be included with agency disclosures.* A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section--

- (A) the summary of rights prepared by the Commission under paragraph (1);
 - (B) in the case of a consumer reporting agency described in section 603(p), a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;
 - (C) a list of all Federal agencies responsible for enforcing any provision of this title, 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;
 - (D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and
 - (E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 605 or cannot be verified.
- (d) **Summary of Rights of Identity Theft Victims**
- (1) *In general.* The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.
 - (2) *Summary of rights and contact information.* Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Commission pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic

See also
16 CFR Part 698,
App E
69 Fed. Reg. 69776
(11/30/04)

fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Commission under paragraph (1), and information on how to contact the Commission to obtain more detailed information.

(e) Information Available to Victims

- (1) *In general.* For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to--
 - (A) the victim;
 - (B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or
 - (C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.
- (2) *Verification of identity and claim.* Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the

identity of the victim making a request under paragraph (1), the victim shall provide to the business entity--

- (A) as proof of positive identification of the victim, at the election of the business entity--
 - (i) the presentation of a government-issued identification card;
 - (ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or
 - (iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and
- (B) as proof of a claim of identity theft, at the election of the business entity--
 - (i) a copy of a police report evidencing the claim of the victim of identity theft; and
 - (ii) a properly completed--
 - (I) copy of a standardized affidavit of identity theft developed and made available by the Commission; or
 - (II) an affidavit of fact that is acceptable to the business entity for that purpose.
- (3) *Procedures.* The request of a victim under paragraph (1) shall--
 - (A) be in writing;
 - (B) be mailed to an address specified by the business entity, if any; and
 - (C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including--

- (i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and
 - (ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.
- (4) *No charge to victim.* Information required to be provided under paragraph (1) shall be so provided without charge.
- (5) *Authority to decline to provide information.* A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that--
 - (A) this subsection does not require disclosure of the information;
 - (B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;
 - (C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or
 - (D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.
- (6) *Limitation on liability.* Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.
- (7) *Limitation on civil liability.* No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.
- (8) *No new recordkeeping obligation.* Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information

or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

(9) Rule of Construction

(A) *In general.* No provision of subtitle A of title V of Public Law 106-102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

(B) *Limitation.* Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

(10) *Affirmative defense.* In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

(A) the business entity has made a reasonably diligent search of its available business records; and

(B) the records requested under this subsection do not exist or are not reasonably available.

(11) *Definition of victim.* For purposes of this subsection, the term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

(12) *Effective date.* This subsection shall become effective 180 days after the date of enactment of this subsection.

(13) *Effectiveness study.* Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.

(f) Disclosure of Credit Scores

(1) *In general.* Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include--

- (A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;
- (B) the range of possible credit scores under the model used;
- (C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);
- (D) the date on which the credit score was created; and
- (E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(2) *Definitions.* For purposes of this subsection, the following definitions shall apply:

- (A) The term “credit score” --
 - (i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such

analysis may also be referred to as a “risk predictor” or “risk score”); and

- (ii) does not include--
 - (I) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or
 - (II) any other elements of the underwriting process or underwriting decision.
- (B) The term “key factors” means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.
- (3) *Timeframe and manner of disclosure.* The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).
- (4) *Applicability to certain uses.* This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not--
 - (A) distribute scores that are used in connection with residential real property loans; or
 - (B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.
- (5) *Applicability to credit scores developed by another person.*
 - (A) *In general.* This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute

arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

- (B) *Exception.* This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.
- (6) *Maintenance of credit scores not required.* This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.
- (7) *Compliance in certain cases.* In complying with this subsection, a consumer reporting agency shall--
- (A) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and
- (B) a statement indicating that the information and credit scoring model may be different than that used by the lender.
- (8) *Fair and reasonable fee.* A consumer reporting agency may charge a fair and reasonable fee, as determined by the Commission, for providing the information required under this subsection.
- (9) *Use of enquiries as a key factor.* If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(C) without regard to the numerical limitation in such paragraph.

See also
69 Fed. Reg. 64698
(11/08/04)

- (g) Disclosure of Credit Scores by Certain Mortgage Lenders
- (1) *In general.* Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the “lender”) shall provide the following to the consumer as soon as reasonably practicable:
- (A) Information Required under Subsection (f)
- (i) *In general.* A copy of the information identified in subsection (f) that was obtained from a consumer reporting agency or was developed and used by the user of the information.
- (ii) *Notice under subparagraph (D).* In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (D).
- (B) Disclosures in Case of Automated Underwriting System
- (i) *In general.* If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.
- (ii) *Numerical credit score.* However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (C).

- (iii) *Enterprise defined.* For purposes of this subparagraph, the term “enterprise” has the same meaning as in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.
- (C) *Disclosures of credit scores not obtained from a consumer reporting agency.* A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.
- (D) *Notice to home loan applicants.* A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

“Notice To The Home Loan Applicant

“In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

“The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and

payment patterns change, and how credit scoring technologies change.

“Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

“If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

“If you have questions concerning the terms of the loan, contact the lender.”

- (E) *Actions not required under this subsection.* This subsection shall not require any person to—
- (i) explain the information provided pursuant to subsection (f);
 - (ii) disclose any information other than a credit score or key factors, as defined in subsection (f);
 - (iii) disclose any credit score or related information obtained by the user after a loan has closed;
 - (iv) provide more than 1 disclosure per loan transaction; or
 - (v) provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

- (F) No Obligation for Content
- (i) *In general.* The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.
 - (ii) *Limit on liability.* No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.
- (G) *Person defined as excluding enterprise.* As used in this subsection, the term “person” does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

(2) Prohibition on Disclosure Clauses Null and Void

- (A) *In general.* Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.
- (B) *No liability for disclosure under this subsection-* A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

§ 610. Conditions and form of disclosure to consumers

15 U.S.C. § 1681h

(a) In General

- (1) *Proper identification.* A consumer reporting agency shall require, as a condition of making the disclosures required under section 609 [§ 1681g], that the consumer furnish proper identification.
- (2) *Disclosure in writing.* Except as provided in subsection (b), the disclosures required to be made under section 609 [§ 1681g] shall be provided under that section in writing.

- (b) Other Forms of Disclosure
- (1) *In general.* If authorized by a consumer, a consumer reporting agency may make the disclosures required under 609 [§ 1681g]
 - (A) other than in writing; and
 - (B) in such form as may be
 - (i) specified by the consumer in accordance with paragraph (2); and
 - (ii) available from the agency.
 - (2) *Form.* A consumer may specify pursuant to paragraph (1) that disclosures under section 609 [§ 1681g] shall be made
 - (A) in person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;
 - (B) by telephone, if the consumer has made a written request for disclosure by telephone;
 - (C) by electronic means, if available from the agency; or
 - (D) by any other reasonable means that is available from the agency.
- (c) *Trained personnel.* Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609 [§ 1681g] of this title.
- (d) *Persons accompanying consumer.* The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.
- (e) *Limitation of liability.* Except as provided in sections 616 and 617 [§§1681n and 1681o] of this title, no consumer may bring any action or proceeding in the nature of defa-

mation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615 [§§ 1681g, 1681h, or 1681m] of this title or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report, except as to false information furnished with malice or willful intent to injure such consumer.

§ 611. Procedure in case of disputed accuracy

15 U.S.C. § 1681i

(a) Reinvestigations of Disputed Information

(1) Reinvestigation Required

- (A) *In general.* Subject to subsection (f), if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.
- (B) *Extension of period to reinvestigate.* Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.
- (C) *Limitations on extension of period to reinvestigate.* Subparagraph (B) shall not apply to any

reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt Notice of Dispute to Furnisher of Information

(A) *In general.* Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer or a reseller in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer or reseller.

(B) *Provision of other information.* The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer or the reseller after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination That Dispute Is Frivolous or Irrelevant

(A) *In general.* Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) *Notice of determination.* Upon making any determination in accordance with subparagraph

- (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.
- (C) *Contents of notice.* A notice under subparagraph (B) shall include
- (i) the reasons for the determination under subparagraph (A); and
 - (ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.
- (4) *Consideration of consumer information.* In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1) (A) with respect to such disputed information.
- (5) *Treatment of Inaccurate or Unverifiable Information*
- (A) *In general.* If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall—
- (i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and
 - (ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.

- (B) Requirements Relating to Reinsertion of Previously Deleted Material
- (i) *Certification of accuracy of information.* If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.
 - (ii) *Notice to consumer.* If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.
 - (iii) *Additional information.* As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion
 - (I) a statement that the disputed information has been reinserted;
 - (II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and
 - (III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

- (C) *Procedures to prevent reappearance.* A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).
 - (D) *Automated reinvestigation system.* Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.
- (6) Notice of Results of Reinvestigation
- (A) *In general.* A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.
 - (B) *Contents.* As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)
 - (i) a statement that the reinvestigation is completed;
 - (ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;
 - (iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the

consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

- (iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and
 - (v) a notice that the consumer has the right to request under subsection (d) that the consumer reporting agency furnish notifications under that subsection.
- (7) *Description of reinvestigation procedure.* A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iii) by not later than 15 days after receiving a request from the consumer for that description.
- (8) *Expedited dispute resolution.* If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency
- (A) provides prompt notice of the deletion to the consumer by telephone;
 - (B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) that the agency furnish notifications under that subsection; and
 - (C) provides written confirmation of the deletion and a copy of a consumer report on the con-

sumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.

- (b) *Statement of dispute.* If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.
- (c) *Notification of consumer dispute in subsequent consumer reports.* Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.
- (d) *Notification of deletion of disputed information.* Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.
- (e) Treatment of Complaints and Report to Congress
 - (1) *In general.* The Commission shall--
 - (A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 603(p) contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or

otherwise utilized the procedures provided by subsection (a); and

- (B) transmit each such complaint to each consumer reporting agency involved.
- (2) *Exclusion.* Complaints received or obtained by the Commission pursuant to its investigative authority under the Federal Trade Commission Act shall not be subject to paragraph (1).
- (3) *Agency responsibilities.* Each consumer reporting agency described in section 603(p) that receives a complaint transmitted by the Commission pursuant to paragraph (1) shall--
 - (A) review each such complaint to determine whether all legal obligations imposed on the consumer reporting agency under this title (including any obligation imposed by an applicable court or administrative order) have been met with respect to the subject matter of the complaint;
 - (B) provide reports on a regular basis to the Commission regarding the determinations of and actions taken by the consumer reporting agency, if any, in connection with its review of such complaints; and
 - (C) maintain, for a reasonable time period, records regarding the disposition of each such complaint that is sufficient to demonstrate compliance with this subsection.
- (4) *Rulemaking authority.* The Commission may prescribe regulations, as appropriate to implement this subsection.
- (5) *Annual report.* The Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report regarding information gathered by the Commission under this subsection.

(f) Reinvestigation Requirement Applicable to Resellers

(1) *Exemption from general reinvestigation requirement.* Except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

(2) *Action required upon receiving notice of a dispute.* If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice, and free of charge—

(A) determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

(B) if (i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, not later than 20 days after receiving the notice, correct the information in the consumer report or delete it; or

(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.

(3) *Responsibility of consumer reporting agency to notify consumer through reseller.* Upon the completion of a reinvestigation under this section of a dispute concerning the completeness or accuracy of any information in the file of a consumer by a consumer reporting agency that received notice of the dispute from a reseller under paragraph (2)--

- (A) the notice by the consumer reporting agency under paragraph (6), (7), or (8) of subsection (a) shall be provided to the reseller in lieu of the consumer; and
 - (B) the reseller shall immediately reconvey such notice to the consumer, including any notice of a deletion by telephone in the manner required under paragraph (8)(A).
- (4) *Reseller reinvestigations.* No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.

15 U.S.C. § 1681j § 612. Charges for certain disclosures

See also
16 CFR Part 610
69 Fed. Reg. 35467
(06/24/04)

(a) Free Annual Disclosure

(1) Nationwide Consumer Reporting Agencies

- (A) *In general.* All consumer reporting agencies described in subsections (p) and (w) of section 603 shall make all disclosures pursuant to section 609 once during any 12-month period upon request of the consumer and without charge to the consumer.
- (B) *Centralized source.* Subparagraph (A) shall apply with respect to a consumer reporting agency described in section 603(p) only if the request from the consumer is made using the centralized source established for such purpose in accordance with section 211(c) of the Fair and Accurate Credit Transactions Act of 2003.
- (C) Nationwide Specialty Consumer Reporting Agency
 - (i) *In general.* The Commission shall prescribe regulations applicable to each consumer reporting agency described in section 603(w) to require the establishment of a streamlined process for consumers to request consumer reports under subparagraph (A), which shall include, at a

minimum, the establishment by each such agency of a toll-free telephone number for such requests.

- (ii) *Considerations.* In prescribing regulations under clause (i), the Commission shall consider—
 - (I) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;
 - (II) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and
 - (III) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.
- (iii) *Date of issuance.* The Commission shall issue the regulations required by this subparagraph in final form not later than 6 months after the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.
- (iv) *Consideration of ability to comply.* The regulations of the Commission under this subparagraph shall establish an effective date by which each nationwide specialty consumer reporting agency (as defined in section 603(w)) shall be required to comply with subsection (a), which effective date—
 - (I) shall be established after consideration of the ability of each nationwide specialty consumer reporting agency to comply with subsection (a); and

- (II) shall be not later than 6 months after the date on which such regulations are issued in final form (or such additional period not to exceed 3 months, as the Commission determines appropriate).
- (2) *Timing.* A consumer reporting agency shall provide a consumer report under paragraph (1) not later than 15 days after the date on which the request is received under paragraph (1).
- (3) *Reinvestigations.* Notwithstanding the time periods specified in section 611(a)(1), a reinvestigation under that section by a consumer reporting agency upon a request of a consumer that is made after receiving a consumer report under this subsection shall be completed not later than 45 days after the date on which the request is received.
- (4) *Exception for first 12 months of operation.* This subsection shall not apply to a consumer reporting agency that has not been furnishing consumer reports to third parties on a continuing basis during the 12-month period preceding a request under paragraph (1), with respect to consumers residing nationwide.
- (b) *Free disclosure after adverse notice to consumer.* Each consumer reporting agency that maintains a file on a consumer shall make all disclosures pursuant to section 609 [§ 1681g] without charge to the consumer if, not later than 60 days after receipt by such consumer of a notification pursuant to section 615 [§ 1681m], or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 [§ 1681g].
- (c) *Free disclosure under certain other circumstances.* Upon the request of the consumer, a consumer reporting agency shall make all disclosures pursuant to section 609 [§ 1681g] once during any 12-month period without charge to that consumer if the consumer certifies in writing that the consumer

- (1) is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;
 - (2) is a recipient of public welfare assistance; or
 - (3) has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.
- (d) *Free disclosures in connection with fraud alerts.* Upon the request of a consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 without charge to the consumer, as provided in subsections (a)(2) and (b)(2) of section 605A, as applicable.
- (e) *Other charges prohibited.* A consumer reporting agency shall not impose any charge on a consumer for providing any notification required by this title or making any disclosure required by this title, except as authorized by subsection (f).
- (f) Reasonable Charges Allowed for Certain Disclosures
- (1) *In general.* In the case of a request from a consumer other than a request that is covered by any of subsections (a) through (d), a consumer reporting agency may impose a reasonable charge on a consumer
 - (A) for making a disclosure to the consumer pursuant to section 609 [§ 1681g], which charge
 - (i) shall not exceed \$8;⁴ and
 - (ii) shall be indicated to the consumer before making the disclosure; and
 - (B) for furnishing, pursuant to 611(d) [§ 1681i], following a reinvestigation under section 611(a) [§ 1681i], a statement, codification, or summary to a person designated by the consumer under that section after the 30-day period beginning on the date of notification of the consumer under paragraph (6) or (8) of section 611(a)

⁴ Pursuant to Section 612(f)(2), the Federal Trade Commission increased the maximum charge to \$11.00, effective January 1, 2009. See 73 Fed. Reg. 79845 (Dec. 29, 2008).

[§ 1681i] with respect to the reinvestigation, which charge

- (i) shall not exceed the charge that the agency would impose on each designated recipient for a consumer report; and
 - (ii) shall be indicated to the consumer before furnishing such information.
- (2) *Modification of amount.* The Federal Trade Commission shall increase the amount referred to in paragraph (1)(A)(i) on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.
- (g) **Prevention of Deceptive Marketing of Credit Reports**
- (1) *In general.* Subject to rulemaking pursuant to section 205(b) of the Credit CARD Act of 2009, any advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at “AnnualCreditReport.com” (or such other source as may be authorized under Federal law).
 - (2) *Television and radio advertisement.* In the case of an advertisement broadcast by television, the disclosures required under paragraph (1) shall be included in the audio and visual part of such advertisement. In the case of an advertisement broadcast by television or radio, the disclosure required under paragraph (1) shall consist only of the following: “This is not the free credit report provided for by Federal law.”

15 U.S.C. § 1681k § 613. Public record information for employment purposes

- (a) *In general.* A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer’s ability to obtain employment shall

- (1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or
 - (2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.
- (b) *Exemption for national security investigations.* Subsection (a) does not apply in the case of an agency or department of the United States Government that seeks to obtain and use a consumer report for employment purposes, if the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).

§ 614. Restrictions on investigative consumer reports

15 U.S.C. § 1681f

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

§ 615. Requirements on users of consumer reports

15 U.S.C. § 1681m

- (a) *Duties of users taking adverse actions on the basis of information contained in consumer reports.* If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall

- (1) provide oral, written, or electronic notice of the adverse action to the consumer;
 - (2) provide to the consumer orally, in writing, or electronically
 - (A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - (B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
 - (3) provide to the consumer an oral, written, or electronic notice of the consumer's right
 - (A) to obtain, under section 612 [§ 1681j], a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and
 - (B) to dispute, under section 611 [§ 1681i], with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.
- (b) Adverse Action Based on Information Obtained from Third Parties Other than Consumer Reporting Agencies
- (1) *In general.* Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable

period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

- (2) Duties of Person Taking Certain Actions Based on Information Provided by Affiliate
- (A) *Duties, generally.* If a person takes an action described in subparagraph (B) with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall
- (i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and
 - (ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (i), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.
- (B) *Action described.* An action referred to in subparagraph (A) is an adverse action described in section 603(k)(1)(A) [§ 1681a], taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 603(k)(1)(B) [§ 1681a].
- (C) *Information described.* Information referred to in subparagraph (A)
- (i) except as provided in clause (ii), is information that

- (I) is furnished to the person taking the action by a person related by common ownership or affiliated by common corporate control to the person taking the action; and
 - (II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and
 - (ii) does not include
 - (I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or
 - (II) information in a consumer report.
- (c) *Reasonable procedures to assure compliance.* No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.
- (d) **Duties of Users Making Written Credit or Insurance Solicitations on the Basis of Information Contained in Consumer Files**
 - (1) *In general.* Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 604(c)(1)(B) [§ 1681b], shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that
 - (A) information contained in the consumer's consumer report was used in connection with the transaction;
 - (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability

under which the consumer was selected for the offer;

- (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;
 - (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and
 - (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [§ 1681b].
- (2) *Disclosure of address and telephone number; format.* A statement under paragraph (1) shall--
- (A) include the address and toll-free telephone number of the appropriate notification system established under section 604(e); and
 - (B) be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.
- (3) *Maintaining criteria on file.* A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until

See also
16 CFR Part 642
16 CFR Part 698
App A
70 Fed. Reg. 5022
(01/31/05)

the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

- (4) *Authority of federal agencies regarding unfair or deceptive acts or practices not affected.* This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

See also
16 CFR Part 681
72 Fed. Reg. 63772-
74 (11/09/07)
74 Fed. Reg. 22640-
41 (05/14/09)

(e) Red Flag Guidelines and Regulations Required

- (1) *Guidelines.* The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621–
- (A) establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;
 - (B) prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A), to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers; and
 - (C) prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer, in accordance with reasonable policies and procedures–

- (i) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;
 - (ii) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or
 - (iii) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subparagraph (B).
- (2) Criteria
- (A) *In general.* In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.
 - (B) *Inactive accounts.* In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall consider including reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or financial institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.
- (3) *Consistency with verification requirements.* Guidelines established pursuant to paragraph (1) shall not be inconsistent with the policies and procedures required under section 5318(l) of title 31, United States Code.

- (f) **Prohibition on Sale or Transfer of Debt Caused by Identity Theft**
- (1) *In general.* No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 605B has resulted from identity theft.
 - (2) *Applicability.* The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).
 - (3) *Rule of construction.* Nothing in this subsection shall be construed to prohibit--
 - (A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;
 - (B) the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or
 - (C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.
- (g) *Debt collector communications concerning identity theft.* If a person acting as a debt collector (as that term is defined in title VIII) on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person shall--
- (1) notify the third party that the information may be fraudulent or may be the result of identity theft; and
 - (2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.

(h) Duties of Users in Certain Credit Transactions

- (1) *In general.* Subject to rules prescribed as provided in paragraph (6), if any person uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person shall provide an oral, written, or electronic notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection.
- (2) *Timing.* The notice required under paragraph (1) may be provided at the time of an application for, or a grant, extension, or other provision of, credit or the time of communication of an approval of an application for, or grant, extension, or other provision of, credit, except as provided in the regulations prescribed under paragraph (6).
- (3) *Exceptions.* No notice shall be required from a person under this subsection if—
 - (A) the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report; or
 - (B) the person has provided or will provide a notice to the consumer under subsection (a) in connection with the transaction.
- (4) *Other notice not sufficient.* A person that is required to provide a notice under subsection (a) cannot meet that requirement by providing a notice under this subsection.
- (5) *Content and delivery of notice.* A notice under this subsection shall, at a minimum—
 - (A) include a statement informing the consumer that the terms offered to the consumer are set based on information from a consumer report;

- (B) identify the consumer reporting agency furnishing the report;
 - (C) include a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge; and
 - (D) include the contact information specified by that consumer reporting agency for obtaining such consumer reports (including a toll-free telephone number established by the agency in the case of a consumer reporting agency described in section 603(p)).
- (6) Rulemaking
- (A) *Rules required.* The Commission and the Board shall jointly prescribe rules.
 - (B) *Content.* Rules required by subparagraph (A) shall address, but are not limited to—
 - (i) the form, content, time, and manner of delivery of any notice under this subsection;
 - (ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable;
 - (iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers;
 - (iv) a model notice that may be used to comply with this subsection; and
 - (v) the timing of the notice required under paragraph (1), including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report.

- (7) *Compliance.* A person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the person maintained reasonable policies and procedures to comply with this section.
- (8) Enforcement
 - (A) *No civil actions.* Sections 616 and 617 shall not apply to any failure by any person to comply with this section.
 - (B) *Administrative enforcement.* This section shall be enforced exclusively under section 621 by the Federal agencies and officials identified in that section.

§ 616. Civil liability for willful noncompliance

15 U.S.C. § 1681n

- (a) *In general.* Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of
 - (1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or
 - (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;
 - (2) such amount of punitive damages as the court may allow; and
 - (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (b) *Civil liability for knowing noncompliance.* Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer report-

ing agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

- (c) *Attorney's fees.* Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.
- (d) *Clarification of willful noncompliance.* For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and the date of the enactment of this subsection but otherwise complied with the requirements of section 605(g) for such receipt shall not be in willful noncompliance with section 605(g) by reason of printing such expiration date on the receipt.

15 U.S.C. § 1681o § 617. Civil liability for negligent noncompliance

- (a) *In general.* Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of
 - (1) any actual damages sustained by the consumer as a result of the failure; and
 - (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
- (b) *Attorney's fees.* On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

§ 618. Jurisdiction of courts; limitation of actions 15 U.S.C. § 1681p

An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of (1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs.

§ 619. Obtaining information under false pretenses 15 U.S.C. § 1681q

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

§ 620. Unauthorized disclosures by officers or employees 15 U.S.C. § 1681r

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

§ 621. Administrative enforcement 15 U.S.C. § 1681s

- (a) (1) *Enforcement by Federal Trade Commission.* Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act [15 U.S.C. §§ 41 et seq.] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. § 45(a)] and shall be subject to enforcement by the Federal Trade Commission under section 5(b)

thereof [15 U.S.C. § 45(b)] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

- (2) (A) In the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than \$2,500 per violation.⁵
- (B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.
- (3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) [§ 1681s-2] unless the person has been enjoined from committing the violation, or

⁵ Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Trade Commission increased the maximum civil penalty to \$3,500 per violation, effective February 9, 2009. See 74 Fed. Reg. 857 (Jan. 9, 2009).

ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

- (b) *Enforcement by other agencies.* Compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) of section 615 [§ 1681m] shall be enforced under
- (1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], in the case of
 - (A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
 - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. §§ 601 et seq., §§ 611 et seq], by the Board of Governors of the Federal Reserve System; and
 - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
 - (2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. § 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

- (3) the Federal Credit Union Act [12 U.S.C. §§ 1751 et seq.], by the Administrator of the National Credit Union Administration [National Credit Union Administration Board] with respect to any Federal credit union;
- (4) subtitle IV of title 49 [49 U.S.C. §§ 10101 et seq.], by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;
- (5) the Federal Aviation Act of 1958 [49 U.S.C. Appx §§ 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act [49 U.S.C. Appx §§ 1301 et seq.]; and
- (6) the Packers and Stockyards Act, 1921 [7 U.S.C. §§ 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. §§ 226 and 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. §1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. § 3101).

(c) State Action for Violations

- (1) *Authority of states.* In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State
 - (A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;
 - (B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover
 - (i) damages for which the person is liable to such residents under sections 616 and 617

- [§§ 1681n and 1681o] as a result of the violation;
- (ii) in the case of a violation described in any of paragraphs (1) through (3) of section 623(c) [§ 1681s-2], damages for which the person would, but for section 623(c), be liable to such residents as a result of the violation; or
 - (iii) damages of not more than \$1,000 for each willful or negligent violation; and
- (C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.
- (2) *Rights of federal regulators.* The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right
- (A) to intervene in the action;
 - (B) upon so intervening, to be heard on all matters arising therein;
 - (C) to remove the action to the appropriate United States district court; and
 - (D) to file petitions for appeal.
- (3) *Investigatory powers.* For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer

oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

- (4) *Limitation on state action while federal action pending.* If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this title that is alleged in that complaint.
- (5) Limitations on State Actions for Certain Violations
 - (A) *Violation of injunction required.* A State may not bring an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 623(c), unless
 - (i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and
 - (ii) the person has violated the injunction.
 - (B) *Limitation on damages recoverable.* In an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 623(c), a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.
- (d) *Enforcement under other authority.* For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing

compliance with any requirement imposed under this title any other authority conferred on it by law.

(e) Regulatory authority

- (1) The Federal banking agencies referred to in paragraphs (1) and (2) of subsection (b) shall jointly prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraphs (1) and (2) of subsection (b), and the Board of Governors of the Federal Reserve System shall have authority to prescribe regulations consistent with such joint regulations with respect to bank holding companies and affiliates (other than depository institutions and consumer reporting agencies) of such holding companies.
- (2) The Board of the National Credit Union Administration shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraph (3) of subsection (b).

(f) Coordination of Consumer Complaint Investigations

- (1) *In general.* Each consumer reporting agency described in section 603(p) shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the agency alleging identity theft, or requesting a fraud alert under section 605A or a block under section 605B.
- (2) *Model form and procedure for reporting identity theft.* The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.
- (3) *Annual summary reports.* Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.

See also
70 Fed.Reg. 21792
(04/27/05)

- (g) *FTC regulation of coding of trade names.* If the Commission determines that a person described in paragraph (9) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures, as necessary to ensure that such person complies with such paragraph.

15 U.S.C. § 1681s-1 § 622. Information on overdue child support obligations

Notwithstanding any other provision of this title, a consumer reporting agency shall include in any consumer report furnished by the agency in accordance with section 604 [§ 1681b] of this title, any information on the failure of the consumer to pay overdue support which

- (1) is provided
 - (A) to the consumer reporting agency by a State or local child support enforcement agency; or
 - (B) to the consumer reporting agency and verified by any local, State, or Federal government agency; and
- (2) antedates the report by 7 years or less.

15 U.S.C. § 1681s-2 § 623. Responsibilities of furnishers of information to consumer reporting agencies

- (a) Duty of Furnishers of Information to Provide Accurate Information
 - (1) Prohibition
 - (A) *Reporting information with actual knowledge of errors.* A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.
 - (B) *Reporting information after notice and confirmation of errors.* A person shall not furnish information relating to a consumer to any consumer reporting agency if

- (i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and
 - (ii) the information is, in fact, inaccurate.
 - (C) *No address requirement.* A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.
 - (D) *Definition.* For purposes of subparagraph (A), the term “reasonable cause to believe that the information is inaccurate” means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.
- (2) *Duty to correct and update information.* A person who
- (A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer; and
 - (B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate, shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.
- (3) *Duty to provide notice of dispute.* If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not

furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

- (4) *Duty to provide notice of closed accounts.* A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.
- (5) *Duty to Provide Notice of Delinquency of Accounts*
 - (A) *In general.* A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.
 - (B) *Rule of construction.* For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—
 - (i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;
 - (ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and

- follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or
- (iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.
- (6) Duties of Furnishers Upon Notice of Identity Theft-Related Information
- (A) *Reasonable procedures.* A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.
- (B) *Information alleged to result from identity theft.* If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) Negative Information

(A) Notice to Consumer Required

- (i) *In general.* If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.
- (ii) *Notice effective for subsequent submissions.* After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) Time of Notice

- (i) *In general.* The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).
- (ii) *Coordination with new account disclosures.* If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

- (C) *Coordination with other disclosures*- The notice required under subparagraph (A)-
- (i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and
 - (ii) must be clear and conspicuous.
- (D) Model Disclosure
- (i) *Duty of board to prepare.* The Board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.
 - (ii) *Use of model not required.* No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Board.
 - (iii) *Compliance using model.* A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Board, or the financial institution uses any such model form and rearranges its format.
- (E) *Use of notice without submitting negative information.* No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.
- (F) *Safe harbor.* A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

See also
12 CFR Part 222,
App B
70 Fed. Reg. 33281
(06/15/04)

- (G) *Definitions.* For purposes of this paragraph, the following definitions shall apply:
- (i) The term “negative information” means information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.
 - (ii) The terms “customer” and “financial institution” have the same meanings as in section 509 Public Law 106-102.
- (8) Ability of Consumer to Dispute Information Directly with Furnisher
- (A) *In general.* The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.
- (B) *Considerations.* In prescribing regulations under subparagraph (A), the agencies shall weigh--
- (i) the benefits to consumers with the costs on furnishers and the credit reporting system;
 - (ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;
 - (iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and
 - (iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3) [15 U.S.C. §1679a(3)], including entities that would be a credit repair organization, but for

See also
16 CFR Part 660.4
74 Fed. Reg. 31484
(7/1/09)

- section 403(3)(B)(i), are able to circumvent the prohibition in subparagraph (G).
- (C) *Applicability.* Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).
- (D) *Submitting a notice of dispute.* A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that--
- (i) identifies the specific information that is being disputed;
 - (ii) explains the basis for the dispute; and
 - (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.
- (E) *Duty of person after receiving notice of dispute.* After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall--
- (i) conduct an investigation with respect to the disputed information;
 - (ii) review all relevant information provided by the consumer with the notice;
 - (iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

- (iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.
- (F) Frivolous or Irrelevant Dispute
- (i) *In general.* This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including--
 - (I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or
 - (II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.
 - (ii) *Notice of determination.* Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

- (iii) *Contents of notice.* A notice under clause (ii) shall include--
 - (I) the reasons for the determination under clause (i); and
 - (II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.
 - (G) *Exclusion of credit repair organizations.* This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i).
 - (9) *Duty to provide notice of status as medical information furnisher.* A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.
- (b) Duties of Furnishers of Information upon Notice of Dispute
- (1) *In general.* After receiving notice pursuant to section 611(a)(2) [§ 1681i] of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall
 - (A) conduct an investigation with respect to the disputed information;
 - (B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2) [§ 1681i];

- (C) report the results of the investigation to the consumer reporting agency;
 - (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and
 - (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—
 - (i) modify that item of information;
 - (ii) delete that item of information; or
 - (iii) permanently block the reporting of that item of information.
- (2) *Deadline.* A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) [§ 1681i] within which the consumer reporting agency is required to complete actions required by that section regarding that information.
- (c) *Limitation on liability.* Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—
- (1) subsection (a) of this section, including any regulations issued thereunder;
 - (2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; or
 - (3) subsection (e) of section 615.

- (d) *Limitation on enforcement.* The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.
- (e) Accuracy Guidelines and Regulations Required

See also
16 CFR Part 660
74 Fed. Reg. 31484
(7/1/09)

- (1) *Guidelines.* The Federal banking agencies, the National Credit Union Administration, and the Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2)--
- (A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and
- (B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).
- (2) *Coordination.* Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.
- (3) *Criteria.* In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall--
- (A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

- (B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;
- (C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and
- (D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

See also
 16 CFR Parts 680,
 698 Appx C
 72 Fed. Reg. 61455-
 64 (10/30/07)
 74 Fed. Reg. 22639-
 40 (05/14/09)

15 U.S.C. § 1681s-3 § 624. Affiliate sharing

- (a) Special Rule for Solicitation for Purposes of Marketing
 - (1) *Notice.* Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for clauses (i), (ii), and (iii) of section 603(d)(2)(A), may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless--
 - (A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and
 - (B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.
 - (2) Consumer Choice
 - (A) *In general.* The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all solicitations referred to in such paragraph, and may allow the consumer to choose from different options when electing

to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

- (B) *Format.* Notwithstanding subparagraph (A), the notice required under paragraph (1) shall be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) shall be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

(3) Duration

- (A) *In general.* The election of a consumer pursuant to paragraph (1)(B) to prohibit the making of solicitations shall be effective for at least 5 years, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

- (B) *Notice upon expiration of effective period.* At such time as the election of a consumer pursuant to paragraph (1)(B) is no longer effective, a person may not use information that the person receives in the manner described in paragraph (1) to make any solicitation for marketing purposes to the consumer, unless the consumer receives a notice and an opportunity, using a simple method, to extend the opt-out for another period of at least 5 years, pursuant to the procedures described in paragraph (1).

(4) *Scope.* This section shall not apply to a person—

- (A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

- (B) using information to facilitate communications to an individual for whose benefit the person provides employee benefit or other services pursuant to a contract with an employer related to and arising out of the current employment relationship or status of the individual as a participant or beneficiary of an employee benefit plan;
 - (C) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not be construed as permitting a person to send solicitations on behalf of another person, if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);
 - (D) using information in response to a communication initiated by the consumer;
 - (E) using information in response to solicitations authorized or requested by the consumer; or
 - (F) if compliance with this section by that person would prevent compliance by that person with any provision of State insurance laws pertaining to unfair discrimination in any State in which the person is lawfully doing business.
- (5) *No retroactivity.* This subsection shall not prohibit the use of information to send a solicitation to a consumer if such information was received prior to the date on which persons are required to comply with regulations implementing this subsection.
- (b) *Notice for other purposes permissible.* A notice or other disclosure under this section may be coordinated and consolidated with any other notice required to be issued under any other provision of law by a person that is subject to this section, and a notice or other disclosure that is equivalent to the notice required by subsection (a), and that is provided by a person described in subsection (a) to a consumer together with disclosures required by any

other provision of law, shall satisfy the requirements of subsection (a).

- (c) *User requirements.* Requirements with respect to the use by a person of information received from another person related to it by common ownership or affiliated by corporate control, such as the requirements of this section, constitute requirements with respect to the exchange of information among persons affiliated by common ownership or common corporate control, within the meaning of section 625(b)(2).
- (d) *Definitions.* For purposes of this section, the following definitions shall apply:
- (1) The term “pre-existing business relationship” means a relationship between a person, or a person’s licensed agent, and a consumer, based on--
 - (A) a financial contract between a person and a consumer which is in force;
 - (B) the purchase, rental, or lease by the consumer of that person’s goods or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between the consumer and that person during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section;
 - (C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or
 - (D) any other pre-existing customer relationship defined in the regulations implementing this section.
 - (2) The term “solicitation” means the marketing of a product or service initiated by a person to a particular consumer that is based on an exchange of information described in subsection (a), and is intended to

encourage the consumer to purchase such product or service, but does not include communications that are directed at the general public or determined not to be a solicitation by the regulations prescribed under this section.

15 U.S.C. § 1681t § 625. Relation to State laws

- (a) *In general.* Except as provided in subsections (b) and (c), this title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.
- (b) *General exceptions.* No requirement or prohibition may be imposed under the laws of any State
 - (1) with respect to any subject matter regulated under
 - (A) subsection (c) or (e) of section 604 [§ 1681b], relating to the prescreening of consumer reports;
 - (B) section 611 [§ 1681i], relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996;
 - (C) subsections (a) and (b) of section 615 [§ 1681m], relating to the duties of a person who takes any adverse action with respect to a consumer;
 - (D) section 615(d) [§ 1681m], relating to the duties of persons who use a consumer report of a consumer in connection with any credit or

- insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;
- (E) section 605 [§ 1681c], relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996;
 - (F) section 623 [§ 1681s-2], relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply
 - (i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996); or
 - (ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996);
 - (G) section 609(e), relating to information available to victims under section 609(e);
 - (H) section 624, relating to the exchange and use of information to make a solicitation for marketing purposes; or
 - (I) section 615(h), relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;
- (2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, except that this paragraph shall not apply with respect to subsection (a) or (c)(1) of section 2480e of title 9, Vermont Statutes Annotated (as in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996);
 - (3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 609,

or subsection (f) of section 609 relating to the disclosure of credit scores for credit granting purposes, except that this paragraph--

- (A) shall not apply with respect to sections 1785.10, 1785.16, and 1785.20.2 of the California Civil Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003) and section 1785.15 through section 1785.15.2 of such Code (as in effect on such date);
 - (B) shall not apply with respect to sections 5-3-106(2) and 212-14.3-104.3 of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); and
 - (C) shall not be construed as limiting, annulling, affecting, or superseding any provision of the laws of any State regulating the use in an insurance activity, or regulating disclosures concerning such use, of a credit-based insurance score of a consumer by any person engaged in the business of insurance;
- (4) with respect to the frequency of any disclosure under section 612(a), except that this paragraph shall not apply--
- (A) with respect to section 12-14.3-105(1)(d) of the Colorado Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);
 - (B) with respect to section 10-1-393(29)(C) of the Georgia Code (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);
 - (C) with respect to section 1316.2 of title 10 of the Maine Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);

- (D) with respect to sections 14-1209(a)(1) and 14-1209(b)(1)(i) of the Commercial Law Article of the Code of Maryland (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);
 - (E) with respect to section 59(d) and section 59(e) of chapter 93 of the General Laws of Massachusetts (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003);
 - (F) with respect to section 56:11-37.10(a)(1) of the New Jersey Revised Statutes (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); or
 - (G) with respect to section 2480c(a)(1) of title 9 of the Vermont Statutes Annotated (as in effect on the date of enactment of the Fair and Accurate Credit Transactions Act of 2003); or
- (5) with respect to the conduct required by the specific provisions of--
- (A) section 605(g);
 - (B) section 605A;
 - (C) section 605B;
 - (D) section 609(a)(1)(A);
 - (E) section 612(a);
 - (F) subsections (e), (f), and (g) of section 615;
 - (G) section 621(f);
 - (H) section 623(a)(6); or
 - (I) section 628.
- (c) *Definition of firm offer of credit or insurance.* Notwithstanding any definition of the term “firm offer of credit or insurance” (or any equivalent term) under the laws of any State, the definition of that term contained in section 603(l) [§ 1681a] shall be construed to apply in the enforcement and interpretation of the laws of any State governing consumer reports.

- (d) *Limitations.* Subsections (b) and (c) do not affect any settlement, agreement, or consent judgment between any State Attorney General and any consumer reporting agency in effect on the date of enactment of the Consumer Credit Reporting Reform Act of 1996.

15 U.S.C. § 1681u § 626. Disclosures to FBI for counterintelligence purposes

- (a) *Identity of financial institutions.* Notwithstanding section 604 [§ 1681b] or any other provision of this title, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 1101 of the Right to Financial Privacy Act of 1978 [12 U.S.C. § 3401]) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee 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, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined 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.
- (b) *Identifying information.* Notwithstanding the provisions of section 604 [§ 1681b] or any other provision of this title, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee, which certifies compliance with this subsection. The Director or the Director's

designee 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 may make such a certification only if the Director or the Director's designee has determined 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.

- (c) *Court order for disclosure of consumer reports.* Notwithstanding section 604 [§ 1681b] or any other provision of this title, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director 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, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing 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. The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counter-intelligence investigation.
- (d) *Confidentiality.* No consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person, other than those officers, employees, or agents of a consumer reporting agency necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section, that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee,

or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information or a consumer report.

- (e) *Payment of fees.* The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.
- (f) *Limit on dissemination.* The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.
- (g) *Rules of construction.* Nothing in this section shall be construed to prohibit information from being furnished by the Federal Bureau of Investigation pursuant to a subpoena or court order, in connection with a judicial or administrative proceeding to enforce the provisions of this Act. Nothing in this section shall be construed to authorize or permit the withholding of information from the Congress.
- (h) *Reports to Congress.* On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the Senate concerning all requests made pursuant to subsections (a), (b), and (c).

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- (i) *Damages.* Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of
- (1) \$100, without regard to the volume of consumer reports, records, or information involved;
 - (2) any actual damages sustained by the consumer as a result of the disclosure;
 - (3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and
 - (4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.
- (j) *Disciplinary actions for violations.* If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.
- (k) *Good-faith exception.* Notwithstanding any other provision of this title, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.
- (l) *Limitation of remedies.* Notwithstanding any other provision of this title, the remedies and sanctions set forth in

this section shall be the only judicial remedies and sanctions for violation of this section.

- (m) *Injunctive relief.* In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.

15 U.S.C. § 1681v § 627. Disclosures to governmental agencies for counterterrorism purposes

- (a) *Disclosure.* Notwithstanding section 604 or any other provision of this title, 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.
- (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) *Confidentiality.* 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).
- (d) *Rule of construction.* Nothing in section 626 shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.
- (e) *Safe harbor.* Notwithstanding any other provision of this title, 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 governmental 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.

§ 628. Disposal of records

15 U.S.C. § 1681w

(a) Regulations

See also
16 CFR Part 682
69 Fed. Reg. 68690
(11/24/04)

- (1) *In general.* Not later than 1 year after the date of enactment of this section, 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 621, and the Securities and Exchange Commission, 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 Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission 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.

15 U.S.C. § 1681x § 629. Corporate and technological circumvention prohibited

The Commission shall prescribe regulations, to become effective not later than 90 days after the date of enactment of this section, to prevent a consumer reporting agency from circumventing or evading treatment as a consumer reporting agency described in section 603(p) for purposes of this title, 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 603(p), in the manner described in section 603(p).

See also
 16 CFR Part 611
 69 Fed. Reg. 8531
 (02/24/04)
 69 Fed. Reg. 29061
 (05/20/04)

LEGISLATIVE HISTORY

House Report: No. 91-975 (Comm. on Banking and Currency)

Senate Report: No. 91-1139 (Comm. on Banking and Currency)

Conference Report: No. 91-1587

Enactment: Public Law No. 91-508 (October 26, 1970)

Amendments: Public Law Nos. 95-473 (October 17, 1978)
95-598 (November 6, 1978)
98-443 (October 4, 1984)
101-73 (August 9, 1989)
102-242 (December 19, 1991)
102-537 (October 27, 1992)
102-550 (October 28, 1992)
103-325 (September 23, 1994)
104-88 (December 29, 1995)
104-93 (January 6, 1996)
104-193 (August 22, 1996)
104-208 (September 30, 1996)
105-107 (November 20, 1997)
105-347 (November 2, 1998)
106-102 (November 12, 1999)
107-56 (October 26, 2001)
108-159 (December 4, 2003)
109-351 (October 13, 2006)
110-241 (June 3, 2008)
111-24 (May 22, 2009)

FEDERAL TRADE COMMISSION

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FOR THE CONSUMER

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THE FAIR DEBT COLLECTION PRACTICES ACT

As amended by Pub. L. 109-351, §§ 801-02, 120 Stat. 1966 (2006)

As a public service, the staff of the Federal Trade Commission (FTC) has prepared the following complete text of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p.

Please note that the format of the text differs in minor ways from the U.S. Code and West's U.S. Code Annotated. For example, this version uses FDCPA section numbers in the headings. In addition, the relevant U.S. Code citation is included with each section heading. Although the staff has made every effort to transcribe the statutory material accurately, this compendium is intended as a convenience for the public and not a substitute for the text in the U.S. Code.

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15 USC 1601 note

§ 801. Short Title

This title may be cited as the “Fair Debt Collection Practices Act.”

15 USC 1692

§ 802. Congressional findings and declaration of purpose

- (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
- (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.
- (e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 USC 1692a

§ 803. Definitions

As used in this title—

- (1) The term “Commission” means the Federal Trade Commission.
- (2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.

- (4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—
 - (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 - (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only

- for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
- (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
 - (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
 - (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
 - (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
 - (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - (ii) concerns a debt which was originated by such person;
 - (iii) concerns a debt which was not in default at the time it was obtained by such person; or
 - (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- (7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.
- (8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information

15 USC 1692b

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection

15 USC 1692c

(a) **COMMUNICATION WITH THE CONSUMER GENERALLY.** Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the

consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

- (d) For the purpose of this section, the term “consumer” includes the consumer’s spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 806. Harassment or abuse

15 USC 1692d

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)¹ of this Act.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller’s identity.

1. Section 604(3) has been renumbered as Section 604(a)(3).

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of—
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
 - (A) lose any claim or defense to payment of the debt; or
 - (B) become subject to any practice prohibited by this title.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.
- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true propose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.

- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 809. Validation of debts

15 USC 1692g

- (a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—
 - (1) the amount of the debt;
 - (2) the name of the creditor to whom the debt is owed;
 - (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
 - (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
 - (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- (b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original credi-

tor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

- (c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.
- (d) A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).
- (e) The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

15 USC 1692h

§ 810. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 809

15 USC 1692g

§ 811. Legal actions by debt collectors

15 USC 1692i

- (a) Any debt collector who brings any legal action on a debt against any consumer shall—
- (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or
 - (2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—
 - (A) in which such consumer signed the contract sued upon; or
 - (B) in which such consumer resides at the commencement of the action.
- (b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms

15 USC 1692j

- (a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.
- (b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

§ 813. Civil liability

15 USC 1692k

- (a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of—

- (1) any actual damage sustained by such person as a result of such failure;
 - (2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or
(B) in the case of a class action,
 - (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and
 - (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and
 - (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.
- (b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—
- (1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or
 - (2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

- (c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.
- (d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.
- (e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 814. Administrative enforcement

15 USC 1692/

- (a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.
- (b) Compliance with any requirements imposed under this title shall be enforced under—

- (1) section 8 of the Federal Deposit Insurance Act, in the case of—
 - (A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
 - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and
 - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
- (2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
- (3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;
- (4) the Acts to regulate commerce, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;
- (5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and
- (6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

- (c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).
- (d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission

15 USC 1692m

- (a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.
- (b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

15 USC 1692n

§ 816. Relation to State laws

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

15 USC 1692o

§ 817. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

15 USC 1692p

§ 818. Exception for certain bad check enforcement programs operated by private entities

(a) In General.—

- (1) TREATMENT OF CERTAIN PRIVATE ENTITIES.— Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 803(6), with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).
- (2) CONDITIONS OF APPLICABILITY.—Paragraph (1) shall apply if—
 - (A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

- (B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and
- (C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—
 - (i) complies with the penal laws of the State;
 - (ii) conforms with the terms of the contract and directives of the State or district attorney;
 - (iii) does not exercise independent prosecutorial discretion;
 - (iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—
 - (I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and
 - (II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;
 - (v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—
 - (I) the alleged offender may dispute the validity of any alleged bad check violation;
 - (II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft,

or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

- (b) Certain Checks Excluded.—A check is described in this subsection if the check involves, or is subsequently found to involve—
- (1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;
 - (2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;
 - (3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;
 - (4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

- (5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or
 - (6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.
- (c) Definitions.—For purposes of this section, the following definitions shall apply:
- (1) STATE OR DISTRICT ATTORNEY.—The term “State or district attorney” means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth’s attorneys, solicitors, county attorneys, and state’s attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.
 - (2) CHECK.—The term “check” has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.
 - (3) BAD CHECK VIOLATION.—The term “bad check violation” means a violation of the applicable State criminal law relating to the writing of dishonored checks.

15 USC 1692 note

§ 819. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

LEGISLATIVE HISTORY

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