



September 21, 2010

Federal Trade Commission
Office of the Secretary
Rom H-135 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACTA Notices, Project No. P105408 (Summary of Rights and Notice of Duties Under the Fair Credit Reporting Act)

Ladies and Gentlemen:

The American Financial Services Association (“AFSA”) appreciates the opportunity to comment on the Federal Trade Commission’s (“FTC”) revised summary of rights and notices of duties under the Fair Credit Reporting Act (“FCRA”). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers. AFSA members furnish information to consumer reporting agencies and obtain consumer reports from consumer reporting agencies.

Below are our comments on the revised versions of the summary of consumer rights (“summary of rights”) and the notice of responsibilities for persons that furnish information to consumer reporting agencies (“furnisher notice”).

Summary of Rights (Appendix F)

Fix Mistakes in Your Credit Report

AFSA believes that the information given to consumers in the summary of rights notice under the bullet, “Fix Mistakes in Your Credit Report,” is too vague. The advice to, “write a letter to the company that provided the information about you (such as your credit card company), tell them about the mistake, and ask them to correct it,” will generate a number of frivolous disputes which will distress consumers trying to follow the advice in the summary of rights.

Furnishers are only required, by the final rules implementing the Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section

312 of the Fair and Accurate Credit Transactions Act (“Accuracy and Integrity Rules”), to investigate disputes that meet certain conditions.

“A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at: (1) The address of a furnisher provided by a furnisher and set forth on a consumer report relating to the consumer; (2) An address clearly and conspicuously specified by the furnisher for submitting direct disputes that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or (3) Any business address of the furnisher if the furnisher has not so specified and provided an address for submitting direct disputes under paragraphs (c)(1) or (2) of this section.”¹

“A dispute notice must include: (1) Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer, if applicable; (2) The specific information that the consumer is disputing and an explanation of the basis for the dispute; and (3) All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example: A copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.”²

Already the majority of the disputes that furnishers receive are frivolous and most are mere reproductions of form letters found on the internet or provided by “credit repair” organizations. Nonetheless, under the current rules, if the dispute is mailed to the specified address, the furnisher must respond to it. The nearly universally frivolous nature of the disputes received greatly increases the risk that the rare meritorious dispute will not be recognized for what it is. Frivolous disputes waste time for furnishers and often upset consumers who would like a response from a furnisher, but do not know how to correctly contact the furnisher. Consumers will likely and unintentionally submit many more frivolous or irrelevant disputes by following the advice in the summary of rights as currently drafted. AFSA recommends that the FTC use the summary of rights to better educate consumers by explaining to them the proper way to submit a dispute. We understand that the FTC wishes the form to be clear and useful and we believe that the inclusion of a few more details will better achieve that objective.

AFSA suggests that the FTC add three points under the second bullet point in the section “Fix Mistakes in Your Credit Report.” The first bullet point should state, “You must write to the company at the address provided in the consumer report or one provided by the company for the purpose of fixing mistakes in credit reports. If no address is provided, you may send your letter to any business address.” If an address is specified in the consumer report and you do not use that address, no action is required by the furnisher and you may not received any response to your letter.”

The second bullet point should state, “In your letter, you must include sufficient information to identify what account you have with the company (such as an account number and your name, address and telephone number), what specific information you are disputing, an explanation of your dispute, and supporting documentation that demonstrates the basis of your dispute, such

¹ 74 FR 31513 (July 1, 2009)

² 74 FR 31513 (July 1, 2009)

as a police report, a fraud or identity theft affidavit, a court order, or account statements.” A mere statement that “The information is incorrect” or “I do not recall this account” is insufficient and does not put the furnisher under any obligation to investigate your dispute.”

The third bullet point should state, “If you do not provide this information to the correct address, the company will not be able to fix the mistake.”

This clarification will reduce the number of frivolous or irrelevant disputes, which will help the consumer and the furnisher.

Stop Pre-Approved Offers of Credit

AFSA respectfully requests that the FTC change the phrase “stop pre-approved offers of credit” to “opt-out of pre-approved offers of credit.” The term “opt-out” is more accurate.

Consumer Reporting Company

The FTC uses the term “consumer reporting company” in the summary of rights to describe Equifax, Experian, TransUnion, and others. AFSA believes that the FTC should use the term “credit bureau” or “consumer reporting agency” instead, since either of those terms are more common and will be more familiar to consumers.

Additional Rights

The third bullet point under this heading provides that “Identity theft victims and active military duty personnel have additional rights. For more information, visit www.ftc.gov/idtheft.” Although this site will provide additional information to assist consumers that may have been the victims of identity theft, this link does not contain any information regarding rights available to military duty personnel. The section should include information regarding where additional information is available to active military duty personnel, or remove the reference to active military duty personnel from this section.

Notice of Derogatory Information

AFSA believes that it would be beneficial to consumers to add a section in the summary of rights telling consumers that companies can and will report derogatory information about a consumer’s account, as permitted under the FCRA. The section should state that companies must notify consumers in writing of this possibility, but that the notice may be provided on billing statements or on any other documents that may be given to the consumer in connection with the credit transaction.

AFSA members have been getting complaints from consumers, and even lawsuits, stating that companies do not have the right to report derogatory information to a credit bureau because

the information was not provided in a proper notice. AFSA believes it would be beneficial to consumers to know where they can find the notice.

Furnisher Notice (Appendix G)

To Provide Accurate Information

The furnisher notice includes the following statement: “If a consumer disputes the accuracy or completeness of information you provided to a CRA, you must not report it to a CRA without noting the dispute.” AFSA asks that the FTC clarify that the statement only applies to valid disputes, not frivolous or irrelevant disputes. We suggest that the FTC add the phrase, “unless the dispute is frivolous or irrelevant,” to the end of the sentence.

To Investigate Disputes

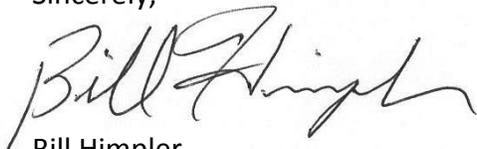
This section states that when a consumer notifies a furnisher in writing that the furnisher provided inaccurate information about the consumer to a CRA, the furnisher must “promptly report the correct information to CRAs if the information is inaccurate.” AFSA asks that the statement be modified by adding, “or add a dispute flag, as is permitted in certain circumstances, such as on-going litigation.”

In the Event of Identity Theft

AFSA respectfully requests that language in this section more closely mirror the language in the Accuracy and Integrity Rules. Additionally, this section should note that a furnisher needs a copy of a police report to claim identity theft.

Please do not hesitate to contact me at 202-296-5544 or bhimpler@afsamail.org if you have any questions about our comments or if we can provide further assistance.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association