



August 16, 2004

Experian  
475 Anton Boulevard  
Costa Mesa, CA 92626

Donald S. Clark  
Secretary  
Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex S)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20850

Re: FACTA Notices, Matter No. R411013

Dear Mr. Clark:

Experian Information Solutions, Inc. (“Experian”) respectfully submits its comments on the Federal Trade Commission’s (“Commission”) newly proposed summary of rights of identity theft victims, as well as to the proposed revisions to the existing general summary of consumer rights under the FCRA, the notice of responsibilities under the FCRA of persons that furnish information to consumer reporting agencies and the notice of responsibilities for users of consumer reports.<sup>1</sup>

In addition to its own comments, Experian fully supports and joins with the comments and suggested revisions provided by the Consumer Data Industry Association (“CDIA”). Because consumers, consumer report users and furnishers of information to consumer reporting agencies will look to the information provided in the summaries and notices when communicating with Experian and other consumer reporting agencies, Experian believes that it is vital that the summaries and notices provide accurate information and correctly reflect the FCRA’s provisions as amended by the Fair and Accurate Credit Transactions Act (“FACT Act”).

**1. Requirement to Provide Revised Notices to *Current* Information Furnishers and Users of Consumer Reports**

FCRA § 607(d) requires the Commission to prescribe the content of the notices that consumer reporting agencies must provide to consumer report users and furnishers of information to consumer reporting agencies.<sup>2</sup> Although the FACT Act did not amend FCRA § 607(d), the Commission believes the existing furnisher and user notices are outdated because of the significant changes made to furnisher and user obligations by

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<sup>1</sup> 69 Fed. Reg. 42616 (July 16, 2004).

<sup>2</sup> FCRA § 607(d); 15 U.S.C. § 1681e(d).

the FACT Act. Experian agrees that revisions to existing notices are needed to accurately communicate the duties of furnishers and users under the FCRA.

Experian, however, believes that the Commission's requirement that the revised notices be provided to "all *current* users and furnishers" should be stricken as improper, redundant, burdensome and of no identifiable benefit. Since 1997, Experian has provided the Commission-developed notices to information furnishers and consumer report users. In addition, it is Experian's belief that this requirement is unnecessary because furnishers and users have actively monitored the FACT Act amendments to the FCRA.

There is no statutory basis for a requirement that consumer reporting agencies provide the revised notices to *current* users and furnishers. Consumer reporting agencies are required to provide the notices of furnisher and user duties only once.<sup>3</sup> FCRA § 607(d) requires only that the notices provided by consumer reporting agencies be "substantially similar" to the Commission-prescribed notices.<sup>4</sup> Experian and other consumer reporting agencies have met this requirement since 1997 and will continue to meet this requirement in the future when the Commission's revised notices become effective. The Commission's attempt to require consumer reporting agencies to *redisclose* notices to *current* users and furnishers amounts to unauthorized rulemaking by the Commission.

Experian, therefore, joins CDIA in urging the Commission to make clear that consumer reporting agencies comply with their FCRA § 607(d) obligations when they provide notices to furnishers and users that are substantially similar to the Commission's prescribed notices that are in effect at the time the notices are given.

## **2. Comments Concerning Summaries and Notices**

Experian believes that the primary purpose of the summaries and notices is to accurately and meaningfully reflect the content of the FCRA as amended by the FACT Act. With this purpose in mind, Experian offers the following suggestions and comments on each of the proposed summaries and notices. These changes, and others not discussed herein, are reflected in the *revised* summaries and notices attached to CDIA's Comment Letter, which Experian wholly supports and urges the Commission to adopt.

### **Appendix E: Summary of Consumer Rights for Remediating the Effects of Identity Theft**

The summary contains inaccurate statements. Under the first heading, the summary states "[y]ou have a right to a free copy of your consumer report, if you believe it has inaccurate information due to fraud or identity theft." This statement confuses the term "consumer report" with a statutory file disclosure. A "consumer report" is what a

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<sup>3</sup> 69 Fed. Reg at 42618.

<sup>4</sup> FCRA § 607(d); 15 U.S.C. § 1681e(d).

consumer reporting agency provides to a third party user.<sup>5</sup> When consumers obtain disclosures from consumer reporting agencies under FCRA § 609(a), they obtain “all the information in the consumer’s file” at the agency. This information includes not only that which may be reported in a consumer report to a third party, but also recent inquiries on the consumer’s file. The Commission’s summary should accurately describe what consumers receive from consumer reporting agencies.

In addition, the reference to “or identity theft” should be stricken from the following sentence: “[y]ou have a right to a free copy of your consumer report [sic], if you believe it has inaccurate information due to fraud or identity theft.” The statute provides for a free file disclosure only if the consumer believes the report has inaccurate information *due to fraud*.<sup>6</sup> Although an identity theft victim may also obtain free file disclosures if he places a fraud alert or an extended alert on his file, that right is predicated upon the victim meeting the requirements to obtain these alerts.

The following sentence should also be stricken: “This report is in addition to the free report all consumers may obtain every twelve months under another provision of the FCRA.” The right to a free file disclosure every twelve months has nothing to do with identity theft. Moreover, the summary of identity theft rights must be given by all consumer reporting agencies, whereas the right to a free file disclosure applies only to nationwide (and nationwide specialty) consumer reporting agencies.

Finally, the proposal refers to the consumer’s right to a free “consumer report” every “year.” Again, the consumer has a right to a free file disclosure from a nationwide consumer reporting agency or a nationwide specialty consumer reporting agency every twelve months. Moreover, the FCRA does not require that the information in this box be included in this summary of rights for identity theft victims. The final version of the summary should make clear that its inclusion is voluntary.

#### **Appendix F: Summary of Consumers’ Rights under the FCRA**

As the Commission observes, the FACT Act amendments to Section 609 raise an issue as to whether CRAs must distribute the summary in the exact form prescribed by the Commission. The Supplementary Information indicates that the Commission reads the statute as providing consumer reporting agencies with the flexibility to structure the disclosure as necessary and appropriate.

Experian is concerned that this flexibility is undermined by the statement that: “[C]onsumer reporting agencies that distribute summaries and notices as set forth below will be in compliance.”<sup>7</sup> Experian suggests that the final version make clear that consumer reporting agencies will comply if their summaries are “substantially similar” to the Commission’s versions.

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<sup>5</sup> See FCRA § 603(d).

<sup>6</sup> See FCRA § 612(c)(3).

<sup>7</sup> 69 Fed. Reg. at 42621.

The paragraph describing the consumer's ability to obtain information from his or her file should be revised to make clear that when consumers obtain their file disclosures from consumer reporting agencies under FCRA § 609(a), they obtain "all the information in the consumer's file" at the agency as well as the recent inquiries on the consumer's file. They do not obtain a "consumer report."

The paragraph under the heading "you have the right to know your credit score" should make clear that the consumer may obtain the credit score "upon request." The paragraph should also state that the consumer may obtain a credit score disclosure rather than "your credit score." There are thousands of scores used commercially. Even applying the same scoring model, consumers' scores vary over time and from consumer reporting agency to agency. Experian is concerned that the summary inaccurately implies that there is only one score for every consumer.

### **Appendix G: Notice of Furnishers' Obligations**

The first paragraph of the proposed furnisher notice states that: "State law may impose additional requirements." Experian believes that the notice should be revised to reflect the federal preemption of all state laws that impose requirements relating to the responsibilities of furnishers, with the exception of two laws (certain provisions of Massachusetts and California law as in effect on September 30, 1996).<sup>8</sup>

The notice also refers furnishers to the FTC's website for the applicable regulations. Many furnishers of information to consumer reporting agencies are within the jurisdiction of the federal banking agencies or the NCUA, rather than the Commission. The notice should include the website addresses where these other agencies have published their implementing regulations.

### **Appendix H: Notice of Obligations of Users of Consumer Reports**

The first paragraph under II (additional disclosures of creditors) inaccurately summarizes the provisions of FCRA § 615(h). At this juncture, we do not know what the agencies' final rule will provide. For that reason, the summary paragraph should reflect the statutory language. The statement incorrectly states that the user of a consumer report must "disclose this fact [that creditor offered less favorable material terms to the consumer than are offered to a substantial portion of the creditor's customers] to the consumer." There is *no* such required disclosure in the statute. Unless it is provided for in the regulations, it should not be in this summary. We note, as well, that the Commission should take this opportunity to make clear that, until the subject regulations are final, creditors are under no obligation to provide this notice.

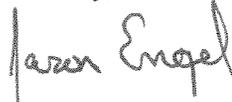
Other changes are discussed in CDIA's Comment Letter and revised summary. Experian agrees with CDIA that these additional revisions are needed and urges the Commission to give them proper considerations.

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<sup>8</sup> FCRA §§ 625(b)(1)(F) and 615(5)(F); 15 U.S.C. §§ 1681(u)(b)(1)(F) and 1681(u)(b)(5)(F).

Experian appreciates the opportunity to comment on these important summaries and notices and hopes that due consideration will be given to its comments as a consumer reporting agency that will have to provide the summaries and notices to millions of consumers, users of consumer reports and furnishers of information.

Sincerely,

A handwritten signature in black ink that reads "Jason Engel". The signature is written in a cursive style with a vertical line extending downwards from the end of the name.

Jason Engel  
Vice President and  
Assistant General Counsel