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September 21, 2010

Via Regular Mail and  
Weblink (<https://ftcpublic.commentworks.com/ftc/fcrarevvisednotices>)

Federal Trade Commission (*FACTA Notices, Project No. P105408*)  
Office of the Secretary, Room H-135 (Annex M)  
600 Pennsylvania Avenue NW  
Washington, D.C. 20580

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

To Whom It May Concern:

On behalf of Legal Services of New Jersey (LSNJ), we hereby provide comments on the Federal Trade Commission's (FTC) proposed changes to the Summary of Rights and Notices of Duties Under the Fair Credit Reporting Act (75 Fed. Reg. 52655, August 27, 2010). We agree with the FTC's proposed changes to improve the clarity and readability of the Summary of Rights Notice to consumers, and join the request of the National Employment Law Project (NELP) and Community Legal Services (CLS), to require notices to specifically address the issues presented by criminal background reports, preferably by creating consumer notices customized for employment purposes.

LSNJ is the coordinating agency for New Jersey's Legal Services System, which provides legal assistance to low-income people in civil matters. LSNJ's Prisoner Reentry Project provides assistance in civil matters to eligible inmates and those with criminal records to help their successful transition back into society.

Many of the individuals in New Jersey who return home from prison with a criminal record want to fully integrate back into their communities, contribute to their families, and resume life as productive members of society. However, the collateral consequences of a criminal record are difficult to overcome. In particular, a criminal record presents a major barrier to employment.

During the employment application process, individuals with criminal records are routinely subject to extensive criminal background checks which may reveal sensitive personal information, including arrests, convictions and other "criminal" dispositions. Most of the employment "screening" is done through

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the use of third-party consumer reporting agencies which are subject to the provisions of the Fair Credit Reporting Act.

We have found that criminal record background reports of consumer reporting agencies are often inaccurate, outdated, misleading, and/or contain information beyond the scope of the law (e.g. arrests older than seven (7) years old are reported) or information which pertains to an individual other than the consumer.

We have assisted numerous clients who have been subject to adverse employment decisions due to information provided by consumer reporting agencies without full protection of the law. In one instance, a client sought employ as a customer service representative with a corporate employer and in connection therewith, consented to a criminal background check. The client was hired, and worked without incident for approximately two months before he was terminated by the employer because his background check revealed that he was a "convicted felon." The client adamantly denied that he had ever been convicted of a crime, however, the employer did not give the client an opportunity to explain, nor did the employer provide a reasonable opportunity to rectify the issue with the reporting agency. The employer refused to provide the client with a copy of the background report.

With some guidance, the client obtained the name and contact information for the reporting agency and filed a dispute. After some investigation, the consumer agency discovered its mistake -- that it had failed to use the client's middle initial when it conducted the background check. The consumer agency then created an amended report to reflect the corrected information and forwarded a copy to the employer, at the client's request. Despite the humiliation he suffered, the client was hopeful that he would be rehired and made several attempts to contact the employer. The employer did not return the client's phone calls or otherwise contact him. Disillusioned, the client sought other employment for less pay.

This example, on many levels, represents a failure in consumer protection with respect to criminal background reporting and highlights several issues which might be addressed by way of amended notice provisions. Our specific comments are as follows:

- **We agree with the FTC's proposed changes to improve the clarity and readability of the Summary of Rights Notice to consumers.** It is not enough that the law simply provides protections; consumers, particularly low-income individuals and those with limited means to retain counsel or assistance, must be *made aware* of their rights in the spirit of equal access to justice. It is therefore imperative that consumers receive *meaningful* notice of their rights -- in a manner which is accessible and understandable, in plain language. We believe the FTC's proposed changes reflect this purpose.
- **We join the request of NELP and CLS, to require notices to specifically address the issues presented by criminal background reports, preferably by creating consumer notices customized for employment purposes.** The Summary of Rights Notice, should speak directly to those who have been denied employment, specifically, as they relate to the use and reporting of criminal records information. Many consumers may not even be aware that the protections of consumer reporting under the FCRA apply equally to consumer "criminal background" reporting agencies. These individuals must be made aware that they have important rights and protections under the law which pertains to them. We further suggest that criminal background-related

notices for *users* also be adopted. We believe that such “specific” notice would also help employers who purchase and use such reports of criminal background reporting agencies to comply with their obligations under the FCRA.

As the above case study highlights, many consumers will face barriers to employment simply as a result of criminal record reporting. These barriers not only affect individuals, but impact families, communities and ultimately, taxpayers. It is crucial that individuals who are subject to criminal background reports are aware of and understand their rights under the law. Also, those who use these reports must be held to comply with the standards set forth in the FCRA. This begins with a clear statement, as prescribed by the Commission, on the required content of notices to users.

We thank you for the opportunity to present comments on an issue which impacts many citizens of the State of New Jersey, and the clients we serve.

Please let us know if you have any questions or if we may be of further assistance.

Very truly yours,  
Legal Services of New Jersey

By: \_\_\_\_\_  
Akil S. Roper, Esq.  
Prisoner Reentry Project