



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Privacy and Identity Protection

**VIA FEDERAL EXPRESS  
SIGNATURE REQUESTED**

May 2, 2013

ConsumerBase  
Lawrence Organ  
1603 Orrington Ave., #900  
Evanston, IL 60201-3841

Dear Mr. Organ:

This letter concerns recent test-shopping contacts with your company by non-attorney staff of the Federal Trade Commission (“FTC”), a federal agency that enforces consumer privacy laws, including the Fair Credit Reporting Act (“FCRA”).<sup>1</sup> These test-shopping contacts indicated that your company might be selling “prescreened” lists – *i.e.*, lists of consumers who meet a set of minimum financial criteria, such as a particular credit score, that are sold to lenders who will make pre-approved – or “firm” – credit offers to consumers on the list. Your sale of such lists may violate the FCRA. We want to make you aware of the requirements of this law so that you can ensure that your practices comply with it, insofar as you engage in such sales.

If you assemble or evaluate information on consumers and use it to provide prescreened lists to third parties, then you are a consumer reporting agency (“CRA”) that is required to comply with the FCRA.<sup>2</sup> Even if you place a disclaimer on your website indicating that your data must not be used for prescreening or other FCRA-covered purposes, you may still be a CRA. If you are a CRA, the reports that you provide for these purposes are known as “consumer reports.”<sup>3</sup>

In the event that you are a CRA, the FCRA requires you to take several steps to ensure the fairness, accuracy, and confidentiality of the consumer reports that you provide. For example, you must have reasonable procedures to ensure that your prescreened lists are being used only to make firm offers of credit. This includes making a reasonable effort to verify the uses of the lists prior to furnishing them to purchasers. You must also inform third parties who obtain consumer reports from you about their obligations under the FCRA.<sup>4</sup> A model notice is available in 12 Code of Federal Regulations § 1022, Appendix N. *See, e.g.* Parts I (Obligations of All Users of Consumers Reports) and VII (Obligations of Users of “Prescreened” Lists) of Appendix N. In addition, if you provide prescreened lists, you must publish an annual notice

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<sup>1</sup> 15 U.S.C. § 1681 *et seq.*

<sup>2</sup> *See* 15 U.S.C. § 1681a(f).

<sup>3</sup> 15 U.S.C. § 1681a(d).

<sup>4</sup> 15 U.S.C. § 1681e(d).

that the information you maintain on consumers may be used in connection with prescreened lists, and you must establish and maintain a notification system to permit consumers to opt out of future prescreened lists.<sup>5</sup>

At this time, we have not evaluated your company's practices to determine whether they trigger the obligations of the FCRA. However, we encourage you to review your products and services, as well as your policies, employee training, and other procedures to ensure that if you are a CRA, you are complying with the FCRA. You may find the full text of the FCRA and more information about it on the FTC website at <http://business.ftc.gov/privacy-and-security/credit-reporting>.

The Commission reserves the right to take action against you based on past or future law violations; your practices also may be subject to laws enforced by other federal, state, or local law enforcement agencies. A violation of the FCRA may result in legal action by the FTC, in which it is entitled to seek injunctive relief and/or monetary penalties of up to \$3,500 per violation.<sup>6</sup>

If you have any questions, please call Laura Berger at (202) 326-2471 or Kristen Anderson at (202) 326-3209.

Sincerely,

Maneesha Mithal  
Associate Director

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<sup>5</sup> 15 U.S.C. § 1681b(e)(5). The Consumer Financial Protection Bureau has published a regulation establishing how CRAs should provide such notice at 12 Code of Federal Regulations § 1022.54.

<sup>6</sup> See, e.g., *U.S. v. Teletrack, Inc.*, Case No. 1:11-CV-2060 (N.D. Ga. June 27, 2011) (consent agreement for civil penalties of \$1.8 million for violations of the FCRA).