

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

2030 M Street, 8th Floor
WASHINGTON, D.C. 20036
Phone (202) 326-6000
Fax (202) 331-1427
<http://www.naag.org/>

JAMES E. MCPHERSON
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Attorney General of Nebraska

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Attorney General of North Carolina

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December 7, 2009

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

Re: Free Annual File Disclosures
Rule No. R411005

Dear Mr. Secretary:

On behalf of the Attorneys General of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia (hereinafter “States”), and in response to a Notice of Proposed Rulemaking published in the Federal Register, 74 Fed. Reg. 52915 (October 15, 2009), we submit the comments below on the Federal Trade Commission (“FTC”) Amendments to the Rule to Prevent Deceptive Marketing of Credit Reports and to Ensure Access to Free Annual File Disclosures, 16 C.F.R. Part 610.

As Attorneys General charged with enforcing state laws to protect consumers from unfair and deceptive business practices, we believe it is important to comment on the proposed rules. Numerous Attorneys General have made identity theft and financial literacy a priority of their offices. For example, the Illinois Attorney General’s Office created an Identity Theft Unit that operates a hotline and assists victims with credit remediation and other privacy issues. As part of our efforts to promote financial literacy in our states, many Attorneys General encourage consumers, through educational materials in print and on websites, to avail themselves of the federal law and some state laws¹ that permit consumers to obtain free credit reports.

¹ See Vermont Fair Credit Reporting Act, 9 VSA §2480a-2480n.

North Carolina recently enacted legislation to educate consumers about their ability to access their credit reports for free. Effective October 1, 2009, credit monitoring services must clearly and conspicuously disclose to consumers – prior to charging or collecting a fee for obtaining, providing or monitoring the consumer’s credit report – that consumers have the right to one free credit report per year pursuant to the federal Fair Credit Reporting Act.²

Marketing at Centralized Source

The States support the FTC’s proposed rule to add a prohibition on any advertising and marketing for products or services through the centralized source until after the consumer has obtained his or her annual file disclosure. The purpose of the centralized source for free credit reports, consistent with § 211(d) of the FACT Act, is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under § 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

Advertising or marketing of credit products and services through the centralized source interferes with a consumer’s ability to obtain his or her free annual file disclosure. A consumer begins the process to obtain his or her free annual file disclosure by going online and reaching the www.AnnualCreditReport.com website. Next, the consumer chooses one of the three consumer reporting agencies and is sent to that agency’s website for processing. Currently, once consumers reach the agency’s website, they are inundated with “special offers” for identity theft protection services, credit monitoring services, and other products. Consumers must affirmatively decline these “special” offers before they can move to complete their request for their free annual file disclosure. Identity theft advocates who answer the hotline in the Illinois Attorney General’s office have fielded many questions from consumers who are confused about whether they are required to accept other products or services in order to obtain their free annual file disclosure. To eliminate the confusion, consumers should be able to go through the entire process and obtain their free annual file disclosure before receiving marketing or advertising about additional products or services.

In addition, the States support the FTC’s proposed rule that prohibits hyperlinks from the AnnualCreditReport.com website to commercial websites. Allowing hyperlinks to commercial websites from the www.AnnualCreditReport.com website further confuses consumers about the best way to access their free file disclosure. The States also support the FTC’s proposed rule that prohibits the consumer reporting agencies from requiring the establishment of accounts as a condition for accessing file disclosures, and from imposing any terms and conditions on consumers’ access to their file disclosures.

Deceptive Marketing of Free Credit Reports

Definitions

The FTC proposes a definition of “free credit report” in part to make it clear which entities are required to comply with the advertising disclosures. The States support the proposed definition but believe it should be strengthened. When consumers sign up to receive a “free” credit report from websites other than the www.AnnualCreditReport.com website, they often are automatically enrolled in another product or service. Consumers are given a specific amount of time, sometimes as little as seven days, in which to cancel that automatic enrollment without

² North Carolina Credit Monitoring Services Act, N.C.G.S. §75-135.

incurring any charges. The States are concerned about the potential for different interpretations of what constitutes a “purchase.” If a consumer receives a free credit report and cancels any service within the allotted time without paying anything, some may argue that the report is not technically “tied to the purchase of a product or service.” The States do not believe that argument has merit, but want to ensure that there is no ambiguity about the term “purchase” in the definition. The States therefore recommend an addition to the proposed definition of “free credit report,” so that it would now read:

a consumer report or file disclosure that is prepared by or obtained, directly or indirectly, from a nationwide consumer reporting agency (as defined in section 603(p) of the [FCRA]); that is represented, either expressly or impliedly, to be available to the consumer free of charge; and that is, in any way, tied to the purchase of a product or service, including any obligation on the consumer to purchase, or incur charges for a product or service at a later date.

Use of the term “free credit report”

Consumers frequently contact the States with complaints regarding www.freecreditreport.com and other websites and companies that advertise “free” file disclosures. Consumers complain that they are confused and were simply looking for their free annual credit report. In fact, when consumers do a Google search for “free credit report,” they are likely to come up with the www.freecreditreport.com website before the listing of the actual free Federal website, www.AnnualCreditReport.com. When a company offers a “free” report, consumers believe that it will in fact be free. Consumers file complaints stating that they did not understand that by accessing their free credit report, they had signed up for a service that automatically charged a specific amount per month for credit monitoring.

The States believe that the use of Uniform Resource Locators (“URL”) that contain the words “free credit report” are confusing and potentially deceptive because they fail to disclose to consumers before clicking on the hyperlinks that the report is only free if an additional product is purchased. The FTC should consider requiring all of the disclosures below at the point of the URL. If that is not possible through the search engine, the FTC should consider restricting the use of the words “free credit report” in URLs.

Media Specific Disclosures

The States support the FTC’s proposed rules for the general requirements for advertising disclosures. The States recommend that the FTC consider the following additional disclosures for the advertising of free credit reports.

a. Disclosures for television advertisements

The FTC has proposed that television advertisements utilize the following disclosure: “This is not the free credit report provided for by Federal law.” The States propose strengthening the proposal as follows: “This is not the free credit report provided for by Federal law. This report is only free if you make a purchase.”

The States recommend that the disclosures be equally prominent and in close proximity to the triggering claim, which in this case is the word “free” or the phrase “free credit report.” The

States are in agreement with the FTC that the disclosure should be simultaneously displayed in visual and audio format.

b. Disclosures for radio advertisements

As with television, the States propose the following disclosure: “This is not the free credit report provided for by Federal law. This report is only free if you make a purchase.” The disclosure should be made every time the triggering term is used and at the same decibel.

c. Disclosures for print advertisements

The FTC has proposed that print advertisements utilize the following disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit www.AnnualCreditReport.com or call 877-322-8228.” The States support the inclusion of the URL and phone number for the free annual file disclosure through the centralized source. In addition, the States propose the following disclosure: “This is not the free credit report provided for by Federal law. This report is only free if you make a purchase. To get your free report without having to make a purchase, visit www.AnnualCreditReport.com or call 877-322-8228.”

The States recommend that the disclosures be equally prominent and in close proximity to the triggering claim, which in this case is the word “free” or the phrase “free credit report.”

d. Disclosures for Internet websites

The States recommend a ban on the use of the URL www.freecreditreport.com as false and deceptive on its face. Unless the company can disclose at the point of the URL that the credit report is free only with the purchase of a product and is not the official free credit report website, then companies should be prohibited from advertising the URL www.freecreditreport.com.

Even with the required disclosures above, the States support the FTC’s requirement that any website on which “free credit reports” are offered for sale must first send the consumer to a separate landing page on which the consumer can elect either to go to www.AnnualCreditReport.com or to continue on to the company’s website. The mandatory link to www.AnnualCreditReport.com is necessary to ensure that consumers who reached a different website by accident can correct the error and easily go to the centralized source. The States also support the proposal that the disclosure be at least twice the size as the hyperlink to the company’s website.

The FTC has proposed that internet websites utilize the following disclosure: “This is not the free credit report provided for by Federal law. To get your free report, visit www.AnnualCreditReport.com or call 877-322-8228.” Again, the States support the inclusion of the URL and phone number for the free annual file disclosure through the centralized source, but propose strengthening the disclosure as follows: “This is not the free credit report provided for by Federal law. This report is only free if you make a purchase. To get your free report without having to make a purchase, visit www.AnnualCreditReport.com or call 877-322-8228.”

e. Disclosures for Internet-hosted multi-media advertising

Internet-hosted multi-media advertising can contain both audio and visual messages (like television) but it also allows a user direct access to the company doing the advertising through

the use of hyperlinks. The States therefore support the proposals that the required disclosures for Internet-hosted multi-media advertising appear simultaneously in the audio and visual part of the advertisement. The States recommend that the disclosures be equally prominent and in close proximity to the triggering claim, which in this case is the word “free” or the phrase “free credit report.”

The States propose the following disclosure: “This is not the free credit report provided for by Federal law. This report is only free if you make a purchase. To get your free report without having to make a purchase, visit www.AnnualCreditReport.com or call 877-322-8228.”

f. Disclosures for telephone requests

The States propose the following audio disclosure: “You have reached [name of company of service]. This is not the source for the free credit report provided for by Federal law. This report is only free if you make a purchase. To get your free report without having to make a purchase, call 877-322-8228 or visit www.AnnualCreditReport.com.”

The States support the disclosure being made at the outset of the call.

g. Telemarketing solicitations

The States support the FTC’s proposal to require the disclosure when a telemarketing call is made to a consumer that offers a “free credit report,” and agree that the Act’s broad mandate includes telemarketing solicitations. The States propose the following audio disclosure: “This is not the source for the free credit report provided for by Federal law. This report is only free if you make a purchase. To get your free report without having to make a purchase, call 877-322-8228 or visit www.AnnualCreditReport.com.”

In closing, we believe that advertising restrictions and mandatory disclosures are necessary to ensure that consumers are not misled or confused by advertisements and offers for “free” credit reports and are able to easily obtain their free annual credit reports. We hope that the Federal Trade Commission finds our comments useful in achieving its consumer protection goals.

Sincerely,

Lisa Madigan
Attorney General of Illinois

Troy King
Attorney General of Alabama

Terry Goddard
Attorney General of Arizona

Dustin McDaniel
Attorney General of Arkansas

Edmund G. Brown, Jr.
Attorney General of California

John Suthers
Attorney General of Colorado

Richard Blumenthal
Attorney General of Connecticut

Joseph R. Biden, III
Attorney General of Delaware

Alicia G. Limtiaco
Attorney General of Guam

Mark J. Bennett
Attorney General of Hawaii

Lawrence G. Wasden
Attorney General of Idaho

Tom Miller
Attorney General of Iowa

Steve Six
Attorney General of Kansas

Jack Conway
Attorney General of Kentucky

James D. Caldwell
Attorney General of Louisiana

Janet T. Mills
Attorney General of Maine

Douglas F. Gansler
Attorney General of Maryland

Martha Coakley
Attorney General of Massachusetts

Mike Cox
Attorney General of Michigan

Lori Swanson
Attorney General of Minnesota

Jim Hood
Attorney General of Mississippi

Chris Koster
Attorney General of Missouri

Steve Bullock
Attorney General of Montana

Catherine Cortez Masto
Attorney General of Nevada

Michael A. Delaney
Attorney General of New Hampshire

Anne Milgram
Attorney General of New Jersey

Gary K. King
Attorney General of New Mexico

Andrew M. Cuomo
Attorney General of New York

Roy Cooper
Attorney General of North Carolina

Wayne Stenehjem
Attorney General of North Dakota

Richard Cordray
Attorney General of Ohio

W.A. Drew Edmondson
Attorney General of Oklahoma

John R. Kroger
Attorney General of Oregon

Tom Corbett
Attorney General of Pennsylvania

Patrick C. Lynch
Attorney General of Rhode Island

Henry McMaster
Attorney General of South Carolina

Marty J. Jackley
Attorney General of South Dakota

Robert E. Cooper, Jr.
Attorney General of Tennessee

Greg Abbott
Attorney General of Texas

Mark L. Shurtleff
Attorney General of Utah

William H. Sorrell
Attorney General of Vermont

Rob McKenna
Attorney General of Washington

Darrell V. McGraw, Jr.
Attorney General of West Virginia