



September 20, 2010

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

RE: RIN 3084-AA94; Summary of Rights and Notices of Duties Under the Fair Credit Reporting Act

Dear Sir or Madam:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the Federal Trade Commission's (FTC) proposed rule regarding three revised disclosures to be given by furnishers and users of credit information. We suggest the following clarifications or changes to the proposed disclosures:

Your Rights Under the Fair Credit Reporting Act – “Fix Mistakes in Your Credit Report”

MBA respectfully suggests that the FTC consider adjusting the description provided to consumers under the bullet, “Fix Mistakes in Your Credit Report,” to conform more accurately to existing regulations.

The proposed advice to consumers is 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.” This description fails to identify sufficiently the criteria that consumers must comply with when submitting disputes to companies that furnished the information. Without

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

sufficient information, lenders and servicers will be unable to investigate the consumer's request and provide the appropriate outcome. In return, consumers will be frustrated that their requests are not being answered and may initiate unnecessary litigation.

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."²

"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."³

Consumers are often not aware of these requirements. MBA believes, therefore, that identifying them in the proposed disclosure will reduce consumer frustration and prevent unnecessary litigation.

MBA 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 the 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." 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 information you believe the company is mistaken about, and documentation that demonstrates that the company is mistaken." 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."

² 74 FR 31513 (July 1, 2009).

³ Id.

Notice To Furnishers Of Information To Consumer Reporting Agencies: Your Obligation Under The Fair Credit Reporting Act

MBA respectfully requests that the FTC consider adding additional clarity to the “Notice to Furnishers of Information to Consumer Reporting Agencies.” Specifically, the section entitled “Specific Types of Furnishers Have Additional Responsibilities Under the FCRA” states,

“If you are a financial institution that extends credit and regularly furnishes information to a nationwide CRA, you must provide consumers with written notice if you provide negative information to such CRA.⁴”

Footnote 4 cites the Federal Reserve Board’s model disclosures at 12 CFR 222, App. B.

While the statement is technically correct, it fails to identify the two options furnishers have in notifying consumers of reporting negative credit information.⁴ As a result, the provision may create confusion as to the furnisher’s obligation under the law. The preamble to the Federal Reserve Board’s final rule at 12 CFR 222 establishes the criteria.

“Section 217 [of the Fair and Accurate Credit Transaction Act of 2003] specifies that an institution must provide the required notice to the customer prior to, or no later than 30 days after, furnishing the negative information to a nationwide consumer reporting agency. After providing the notice, the institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. If a financial institution has provided a customer with a notice prior to the furnishing of negative information, the institution is not required to furnish negative information about the customer to a nationwide consumer reporting agency. A financial institution generally may provide the notice about furnishing negative information on or with any notice of default, any billing statement, or any other materials provided to the customer, so long as the notice is clear and conspicuous. Section 217 specifically provides, however, that the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)).”
(Bracketed phrase added for clarity).

Moreover sections 15 USC 1681s-(2)(a)(7)(B)(ii) and (2)(a)(7)(C) of the Fair Credit Reporting Act (FCRA) clarify that while the notice of reporting negative credit information cannot be provided with TILA disclosures at origination, “it can be combined with or provided as part of a notice of default, any billing statement, or any other materials provided to the customer,” such as information provided when a new account is opened. Thus a notice to the borrower does not need to be provided *each* time negative information is reported to the credit repositories.

Without describing FCRA more fully, the proposed disclosure implies that furnishers must provide a disclosure each time negative credit information is remitted to the credit repositories, which is not required by law. To avoid confusion, MBA recommends that the FTC retain footnote 4 referencing the Federal Reserve Board’s regulation and model disclosure in 12 CFR 222. Also, we recommend that in the “Notice to Furnishers,” the FTC replace the first paragraph

⁴ 15 U.S.C. 1681s-2(a)).

under “Specific Types of Furnishers Have Additional Responsibilities Under the FCRA” with the following:

“If you are a financial institution that extends credit and regularly furnishes information to a nationwide consumer reporting agency, you must provide consumers with written notice prior to, or no later than 30 days after, furnishing the negative information to a nationwide consumer reporting agency. After providing the notice, you may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account or customer without providing additional notice to the consumer.”⁴”

Thank you for the opportunity to comment on the proposed revised disclosures. If you have any questions or need additional information, please contact Vicki Vidal, Associate Vice President, Public Policy at (202) 557-2861, vvidal@mortgagebankers.org or Sandra Troutman, Director, Public Policy at (202) 557-2858, stroutman@mortgagebankers.org.

Sincerely,

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John A. Courson
President and Chief Executive Officer