



September 21, 2010

Office of the Secretary
Federal Trade Commission
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

The Consumer Data Industry Association (“CDIA”) appreciates the opportunity to comment on the Federal Trade Commission’s (“FTC” or “Commission”) proposed revisions to the Summary of Rights and Notices of Duties Under the Fair Credit Reporting Act (“FCRA”).¹

CDIA is an international trade association representing the consumer data industry. CDIA’s members provide consumer reports, fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, and data for insurance underwriting and collection services. CDIA’s membership includes over 200 American credit reporting

¹ 75 Fed. Reg. 52655 (Aug. 27, 2010). Specifically, the FTC’s proposed revisions involve three notices that consumer reporting agencies must provide to consumers, furnishers of consumer report information, and users of consumer report information:

1. Summary of Consumer Rights (Appendix F to Part 698) (“Consumer Rights Notice”)
2. Notice to Furnishers of Information to Consumer Reporting Agencies: Your Obligations Under the Fair Credit Reporting Act (Appendix G to Part 698) (“Furnisher Notice”); and
3. Notice to Users of Consumer Reports: Your Obligations Under the Fair Credit Reporting Act (Appendix H to Part 698) (“User Notice”).

agencies, mortgage reporting companies, collection services companies, check services companies, tenant screening companies and employment reporting companies.

To fulfill their obligations under the Fair Credit Reporting Act (“FCRA”), CDIA’s members provide the notices required under Appendices F, G and H (the “Notices”). CDIA provides comments to the proposed revisions to each Notice.

I. General Comments

CDIA agrees that, as a result of completion of rulemakings under the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), some of the information in the three Notices has become outdated and the Notices need to be revised to reflect the current status of the law.

CDIA appreciates the FTC’s efforts to make the notices more understandable. However, CDIA is concerned that, in some important instances, understandability has taken precedence over accuracy. The proposed Notices are more than consumer or business educational information pieces; they are notices and summaries of the law that the FCRA requires the Commission to prescribe.² Because consumer reporting agencies must provide the prescribed Notices to consumers, furnishers and users, it is imperative that they accurately reflect the legal requirements. CDIA believes that the proposed revised Consumer Rights Notice contains inaccurate information, is incomplete, and if adopted, will confuse consumers about their rights under the FCRA. Further, CDIA is concerned that the Furnisher and User Notices have been revised in such a way that they are incomplete and could be improperly construed as establishing a new standard or authoritative interpretation for furnisher and user duties that do not comport with the requirements of the FCRA.

When the FTC last revised the Notices in 2004, the Commission made every effort to strike a balance between technical precision and understandability.³ Because it is necessary to portray accurately the legal requirements, which are not always clear or simple, the FTC decided to make additional educational information available so that consumers and businesses could understand their rights and obligations under the FCRA. CDIA believes that the FTC should retain certain language in the current Notices and continue to provide additional information as the FTC deems necessary to assist consumers and/or businesses in understanding and implementing requirements under the FCRA. CDIA also makes specific comments about proposed changes to the Notices.

The changes to the Consumer Rights Notice will require CDIA’s members to make changes to their systems. As such, CDIA believes it would be appropriate for the

² FCRA §§ 607(d)(2); 609(c)(1); 15 U.S.C. §§ 1681e(d)(2); 1681g(c)(1).

³ See 69 Fed. Reg. 69776 (November 30, 2004).

FTC to allow a six-month implementation period, so that the Notice would become effective six months after the final notice is published in the Federal Register.

In the Supplementary Information, the FTC states the consumer reporting agencies will need to distribute the revised Furnisher and User Notices on a “one time basis to all of the entities that furnish or use information obtained from a CRA even if they were previously sent a prior version of the notices.” CDIA does not believe that the FCRA requires all consumer reporting agencies to send new notices to all their furnishers and users when the FTC revises the notices. The FCRA states only that a consumer reporting agency send “*a notice*” to users and furnishers.⁴

Contrary to the FTC’s assertions, this additional notice requirement will impose a burden on consumer reporting agencies, and there will be significant time and cost associated with sending the revised notices to all furnishers and users. When the FTC proposed revisions to the Notices in 2004, CDIA raised this issue related to the cost and burden of sending revised notices to furnishers and users that had already received a notice and had a separate legal obligation to keep up with the changing laws. The FTC postponed the requirement that consumer reporting agencies send revised notices to their furnishers and users. CDIA believes that the statutory provisions and financial burdens continue to weigh against requiring that new notices to all furnishers and users. If, however, the FTC still believes that new Furnisher and User Notices should be sent, CDIA believes that the requirement to send such notices should become effective six months after the final notices are published in the Federal Register.

II. Summary of Consumer Rights (Appendix F to Part 698)

The FTC has proposed substantial revisions to both the form and content of the Consumer Rights Notice. CDIA recognizes that the FCRA is a complicated statute and that it may be difficult for consumers to understand what rights they have. CDIA believes, however, that the current Notice is more accurate than the FTC’s proposed revised Notice. Moreover, the current Notice achieves the purpose of informing consumers of certain rights, as enumerated under FCRA §609(c)(1), in a summary fashion.⁵ It is important to retain that accuracy, even when providing a summary.

⁴ FCRA § 607(d) provides. “A consumer reporting agency shall provide to any person (A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or (B) to whom a consumer report is provided by the agency; *a notice* of such person's responsibilities under this subchapter. 15 U.S.C. § 1681e(d) (Emphasis added).

⁵ The FCRA charges the FTC with preparing the summary of rights. There are six enumerated rights: (i) the right of a consumer to obtain a copy of a consumer report from each consumer reporting agency; (ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge; (iii) the right of a consumer to dispute information in the file of the consumer; (iv) the right of a consumer to obtain a credit score from a consumer

- Separate Notices for Consumer Reports and Credit Reports

CDIA believes that the FTC should continue to use one form of notice for all consumer reports, and does not believe it would be helpful for consumers to receive one notice for credit reports and a separate notice for other types of consumer reports. With advances in technology and varying business models, companies may provide both credit report and other consumer report information in connection with the same transaction. Providing a consumer with multiple notices will be confusing to consumers. Moreover, many of the requirements apply to credit reports and other consumer report information, so if consumers do receive two notices in connection with a single transaction, the information will be duplicative.

The current Notice clearly explains that there are different types of consumer reports that are used in connection with credit, insurance, employment, check-writing and tenant screening. The current Notice enables consumers to readily understand that consumer report information can be used in different ways and that different types of reports may have played a role in the ultimate decision of the user. Because users may use credit report information as well as other types of consumer report information, it is important that consumers understand this. Therefore, CDIA believes that it is in consumers' best interest to receive a single, more comprehensive Notice. The current Notice demonstrates how this information can be conveyed in a clear and concise way. CDIA has suggested specific language in the points below.

- Foreign Language Translation

The information that precedes Appendix F includes a statement that “Translations of this summary will be in compliance with the Commission’s model, provided that the transaction is accurate and that it is provided in a language used by the recipient consumer.” Because there has been no request for comment on whether notices should be provided in foreign languages, CDIA assumes that this statement does not, and was not intended to, impose any new or additional obligation on consumer reporting agencies. Rather, this is merely a permissive statement, as discussed in more detail in the 2004 Federal Register Notice, that the Commission “encourages those businesses serving Spanish-speaking consumers to provide the summary in Spanish.”⁶ The Supplementary

reporting agency, and a description of how to obtain a credit score; (v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and (vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 603(w), as provided in the regulations of the Commission prescribed under section 612(a)(1)(C).

⁶ 2004 Fed. Reg. 69779.

Information provided with the 2004 Notices made it clear that it would be acceptable to provide the Notice in Spanish or some other language to comply with the disclosure requirement, but did not add a requirement to provide the Summary of Rights in any language other than English.

- Length of Notice and Disclosure of Enforcement Agencies

CDIA agrees with the FTC that the Consumer Rights Notice should be limited to two pages. CDIA also believes that it is important to apprise consumers of their rights, with accurate disclosures, and recognizes that to do so may require slight revisions the form of the proposed Notice by reducing the font or adjusting the margins to accommodate additional text.

CDIA believes that it is important to retain the list of agencies for consumers to contact because that is information consumer reporting agencies are required to add when providing the Consumer Rights Notice. CDIA does not believe that retaining the current list of agency contact information will affect the ability to create the notice in a readable format. However, that information should fit within the two pages.

- Heading of Notice

The proposed Notice is entitled “Your Rights Under the Fair Credit Reporting Act.” This is an inaccurate statement under the FCRA and may cause consumers to erroneously believe that this notice encompasses all of their rights, as opposed to just a summary of rights. CDIA believes that the heading from the current Notice should be retained: **“A Summary of Your Rights Under the Fair Credit Reporting Act.”** The addition of the word “summary” should not be confusing to the consumer and will immediately alert consumers that there are other rights or details about their rights.

- Reference to “consumer reporting company” versus “consumer reporting agency”

The FCRA does not use the term “consumer reporting company.” The term “consumer reporting agency” is a legally defined term and is used throughout the FCRA. CDIA believes that it is appropriate to retain the reference to “consumer reporting agencies” in the Consumer Rights Notice. The current Notice includes the following language, which should be retained at the beginning of the revised Notice:

“There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records and rental history records).”

Without this information, consumers will not be fully informed that there is consumer report information about them that includes information other than credit report information. The proposed Notice seems to indicate that only credit bureaus maintain consumer report information on the consumer and that a consumer's rights are limited to credit reports, which is not true.

- Introductory Paragraph

This proposed introductory paragraph contains incorrect information and is incomplete. CDIA believes that the current Notice provides helpful introductory information to consumers. For example, it is essential for consumers who receive the Notice to understand (1) what the FCRA is, (2) that there are many types of consumer reports, (3) that the notice provides only a summary of rights under the FCRA, and (4) where consumers can obtain additional information. The proposed revised Notice incorrectly tells consumers that there is a file about them called a credit report if they have ever applied for a credit card, loan or insurance. This is incorrect because an application for insurance does not result in information in a credit report because insurers do not furnish information to credit reporting agencies. Moreover, the mere application for credit may not result in the creation of consumer report information about a consumer. Finally, not all consumers have a credit report or other consumer report information about them. Whether there is a credit report or other consumer report information about them depends on numerous factors, such as whether the consumer ever obtained credit and whether information about their obligations was furnished to consumer reporting agencies. As such, this opening statement does not effectively advise consumer about consumer reports. Because of the many types of consumer reports that are used, CDIA believes that the Consumer Rights Notice serves an important educational purpose. Consumer should be informed that a consumer report *may* include information about whether the consumer pays bills on time, show balances owed to creditors, or indicate whether a consumer paid rent on time. The type of information included will depend on the type of information maintained and reported by the different types of consumer reporting agencies. The language of the current Notice explains the different reports and rights in a helpful way for consumers.

The bullet list of four items in the introductory paragraph (and which dictates the form of the proposed Notice) may lead consumers to believe that these are all or the most important of the rights a consumer has under the FCRA when the consumer does, in fact, have additional rights. CDIA believes that the bullet list should be removed from the introductory paragraph so as to not confuse consumers into believing that their rights are limited or to overshadow other rights that a particular consumer may need to know.

- Get Your Credit Report

The heading and information under this heading do not accurately convey the consumer's rights. First, use of the term "credit report" in the heading is misleading because the consumer actually has rights to consumer report information other than credit reports. This should be titled "**When You Can Get a Consumer Report or File Disclosure.**" to accurately reflect the information that will follow.

In crafting the current Notice, the FTC reported in 2004 that "a number of commenters suggested that the summary should be more technically precise, and, in response, the final summary uses the term 'file disclosure' in place of 'consumer report' when describing the right of consumers to see the information about them in the files of the consumer reporting agency."⁷ This is an important distinction that should be retained in a revised Consumer Rights Notice. To more accurately apprise consumers of their rights, the revised Notice should include or be modified as follows:

- First bullet – Change the statement to refer to a "file disclosure" not a "credit report." Consumers should also be informed that they will be required to provide identifying information when requesting a file disclosure. CDIA recommends adding a statement to the end: "**You will be required to provide identifying information when you request a file disclosure.**"
- Second bullet – The explanation that a consumer can contact a consumer reporting agency to obtain an additional free credit report is too broad, as it informs consumers that they the right to the additional free report if "you are the victim of fraud." CDIA recommends retaining language in the current Notice to explain when the consumer has such a right:
 - "**You are the victim of identity theft and place a fraud alert in your file**"
 - "**Your file contains inaccurate information as a result of fraud**"

Informing the consumer of the right to obtain a free credit report if "You are the victim of fraud" is too broad and could confuse consumers, making them believe that all they need to do is inform a consumer reporting agency that there was fraud without further detail.

⁷ 69 Fed. Reg. 69780 (Section III.C).

- Third bullet –The explanation of right to a free report after adverse action is not accurate or complete; the description misinforms the consumer about the information s/he will receive from the user. This bullet should be revised to inform the consumer of the following important rights, which are included in the current Notice:
 - **“Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take adverse action against you – must tell you , and must give you the name, address and phone number of the agency that provided the information.”** After this statement include the following language: **“You can get a free report if someone has taken action against you, as long as you ask for it within 60 days of receiving the notice.”**

This revision will help consumers understand not only their rights, but also their obligation to request the information within a specific time.

- Fourth bullet – As noted above, the FTC previously recognized the importance of accurate references in the Notice. Therefore, CDIA believes that the reference should be changed to a “file disclosure,” not a “free report.” CDIA also believes that it will helpful to add a statement that consumers will be required to provide identifying information. **“You will be required to provide identifying information when you request a file disclosure.”**
- Get Your Credit Score

The language in this section was taken, in part, from the model Risk-Based Pricing Notice. CDIA believes that while such language may be suited for a Risk-Based Pricing Notice, which is given to certain consumers who apply for and receive credit, it is too narrow to cover a general summary of rights under the FCRA. In addition, the reference to “loans” may cause consumers to believe that the only time a credit score will be used is in connection with a direct loan. CDIA believes that some of the language in the “Model Notice Where the Credit Score is Not Available” will be more useful to consumers. CDIA suggests the following revision to this paragraph:

“Your credit score is a number that reflects the information in a credit report. A credit report is a record of your credit history. It includes information about whether you pay your bills on time and

how much you owe to creditors. A credit score can change, depending on how your credit history changes. You can order a credit score from a consumer reporting agency. You may have to pay for your credit score.”

- Fix Mistakes in Your Credit Report

The heading and information under this section erroneously suggest that consumer report file information is replete with errors.⁸ It also suggests that the only time a consumer may inquire about information in a consumer report file is if the consumer believes that information in the file contains mistakes.

Under the FCRA, the consumer has a right to dispute information that is inaccurate or incomplete. In practice, consumers often “dispute” information when they are confused about why it appears in their report. Consumers may learn as a result of a “dispute” that information is accurate, and at that point, are educated about the information maintained about them.

The description of the process for disputing information is vague and unhelpful to consumers. It is important for consumers to understand that there are two ways to dispute information and that they may be required to follow certain procedures for their dispute to be investigated. Under the new Direct Dispute Rules, furnishers are required to establish a policy and procedure for handling such disputes. Furnishers can ask consumers to provide information needed to investigate the dispute and require consumers to submit the dispute in writing to a certain address.⁹ This should be explained to consumers. Moreover, the proposed Notice, unlike the current Notice, fails to tell consumers that frivolous disputes will not be investigated.

⁸ In 2007, data from www.annualcreditreport.com showed that 89 % of the credit file disclosures issued resulted in no disputes. Out of 52 million credit file disclosures reviewed by consumers, only 1.98% of these resulted in a dispute where data was deleted. As much as 55% of disputes, are in reality a request for an update of accurate data. A dispute is not synonymous with an error. In approximately 25% of the disputes, the data was verified as accurate. The FRB/FTC Report to Congress on the Fair Credit Reporting Act Dispute Process cites a 2005 GAO survey of consumers where 13% of the reasons for submitting a dispute were due to either incorrect personal information (such as a misspelling reported by a data furnisher) or incorrect information on a former spouse (where a divorce is not accounted for by a data furnisher). Testimony of Stuart Pratt before Committee on Financial Services, “Credit Reports: Consumers’ Ability to Dispute and Change Inaccurate Information” (June 19, 2007), available at <http://financialservices.house.gov/hearing110/ospratt061907.pdf>.

⁹ 74 Fed. Reg. 31484 (July 1, 2009).

CDIA believes that the language in the current Notice can be adapted to provide complete and helpful information to the consumer about the right to dispute information:

Suggested Headings:

“Dispute Inaccurate or Incomplete Information”
“How Can You Dispute Inaccurate Information?”

Suggested Changes to Revised Text:

There are two ways you ways you can dispute information in your file that you think may be incomplete or inaccurate:

- 1. Contact the consumer reporting agency that provided the report and ask for an investigation.**
- 2. Make a direct dispute to the person who reported the information to the consumer reporting agency. You may need to follow specific directions about what information to send and where to send it for your dispute to be investigated.**

There are important things to know when you make a dispute:

- **Inaccurate, incomplete or unverifiable information must be deleted or corrected, usually within 30 to 45 days.**
- **Accurate, negative information stays in your consumer report for seven years, even if you paid the debt. Bankruptcies can stay in your consumer report for ten years. Criminal convictions can be included in a consumer report indefinitely.**
- **If your dispute is frivolous, it will not be investigated.**
- **For more information on how to dispute information in your consumer report, visit www.ftc.gov/credit.**
- **Stop Pre-Approved Offers of Credit**

A consumer’s right to opt-out of prescreen solicitations is an additional right, and not one of the rights that the FTC is charged with including in the Summary of Rights under FCRA § 609(c). Because users who make prescreened offers must provide consumers with a mandatory notice and an opt-out mechanism, it is not necessary for this

notice to serve as the opt-out notice. CDIA believes that the right to opt-out of prescreened solicitations should be moved to the “Additional Rights” section, and the language changed from “pre-approved” (which creditors may still use without prescreening) to “prescreened” so that it is clearly understood as being subject to FCRA protections.

To the extent it is deemed necessary to retain a separate section for prescreened opt-out rights, the language should be modified so that it accurately reflects consumers’ rights. The language in the current Notice accurately reflects consumers’ rights in this regard, which can be completed with the information in the proposed revised Notice:

You may limit “prescreened” offers of credit and insurance you get based on information in a consumer report. You may choose to stop these offers by calling 1-888-5-OPTOUT (1-888-567-8688). You may have to provide your social security number to assure proper identification.

The FCRA does not give the consumer any rights under the Do-Not-Call registry. It is misleading to inform consumers that this is a right under the FCRA, when this is not the case. Moreover, even if a consumer places his or her name on the Do-Not-Call registry, the consumer may still receive prescreened offers. This information has no place in the Summary of Rights Under the FCRA.

- Additional Rights

The first bullet includes inaccurate information about providing reports to employers or potential employers. CDIA believes that it will be more helpful for the consumer if the sentence is revised as follows: “You must agree in writing before **an employer or potential employer can request information in your consumer report from a consumer reporting company**. For more information about **consumer reports** and employment, visit www.ftc.gov/credit.

III. Notice to Furnishers of Information to Consumer Reporting Agencies: Your Obligations Under the Fair Credit Reporting Act

CDIA agrees that, in light of the completion of rule-makings required under the FACT Act, revisions needed to be made to the Furnisher Notice. CDIA is concerned, however, that in an effort to make the Furnisher Notice more readable, some of the proposed revisions are incomplete, inaccurate, and could be considered as an authoritative interpretation of the statute.

The FTC has solicited comments on whether it is helpful to remove citations from text of the Furnisher Notices. CDIA believes that the citations are very helpful to businesses and should be retained. It is helpful for the furnisher, especially smaller businesses that may not have in-house counsel, to be able to refer to the complete text of the FCRA. In fact, CDIA believes that given the numerous rulemakings, it would be even more helpful to businesses if the summary statement included not only the citations to the statute and rules, but also a reference to the federal register notice identifying the rules implementing a statutory requirement. If the citations are included with each pertinent paragraph, the notice will serve as an easy reference tool. There is nothing confusing about including the citations – businesses and consumer comprehension are not the same. Businesses are expected to know the law.

In the Furnisher Notice, when describing the duty to provide accurate information, there is a statement that the furnisher must establish and implement reasonable written policies and procedures “to ensure” the accuracy and integrity of the information furnished. FCRA § 607(b) requires furnishers to “follow reasonable procedures to assure maximum possible accuracy of the information...” The statement should be revised to accurately reflect a furnisher’s legal obligations.

Similarly, in the provision governing responses to identity theft claims, the proposed language has been changed to reflect that a furnisher has an obligation “to ensure” that the furnisher does not furnish that information in the future. The FCRA does not use the word “ensure.” CDIA believes that the language in the current Notice accurately reflects the furnishers’ obligation to have procedures to “prevent refurnishing” of the information, and the language in the current Notice should be retained.

CDIA believes that it would be helpful to delete the explanation as to why furnishers must disclose when the account was closed by the consumer. This does not advance the furnishers’ understanding of their own obligations.

Because the Direct Dispute Rule is relatively new, the summary provided to the furnisher should be more precise. CDIA believes that it would be better to change the reference, “If a consumer notifies you” to “**If a consumer submits a ‘direct dispute...’**” Furnishers are required to have written policies and procedures governing direct disputes. The Direct Dispute Rule does not impose a requirement that a furnisher conduct an investigation every time there is any notice. Rather, there are specific requirements that trigger the investigation of direct disputes, including written notice, with required information, to an address identified by the furnisher.

IV. Notice to Users of Consumer Reports: Your Obligations Under the Fair Credit Reporting Act

The FTC has also solicited comments on whether it is helpful to remove citations from text of the User Notices. For the reasons discussed above with respect to the Furnisher Notices, CDIA believes that the citations should be retained.

CDIA is concerned that the description of certain obligations included in the proposed Notice are incomplete or inaccurate and may cause more confusion to some businesses, especially smaller businesses that may not have in-house counsel. CDIA is also concerned that the summary in the User Notice could be construed as establishing a new standard or authoritative interpretation. CDIA identifies below some of the specific provisions that are inaccurate or incomplete:

- Permissible purposes. The proposed User Notice includes a high-level summary of some of the permissible purposes under the FCRA. The summary, however, does not accurately reflect the permissible purposes enumerated in FCRA § 604(a). For example, the proposed User Notice identifies one purpose as “to hire or promote an employee, if the employee has given consent in writing.” However, the FCRA does not include the words “hire” or “promote” and does not limit the employment use to those situations. Rather, FCRA § 604(a)(3)(B) makes it a permissible purpose if the user “intends to use the information for employment purposes.” The current Notice gives “hiring and promotion decisions” as examples of a permissible employment purposes, but does not include a restricted summary list. CDIA believes that it would be appropriate to retain the list in the current Notice, which more accurately reflects the law.
- Fraud and Active Duty Alert. The proposed User Notice leaves out the reference to the restrictions on issuance of new credit cards after notice of a fraud or active duty alert. This is an important item for users to understand and should be included. In addition, the proposed User Notice instructs the user to “call” the creditor when there is a fraud or active duty alert. This interpretation is too narrow, as the FCRA (and the current Notice) require a user to contact the consumer in accordance with the “contact information provided” in the consumer alert. Given technological advances and the difficulty in reaching military members, CDIA believes that the broader language from the current Notice should be retained.
- Notice of Address Discrepancy. The proposed Notice indicates consumer reporting agency will provide a notice of address discrepancy when the

address provided by the user is “not the same as” the address in the consumer report. The correct standard, set forth in FCRA § 605(h), requires a consumer reporting agency to send a notice to a user when the address “substantially differs.” CDIA is concerned that if such language is included in the User Notice, it could be construed as imposing a new standard for when the notice of address discrepancy should be sent by a consumer reporting agency. In the final rule implementing the address discrepancy notice requirements, the federal agencies specifically declined to define what it means to “substantially differ.”¹⁰ The agencies stated that: “The phrase ‘substantially differs’ is not defined in the statute. Instead, the statute allows each CRA to construe this phrase as it chooses and, accordingly, to set the standard it will use to determine when it will send a notice of address discrepancy.”

CDIA believes that it would be appropriate to inform users of the following: **“If you receive a notice of address discrepancy from a nationwide consumer reporting agency, you must follow reasonable procedures to verify that the consumer report relates to the right consumer. You should consult the rules issued by the federal agencies to be sure that your policies and procedures comply with all legal requirements. See 72 Fed. Reg. 63718 (Nov. 9, 2007).”**

- Notices for Employers: There is a mistake in the following sentence: “Before you take adverse action, you must provide a copy of the consumer report to the consumer, as well as the summary of rights and notice of the adverse action.” The Proposed notice does not accurately describe the adverse action notice obligation.

CDIA suggests the following: **“Before you take adverse action, you must provide the consumer with a copy of the consumer report and a copy of the Summary of Consumer’s Rights, which you will receive from the consumer reporting agency that provided the report to you. After you take adverse action, you will need to send the consumer an adverse action notice as required under FCRA § 615(a).”**

- Investigative consumer reports. There is an incomplete statement about the user’s obligation to provide additional disclosures, which makes the obligation unclear. The proposed Notice includes the following statement: “... you must: mail or deliver the additional disclosures to the consumer within five days of a request.” Under FCRA § 606(b), the

¹⁰ See 72 Fed. Reg. 63718, 63736 (November 9, 2007).

consumer must make the request in writing within a reasonable time after the disclosure. CDIA believes that the current Notice accurately reflects the consumer's rights and should be retained.

As an alternative to technical revisions to the proposed Furnisher and User Notices, and if the FTC prefers the cursory summary for these Notices, CDIA believes that it would be appropriate to include the following statement at the end of the Notice to put furnishers and users notice:

About this Notice: This Notice is intended to provide a brief summary of your obligations under the FCRA. The Notice does not convey all of the obligations you have. You should not rely on the Notice as the authority that governs your policies, practices and procedures, but instead you should consult the FCRA and rules implementing the FCRA to comply with the law.

Such a statement will alert those who may have relied on the User or Furnisher Notices in the past that they should not do so because the obligations under the FCRA are complex and require a detailed review of the law.

As the foregoing discussion reveals, there are many instances where the proposed Notices should be revised for clarity and to reflect accurately the FCRA's provisions. For that reason, CDIA respectfully suggests that, once the FTC revises the Notices based on the comments received, the FTC publish revised Notices for additional public comment before they become final.

CDIA appreciates the opportunity to provide comments.

Respectfully submitted,

Eric J. Ellman
Vice President, Public Policy and Legal Affairs