



Office of the Secretary

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

December 29, 2008

The Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Re: Report on Complaint Referral Program Pursuant to Section 611(e) of the
Fair Credit Reporting Act

Dear Chairman Dodd and Chairman Frank:

The Federal Trade Commission ("FTC" or "Commission") submits this report in accordance with section 611(e) of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681i(e), which was added to the FCRA by section 313 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act").¹ The Commission is the federal agency with primary responsibility for compliance with the FCRA and operates a system for receiving complaints from consumers about possible violations of the FCRA. Section 611(e) directs the Commission to transmit certain consumer complaints to the nationwide consumer reporting agencies ("CRAs") that are the subject of the complaints; obtain information from the CRAs related to the resolution of those complaints; and, submit to Congress information gathered by the Commission pursuant to the subsection. This report covers the period from the initiation of the program in 2004 through the end of 2007.²

¹ Pub. L. 104-208, 110 Stat. 3009.

² Following enactment of the law, the Commission immediately began (i) formulating the means to identify and cull those complaints from our consumer complaint database based upon the criteria in section 611(e); (ii) working with the CRAs to develop procedures to review those complaints and report back to us; and, (iii) implementing a review system to monitor adherence to the program and law. While those efforts have been ongoing and information has been collected beginning in 2004, this is the first report to the Committees transmitting the information gathered as a result of those efforts. The Commission regrets the delay in transmitting this report and will provide a report annually going forward.

Background

The Fair Credit Reporting Act,³ enacted in 1970, governs the collection and dissemination by CRAs of personal data about consumers, such as how promptly they pay their bills. Incomplete or inaccurate information in consumer reports can affect consumers' ability to obtain, and the terms of, credit, employment, insurance, or other benefits. Accordingly, a primary focus of the FCRA is on the accuracy of information in the CRAs' files. To this end, section 607 of the FCRA requires CRAs to have in place reasonable procedures to assure the "maximum possible accuracy" of the information in the consumer reports they disseminate. The FCRA also gives consumers specific rights designed to assist them in ensuring the accuracy of their consumer reports. For example, businesses using consumer reports must inform consumers when they take adverse action based, in whole or in part, on consumer report information (FCRA section 615), and consumers have the right to access and review their reports (FCRA sections 609 and 610) and dispute incomplete or inaccurate information in them (FCRA section 611).

The Dispute Process

Sections 611 and 623 of the FCRA impose dispute investigation and resolution duties on CRAs and those entities that furnish information about consumers to the CRAs ("furnishers"). If a consumer disputes the completeness or accuracy of an item of information in his or her file with a CRA, the CRA must (i) complete an investigation of the dispute, usually within 30 days of receiving the notice of dispute from the consumer; (ii) review and consider all relevant information submitted by the consumer; (iii) notify the furnisher of the disputed information within five business days of receiving the dispute; and (iv) transmit to the furnisher all relevant information that the CRA received from the consumer.⁴ After receiving the dispute, furnishers must (i) conduct an investigation of the disputed information; (ii) review the information transmitted by the CRA; (iii) report the results of the investigation to the CRA; and (iv) if the investigation determines that the information is incomplete or inaccurate, report those results to all nationwide CRAs to which the furnisher reported the original information.⁵

Development of the Complaint Referral Program

Section 611(e) of the FCRA directs the Commission to refer certain consumer complaints it receives to the nationwide CRAs. Following enactment of the FCRA, the Commission developed procedures to identify complaints based upon the parameters of this provision.⁶ The

³ 15 U.S.C. § 1681, *et seq.*

⁴ FCRA section 611(a), 15 U.S.C. § 1681i(a).

⁵ FCRA section 623(b), 15 U.S.C. § 1681s-2(b).

⁶ Consumers file complaints with the Commission through various means: our toll-free hotlines (1-877-FTC-HELP and 1-877-ID-THEFT), online complaint forms, or physical mail. These consumer complaints are maintained in the Commission's Consumer Sentinel database, which includes complaints about a host of subjects, such as identity theft; violations of the FTC's Do Not Call rule; online auctions

complaints covered by this section are those alleging that a consumer's file contains inaccurate or incomplete information, with respect to which the consumer previously filed a dispute with the CRA. Section 611(e) specifies that the Commission's referrals be made to entities that meet the definition of a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis," as that term is defined in section 603(p) of the FCRA. As an initial step in implementing the complaint referral program, the Commission determined that the three large, national credit bureau systems – TransUnion, Equifax, and Experian⁷ – meet the standard for inclusion in the program. In 2004, the Commission entered into identical agreements with each of the nationwide CRAs to implement the program. The Commission also entered into agreements with several smaller consumer reporting agencies associated with the nationwide CRAs.⁸

Pursuant to the procedures established, Commission staff, on a monthly basis, retrieves, compiles, and refers to the relevant CRA(s) all of the consumer complaints that the Commission has received that (i) relate to the completeness or accuracy of information in a consumer report maintained by the CRA, (ii) indicate that the consumer submitted a dispute to the CRA but was dissatisfied with the response, and (iii) contain sufficient identifying information to enable the CRA to locate the consumer's file.⁹ As reported in the attached summary table, since 2004,

and other types of Internet scams; telemarketing scams; advance-fee loan and credit scams; sweepstakes, lotteries, and prizes; business opportunities and work-at-home schemes; and deceptively advertised health and weight-loss products. The Commission uses complaints for general monitoring of industry, enforcement target selection, and preliminary information that might, with further factual development, reveal or help prove a law violation. For calendar year 2008, we estimate over 1.2 million complaints will be entered into Consumer Sentinel.

⁷ The TransUnion system is operated by TransUnion LLC, headquartered in Chicago, Illinois. The Equifax system is operated by Equifax Information Services LLC, a subsidiary of Equifax, Inc. Its headquarters are in Atlanta, Georgia. The Experian system is operated by Experian Information Solutions, Inc., headquartered in Costa Mesa, California.

⁸ Because the nationwide CRAs technically do not control all of the data they report – some of the data actually is owned by smaller CRAs associated with the nationwide CRAs – Commission staff negotiated additional agreements with a number of these associated agencies. These agreements provided that the nationwide CRAs would forward, as appropriate, complaints to the associated agencies, which would then review and respond to the complaints. A number of these smaller agencies have since been acquired by one of the nationwide CRAs. Many of the remaining agencies have entered into contracts with a nationwide CRA, whereby the nationwide CRA assumes responsibility for the associated agencies' obligations under the program.

⁹ The complaint referral program became operational in April 2004 when Commission staff began providing complaints to the three CRAs. The first reporting quarter ended in June 2004, and the CRAs submitted their first sets of reports beginning in October 2004. The initial reports revealed consistency problems in the reporting of data as well as other concerns. For example, the CRAs took different approaches to analyzing and reporting complaints that alleged multiple disputes or that did not clearly identify disputed items. The Commission staff worked with the CRAs to resolve these issues, resulting in a number of interim changes to the complaint referral program and, ultimately, a consistent standard reporting format.

when the complaint referral program became operational, the Commission has transmitted over 23,000 complaints to the CRAs pursuant to Section 611(e).¹⁰

Section 611(e) also requires the CRAs to review the referred complaints to determine whether the CRAs have met all of their FCRA obligations, report back to the Commission on a regular basis as to the actions they have taken with respect to the complaints, and maintain records sufficient to show their compliance. The program was intended to enable consumers to obtain a second review of their complaints when they remain dissatisfied after having completed the dispute process with the CRAs, and was not designed to be a measure of the prevalence of inaccurate or incomplete information in consumers' credit files.¹¹

Under the FTC's agreements with the CRAs, the CRAs must review all of the referred complaints to ensure that they have satisfied all legal obligations imposed by the FCRA. In addition, at the end of each calendar quarter, Commission staff selects a random sample comprising 10 percent of the complaints referred to each CRA that quarter and sends a list of those complaints to each CRA. The CRAs then submit reports to the Commission on the disposition of the selected complaints within 90 days after receiving the sample selection. The reports include, among other things, (i) the number of complaints that were resolved consistent with the consumer's request *prior* to the Commission's referral (*i.e.*, through the CRA's normal dispute process), (ii) the number of complaints that were resolved favorably to the consumer *after* the referral, and (iii) the number of complaints that were resolved contrary to the consumer's request (*i.e.*, no changes were made to the consumer's file after the referral).

¹⁰ This figure is a subset of the millions of disputes filed directly with the CRAs. Each CRA has records on as many as 1.5 billion credit accounts held by approximately 210 million individuals. *See* Report to Congress on the Fair Credit Reporting Act Dispute Process in August 2006 ("Dispute Study"), <http://www.ftc.gov/opa/2006/08/fyi0653.shtm>, at 3. The Consumer Data Industry Association, the trade group for the CRAs, estimated that about 12.5 million disputes were filed by consumers in 2003. *See* Dispute Study, at 12.

¹¹ The referred complaints constitute only a small and unrepresentative sample of all of the files maintained by the CRAs. Other provisions of the FCRA deal with the accuracy of the information contained in consumer reports. For example, section 319 of the FACT Act requires the Commission to conduct a long-term ongoing study of the accuracy and completeness of information in consumer reports and how they could be improved. The Commission was directed to submit an interim report within one year after enactment of the FACT Act, with additional reports every two years thereafter for eight years, leading to a final report within two years after the final interim report. The Commission has issued three interim reports to date, in December 2004, December 2006, and December 2008. *See* <http://www.ftc.gov/opa/2004/12/factarpt.shtm>; <http://www.ftc.gov/opa/2006/12/fyi0679.shtm>; <http://www.ftc.gov/opa/2008/12/factareport.shtm>. The 2008 interim report includes the results of a second pilot survey of accuracy and completeness, and concludes that the methodology of this kind of survey is generally feasible. In 2009, FTC staff will formulate and submit for OMB approval a specific proposal for a nationwide survey similar in approach to the second pilot study designed to reach a nationally representative sample of consumer credit reports, while employing special recruitment techniques for securing the participation of hard-to-reach demographic groups.

The Operation of the Complaint Referral Program: 2004-2007

As stated above, over the period 2004 through 2007, the Commission referred over 23,000 complaints to the three CRAs,¹² the CRAs investigated the allegations in all those cases, and the CRAs filed quarterly reports with the Commission on their disposition of the complaints in the 10 percent samples. The quarterly reports provide a snapshot of the operation of the program and enable the Commission to assess how the program is working.

The data indicate that a significant number of disputes were resolved in the consumer's favor (*i.e.*, the disputed information was either removed from the file or modified as requested).¹³ The data further indicate, however, that in most cases, the favorable resolutions took place as part of the normal dispute process, and not as a result of the referral program. Specifically, the CRAs' reports show that over 90 percent of disputes that were resolved "as requested by the consumer" were resolved *before* the CRA processed the referral from the Commission.

Based on these anomalies, Commission staff undertook a further examination of the data, including reviewing specific consumer complaints selected for referral and the associated CRA files. This examination revealed that, in many cases, consumers contacted the CRAs at about the same time they filed complaints with the Commission. In these cases, by the time the CRAs received and reviewed the complaints forwarded by the Commission, the CRAs had in the meantime favorably resolved the disputes that the consumer had submitted directly to the CRA. This appears to have occurred even when the consumer indicated in his or her complaint to the Commission that he or she had submitted a dispute to the CRAs more than 45 days -- the maximum time allowed CRAs to reinvestigate disputes under the provisions of the FCRA -- before filing with the Commission.

¹² This figure is for the total number of *complaints* referred to the three CRAs, but overstates the number of complaining *consumers*. A complaint from a consumer who had disputes with all three CRAs counts as three complaints in this calculation; if the complaint involved two CRAs, it counts as two.

¹³ There are certain caveats that must be noted, however. Many of the complaints did not specify clearly the item(s) of information the consumer was disputing. In these situations, the CRAs reviewed and reported on *all* of the disputes that the consumer had filed within the previous year, regardless of whether the consumer mentioned the disputes in his or her complaint to the Commission. Further, individual complaints forwarded to the CRAs often have involved multiple disputed items, only some of which may have been resolved as requested by the consumer. Based on the limited data that is available, it appears that many consumers who had some of their disputes resolved as requested also had disputes that were not resolved and remained on the consumers' credit reports. Of course, the fact that a particular complaint may have been resolved unfavorably does not necessarily indicate a problem with the accuracy of the consumer's file or the efficacy of the dispute process. Rather, the unfavorable disposition simply may reflect misapprehension on the part of the consumer. For example, many of the complaints to the FTC are from consumers who think their negative payment history should be deleted from their file once they bring the account current, not realizing that negative payment information can remain in the file for seven years as a matter of law.

As a result of its examination, Commission staff has initiated efforts to modify the complaint referral program to ensure that the program better fulfills its purpose, which is to give consumers a second chance to resolve their disputes after they have exhausted the normal dispute process and remain dissatisfied, and not to supplant the dispute process in the first instance. Staff is working on intake process changes to improve the quality of information available in the consumer's complaints, which will assist staff and the CRAs in better identifying the precise nature of the consumer's complaint and in determining whether the consumer has in fact previously filed a dispute with the CRA. In addition, staff will be contacting the CRAs to adjust their reporting obligations. The goal is to allow the Commission to focus attention on those complaints that are covered by the program, rather than complaints that have already been timely resolved in the consumer's favor in the normal dispute process.

Conclusion

The Commission staff has carefully examined the operation of the program and is working on measures to facilitate the complaint intake process and refine the complaint referral program, as appropriate.

By direction of the Commission.


Donald S. Clark
Secretary

cc: The Honorable Richard C. Shelby, Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus, Ranking Member
Committee on Financial Services
United States House of Representatives

**Summary Table for Report on Complaint Referral Program
Pursuant to Section 611(e) of the Fair Credit Reporting Act**

	Number of Complaints Referred to CRAs	Number of Complaints Randomly Selected for Reporting	Number of Disputed Items in Randomly Selected Complaints	Number of Items Resolved as Requested by the Consumer in Randomly Selected Complaints
2004 2 nd Quarter	2360	249	1117	797
2004 3 rd Quarter	1552	166	1244	944
2004 4 th Quarter	1574	172	692	527
2004 Totals	5486	587	3053	2268
2005 1 st Quarter	1666	167	1456	1070
2005 2 nd Quarter	1797	186	1412	911
2005 3 rd Quarter	1645	171	905	503
2005 4 th Quarter	1344	145	1266	730
2005 Totals	6452	669	5039	3214
2006 1 st Quarter	1614	168	1705	997
2006 2 nd Quarter	1606	167	1313	558
2006 3 rd Quarter	1495	152	971	649
2006 4 th Quarter	1285	139	676	411
2006 Totals	6000	626	4665	2615
2007 1 st Quarter	1503	161	1200	731
2007 2 nd Quarter	1603	171	1293	677
2007 3 rd Quarter	1255	131	1269	642
2007 4 th Quarter	1023	109	905	453
2007 Totals	5,384	572	4667	2503
Totals for 2004-2007	23,322	2,454	17,424	10,600