

SUMMARY OF PROVISIONS OF FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 (“FACT”) RELATING TO RESELLERS

The changes made to the Fair Credit Reporting Act by FACT are numerous and complicated. In order to better understand the provisions that only apply to resellers, the following sets forth a summary of the new provisions as they apply to all CRA's and an extract of the new statutory language of the provisions that apply to resellers. There are, of course, numerous other provisions that apply to CRA's, creditors and information furnishers that are not discussed herein.

The amendments are generally effective on dates set forth in the regulations to be jointly written by the FTC and the Federal Reserve Board within two months of the date of enactment (December 4, 2003). The various effective dates are to be “as early as possible”, but in no case later than ten months from the date of the issuance of the regulations in final form, i.e., December 4, 2004. However, there are certain provisions that carry different effective dates (on December 16, 2003 the Federal Reserve Board published proposed dates) and those are set forth after each of the descriptions of the provisions below.

First, in order to understand the context of these changes, it might be helpful to look through the table of contents of FACT to see the various subject areas covered by FACT.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) SHORT TITLE- This Act may be cited as the “Fair and Accurate Credit Transactions Act of 2003”.
- (b) TABLE OF CONTENTS- The table of contents for this Act is as follows:
 - Sec. 1. Short title; table of contents.
 - Sec. 2. Definitions.
 - Sec. 3. Effective dates.

TITLE I—IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

Subtitle A—Identity Theft Prevention

- Sec. 111. Amendment to definitions.
- Sec. 112. Fraud alerts and active duty alerts.
- Sec. 113. Truncation of credit card and debit card account numbers.
- Sec. 114. Establishment of procedures for the identification of possible instances of identity theft.
- Sec. 115. Authority to truncate social security numbers.

Subtitle B—Protection and Restoration of Identity Theft Victim Credit History

- Sec. 151. Summary of rights of identity theft victims.
- Sec. 152. Blocking of information resulting from identity theft.
- Sec. 153. Coordination of identity theft complaint investigations.
- Sec. 154. Prevention of repollution of consumer reports.
- Sec. 155. Notice by debt collectors with respect to fraudulent information.
- Sec. 156. Statute of limitations.
- Sec. 157. Study on the use of technology to combat identity theft.

TITLE II—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION

- Sec. 211. Free consumer reports.
- Sec. 212. Disclosure of credit scores.
- Sec. 213. Enhanced disclosure of the means available to opt out of prescreened lists.
- Sec. 214. Affiliate sharing.
- Sec. 215. Study of effects of credit scores and credit -based insurance scores on availability and affordability of financial products.
- Sec. 216. Disposal of consumer report information and records.
- Sec. 217. Requirement to disclose communications to a consumer reporting agency.

TITLE III—ENHANCING THE ACCURACY OF CONSUMER REPORT INFORMATION

- Sec. 311. Risk-based pricing notice.
- Sec. 312. Procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies.
- Sec. 313. FTC and consumer reporting agency action concerning complaints.
- Sec. 314. Improved disclosure of the results of reinvestigation.
- Sec. 315. Reconciling addresses.
- Sec. 316. Notice of dispute through reseller.
- Sec. 317. Reasonable reinvestigation required.
- Sec. 318. FTC study of issues relating to the Fair Credit Reporting Act.
- Sec. 319. FTC study of the accuracy of consumer reports.

TITLE IV—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

- Sec. 411. Protection of medical information in the financial system.
- Sec. 412. Confidentiality of medical contact information in consumer reports.

TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

- Sec. 511. Short title.
- Sec. 512. Definitions.
- Sec. 513. Establishment of Financial Literacy and Education Commission.
- Sec. 514. Duties of the Commission.
- Sec. 515. Powers of the Commission.
- Sec. 516. Commission personnel matters.
- Sec. 517. Studies by the Comptroller General.
- Sec. 518. The national public service multimedia campaign to enhance the state of financial literacy.
- Sec. 519. Authorization of appropriations.

TITLE VI—PROTECTING EMPLOYEE MISCONDUCT INVESTIGATIONS

- Sec. 611. Certain employee investigation communications excluded from definition of consumer report.

TITLE VII—RELATION TO STATE LAWS

- Sec. 711. Relation to State laws.

TITLE VIII—MISCELLANEOUS

- Sec. 811. Clerical amendments.

Thus, the table of contents reveals the wide variety of subjects covered by the new legislation. Among these are numerous studies which both the FTC and the Federal Reserve Board are required to conduct and report the findings to Congress, including (1) a study of technology and identity theft, (2) a study of the effects of credit scoring on the availability of financial products, (3) a study of the FCRA, including the efficacy of increasing the points of identification matching criteria, requiring notification to the consumer when negative information is entered into the file, and whether any common financial transactions that are not generally reported to consumer reporting agencies would be useful in determining the creditworthiness of consumers, and (4) a study of the accuracy of consumer reports. Undoubtedly, the views of resellers will be sought on a number of these issues.

The provisions directly affecting resellers are as follows:

I. NEW §604(G) limits consumer reporting agencies from furnishing consumer reports containing medical information for employment, credit or insurance purposes (other than codified medical contact information) unless the information is relevant to the transaction and the consumer provides written consent or unless the information pertains solely to debts arising from the receipt of medical services where such information, other than account status or amounts, is restricted or reported using codes that do not identify the specific provider or the nature of the services. Effective June 4, 2004.

§604(g) Protection of Medical Information.—

(1) Limitation on consumer reporting agencies.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6)) about a consumer, unless—

(a) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(b) if furnished for employment purposes or in connection with a credit transaction—

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(c) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices [sic], where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).

II. NEW §605(a)(6) is to be read in conjunction with §604(g), discussed above, and with §623(a)(9), discussed below. Section 605(a)(6) prohibits consumer reporting agencies from reporting the name, address and telephone number of any medical information furnisher that has notified the agency that it is such a furnisher UNLESS such identifying information is reported using codes that do not identify the specific provider or the nature of the services. Effective March 4, 2005.

§605(a) Information excluded from consumer reports. Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(6) the name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

(a) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer...

III. NEW §623(a)(9) creates a new class of data furnisher, termed a medical information provider (including a collection agency) which furnishes medical information to consumer reporting agencies and requires such providers to notify the consumer reporting agency of its status as a medical information provider and provide such information using codes set up by regulation. This provision should be read in conjunction with sections 604(g) and 605(a)(6), discussed above. Effective March 4, 2005.

§623(a)(9) Duty to provide notice of status as medical information furnisher.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.

ANALYTICAL DISCUSSION OF MEDICAL INFORMATION

The FCRA's new restrictions on disclosure of medical information are complicated by the restrictions placed on such disclosures under the Health Insurance Portability and Accountability Act of 1996, or HIPAA. HIPAA sets up complex procedures for health care providers and their agents (including collection agencies) to follow with respect to the disclosure of individually identifiable health information, but, according to the U.S.

Department of Health and Humans Services (HHS), allows such providers to disclose such information to consumer reporting agencies, so long as it is done in compliance with the FCRA. Note, however, that some collection agencies are requiring consumer reporting agencies to obtain an authorization from the consumer prior to releasing updated account information to them. Even though such authorizations are not technically required, practically these agencies are acting as if it is, and if the collection agency requires such an authorization prior to being willing to update account information, the reseller is faced with having to so provide it.

In any event, after having obtained the information from the medical information furnisher, the consumer reporting agency will need the consent of the consumer to issue a report containing medical information UNLESS the information is reported using codes that do not identify the specific provider or the nature of the services.

IV. NEW S605(d)(2) requires a consumer reporting agency that furnishes a credit score that contains a “key factor” of number of inquiries to disclose such in its reports. Any such disclosure made in a repository report must be passed along in a reseller report. Effective December 1, 2004.

(2) Key factor in credit score information.—Any consumer reporting agency that furnishes a consumer report that contains any credit score or any other risk score or predictor on any consumer shall include in the report a clear and conspicuous statement that a key factor (as defined in section 609(f)(2)(b)) that adversely affected such score or predictor was the number of enquiries, if such a predictor was in fact a key factor that adversely affected such score. this paragraph shall not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, but only to the extent that such company is engaged in such activities.

V. NEW §605(h) requires nationwide consumer reporting agencies to provide a notice of any discrepancy in the address of a file that differs from the address in the request. The notice is to be given to any “person” and thus includes resellers in the class of persons to be given the notification by the nationwide agencies. Regulations will be written jointly by the FTC and the federal banking agencies. Effective December 1, 2004.

(h) Notice of discrepancy in address.—

(1) In general.—if a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer; and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

(2) Regulations.—

(a) Regulations required.—The federal banking agencies, the national credit union administration, and the commission shall jointly, with respect to the entities that are subject to their respective enforcement authority under section 621, prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

(b) Policies and procedures to be included.—The regulations prescribed under subparagraph (a) shall describe reasonable policies and procedures for use by a user of a consumer report—

(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

(ii) if the user establishes a continuing relationship with the consumer; and the user regularly and in the ordinary course of business furnishes information to the consumer

reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.

VI. NEW §605A relates to fraud alerts and active duty alerts. This section generally requires nationwide reporting agencies (“§603(p) agencies”) to include a fraud or active duty alert in a consumer’s file upon the direct request of a consumer. Sections 605A (f) and (g) apply to resellers and require them to include fraud alerts and active duty reports in their reports and, if contacted by the consumer, the reseller is required to provide information on how to contact the FTC and the nationwide consumer reporting agencies. Effective December 1, 2004.

(f) DUTY OF RESELLER TO RECONVEY ALERT- A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.

(g) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION- If a consumer contacts any consumer reporting agency that is not described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this section.

VII. NEW §605B (Sec. 152 of FACT) relates to the blocking of information resulting from identity theft, requiring all CRA’s to do so, with the following exception (§605B(d)) for resellers effective December 1, 2004:

Sec. 605B. Block of information resulting from identity theft

(d) EXCEPTION FOR RESELLERS-

(1) NO RESELLER FILE- This section shall not apply to a consumer reporting agency, if the consumer reporting agency—

(A) is a reseller;

(B) is not, at the time of the request of the consumer under subsection (a), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

(C) informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

(2) RESELLER WITH FILE- The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if—

(A) the consumer, in accordance with the provisions of subsection (a), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

(B) the consumer reporting agency is a reseller of the identified information.

(3) NOTICE- In carrying out its obligation under paragraph (2), the reseller shall promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

VIII. NEW 609(a)(1) requires all consumer reporting agencies (including resellers) to mask the first five digits of a consumer’s social security number in a consumer disclosure (not in a report to a user) upon the request of a consumer.

§ 609. Disclosures to consumers

(a) Information on file; sources; report recipients. Every consumer reporting agency shall, upon request, and subject to 610(a)(1) [§ 1681h], clearly and accurately disclose to the consumer:

(1) All information in the consumer’s file at the time of the request, except that nothing except that—

(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure;

IX. NEW §609 (c), (d) and (e) (Sec. 151 of FACT) requires the FTC to prepare a model summary of rights for victims of fraud or identity theft and all consumer reporting agencies to provide such summaries to any consumer contacting the agency expressing a belief that the consumer is a victim of fraud or identity theft. It also requires creditors to provide such consumers copies of applications and business transaction records relating to the victim. Subsections (d)(1) and (2) relate to the model forms effective December 1, 2004:

(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS-

IN GENERAL- The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prepare a model summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor.

SUMMARY OF RIGHTS AND CONTACT INFORMATION- Beginning 60 days after the date on which the model summary of rights is prescribed in final form by the Commission pursuant to paragraph (1), if any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution or other creditor, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with a summary of rights that contains all of the information required by the Commission under paragraph (1), and information on how to contact the Commission to obtain more detailed information.

X. NEW §609 (f) will require the disclosure of credit scores (Sec. 212 of FACT) by all CRA's. Subsections (4) and (5) apply to CRA's which do not develop scores and clarifies that resellers and other consumer reporting agencies which do not develop such scores are not required to provide an explanation beyond the explanation made in the original report. Effective December 1, 2004.

(4) APPLICABILITY TO CERTAIN USES- This subsection shall not be construed so as to compel a consumer reporting agency to develop or disclose a score if the agency does not—

(A) distribute scores that are used in connection with residential real property loans; or

(B) develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.

(5) APPLICABILITY TO CREDIT SCORES DEVELOPED BY ANOTHER PERSON-

(A) IN GENERAL- This subsection shall not be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of them, or to process a dispute arising pursuant to section 611, except that the consumer reporting agency shall provide the consumer with the name and address and website for contacting the person or entity who developed the score or developed the methodology of the score.

(B) EXCEPTION- This paragraph shall not apply to a consumer reporting agency that develops or modifies scores that are developed by another person or entity.

XI. NEW §611(f) sets up new rules regarding the duties of resellers to reinvestigate information disputed by consumers. Basically, the reseller is required, within five days of receiving a notice from the consumer that an item is disputed, to determine whether the item is incomplete or inaccurate as a result of an act or omission of the reseller. If it is, the reseller must correct or delete the information within 20 days. If it is not, the reseller must convey the notice of the dispute, together with all relevant information, to each consumer reporting agency that provided the original information. Upon the completion of a reinvestigation by the originating agency, that

agency must convey to the reseller (rather than to the consumer) the information required in §611(a)(6), (7) and (8) [ie., the results of the reinvestigation, a description of the reinvestigation procedure and provide for expedited dispute resolution]. This information must be “immediately” reconveyed to the consumer. Effective December 1, 2004.

(f) Reinvestigation requirement applicable to resellers.—

(1) Exemption from general reinvestigation requirement.—except as provided in paragraph (2), a reseller shall be exempt from the requirements of this section.

(2) Action required upon receiving notice of a dispute.—if a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such consumer produced by the reseller, the reseller shall, within 5 business days of receiving the notice, and free of charge—

(a) Determine whether the item of information is incomplete or inaccurate as a result of an act or omission of the reseller; and

(b) If—

(i) the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, not later than 20 days after receiving the notice, correct the information in the consumer report or delete it; or

(ii) if the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.

(3) Responsibility of consumer reporting agency to notify consumer through reseller.—Upon the completion of a reinvestigation under this section of a dispute concerning the completeness or accuracy of any information in the file of a consumer by a consumer reporting agency that received notice of the dispute from a reseller under paragraph (2)—

(a) The notice by the consumer reporting agency under paragraph (6), (7), or (8) of subsection (a) shall be provided to the reseller in lieu of the consumer; and

(b) The reseller shall immediately reconvey such notice to the consumer, including any notice of a deletion by telephone in the manner required under paragraph (8)(a).

(4) Reseller reinvestigations.—No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer dispute directly.

XII. AMENDS §609 (C), (D)and (E) and adds new §612(A) to provide for new Summary of Rights to be formulated by FTC and to include the right to receive a free copy of the report from nationwide consumer reporting agencies. This new summary will be required to be distributed by all CRA’s. Effective date is December 1, 2004.

XIII. AMENDS §618 changes the statute of limitations for bringing a private action under the Act to the EARLIER OF two years from the date of discovery by the plaintiff of a violation or five years after the date on which the violation occurred. The old statute of limitations was two years. Thus all consumer reporting agencies, in order to defend themselves from liability, will be required to keep records of reports issued and disclosures made for a period of at least five years. Effective March 31, 2004.

§ 618. JURISDICTION OF COURTS; LIMITATION OF ACTIONS

An action to enforce any liability created under this title may be brought in any appropriate united states district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

- (1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or*
- (2) 5 years after the date on which the violation that is the basis for such liability occurs.*

XIV. NEW §628 (Sec. 216 of FACT) relates to the disposal of records containing consumer information and requires the FTC to write regulations pertaining to such disposal. Effective December 1, 2004.

Sec. 628. Disposal of records

(a) REGULATIONS-

(1) IN GENERAL- Not later than 1 year after the date of enactment of this section, the Federal banking agencies, the National Credit Union Administration, and the Commission with respect to the entities that are subject to their respective enforcement authority under section 621, and the Securities and Exchange Commission, and in coordination as described in paragraph (2), shall issue final regulations requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

(2) COORDINATION- Each agency required to prescribe regulations under paragraph (1) shall—

(A) consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such agency are consistent and comparable with the regulations by each such other agency;

and

(B) ensure that such regulations are consistent with the requirements and regulations issued pursuant to Public Law 106-102 and other provisions of Federal law.

(3) EXEMPTION AUTHORITY- In issuing regulations under this section, the Federal banking agencies, the National Credit Union Administration, the Commission, and the Securities and Exchange Commission may exempt any person or class of persons from application of those regulations, as such agency deems appropriate to carry out the purpose of this section.

(b) RULE OF CONSTRUCTION- Nothing in this section shall be construed—

- (1) to require a person to maintain or destroy any record pertaining to a consumer that is not imposed under other law; or*
- (2) to alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.*