

Selected Text of the Fair Credit Reporting Act
(15 U.S.C. §§ 1681 – 1681v)

as Amended by the
Fair and Accurate Credit Transactions Act of 2003
(Public Law No. 108-159)

With a special Focus on the
Impact to Mortgage Lenders

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IMPACT OF FACT ON MORTGAGE LENDERS

The changes made to the Fair Credit Reporting Act by the Fair and Accurate Credit Transactions Act of 2003 are numerous and complicated. In order to better understand the provisions that only apply to mortgage lenders, the following extracts the new statutory language of the provisions that apply to mortgage lenders. There are, of course, numerous other provisions that apply to nationwide consumer reporting agencies, resellers, and employers 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, ie., 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.

I. New section 605(H) adds a new provision requiring a nationwide consumer reporting agency to notify a user if the user has requested a consumer report on a consumer whose address is different from the address on the report and requiring the appropriate federal agencies to write regulations on what the user of the report should do in such an event with respect to determining the true identity of the consumer. The regulations will be effective on December 1, 2004.

Interestingly, the statute uses the term “person” in subparagraph (1) to describe the party receiving the report, but uses the term “user” in subparagraph (2), indicating that the “person” which originally gets the report could well be a reseller (whose only obligation is to pass along the notice of address discrepancy to the mortgage lender) and thus the nationwide consumer reporting agency must notify the reseller under this provision, but for the purposes of subparagraph (2), the regulations to be written would only apply to the user, ie., mortgage lender. Once written, the regulations will generally require that the user which receives notice of such an address discrepancy utilize reasonable polices to assure that the user knows the identity of the person to whom the report pertains and reconcile the address discrepancy with the consumer reporting agency.

Effective December 1, 2004:

§605(H)

(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.

II. All of section 605A is new and sets up detailed requirements for nationwide consumer reporting agencies to include fraud alerts and active duty alerts. New section 605A (H) requires users to form a reasonable conclusion as to the true identity of a consumer prior to establishing a new credit relationship or a new extension of credit if the consumer's consumer report contains a fraud alert or active duty alert. In order to form a reasonable conclusion, the user is required to make efforts to contact the consumer at the telephone number provided in the alert.

Effective December 1, 2004:

§605A(H)

(h) LIMITATIONS ON USE OF INFORMATION FOR CREDIT EXTENSIONS.—

(1) REQUIREMENTS FOR INITIAL AND ACTIVE DUTY ALERTS.—

(a) NOTIFICATION.—each initial fraud alert and active duty alert under this section shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than under an openend credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (b).

(B) LIMITATION ON USERS.—

(I) In general.—No prospective user of a consumer report that includes an initial fraud alert or an active duty alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.

(ii) Verification.—If a consumer requesting the alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension described in clause (i) in the name of such consumer, a user of such consumer report shall contact the consumer using that telephone number or take reasonable steps to verify the consumer’s identity and confirm that the application for a new credit plan is not the result of identity theft.

(2) REQUIREMENTS FOR EXTENDED ALERTS.—

(a) NOTIFICATION.—Each extended alert under this section shall include information that provides all prospective users of a consumer report relating to a consumer with—

(i) notification that the consumer does not authorize the establishment of any new credit plan or extension of credit described in clause (i), other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except in accordance with subparagraph (b); and

(ii) a telephone number or other reasonable contact method designated by the consumer.

(B) LIMITATION ON USERS.—No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended fraud alert in accordance with this section may establish a new credit plan or extension of credit, other than under an open-end credit plan (as defined in section 103(i)), in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method described in subparagraph (a)(ii) to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.

III. New section 609(e) requires a “business entity” which has provided credit or goods and services, upon the request of a victim of identity theft, to provide copies of the business transaction records to the victim and to law enforcement within 30 days of a written request.

Effective June 1, 2004:

§609(e)

(E) INFORMATION AVAILABLE TO VICTIMS.—

(1) IN GENERAL.—For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

(a) the victim;

(b) any federal, state, or local government law enforcement agency or officer specified by the victim in such a request; or
(c) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

(2) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that

it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

(a) as proof of positive identification of the victim, at the election of the business entity—

(i) the presentation of a government-issued identification card;

(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

(b) as proof of a claim of identity theft, at the election of the business entity—

(i) a copy of a police report evidencing the claim of the victim of identity theft; and

(ii) a properly completed—

(i) copy of a standardized affidavit of identity theft developed and made available by the commission; or

(ii) an affidavit of fact that is acceptable to the business entity for that purpose.

(3) PROCEDURES.—The request of a victim under paragraph (1) shall—

(a) be in writing;

(b) be mailed to an address specified by the business entity, if any; and

(c) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including—

(i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and

(ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.

(4) NO CHARGE TO VICTIM.—information required to be provided under paragraph (1) shall be so provided without charge.

(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—a business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

(a) this subsection does not require disclosure of the information;

(B) After reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

(C) The request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or
(D) The information requested is internet navigational data or similar information about a person’s visit to a website or online service.

(6) LIMITATION ON LIABILITY.—Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

(7) LIMITATION ON CIVIL LIABILITY.—No business entity may be held civilly liable under any provision of federal, state, or other law for disclosure, made in good faith pursuant to this subsection.

(8) NO NEW RECORD KEEPING OBLIGATION.—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

(9) RULE OF CONSTRUCTION.—

(A) In general.—No provision of subtitle A of Title V of Public Law 106– 102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

(b) Limitation.—except as provided in subparagraph (a), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (b) and (c) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of federal or state law.

(10) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

(a) the business entity has made a reasonably diligent search of its available business records; and

(b) the records requested under this subsection do not exist or are not reasonably available.

(11) DEFINITION OF VICTIM.—For purposes of this subsection, the term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.

(12) EFFECTIVE DATE.—This subsection shall become effective 180 days after the date of enactment of this subsection.

(13) EFFECTIVENESS STUDY.—Not later than 18 months after the date of enactment of this subsection, the comptroller general of the united states shall submit a report to congress assessing the effectiveness of

this provision.

(g) Person defined as excluding enterprise.—As used in this subsection, the term “person” does not include an enterprise (as defined in paragraph (6) of section 1303 of the federal housing enterprises financial safety and soundness act of 1992).

(2) Prohibition on disclosure clauses null and void.—

(a) In general.—Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

(b) No liability for disclosure under this subsection.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

IV. New sections 609 (f) through (g) require both consumer reporting agencies and mortgage lenders to disclose credit scores and the key factors that may have adverse affects on such scores to consumers. The disclosure must also include a statutory notice regarding credit scores.

Effective December 1, 2004:

§§609(f-g)

(F) DISCLOSURE OF CREDIT SCORES.—

(1) IN GENERAL.—Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

(a) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

(b) the range of possible credit scores under the model used;

(c) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4, subject to paragraph (9);

(d) the date on which the credit score was created; and

(e) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(a) CREDIT SCORE.—the term “credit score”—

(i) means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the

likelihood of certain credit behaviors, including default (and the numerical value or the categorization derived from such analysis may also be referred to as a “risk predictor” or “risk score”); and

(ii) DOES NOT INCLUDE—

(i) any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including the loan to value ratio, the amount of down payment, or the financial assets of a consumer; or

(ii) any other elements of the underwriting process or underwriting decision.

(b) KEY FACTORS.—The term “key factors” means all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score.

(3) TIMEFRAME AND MANNER OF DISCLOSURE.—The information required by this subsection shall be provided in the same timeframe and manner as the information described in subsection (a).

(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.

(6) MAINTENANCE OF CREDIT SCORES NOT REQUIRED.—This subsection shall not be construed to require a consumer reporting agency to maintain credit scores in its files.

(7) COMPLIANCE IN CERTAIN CASES.—In complying with this subsection, a consumer reporting agency shall—

(a) supply the consumer with a credit score that is derived from a credit scoring model that is widely distributed to users by that

consumer reporting agency in connection with residential real property loans or with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer; and

(b) a statement indicating that the information and credit scoring model may be different than that used by the lender.

(8) FAIR AND REASONABLE FEE.—A consumer reporting agency may charge a fair and reasonable fee, as determined by the commission, for providing the information required under this subsection.

(9) USE OF ENQUIRIES AS A KEY FACTOR.—If a key factor that adversely affects the credit score of a consumer consists of the number of enquiries made with respect to a consumer report, that factor shall be included in the disclosure pursuant to paragraph (1)(c) without regard to the numerical limitation in such paragraph.

(g) DISCLOSURE OF CREDIT SCORES BY CERTAIN MORTGAGE LENDERS.—

(1) IN GENERAL.—Any person who makes or arranges loans and who uses a consumer credit score, as defined in subsection (f), in connection with an application initiated or sought by a consumer for a closed end loan or the establishment of an open end loan for a consumer purpose that is secured by 1 to 4 units of residential real property (hereafter in this subsection referred to as the “lender”) shall provide the following to the consumer as soon as reasonably practicable:

(a) INFORMATION REQUIRED UNDER SUBSECTION (F).—

(i) In general.—A copy of the information identified in subsection (f) that was obtained from a consumer reporting agency or was developed and used by the user of the information.

(ii) Notice under subparagraph (d).—In addition to the information provided to it by a third party that provided the credit score or scores, a lender is only required to provide the notice contained in subparagraph (d).

(b) DISCLOSURES IN CASE OF AUTOMATED UNDERWRITING SYSTEM.—

(i) In general.—If a person that is subject to this subsection uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(ii) Numerical credit score.—However, if a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person, the score shall be disclosed to the consumer consistent with subparagraph (c).

(iii) Enterprise defined.—For purposes of this subparagraph, the term “enterprise” has the same meaning

as in paragraph (6) of section 1303 of the federal housing enterprises financial safety and soundness act of 1992.

(c) DISCLOSURES OF CREDIT SCORES NOT OBTAINED FROM A CONSUMER REPORTING AGENCY.—A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

(d) NOTICE TO HOME LOAN APPLICANTS.—A copy of the following notice, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used:

“NOTICE TO THE HOME LOAN APPLICANT

“IN CONNECTION WITH YOUR APPLICATION FOR A HOME LOAN, THE LENDER MUST DISCLOSE TO YOU THE SCORE THAT A CONSUMER REPORTING AGENCY DISTRIBUTED TO USERS AND THE LENDER USED IN CONNECTION WITH YOUR HOME LOAN, AND THE KEY FACTORS AFFECTING YOUR CREDIT SCORES.

“THE CREDIT SCORE IS A COMPUTER GENERATED SUMMARY CALCULATED AT THE TIME OF THE REQUEST AND BASED ON INFORMATION THAT A CONSUMER REPORTING AGENCY OR LENDER HAS ON FILE. THE SCORES ARE BASED ON DATA ABOUT YOUR CREDIT HISTORY AND PAYMENT PATTERNS. CREDIT SCORES ARE IMPORTANT BECAUSE THEY ARE USED TO ASSIST THE LENDER IN DETERMINING WHETHER YOU WILL OBTAIN A LOAN. THEY MAY ALSO BE USED TO DETERMINE WHAT INTEREST RATE YOU MAY BE OFFERED ON THE MORTGAGE. CREDIT SCORES CAN CHANGE OVER TIME, DEPENDING ON YOUR CONDUCT, HOW YOUR CREDIT HISTORY AND PAYMENT PATTERNS CHANGE, AND HOW CREDIT SCORING TECHNOLOGIES CHANGE.

“BECAUSE THE SCORE IS BASED ON INFORMATION IN YOUR CREDIT HISTORY, IT IS VERY IMPORTANT THAT YOU REVIEW THE CREDIT-RELATED INFORMATION THAT IS BEING FURNISHED TO MAKE SURE IT IS ACCURATE. CREDIT RECORDS MAY VARY FROM ONE COMPANY TO ANOTHER.

“IF YOU HAVE QUESTIONS ABOUT YOUR CREDIT SCORE OR THE CREDIT INFORMATION THAT IS FURNISHED TO YOU, CONTACT THE CONSUMER REPORTING AGENCY AT THE ADDRESS AND TELEPHONE NUMBER PROVIDED WITH THIS NOTICE, OR CONTACT THE LENDER, IF THE LENDER DEVELOPED OR GENERATED THE CREDIT SCORE. THE CONSUMER REPORTING AGENCY PLAYS NO PART IN THE DECISION TO TAKE ANY ACTION ON THE LOAN APPLICATION AND IS UNABLE TO PROVIDE YOU WITH SPECIFIC REASONS FOR THE DECISION ON A LOAN APPLICATION.

“IF YOU HAVE QUESTIONS CONCERNING THE TERMS OF THE LOAN, CONTACT THE LENDER.”

(e) ACTIONS NOT REQUIRED UNDER THIS SUBSECTION.—This subsection shall not require any person to—

(i) explain the information provided pursuant to subsection (f);

(ii) disclose any information other than a credit score or key factors, as defined in subsection (f);

(iii) disclose any credit score or related information obtained by the user after a loan has closed;

(iv) provide more than 1 disclosure per loan transaction;
or

(v) Provide the disclosure required by this subsection when another person has made the disclosure to the consumer for that loan transaction.

(f) NO OBLIGATION FOR CONTENT.—

(i) In general.—The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency.

(ii) Limit on liability.—No person has liability under this subsection for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

(g) PERSON DEFINED AS EXCLUDING ENTERPRISE.—As used in this subsection, the term “person” does not include an enterprise (as defined in paragraph (6) of section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992).

(2) PROHIBITION ON DISCLOSURE CLAUSES NULL AND VOID.—

(a) in general.—any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void.

(b) No liability for disclosure under this subsection.—A lender shall not have liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

V. New sections 615 (e) and (f) require the federal enforcement agencies to write guidelines for users of consumer reports with respect to identity theft and prohibits the sale of accounts which have been identified with identity theft alerts, except under certain circumstances.

Effective December 1, 2004:

§615 (e & f)

(E) RED FLAG GUIDELINES AND REGULATIONS REQUIRED.—

(1) GUIDELINES.—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—

(a) Establish and maintain guidelines for use by each financial institution and each creditor regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

(b) Prescribe regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (a), to identify possible risks to account holders or customers or to the safety and soundness of the institution or customers; and

(c) Prescribe regulations applicable to card issuers to ensure that, if a card issuer receives notification of a change of address for an existing account, and within a short period of time (during at least the first 30 days after such notification is received) receives a request for an additional or replacement card for the same account, the card issuer may not issue the additional or replacement card, unless the card issuer, in accordance with reasonable policies and procedures—

(i) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

(ii) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

(iii) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subparagraph (b).

(2) CRITERIA.—

(a) IN GENERAL.—In developing the guidelines required by paragraph (1)(a), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

(b) INACTIVE ACCOUNTS.—In developing the guidelines required by paragraph (1)(a), the agencies described in paragraph (1) shall consider including reasonable guidelines providing that when a transaction occurs with respect to a credit or deposit account that has been inactive for more than 2 years, the creditor or financial institution shall follow reasonable policies and procedures that provide for notice to be given to a consumer in a manner reasonably designed to reduce the likelihood of identity theft with respect to such account.

(3) CONSISTENCY WITH VERIFICATION REQUIREMENTS.—Guidelines established

pursuant to paragraph (1) shall not be inconsistent with the policies and procedures required under section 5318(l) of title 31, United States Code.

(f) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—

(1) In general.—No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 605b has resulted from identity theft.

(2) Applicability.—The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).

(3) Rule of construction.—Nothing in this subsection shall be construed to prohibit—

(a) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

(b) the securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or

(c) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.

VI. New section 615(H) sets up complex new rules for creditors and mortgage lenders to provide a notice to consumers when such creditors grant credit on terms materially less favorable than those available by the creditor to a substantial portion of consumers. The rules will be created by rulemaking of the FTC and the Federal Reserve. This section also limits the liability of creditors for any violation of this section and prohibits civil or criminal suits for violations of this provision.

Effective December 1, 2004:

§615 (H)

(H) DUTIES OF USERS IN CERTAIN CREDIT TRANSACTIONS.—

(1) IN GENERAL.—Subject to rules prescribed as provided in paragraph (6), if any person uses a consumer report in connection with an application or, or a grant, extension, or other provision of, credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person shall provide an oral, written, or electronic notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection.

(2) TIMING.—The notice required under paragraph (1) may be provided at the time of an application for, or a grant, extension, or other provision

of, credit or the time of communication of an approval of an application for, or grant, extension, or other provision of, credit, except as provided in the regulations prescribed under paragraph (6).

(3) EXCEPTIONS.—No notice shall be required from a person under this subsection if—

- (a) the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report; or*
- (b) the person has provided or will provide a notice to the consumer under subsection (a) in connection with the transaction.*

(4) OTHER NOTICE NOT SUFFICIENT.—A person that is required to provide a notice under subsection (a) cannot meet that requirement by providing a notice under this subsection.

(5) CONTENT AND DELIVERY OF NOTICE.—A notice under this subsection shall, at a minimum—

- (a) include a statement informing the consumer that the terms offered to the consumer are set based on information from a consumer report;*
- (b) identify the consumer reporting agency furnishing the report;*
- (c) include a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge; and*
- (d) include the contact information specified by that consumer reporting agency for obtaining such consumer reports (including a toll-free telephone number established by the agency in the case of a consumer reporting agency described in section 603(p)).*

(6) RULEMAKING.—

(a) RULES REQUIRED.—The Commission and the Board shall jointly prescribe rules.

(b) CONTENT.—Rules required by subparagraph (a) shall address, but are not limited to—

- (i) the form, content, time, and manner of delivery of any notice under this subsection;*
- (ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable;*
- (iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers;*
- (iv) a model notice that may be used to comply with this subsection; and*
- (v) the timing of the notice required under paragraph (1),*

including the circumstances under which the notice must be provided after the terms offered to the consumer were set based on information from a consumer report.

(7) COMPLIANCE.—A person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the person maintained reasonable policies and procedures to comply with this section.

(8) ENFORCEMENT.—

(a) No civil actions.—Sections 616 and 617 shall not apply to any failure by any person to comply with this section.

(b) Administrative enforcement.—This section shall be enforced exclusively under section 621 by the federal agencies and officials identified in that section.

VII. Section 618 has been amended to limit court actions to the earlier of two years from the date of discovery of the violation by the consumer or five years from the date of the violation. Previously, the statute of limitations was two years from the date of the violation. Therefore, both creditors and consumer reporting agencies will be required to retain their records for a longer period of time.

Effective March 31, 2004:

§ 618

§ 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.

VIII. This section amends section 623 and adds a number of new provisions to prohibit creditors from furnishing information to consumer reporting agencies which the creditor knows or has reasonable cause to know is inaccurate. It requires [in subsection (a)(6)] information furnishers to have in place reasonable procedures to respond to notices of identity theft and to block information. It also requires [in subsection (a)(7)] “financial institution” creditors (state or national banks, federal savings and loan associations, mutual savings banks, state or federal credit unions, or any other person holding “transaction accounts”), to the extent that they furnish information to nationwide consumer reporting agencies, to notify the consumer with a disclosure (to be written by the Federal Reserve Board) within thirty days after reporting negative information. The section also requires [in subsection (a)(8)] the federal agencies to write regulations

relating to the circumstances in which information furnishers should be required to reinvestigate disputes made directly to them by consumers. The regulations [in subsection (e)] will also establish accuracy guidelines for the furnishing of information to consumer reporting agencies.

Effective Dec. 1, 2004:

§ 623(a)(1)(A & D)

§ 623. Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information.

(1) Prohibition.

*(A) Reporting information with actual knowledge of errors. A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person ~~knows or consciously avoids knowing that the information is inaccurate~~ **knows or has reasonable cause to believe that the information is inaccurate.***

(B) Reporting information after notice and confirmation of errors. A person shall not furnish information relating to a consumer to any consumer reporting agency if

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement. A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) DEFINITION.—For purposes of subparagraph (a), the term “reasonable cause to believe that the information is inaccurate” means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

...

§623 (a)(6) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED INFORMATION.—

(a) REASONABLE PROCEDURES.—A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605b relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(b) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such

person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

...
§623 (a)(7) *NEGATIVE INFORMATION.—*

(a) NOTICE TO CONSUMER REQUIRED.—

(i) in general.—if any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) notice effective for subsequent submissions.—after providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(b) TIME OF NOTICE.—

(i) in general.—the notice required under subparagraph (a) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

(ii) coordination with new account disclosures.—if the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the truth in lending act.

(c) COORDINATION WITH OTHER DISCLOSURES.—the notice required under subparagraph (a)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(d) MODEL DISCLOSURE.—

(i) DUTY OF BOARD TO PREPARE.—the board shall prescribe a brief model disclosure a financial institution may use to comply with subparagraph (a), which shall not exceed 30 words.

(ii) USE OF MODEL NOT REQUIRED.—no provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the board.

(iii) COMPLIANCE USING MODEL.—a financial institution shall be deemed to be in compliance with subparagraph (a) if the financial institution uses any such model form prescribed by the board, or the financial institution uses any such model form and rearranges its format.

(e) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—no provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (a) to furnish negative information about the customer to a consumer reporting agency.

(f) SAFE HARBOR.—a financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

(g) DEFINITIONS.—for purposes of this paragraph, the following definitions shall apply:

(i) NEGATIVE INFORMATION.—the term “negative information” means information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

(ii) CUSTOMER; FINANCIAL INSTITUTION.—the terms “customer” and “financial institution” have the same meanings as in section 509 public law 106–102.

§623 (a)(8) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

(a) IN GENERAL.—The federal banking agencies, the national credit union administration, and the commission shall jointly prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

(b) CONSIDERATIONS.—in prescribing regulations under subparagraph (a), the agencies shall weigh—

(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

(iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and

(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3), including entities that would be a credit repair organization, but for section 403(3)(b)(i), are able to circumvent the prohibition in subparagraph (g).

(c) APPLICABILITY.—subparagraphs (d) through (g) shall apply in any circumstance identified under the regulations promulgated under subparagraph (a).

(d) SUBMITTING A NOTICE OF DISPUTE.—a consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

(i) identifies the specific information that is being disputed;

(ii) explains the basis for the dispute; and

(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(e) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—after receiving a notice of dispute from a consumer pursuant to subparagraph (d), the person that provided the information in dispute to a consumer reporting agency shall—

(i) conduct an investigation with respect to the disputed information;

(ii) review all relevant information provided by the consumer with the notice;

(iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting

agency would be required to complete its action if the consumer had elected to dispute the information under that section; and

(iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

(f) FRIVOLOUS OR IRRELEVANT DISPUTE.—

(i) IN GENERAL.—this paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

(i) By reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

(ii) The submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

(ii) NOTICE OF DETERMINATION.—upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

(iii) CONTENTS OF NOTICE.—a notice under clause (ii) shall include—

(i) the reasons for the determination under clause (i); and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(g) EXCLUSION OF CREDIT REPAIR ORGANIZATIONS.—This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(b)(i). ...

§623 (C) (E) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

(1) GUIDELINES.—the federal banking agencies, the national credit union administration, and the commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2)—

(a) Establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(b) Prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (a).

(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

(3) CRITERIA.—in developing the guidelines required by paragraph (1)(a), the agencies described in paragraph (1) shall—

(a) Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(b) Review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(c) Determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and

(d) Examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

IX. New section 628 requires the federal enforcement agencies to issue regulations respecting the disposal of consumer information.

Effective December 1, 2004:

§ 628

§ 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.