

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

Division of Financial Practices

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Attorney

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202-326-3224

April 30, 1999

Re: Sections 604(a)(3), 607(e), and 609(a)(3) of the Fair Credit Reporting Act

Dear Mr. Benner:

This responds to your letters concerning whether the Fair Credit Reporting Act ("FCRA") permits a party to obtain a credit report on a consumer under certain circumstances. We list the three questions you posed verbatim, with our opinion following each.

*1. How long after a consumer terminates an account does a previous credit card issuer or lender have access to the consumer's credit file?*

Section 604(a)(3)(A) of the FCRA provides a consumer reporting agency ("CRA," usually a credit bureau) with a permissible purpose to provide a report on a consumer to a person who "intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer."<sup>(1)</sup> Once an account is closed because the consumer has paid the debt in full (and also, in the case of an open-end account such as a credit card account, notified the creditor to close the account), it is our view that no permissible purpose exists for a CRA to provide file information on a consumer to the creditor. Because there no longer exists any account to "review" and the consumer is not applying for credit, the FCRA provides no permissible purpose for the creditor to receive a consumer report from a CRA. I enclose a recent staff opinion letter (*Gowen*, 04/29/99) that discusses this issue in more detail.

*2. Is a permissible purpose for obtaining consumer credit reports for the sole purpose of determining possible debt by a collection agency for the purpose of soliciting collection business from creditors?*

No. You report that a debt collector and a major credit bureau assert that the collector has a "legitimate business need" to obtain a random selection of credit histories for the purpose of determining overdue accounts and then contacting the creditors on the account to solicit collection business. Section 604(a)(3)(F)(ii) does provide a permissible purpose to a party that "has a legitimate business need for the information to review an account to determine whether the consumer continues to meet the terms of the account." In our view, this section authorizes a provider of an existing account (e.g., a bank that has established a

checking account with the consumer) to obtain a report on the individual. In the scenario you described, the debt collector has no "account" to "review" when it orders a credit report (in fact, no "account" may exist for some consumers), but instead seeks to randomly examine credit files in order to solicit collection business from creditors. The collector is not authorized to obtain (nor a CRA to furnish) a consumer report for that purpose. The entire focus of Section 604 is to protect the confidentiality of consumers' personal data in the files of CRAs, by restricting access to parties who have a specific need for it.<sup>(2)</sup> If a third party such as a debt collector can review the consumer's file to see if there exists any account that the creditor has reported as delinquent, the section has totally failed its goal.

*3. Is it permissible for a business doing credit with a consumer to obtain credit information under false pretenses, i.e. hiring another firm to solicit credit file information without disclosing the name of the party actually seeking the credit file information? In these cases the consumer attempting to determine who has accessed his credit file, as required, is provided with names of parties unknown to him.*

No. Section 607(e)(1)(A) provides that the second firm may "procure a consumer report for purposes of reselling the report (or any information in the report)" only if it discloses "the identity of the end-user of the report (or information)" to the credit bureau. In our view, the firm hired to procure credit file information would be required to comply with this provision. Section 609(a)(3) requires the credit bureau, when responding to a consumer attempting to determine who has accessed his file, to identify the end-user -- not the intermediary -- as the recipient of the report. Thus, the amended FCRA results in the consumer being provided with the parties who actually used his or her credit file information.

The opinions set forth in this informal staff letter are not binding on the Commission.

Sincerely yours,

Clarke W. Brinckerhoff

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1. Section 604(a)(3)(F)(ii) provides a similar "review" purpose in connection with accounts (such as checking accounts) that do not involve credit.

2. "The bill also seeks to prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information. ... (Section 604) requires that the information in a person's file be kept confidential and used only for legitimate business transactions." S. Rept. 91-517, 91st Cong., 1st Sess. 1 (1969).