November 18, 2018

Via Electronic Delivery

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

RE: Interim Final Rule for Summaries of Rights Under the Fair Credit Reporting Act

Dear Ms. Jackson:

On behalf of the Consumer Data Industry Association (“CDIA”), we submit the following comments regarding the Bureau of Consumer Financial Protection (“BCFP” or “the Bureau”) Interim Final Rule regarding “Summaries of Rights Under the Fair Credit Reporting Act (Regulation V).” CDIA appreciates the Bureau’s efforts to incorporate the Congressionally-designed notice informing consumers of their rights to obtain security freezes under the Fair Credit Reporting Act (“FCRA”). CDIA also appreciates that the Bureau is willing to consider “possible further revisions to the model forms that the Bureau may consider in the future.”

I. Introduction

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers’ access to financial and other products suited to their unique needs.
CDIA members have been complying with federal law and regulations specific to the credit reporting industry for decades. In particular, the FCRA\(^1\) governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the United States.

The FCRA outlines many consumer rights with respect to the use and accuracy of the information contained in their credit reports. FCRA § 605A(i)(5), added by the Economic Growth, Regulatory Relief, and Consumer Protection Act, creates a new right for consumers to obtain a security freeze from nationwide consumer reporting agencies. In addition, every person required to provide a Summary of Rights under the FCRA must include a notice that includes the language specified by Congress. The Bureau’s interim final rule updates Appendices I (“ID Theft Summary”) and K (“Summary of Rights”) of Regulation V, which implements the FCRA, to include the model language required by Congress. Because these Summaries are required to be provided by many different types of consumer reporting agencies, as well as employers, we suggest that the Bureau make some additional changes, as set forth below, to reduce consumer confusion and more clearly articulate the responsibilities and obligations for consumer reporting agencies under the FCRA. Further, in response to the Bureau’s general request for comment on the existing Summaries, we include some additional comments for your consideration.

II. Changes Required by the Economic Growth, Regulatory Relief, and Consumer Protection Act

a. Language in Appendices I and K describing the new security freeze right should specifically identify the “nationwide consumer reporting agencies” in order to avoid confusing consumers.

New security freeze provisions in the Appendices include the following preamble: “The following FCRA right applies with respect to a nationwide consumer reporting agency.” However, neither preamble defines “nationwide consumer reporting agency.” We note that the ID Theft Summary (Appendix I) does define “nationwide consumer reporting agency” separately in its first numbered item, but not in close proximity to the preamble. The Summary of Rights (Appendix K) is entirely silent as to that term. As a result, consumers may not understand which companies are “nationwide consumer reporting agencies” and that their rights to a security freeze under federal law are limited to those agencies. For the sake of clarity, the security freeze provision in both appendices should identify the companies to which the term “nationwide consumer reporting agency” applies. For example, the preamble could be modified as follows: “The following notice is required by federal law to inform consumers about their right to obtain a security freeze from the nationwide consumer reporting agencies, Equifax, Trans Union, and Experian.”

\(^1\) 15 U.S.C. §§ 1681 et seq.
b. The Bureau should amend the notice to clarify that nationwide CRAs are not required to comply with state security freeze laws.

FCRA § 605A establishes a “National Security Freeze” for nationwide consumer reporting agencies.² With this national standard in place, state laws requiring nationwide consumer reporting agencies to place freezes and provide additional notices on state security freeze rights are preempted by federal law.³ In enacting a national security freeze law, Congress clearly sought to ensure nationwide uniformity with respect to security freezes provided by the nationwide CRAs and made this standard subject to the FCRA’s preemption provisions under Section 625(b)(5)(B). We are concerned that the placement of the state law language immediately following the security freeze language in Appendix K creates a misleading impression that nationwide consumer reporting agencies must also follow state security freeze laws. Specifically, Appendix K states:

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General.

Because of the placement and language of this notice, consumers may believe that they have additional security freeze rights under state laws. CDIA requests that the Bureau specifically clarify that nationwide consumer reporting agencies need not comply with state security freeze laws or that the Bureau reconsider the placement of its paragraph describing additional rights under state law.⁴

III. Additional Comments on the Summaries

a. The Summary of Rights (Appendix K) should be amended to reflect the right of a consumer to dispute inaccuracies directly with the furnisher of information.

As a result of the changes in the 2003 Fair and Accurate Credit Transactions Act, consumer have a right to dispute inaccurate information directly with the furnisher of that information.⁵ The Direct Dispute Rule requires the furnisher to investigate the consumer’s dispute and, if the information is inaccurate, correct and update that information with any consumer reporting agency to which the information had been furnished. The Summary of

² FCRA § 605A(i)(1)(A).
³ FCRA § 625(b)(5)(B).
⁴ To that same end, the Bureau should consider a statement or guidance clarifying the fact that nationwide CRAs do not need to comply with any notice provisions relating to state security freeze laws. Under several state laws, CRAs are required to provide notices of their state credit freeze rights when CRAs issue a federal Summary of Rights. See e.g., Fla. Code § 501.005(17). Such state notices would confuse consumers about, for example, whether they are entitled to a security freeze at no cost, the placement and timing of such freezes, etc.
⁵ 12 C.F.R. § 1022.43.
Rights (Appendix K) only references the right of a consumer to dispute with a consumer reporting agency, and to date, has not been amended to include this additional avenue of dispute. Given the importance of a consumer’s right to dispute directly with a furnisher, we request that the Summary of Rights (Appendix K) be amended to include that right.

b. The Summary of Rights (Appendix K) should clarify that criminal convictions may be reportable after more than seven years.

In addressing the FCRA provisions regarding obsolescence, the Summary of Rights (Appendix K) states:

Consumer reporting agencies may not report outdated negative information. In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

While technically accurate, this statement may confuse consumers whose consumer reports include criminal convictions, which information is not subject to a reporting limitation under the FCRA. Section 605(a)(5) specifically excepts “records of convictions of crimes” from the reporting limitations. The Summary of Rights (Appendix K) should be amended to reflect the statute.

c. The Summary of Rights (Appendix K) does not recognize that consumers who apply to a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service may authorize disclosure of a consumer report for employment purposes by mail, telephone, or other similar means.

The Summary of Rights (Appendix K) states that the consumer reporting agencies must generally receive written consent from consumers in order to release information to an employer. It also states that “Written consent generally is not required in the trucking industry.” Section 604(b)(2) of the FCRA generally states that consumers who apply by mail, telephone, computer, or other similar means to a position “over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service” may provide oral, electronic, or written consent to procuring a consumer report. Therefore, the Summary of Rights (Appendix K) should be revised to state “Written, electronic, or oral consent is permissible in the trucking industry.”

IV. Miscellaneous Grammatical Corrections

- The Spanish translation for both Summaries is inaccurate, using the verb form “escribe” instead of “escriba.” Please note the following correction: “Para información en español, visite www.consumerfinance.gov/learnmore or escriba a
la Consumer Financial Protection Bureau, 1700 G Street N. W., Washington, DC 20552.”

- The Summary of Rights (Appendix K) omits “the” in the first paragraph. Please note the following correction: “Here is a summary of your major rights under the FCRA.”

- The Summary of Rights (Appendix K) incorrectly uses “form” instead of “from” in its description of prescreened offers. Please note the following correction: “Unsolicited ‘prescreened’ offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on.”

V. Conclusion

Thank you for the opportunity to comment. Because these Summaries are required to be provided by many different types of consumer reporting agencies, as well as employers, we suggest that the Bureau make certain additional changes to reduce consumer confusion and more clearly articulate the responsibilities and obligations for consumer reporting agencies under the FCRA. The nationwide credit bureaus alone receive over 23 million requests for free credit reports every year through www.annualcreditreport.com, the website maintained bureaus to receive such requests, and the Summary of Rights is provided with each of those file disclosures. These changes, plus the additional changes noted above, will help ensure that consumers are appropriately informed of their rights.

Finally, if the Bureau intends to issue further updated Summaries, we request that the Bureau consider the operational challenges and implementation costs in setting a compliance deadline with any updated notices. Please contact CDIA if you have any questions or need additional information.

Sincerely,

Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs