

April 16, 2004

Mr. Donald Clark
Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: FACTA Free File Disclosures Proposed Rule, Matter No. R411005

Dear Mr. Clark:

AARP appreciates this opportunity to comment on the Federal Trade Commission's (FTC) Proposed Rule to establish a centralized source through which consumers may request a free annual disclosure from each nationwide credit reporting agency, and to develop a standardized form for such requests as required by the Fair and Accurate Credit Transactions (FACT) Act. As we testified last year during the Senate Banking Committee's hearings on amending the Fair Credit Reporting Act [Footnote 1: See the testimony of Michael Naylor, Director of Advocacy, AARP, during the hearing on "The Growing Problem of Identity Theft and Its Relationship to the Fair Credit Reporting Act", June 19, 2003.], AARP strongly supports providing consumers with free annual file disclosure. Such disclosure is vital for consumers seeking to protect themselves against identity theft and to ensure the accuracy of the information contained in the files. Further, disclosure of these files will enhance financial literacy by providing consumers with an understanding of what information is collected and who has had access to their files.

Our comments focus on three issues:

- the ease of request for free file disclosure through the central source,
- the use of personally identifiable information collected by the central source in providing free file disclosure, and
- the marketing of products to consumers requesting their free file disclosure.

We believe that each of these issues has an important impact on the likelihood of older consumers availing themselves of their free file disclosure as mandated by the FACT Act.

Ease of Request

The FTC requested comments on whether the proposed requirements for establishment and operation of the centralized source set forth in section 610.2(b) of the proposed rule are appropriate and adequate to fulfill the purpose of enabling consumers to request easily their free annual file disclosure. We believe that the proposed rule falls short of meeting this goal due to the fact that the proposal does not require the central source to

create a bi-lingual capability to facilitate requests for file disclosure by Spanish-speaking consumers.

Based on 2000 data, the Census Bureau estimates that 28.1 million people in the United States speak Spanish at home, with almost 50 percent of these Spanish-speakers having difficulty communicating in English. [Footnote 2: Shin, H.B. and R. Bruno. *Language Use and English-Speaking Ability: 2000*. U.S. Census Bureau, October 2003.] For such Spanish-speakers, the lack of a Spanish language option will likely inhibit them from requesting free file disclosure, particularly in light of the detailed personally identifiable information required by the central source to verify the identity of the individual requesting the file disclosure. Providing a bi-lingual capability would greatly increase the ease of request for Spanish speaking individuals. We urge the FTC to amend the proposed rule to reflect this need for a bi-lingual option for requesting file disclosure from the central source.

Use of Personally Identifiable Information Collected in Providing File Disclosure

The FTC requested comments on whether section 610.2(b)(2)(ii) of the proposed rule should address alternative usage of information collected by the centralized source as part of the process for providing file disclosure. We believe that the use of information collected by the central source should be addressed by the proposed rule, and that any information collected by the central source through providing file disclosure should be used only to confirm the identity of the requester. This information should not be used for any secondary purpose, such as marketing.

If consumers are to feel secure in exercising their right to free annual file disclosure, they must be assured that the sensitive, personally identifiable information collected during the file disclosure process will not be used for any other purpose. AARP members have expressed strong privacy concerns in connection with their personal information [Footnote 3: See, for example, Moag, K. *AARP Members' Concerns About Information Privacy*. AARP Public Policy Institute Data Digest 39, February 1999, and *AARP National Survey on Consumer Preparedness and E-Commerce: A Survey of Computer Users Age 45 and Older*. AARP, March 2000.] and need to know their sensitive information will not be shared or used for purposes other than to verify the identity of the consumer requesting file disclosure. For this reason, we urge the FTC to prohibit any secondary use of information collected during the process of file disclosure.

Marketing of Products through the Central Source

The FTC requested comments on whether section 610.2(g) of the proposed rule governing the possible use of the centralized source for other communications, including marketing, is adequate to ensure consumers are protected against communications that may interfere with the purpose of the centralized source. We believe that allowing marketing through the central source will interfere with the purpose of the central source -- which is to provide consumers with their free file disclosure.

Currently, a number of companies offer consumers the promise of ‘free credit reports’ as a way to sign up consumers for expensive products such as credit monitoring services. Offering other credit products, such as credit monitoring services for a fee through the central source, can be confusing for consumers seeking free file disclosure under the FACT Act and detract from the primary purpose of the central source. To prevent such confusion, we believe marketing through the central source should be limited to enhancing credit score disclosure to the individual, as intended and mandated by the FACT Act.

Conclusion

The FTC is to be commended for its work in drafting the proposed rules regarding free file disclosure through the central source. The availability of annual free file disclosure provides important consumer protections and will help increase consumer financial literacy. We urge the Commission to address the concerns we have raised, and we look forward to working with the Commission in order to better encourage consumers to exercise their important right to receive free file disclosure. If you have any questions, please feel free to contact me or call Roy Green of our Federal Affairs staff at 202/434-3800.

Sincerely,

David Certner
Director
Federal Affairs