



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

Division of  
Financial Practices

August 1, 2000

Ben Cohan, Vice President of Operations  
Chase Credit Research Corp.  
6350 Laurel Canyon Boulevard  
North Hollywood, CA 91606

Dear Mr. Cohan:

This letter responds to your inquiry posing five questions about the applicability of various sections of the Fair Credit Reporting Act (FCRA) to the activities of re-sellers of consumer reports. I summarize each inquiry below, in italics, with my response following.

*1. Is a re-seller that has no affiliation with any of the national credit repositories required to comply with Section 612(b), which requires each consumer reporting agency that maintains a file on a consumer to make all disclosures mandated by Section 609, when the re-seller "does not maintain files but rather archives" consumer reports? (Emphases in original)*

Yes, a consumer reporting agency ("CRA"), including a mortgage reporting agency or re-seller, is required to make the consumer disclosures prescribed by Section 609, whether the company designates its records "files" or "archives" or uses any other terminology for the information it retains on a consumer. As your inquiry recognizes, Section 612 of the FCRA requires that "[e]ach consumer reporting agency that maintains a file on a consumer shall make all disclosures pursuant to Section 609 without charge to the consumer" under specified circumstances. Section 609, in turn, provides that every CRA shall disclose to the consumer "[a]ll information in the consumer's file at the time of the request." We reach our conclusion that these provisions require disclosure of all information because of the inclusive definition of "file" in Section 603(g) of the FCRA:

The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and *retained* by a consumer reporting agency *regardless of how the information is stored*. (Emphasis added)

The use of words such as "retained" and "stored" suggests that a CRA cannot escape its obligation to make disclosure of information on a consumer simply by placing the information in a category that it considers archival.<sup>(1)</sup>

*2. Can a furnisher of information to CRAs require a re-seller of consumer reports to provide the "written consent of a consumer" before the furnisher complies with Section 623(b) of the FCRA?*

No. Section 623(b) requires the furnisher to conduct an investigation of disputed information when it is notified by a CRA pursuant to Section 611(a)(2) that a consumer disputes the completeness or accuracy of the furnisher's information with a consumer

reporting agency. The consumer's dispute to the CRA under Section 611(a)(1)(A) triggers the furnisher's responsibility to investigate, and the furnisher cannot frustrate the aims of the obligation (or delay the process) by requiring the consumer to, in effect, double-authorize the investigation in a manner that is more burdensome than required by that provision.<sup>(2)</sup>

*3. Is a re-seller required to comply with Section 611(a)(1) when the re-seller is unable to investigate the information that a consumer disputed?*<sup>(3)</sup>

(Emphasis in original)

Yes. Section 611(a)(1) requires the consumer reporting agency, upon dispute by the consumer of the completeness or accuracy of any item of information, to "reinvestigate . . . and record the current status of the disputed information, or delete the item from the file" if it cannot be verified within 30 days. Section 611(a)(2) requires prompt notice to the furnisher of information of a consumer dispute. The furnisher's responsibility to conduct an investigation of disputed information, imposed in Section 623, is a discrete requirement, separate from the CRA's obligation to record the current status or delete unverified information. Thus, if the furnisher fails or refuses to conduct an investigation (which may constitute a separate violation of the FCRA by the furnisher), the CRA must still comply with Section 611.

*4. If the answer to question 3 is 'yes', does Section 611(a)(5)(A) require the re-seller to delete the disputed information?*

Yes; if the consumer reporting agency (re-seller) cannot investigate within 30 days (with some qualifications contained in the FCRA), then disputed item(s) must be deleted. As noted above, the CRA's obligation to comply with Section 611 is triggered by a consumer dispute - it is statutorily separate from the furnisher's responsibility to investigate, and it does not require any form of "written *consent* from the consumer."

*5. When a re-seller furnishes a consumer report to a lender, and subsequently both the lender and the consumer claim that the request for the report was initiated in error by the lender, is the national repository that reports the "inquiry" permitted to remove the inquiry from its file at the request of the re-seller?*

No. If a CRA supplies a consumer report, it may reflect that event by an inquiry notation. There is no legal or policy requirement to display the inquiry (other than to the consumer in connection with disclosure pursuant to Section 609(a)(3)). The fact that a consumer report was requested "in error" does not nullify the fact that the report was furnished; that information must be retained by the CRA so that it can comply with Sections 609(a)(3) and 611(d), among other reasons.

I hope that this information is useful. The views that are expressed above are views of the Commission's staff and do not necessarily reflect the views of the Commission or of any individual Commissioner.

Sincerely,

Christopher W. Keller  
Attorney

**Endnotes:**

1. If the information is retained by the CRA, it must disclose the information available "at the time of the request." For a CRA that updates the information in a consumer's file, this means that the agency need report only the information in the file at the time of the consumer's request. For a re-seller, it requires the disclosure of the "stored" or "retained" file.

2. Section 611(a)(1)(A) requires no written statements of any kind by the consumer, stating that the CRA's reinvestigation duties are triggered when the consumer "notifies the agency directly" of the dispute.

3. As an example of such inability to investigate, your inquiry suggests "such as when a consumer refuses to provide a written consent to the re-seller for investigating the disputed information." As noted in response to inquiry #2, however, no such written consent is required; the consumer dispute itself gives rise to the obligation (and implicit consumer authorization) to investigate, and the furnisher cannot condition its investigation upon consumer consent.