

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

Division of Financial Practices

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Helen Goff Foster
Attorney

May 5, 1999

Re: Section 613(2) of the Fair Credit Reporting Act

Dear Mr. Allan:

This is in response to your letter inquiring whether employment screening services that use "stored data public records" comply with Section 613(2) of the Fair Credit Reporting Act ("FCRA"). You state that such services purchase public records from a "stored data records company" in bulk on magnetic tape or in CD-ROM format every 30, 60, or 90 days, and use them in screening employment applicants for their clients. Under these facts, the employment screening service is a consumer reporting agency ("CRA") under the FCRA.⁽¹⁾ We conclude that a CRA does not comply with Section 613(2) of the FCRA when it furnishes consumer reports for employment purposes that include negative public record information from stored data, without first verifying whether the information is complete and up to date.⁽²⁾

Section 613 of the FCRA states that when a CRA compiles and reports adverse public record information on consumers for employment purposes, it must either (1) notify the consumer that the data is being reported, with the name and address of the employer who is receiving it, or (2) have "strict procedures" in place to ensure accuracy of the information. In order to comply with the second alternative under Section 613(2), the CRA (employment screening service) must:

maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

Thus, our analysis must turn on two points: (1) whether the public record information that employment screening services use in preparing reports to employers is "likely to have an adverse effect upon a consumer's ability to obtain employment," and (2) whether the services' procedures are designed to insure that the public information they are providing is "up to date" in accordance with the statute.

In the facts that you present, these companies are purchasing criminal conviction history as well as "other public records." The applicability of Section 613 will turn on the nature of the

information on a particular applicant. In many cases, this information is clearly adverse to the consumer's ability to obtain employment and thus within the scope of Section 613. So, for example, a criminal history that indicates that the consumer has been convicted would be adverse to the consumer's ability to obtain employment, and would be covered by Section 613. However, other varieties of public record might not be adverse to the consumer's ability to obtain employment and, thus, would not be subject to Section 613.

If the type of public record information being compiled and reported to employers by screening services is of a variety that is likely to adversely impact the consumer's ability to obtain employment, the screen service must either provide notice to the consumer that such information is being reported in accordance with subsection (1), *or* maintain *strict* procedures to insure completeness and accuracy of the information they report, as provided in subsection (2). In stark contrast to the general requirement of Section 607(b) that a CRA maintain "reasonable procedures" to ensure the accuracy of consumer reports, Congress chose to require "strict procedures" in this instance. Further, Congress went on to provide an explicit definition of what would be considered "up to date" for purposes of Section 613: the current public record status at the time reported. Read in combination, these provisions demand that such public record information be updated immediately before reporting. Under this standard, an employment screening service that uses "stored data" (which may be as much as 90 days old) does not comply with subsection (2).

I hope that this information is helpful to you. The views expressed in this letter are those of the staff and do not necessarily represent the views of the Commission or of any individual Commissioner.

Sincerely,

Helen G. Foster

1. The attached staff letter (*LeBlanc*, 6/9/98) discusses the status of employment screening services as CRAs.

2. Such CRAs may, of course, alternatively comply with the FCRA by adhering to the requirements of Section 613(1).