

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC. 20580

Division of Credit Practices
Bureau of Consumer Protection

Cynthia S. Lamb
Investigator
Telephone
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October 21, 1997

Dear Mr. Steer:

Re: Sections 604(b)(2)(A) and 604(b)(2)(B) of the Fair Credit Reporting Act

This is in response to your letter dated July 29, 1997, concerning the obligations of employers to consumers who are employees or prospective employees under the amendments to the Fair Credit Reporting Act ("FCRA") that became effective September 30, 1997. Specifically, you ask if an employer can comply with the Section 604(b)(2)(A) disclosure requirement and also with the Section 604(b)(2)(B) authorization requirement by including both the disclosure and the authorization in a single document.

In your letter, you note that compliance with the Act's authorization and disclosure requirements would be simpler and more direct if the disclosure to the consumer and the consumer authorization could be set forth in a single document. You suggest that using a single document would also eliminate any possible ambiguity concerning the content of the disclosure which the employee is acknowledging by his or her signature. In addition, you note that utilizing one form would be less expensive and would be easier for managerial personnel who may not be well versed in legal matters.

Section 604(b) of the FCRA applies to employers who procure consumer reports for employment purposes. Section 604(b)(2)(A) requires them to provide a clear and conspicuous disclosure in writing to the consumer before a consumer report is obtained; under the terms of this section, this disclosure is required to be "in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes." Section 604(b)(2)(B) requires that the employer obtain the consumer's written authorization before procuring the report.

While Section 604(b)(2)(A) states that the required disclosure that a consumer report may be obtained is to be made in a document that *consists solely of the disclosure*, we believe that the drafters did not intend to say that a disclosure statement should exclude the written authorization for procurement of a report required by Section 604(b)(2)(B). Rather, we believe that it was the intent of the drafters to assure that the required disclosure appear conspicuously in a document unencumbered by any other information. The reason for specifying a stand-alone disclosure was so that consumers will not be distracted by additional information at the time the disclosure is given. We believe that including an authorization in the same document with the disclosure, as you suggest, will

not distract from the disclosure itself; to the contrary, a consumer who is required to authorize procurement of the report on the same document will be more likely to focus on the disclosure. However, such a document should include nothing more than the disclosure and the authorization for obtaining a consumer report.

In sum, it is the Federal Trade Commission staff's view that an employer can comply with Sections 604(b)(2)(A) and (B) of the FCRA by including the required disclosure statement in the same document with the required consumer authorization. We believe that by combining the two in a single document containing only the disclosure and authorization, it will be apparent to consumers that their signature, in fact, authorizes the employer to obtain a copy of their consumer report.

The opinions set forth in this letter are those of the staff, and are not binding on the Commission.

Sincerely yours,

Cynthia S. Lamb