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

Division of Financial Practices

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Attorney

March 1, 2000

Mr. James M. Ball
Vorys, Sater, Seymour and Pease LLP
50 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008

Re: Fair Credit Reporting Act - Request for Interpretation

Dear Mr. Ball:

This will respond to your letter concerning the use of consumer reports in the underwriting of insurance. In your letter, you state that your client, an insurance company (the "Company"), is introducing a new program (the "Good Credit Discount Program") under which consumers who satisfy certain credit scoring criteria will be entitled to purchase property and casualty insurance policies ("P&C Policies") at a discounted premium rate. Historically, the Company has not taken into consideration any information relevant to the consumer's credit history or status. You have several questions that arise under the Fair Credit Reporting Act ("FCRA") with respect to the implementation and operation of the Good Credit Discount Program.

1. Is the Company legally entitled - pursuant to § 604(a)(3)(C) of the FCRA, 15 U.S.C. § 1681b(a)(3)(C) - to obtain consumer reports on existing P&C Policyholders for the purpose of determining whether such existing P&C Policyholders will be entitled to a discount under the Good Credit Discount Program upon renewal of existing P&C Policies?

Section 604(a)(3)(C) of the FCRA states that any consumer reporting agency may furnish a consumer report under the following circumstances:

> To a person which it has reason to believe . . . intends to use the information in connection with the underwriting of insurance involving the consumer.

Further, Comment 604(3)(C)-1 of the Federal Trade Commission Commentary on the FCRA states:

> An insurer may obtain a consumer report to decide whether or not to issue a policy to the consumer, the amount and terms of coverage, the duration of the policy, the rates or fees charged, or whether or not to renew or cancel a policy, because these are all "underwriting" decisions.

55 Fed. Reg. 18804, 18816 (1990).

According to your letter, the Company will be using the credit reports to make a decision concerning the rates or fees charged in the renewal of policies, and thus will be using the credit reports for an "underwriting" decision, which is a permissible purpose of a consumer report under § 604(a)(3)(C) of the FCRA.

2. Do the actions taken in three hypothetical scenarios (verbatim from your letter) constitute "adverse actions" for purposes of § 615(a) of the FCRA, 15 U.S.C. § 1681m(a)?

> **Scenario #1**. *In anticipation of the commencement of the Good Credit Discount Program, the Company determines, based in whole or in part on information contained in a consumer report, that for purposes of policy renewal, an existing P&C Policyholder - who could not have previously qualified for a good credit discount since none was previously offered by the Company - will not qualify for the credit discount available under the Good Credit Discount Program, but will continue to qualify for P&C Policy coverage at a non-discounted rate.*
>
> **Scenario #2**. *In connection with, or subsequent to, the initiation of the Good Credit Discount Program, the Company or one of its independent agents (a) provides to a potential customer who is applying for a P&C Policy a preliminary premium rate quote that does not reflect the discount potentially available under the Good Credit Discount Program, and (b) thereafter, the Company or the independent agent determines, based in whole or in part on information contained in a consumer report, that such customer will qualify for coverage at the previously quoted rate, but will not qualify for the credit discount available under the Good Credit Discount Program.*
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> **Scenario #3**. *In connection with, or subsequent to, the initiation of the Good Credit Discount Program, the Company or one of its independent agents (a) provides to a potential customer who is applying for a P&C Policy a preliminary premium rate quote at the discounted rate available under the Good Credit Discount Program, and (b) thereafter the Company or its independent agent determines, based in whole or in part on information contained in a consumer report, that such customer will not qualify for the previously quoted discounted rate.*

The term "adverse action" is defined in § 603(k) of the FCRA, 15 U.S.C. § 1681a(k), a provision that was added to the FCRA as part of the Consumer Credit Reporting Reform Act of 1996.(1) With regard to the underwriting of insurance, "adverse action" means:

> a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance.

Section 603(k)(1)(B)(i) of the FCRA, 15 U.S.C. § 1681a(k)(1)(B)(i)

The legislative history of this section indicates that Section 603(k) is to be read broadly:

> This list is illustrative, and not definitive. It is the Committee's intent that, whenever a consumer report is obtained for a permissible purpose under section 604(a), *any action taken based on that report that is adverse to the interests of the consumer triggers the adverse action notice requirements under section 615.*

H.R. Rep. No. 103-486 at 26 (1994). *See also* H.R. Rep. No. 102-692 at 21 (1992), and S. Rep. No. 103-209, at 8 (1993)(emphasis added).

In all three cases, it is our view that Section 615(a) requires the adverse action notice because the consumer has suffered "adverse" action, as defined in Section 603(k)(1)(B)(i), due to an "increase in (the premium) charge for . . . insurance." In all cases, the premium is

increased from what otherwise would have been charged to the consumer because of the consumer report.

In your Scenario #3, the discounted rate is quoted to a consumer applicant for insurance, but the individual is charged the higher rate because of the consumer report. The insurer's determination clearly constitutes an adverse action by the Company because it is literally an increase in the premium quoted for the insurance.

In your Scenarios ##1-2, the discounted rate is not actually quoted to the existing insured consumer (#1) or new applicant (#2). Nevertheless, it is our view that in both cases there is an "increase" in the charge for existing insurance, one of the categories of "adverse action" enumerated in § 603(k) of the FCRA, with the result that Section 615(a) requires the insurer to provide an adverse action notice to the consumer. In #1, the charge for the insurance is "increased" when the policyholder applies to renew the policy, and the application is approved with only a higher premium because the policyholder's credit history does not qualify for the good credit discount at a lower rate. In #2, the applicant will have to pay more for insurance at the inception of the policy than he or she would have been charged if the consumer report had been more favorable. The Company has "increased" the premium rate to the individual in both cases because of the consumer report. The customer is charged more than would have been the case if his or her credit report had been more favorable, which we believe constitutes an "increase" under the statutory language.

In sum, the legislative history indicates that the term "adverse action" should be read broadly to include any action taken whenever a credit report is obtained for a permissible purpose that is "adverse to the interests of the consumer." In all your scenarios, the Company has obtained a consumer report for a permissible purpose, i.e., to make a decision about the underwriting of insurance, and then taken "adverse action" as defined in Section 603(k)(1)(B)(i) by charging the consumer a higher insurance premium (subjecting the consumer to an "increase" in such charges) than it would have offered if the report had been more favorable. In the language of the legislative history quoted above, the insurer has taken "action that is adverse to the interest of the consumer" whether the consumer is quoted and then denied the lower rate, or a current policyholder or new applicant is considered for the lower premium and does not receive it. The insurer's determination places the consumer at a financial disadvantage, an act clearly adverse to his or her interests. Thus, we believe the insurer must provide the Section 615(a) notice in all of these situations.

Our view that Section 615(a) requires the insurer to provide an adverse action notice in these situations is consistent with the policy behind the provision. The purpose of Section 615(a) in this context is to put the insurance applicant or policyholder on notice that something in his or her credit file has caused an insurer to treat the consumer unfavorably. With that information in hand, the individual is able to contact the credit bureau, which is required to disclose the information in the file (Section 609), and to reinvestigate any item disputed in good faith and make any deletions or corrections that are needed based on that reinvestigation (Section 611). The insurance applicant or policyholder in each of the three situations you have related is precisely the type of consumer that Section 615(a) is designed to assist. If there is inaccurate information in a consumer report that causes the insurer to charge the consumer a higher premium, the consumer can seek reconsideration and qualify for the lower rate after his or her credit history is corrected. The individual who gets the discounted rate doesn't need the information because his or her credit file is having no negative impact, but the other consumers need to be put on notice that they can learn the

information in the file, and force the credit bureau to correct or delete it if it is inaccurate.

This is an informal staff opinion and is not binding on the Commission.

Sincerely,

Hannah A. Stires

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1. Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1; Pub. L. No. 104-208, 110 Stat. 3009.