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FEDERAL TRADE COMMISSION

16 CFR Part 609

[RIN 3084-AB54]

Military Credit Monitoring Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is publishing for comment a proposed rule to implement the credit monitoring provisions applicable to active duty military consumers in section 302 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends the Fair Credit Reporting Act (FCRA). That section requires nationwide consumer reporting agencies to provide a free electronic credit monitoring service to active duty military consumers, subject to certain conditions. The proposed rule defines “electronic credit monitoring service,” “contact information,” “material additions or modifications to the file of a consumer,” and “appropriate proof of identity,” among other terms. It also contains requirements on how nationwide consumer reporting agencies must verify that an individual is an active duty military consumer.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Military Credit Monitoring Rulemaking, Matter No. R811007” on your

comment and file your comment online at

<https://ftcpublic.commentworks.com/ftc/militarycreditmonitoringnprm> following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, D.C. 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Amanda Koulousias, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, (202) 326-3334.

SUPPLEMENTARY INFORMATION:

I. Background

The Economic Growth, Regulatory Relief, and Consumer Protection Act (“the Act”) was signed into law on May 24, 2018. Pub. L. 115-174. The Act, among other things, amends section 605A of the FCRA, 15 U.S.C. 1681c-1 to add a section 605A(k). Section 605A(k)(2) requires that nationwide consumer reporting agencies provide free electronic credit monitoring services to active duty military consumers.

Section 605A(k)(3) of the FCRA requires the Commission to issue a regulation clarifying the meaning of certain terms used in section 605A(k)(2), including “electronic credit monitoring service” and “material additions or modifications to the file of a consumer.” In addition, section 605A(k)(3) requires that the Commission’s regulation

clarify what constitutes appropriate proof that an individual is an active duty military consumer.

II. Summary of the Proposed Rule

The proposed rule applies to nationwide consumer reporting agencies, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p). The proposed rule requires the nationwide consumer reporting agencies to provide a free electronic credit monitoring service that notifies a consumer of material additions or modifications to the consumer's file when the consumer provides (1) contact information, (2) appropriate proof that the consumer is an active duty military consumer, and (3) appropriate proof of identity. The proposed rule specifies that the nationwide consumer reporting agency must provide notification to the consumer within 24 hours of the material addition or modification. The proposed rule also requires that the notices to consumers include a hyperlink to a summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

The proposed rule defines certain key terms. Specifically, the proposed rule defines "electronic credit monitoring service" as a service through which nationwide consumer reporting agencies provide, at a minimum, electronic notification of material additions or modifications to a consumer's file. Electronic notification may include notification by website, mobile application, email, or text message. In addition, the proposed rule defines "material additions or modifications" as significant changes to a consumer's file, including: (1) new accounts opened in the consumer's name; (2) inquiries or requests for a consumer report; (3) changes to a consumer's name, address, or

phone number; (4) changes to credit account limits; and (5) negative information, which is separately defined to include information concerning a customer's delinquencies, late payments, insolvency, or any form of default. The term "material additions or modifications" excludes requests for prescreened lists and requests to review a consumer's account, as discussed further below.

The proposed rule also specifies what constitutes appropriate proof that the consumer is an active duty military consumer. Under the proposed rule, appropriate proof includes a copy of the consumer's active duty orders; a certification of active duty status issued by the Department of Defense; verification obtained through a method or service approved by the Department of Defense; or a certification of active duty status approved by the nationwide consumer reporting agency.

Further, the proposed rule restricts nationwide consumer reporting agencies' ability to use and disclose the information they collect from consumers in order to provide the required electronic credit monitoring service. The nationwide consumer reporting agencies may use and disclose the information they collect from consumers only for the following: (1) to provide the free electronic credit monitoring service requested by the consumer; (2) to process a transaction requested by the consumer at the same time as a request for the free electronic credit monitoring service; (3) to comply with applicable legal requirements; or (4) to update information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports.

Additionally, the proposed rule contains some limitations on communications surrounding enrollment in an electronic credit monitoring service. First, the proposed rule prohibits any advertising or marketing to a consumer who has indicated an interest in

obtaining the free electronic credit monitoring service for active duty military consumers until after the consumer has enrolled in the service. Second, the proposed rule does not allow any communications or instructions that interfere with, detract from, contradict, or otherwise undermine the purpose of the proposed rule. Prohibited communications include materials that represent, expressly or by implication, that an active duty military consumer must purchase a paid product or service in order to receive the service required under § 609.3(a). They also include materials that falsely represent, expressly or by implication, that a product or service offered ancillary to the free electronic credit monitoring service, such as identity theft insurance, is free. The proposed rule also prohibits any advertising or marketing for a free service, without clearly and prominently disclosing that consumers must cancel the service to avoid being charged, if such is the case.

Finally, the proposed rule prohibits asking or requiring an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service.

III. Section-by-Section Analysis

Section 609.1 Scope of Regulations

Proposed § 609.1 sets forth the scope of the Commission's rule and generally tracks the statutory language in section 605A(k)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681c-1(k)(2). It implements the requirement that nationwide consumer reporting agencies, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p), provide a free electronic credit monitoring service to active duty military

consumers that, at a minimum, notifies them of any material additions or modifications to their files.

Section 609.2 Definitions

Proposed § 609.2 contains definitions for the following terms: “active duty military consumer,” “appropriate proof of identity,” “consumer,” “consumer report,” “contact information,” “credit,” “electronic credit monitoring service,” “electronic notification,” “file,” “firm offer of credit,” “free,” “material additions or modifications,” “nationwide consumer reporting agency,” and “negative information.”

Active Duty Military Consumer, Consumer, Consumer Report, Credit, File, Firm Offer of Credit, Nationwide Consumer Reporting Agency, and Negative Information

Proposed paragraphs (a), (c), (d), (f), (i), (j), (m), and (n) incorporate the FCRA’s statutory definitions of “active duty military consumer,” “consumer,” “consumer report,” “credit,” “file,” “firm offer of credit,” “nationwide consumer reporting agency,” and “negative information.” Each of these terms is used in the proposed rule.

Appropriate Proof of Identity

Proposed paragraph (b) defines “appropriate proof of identity” as having the same meaning as set forth in 12 CFR 1022.123. Although the statute requires only that consumer reporting agencies obtain contact information and appropriate proof of active duty military status before providing electronic credit monitoring to military consumers, the proposed rule adds language that would permit the nationwide consumer reporting agencies to request appropriate proof of identity before providing a military consumer with the statutorily required credit monitoring service.

The Commission believes that, before providing sensitive consumer report information to a military consumer in connection with credit monitoring, a consumer reporting agency should be able to verify the consumer's identity. Consumer report information is very sensitive and it is imperative that consumers only receive credit monitoring with respect to their own credit file. For example, under section 610 of the FCRA, consumer reporting agencies must obtain "proper identification" from a consumer before providing the consumer with a disclosure of his or her credit file. More generally, consumer reporting agencies are required to establish reasonable procedures designed to limit the furnishing of consumer reports to legitimate persons with legitimate purposes for obtaining the report. See 15 U.S.C. 1681e.

The proposed rule defines "appropriate proof of identity" by cross-referencing 12 CFR 1022.123. This existing definition was established to provide guidance on what information consumers should be required to provide to constitute proof of identity for purposes of FCRA sections 605A (obtaining a fraud alert), 605B (requesting that information resulting from identity theft be blocked from one's consumer report), and 609(a)(1) (requesting a file disclosure from a consumer reporting agency). This definition is risk-based, meaning that a consumer reporting agency's policy with respect to appropriate proof of identity should be commensurate with the risk of harm to the consumer resulting from misidentification, and should not unreasonably restrict a consumer's access to statutorily required services.

Because consumer reporting agencies already are required to implement procedures for obtaining appropriate proof of identity under 12 CFR 1022.123, the

Commission believes it would be efficient to permit consumer reporting agencies to comply with the proposed rule by using the same requirements, already in place.

The Commission is soliciting comments on whether the rule should cross-reference 12 CFR 1022.123, stay silent on the definition, or develop a different approach.

Contact Information

Proposed paragraph (e) contains a definition of “contact information.” The statute allows nationwide consumer reporting agencies to condition provision of the free electronic credit monitoring service to those consumers that provide both appropriate proof that they are active duty military consumers and contact information. The Commission believes that clarifying the term “contact information” is beneficial to the nationwide consumer reporting agencies and consumers. Nationwide consumer reporting agencies need a minimal amount of information from a consumer in order to provide the free credit monitoring service. Accordingly, the proposed rule defines “contact information” as information about a consumer, such as a consumer’s first and last name and email address, that is reasonably necessary to collect in order to provide the electronic credit monitoring service.

Electronic Credit Monitoring Service

Proposed paragraph (g) defines “electronic credit monitoring service” as a service through which nationwide consumer reporting agencies provide electronic notifications of material additions or modifications to a consumer’s file. Section 605A(k)(3) of the FCRA specifically requires the Commission to define this term. The Commission believes that this definition and the accompanying definitions of “material addition or

modification” and “electronic notification” provide the detail necessary for nationwide consumer reporting agencies to provide the credit monitoring required by the statute.

Electronic notification

Proposed paragraph (h) defines “electronic notification” as a notice provided to the consumer via a website; mobile application; email; or text message. The Commission wants to give the nationwide consumer reporting agencies and consumers the flexibility to communicate in a manner that is most convenient for them. Currently, the nationwide consumer reporting agencies typically send customers of their commercial credit monitoring services an email alerting them that changes have been made to their files. Customers then log in to the consumer reporting agency’s website to see the specific changes that have occurred. Other commercial credit monitoring services provide a mobile application through which they notify customers of changes to their consumer reports. In addition to these methods, the Commission believes some consumers would find the option of receiving notifications via text message convenient. However, the Commission notes, that any nationwide consumer reporting agency electing to provide consumers the option of receiving notifications via text message must comply with Telephone Consumer Protection Act, 47 U.S.C. 227, and all other applicable laws and requirements. The Commission welcomes comment on this proposed definition of electronic notification.

Free

Proposed paragraph (k) defines “free” as being provided at no cost to the consumer. This definition comes from Merriam-Webster’s Dictionary. The Commission

seeks comment on whether a definition of “free” is necessary, and if so, whether it should include any additional requirements.

Material additions or modifications

Proposed paragraph (l) defines “material additions or modifications” as significant changes to a consumer’s file, including: (1) new accounts opened in the consumer’s name; (2) inquiries or requests for a consumer report (with the exceptions noted below); (3) changes to a consumer’s name, address, or phone number; (4) changes to credit account limits; and (5) negative information.

The changes set forth in (1)-(5) above are material because they can indicate that a consumer is the victim of identity theft or other fraud. The sooner a consumer is alerted to these changes, the sooner the consumer can begin to mitigate harm. Notifications of these changes are included in many of the credit monitoring products available commercially today.

The definition also includes any other “significant changes to a consumer’s file.” The enumerated list is not exhaustive, and nationwide consumer reporting agencies may elect to provide notification of other significant changes to a consumer’s file. There may be other information that is useful to particular types of consumers or other significant changes that the Commission cannot contemplate today. Therefore, the Commission believes that the nationwide consumer reporting agencies should have discretion to include additional significant changes to a consumer’s file within their free electronic credit monitoring service.

At the same time, the Commission proposes that the definition of “material additions or modifications” specifically exclude (1) inquiries for a prescreened list

obtained for the purpose of making a firm offer of credit or insurance as described in 15 U.S.C. 1681b(c)(1)(B), and (2) inquiries for the purpose of reviewing an account of the consumer (“account review”). As to inquiries for prescreened lists, while most credit inquiries signal that a consumer is affirmatively seeking credit and may affect their credit scores, inquiries for prescreened lists are made without consumers’ knowledge or specific consent and do not affect their credit scores. Consumers may opt out of prescreening. The Commission does not believe that there would be any benefit to active duty military consumers if they received notification every time an inquiry for a prescreened list is made. In fact, including inquiries for prescreened lists in the proposed rule’s notification requirement could result in over-notification to the consumer, which could be confusing and make it difficult for consumers to determine when an inquiry indicates that they are potentially the victim of identity theft or other fraud.

Similarly, inquiries made for purposes of account review, such as when a credit card issuer reviews a customer’s credit file in order to determine whether to change the annual percentage rate (“APR”) on a credit card, also do not indicate that a consumer is shopping for credit. These account review inquiries may not result in any changes to the consumer’s credit account. In cases where account review does result in a change to the consumer’s credit account, such as by increasing the APR on a credit card, the creditor must send the consumer a risk-based pricing notice. *See* 12 CFR 1022.70 – 1022.75. The risk-based pricing notice contains information about the account review and provides consumers with additional information and gives them a right to obtain a free copy of their consumer report. The Commission believes that requiring notification of account review inquiries could result in over-notification and be confusing to consumers. For

those consumers for whom account review results in changes to their credit accounts, the risk-based pricing notice is more informative and valuable than a notification that simply indicates that a creditor has reviewed their credit files.

Section 609.3 Requirement to Provide Free Electronic Credit Monitoring Service

Proposed § 609.3 establishes the basic rules surrounding the provision of free electronic credit monitoring to active duty military consumers. Paragraph (a) states the general requirement that nationwide consumer reporting agencies must provide a free electronic credit monitoring service to active duty military consumers.

Determining whether a consumer must receive electronic credit monitoring service

Proposed § 609.3(b) allows nationwide consumer reporting agencies to condition the provision of the free electronic credit monitoring service upon the consumer providing appropriate proof of identity, contact information, and appropriate proof that the consumer is an active duty military consumer. The Act itself specifically states that nationwide consumer reporting agencies need only provide the free electronic credit monitoring to consumers that provide contact information and appropriate proof of active duty military status.

The Commission also proposes to include the condition that consumers provide the nationwide consumer reporting agencies with appropriate proof of identity. Consumer report information is very sensitive and it is imperative that consumers only receive credit monitoring of their own file. The Commission is proposing to define “appropriate proof of identity” by cross-referencing 12 CFR 1022.123, as explained in further detail above.

Appropriate Proof of Active Duty Military Status

Proposed paragraph (c) fulfills the statutory requirement that the Commission determine what constitutes appropriate proof of active duty military status. The proposed rule allows active duty military status to be verified through: (1) a copy of the consumer's active duty military orders; (2) a copy of a certification of active duty status issued by the Department of Defense; (3) a method or service approved by the Department of Defense; or (4) a certification of active duty status approved by the nationwide consumer reporting agency.

The first two methods require consumers to provide nationwide consumer reporting agencies with documents verifying their active duty status. The third method – one approved by the Department of Defense – anticipates future developments in this area. The Commission understands from the Department of Defense that there is not currently an automated method by which nationwide consumer reporting agencies may obtain notice of a consumer's active duty military status from the Department of Defense for the purpose of fulfilling their obligations under this proposed rule. If such a method does become available, however, this language makes sure it would suffice as “appropriate proof of active duty military status” under the proposed rule. The Commission defers to the Department of Defense on what methods it may determine are appropriate to prove active duty status.

The fourth method would allow any nationwide consumer reporting agency to develop its own method for determining proof of active duty military status. The Commission believes that it may be burdensome for consumers and the nationwide consumer reporting agencies to have a system that requires documents to be uploaded in

order to confirm active duty status. In an effort to provide nationwide consumer reporting agencies the flexibility to design a less burdensome method of proof, the proposed rule allows them to approve other certifications of status. For example, the proposed rule would allow the nationwide consumer reporting agencies to accept consumers' self-certification of active duty military status, e.g., by allowing consumers to check a box certifying active duty military status.

The Commission welcomes comment on the efficacy of these methods, and whether there are other methods of determining active duty military status that it should add to the definition.

Information Use and Disclosure

Proposed § 609.3(d) limits nationwide consumer reporting agencies' use and disclosure of information they collect from consumers as a result of a consumer's request to obtain the free electronic credit monitoring service. Specifically, the proposed rule allows nationwide consumer reporting agencies to use and disclose information collected from consumers only: (1) to provide the free electronic credit monitoring service requested by the consumer; (2) to process a transaction requested by the consumer at the same time as a request for the free electronic credit monitoring service; (3) to comply with applicable legal requirements; or (4) to update information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports. Under (4), if a nationwide consumer reporting agency updates information it maintains for consumer reporting purposes, the updated information is subject to the same restrictions that apply to the original, pre-updated data. These restrictions on use and disclosure are identical to the requirements placed on the nationwide consumer reporting

agencies' collection of personally identifiable information from consumers using the centralized source found in 12 CFR 1022.136(f). Restricting "secondary" use and disclosure of information collected from active duty military consumers seeking to obtain the free electronic credit monitoring service ensures that these consumers will not be subjected to unintended consequences, such as unwanted marketing. Additionally, the Commission does not believe that it would be appropriate to make an active duty military consumer's access to the free electronic credit monitoring service contingent on the consumer's willingness to allow a nationwide consumer reporting agency to use the consumer's information for unrelated, secondary uses.

The proposed rule does allow information collected from consumers as part of the free electronic credit monitoring enrollment process to be used to process transaction requests made by consumers at the same time. This provision allows consumers to avoid having to reenter information in order to obtain products and services separate from the free electronic credit monitoring. For example, a consumer would not have to reenter information if, after enrolling in the free electronic credit monitoring service, the consumer decided to also obtain identity theft insurance. The proposed rule also permits nationwide consumer reporting agencies to use and disclose information in order to comply with all applicable legal requirements. Finally, the proposed rule permits nationwide consumer reporting agencies to use the information collected to update information they already maintain for consumer reporting purposes, but does not permit them to add additional information that they do not already collect from other sources. The Commission seeks comments on whether these restrictions are appropriate and whether any modifications to the proposed restrictions are necessary.

Communications Surrounding Enrollment in Electronic Credit Monitoring Service

Proposed § 609.3(e) places limitations on the types of communications that may surround enrollment in the electronic credit monitoring service. Section 609.3(e)(1) restricts any advertising or marketing for products or services, or any communications or instructions that advertise or market any products and services to a consumer that has indicated an interest in signing up for the free electronic credit monitoring service until after the consumer has enrolled in the service. This restriction is similar to the restriction on advertising on the annual credit report website found in 12 CFR 1022.136(g). The goal of including a similar requirement is to ensure that the Act's purpose of providing active duty military consumers with a free electronic credit monitoring service is not thwarted by confusing advertisements or communications that dissuade active duty military consumers from enrolling in the free service. The proposed requirement is not intended to ban advertising on all webpages of the nationwide consumer reporting agencies. Instead, it seeks to limit advertising directed to those consumers who have indicated that they want to enroll in the free credit monitoring for active duty military consumers. Thus, for example, the proposed requirement would apply only to the pages on a nationwide consumer reporting agency's website or app dedicated to providing active duty military consumers with their rights under this regulation. The Commission appreciates that this restriction on advertising may increase costs to the nationwide consumer reporting agencies by, among other things, requiring them to create separate enrollment processes for active duty military consumers. The Commission requests comment on whether this restriction is consistent with the authority granted under the Act

and necessary to ensure that active duty military consumers are able to enroll easily in the free electronic credit monitoring service.

Section 609.3(e)(2) of the proposed rule specifies that any communications, instructions, or permitted advertising or marketing may not interfere with, detract from, contradict, or otherwise undermine the purpose of providing a free electronic credit monitoring service to active duty military consumers. The proposed rule provides examples of conduct that would interfere with, detract from, contradict, or undermine the purpose of the rule. For example, a nationwide consumer reporting agency would be prohibited from providing materials that represent, expressly or by implication, that in order to obtain the free credit monitoring service, active duty military consumers must also purchase identity theft insurance. This limitation on communications is identical to 12 CFR 1022.136(g)'s requirements for the centralized source for free annual file disclosures.

Sections 609.3(e)(1) and (2) are complementary and are designed to ensure that active duty military consumers are not confused or deceived by communications related to a nationwide consumer reporting agency's products and services. Using the example of the identity theft insurance product described above, section 609.3(e)(1) would prohibit any advertising of such a product from the time the consumer indicates an interest in obtaining free credit monitoring for active duty military until after that consumer has enrolled in the service. Section 609.3(e)(2) applies to any advertising before the consumer indicates such an interest, or after the consumer has enrolled in the service. It also applies to non-advertising communications or instructions relating to the free electronic credit monitoring service.

The Commission recognizes that if done appropriately, access to some identity theft services -- such as identity theft insurance -- may be beneficial and convenient for consumers. The Commission wants to ensure, however, that these additional services are not offered in a way that is confusing to active duty military consumers or dissuades them from enrolling in the free electronic credit monitoring service that they are entitled to under the Act. The Commission solicits comment on whether this restriction is consistent with the authority granted under the Act and necessary to ensure that active duty military consumers can easily obtain the free credit monitoring service.

Other Prohibited Practices

Proposed § 609.3(f) prohibits asking or requiring an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service. This restriction is similar to the restriction for the annual credit report website found in 12 CFR 1022.136(h). The Commission believes that an active duty military consumer's right to obtain a free electronic credit monitoring service should be unfettered and without any restrictions or conditions, apart from providing appropriate proof of identity, contact information, and appropriate proof that the consumer is an active duty military consumer. The Commission solicits comment on whether this restriction is consistent with authority granted under the Act and necessary to ensure that active duty military consumers can easily obtain the free credit monitoring service.

Section 609.4 Timing of Credit Monitoring Notices

Proposed § 609.4 requires that the notices required under § 609.3(a) be provided within 24 hours of any material additions or modifications to a consumer's file. Advertisements for commercial credit monitoring services that are currently on the

market suggest that consumers can be notified of changes to their files as soon as those changes are detected. Therefore, the Commission believes that 24 hours provides ample time for the nationwide consumer reporting agencies to give an electronic notification to affected consumers.

Section 609.5 Additional Information to Be Included in Electronic Credit Monitoring Notices

Proposed § 609.5 states that the electronic notifications shall include a hyperlink to a summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c). The Commission believes that it will be useful for consumers to be able to easily access information about their rights to, for example, obtain consumer reports and dispute information on their reports. Including a link to the summary with each electronic notification will ensure that consumers can find that information when it may be most useful to them. The Commission welcomes comment on this proposed requirement.

Section 609.6 Severability

Proposed § 609.6 states that the provisions of the proposed rule are separate and severable from one another, so that if any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

IV. Request for Comment

The Commission seeks comment on various aspects of the proposed rule. Without limiting the scope of issues on which it seeks comment, the FTC is particularly interested in receiving comments on the questions that follow. In responding to these questions, please include detailed factual supporting information if possible.

Section 609.2: Definitions

1. Does the definition of “electronic credit monitoring service” adequately describe the service that the proposed rule should cover? If not, how should the definition be modified?
2. Does the definition of “material additions or modifications” adequately cover the changes to a consumer’s file that should require notification? If not, what other elements should be added to the definition? Should changes to credit account limits remain in the definition? What benefits to consumers would notifications of account limit changes provide?
3. The proposed rule does not require notice to be given if an inquiry was made for a prescreened list obtained for the purpose of making a firm offer of credit or insurance as described in 15 U.S.C. 1681b(c)(1)(B) or for the purpose of account review. Are these exceptions appropriate? Are there other exceptions that should be added to the proposed rule?
4. The proposed rule requires notice to be given if an inquiry is made for the purpose of collection of an account of the consumer. Do nationwide consumer reporting agencies have the ability to differentiate between inquiries made for the purposes of account review and collection?
5. Is the definition of “electronic notification” adequate? Are there other methods of notification that should be included in the definition?
6. Is the definition of “appropriate proof of identity” necessary? Is the current definition, referencing the requirements of 12 CFR 1022.123 appropriate? Is there a better approach to determining what constitutes “appropriate proof of

identity?” What procedures are consumer reporting agencies currently employing to comply with 12 CFR 1022.123? Do consumer reporting agencies currently require customers of commercial credit monitoring services to provide appropriate proof of identity? If so, what proof of identity is being required?

Section 609.3: Requirement to Provide Electronic Credit Monitoring Service

1. The proposed rule states that “appropriate proof of active duty military status” can be verified through: (1) a copy of the consumer’s active duty orders; (2) a copy of a certification of active duty status issued by the Department of Defense; (3) a method or service approved by the Department of Defense; or (4) a certification of active duty status approved by the nationwide consumer reporting agency. Are these methods adequate? Are there other methods of verifying active duty status that should be included? What is the most efficient method for providing nationwide consumer reporting agencies with proof of active duty military status? Is it burdensome for consumers to provide appropriate proof? Is there a way to minimize the burden?
2. Proposed § 609.3(d) restricts secondary uses and disclosures of information collected from a consumer requesting to obtain the service required under § 609.3(a). Is this limitation necessary to ensure that consumers seeking to obtain the free electronic credit monitoring service are not forced to provide personal information for unrelated, secondary purposes?
3. Proposed § 609.3(d) allows nationwide consumer reporting agencies to use and disclose information collected from consumers requesting to obtain the service required under § 609.3(a) only: (1) to provide the free electronic credit

monitoring service requested by the consumer; (2) to process a transaction requested by the consumer at the same time as a request for the free electronic credit monitoring service; (3) to comply with specific legal requirements; or (4) to update information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced. Are these approved uses appropriate? Are there additional uses that should be permitted?

4. Proposed § 609.3(e)(1) bans marketing until after a consumer who has indicated an interest in obtaining the service required under § 609.3(a) has enrolled in the free electronic credit monitoring service. Is this limitation necessary to ensure that active duty military consumers are able easily to obtain their free electronic credit monitoring service? Does this limitation impose undue burdens on nationwide consumer reporting agencies? If so, is there a way to minimize these burdens?
5. Proposed § 609.3(e)(2) prohibits any communications, instructions, or permitted advertising or marketing from interfering with, detracting from, contradicting, or otherwise undermining the purpose of providing a free electronic credit monitoring service to active duty military consumers. Is this prohibition necessary?
6. Section 609.3(e)(3) provides the following examples of prohibited conduct: (1) any representation that an active duty military consumer must purchase a paid

product or service in order to obtain the free electronic credit monitoring service required by § 609.3(a); (2) a false representation that a product or service ancillary to receipt of the free electronic credit monitoring service, such as identity theft insurance, is free; or (3) the offering of an ongoing service without a clear and prominent disclosure that the consumer must cancel the service to avoid being charged. Are there more examples of prohibited conduct that should be included in the proposed rule? Should “clearly and prominently” be defined?

7. Proposed § 609.3(f) prohibits asking or requiring an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service. Is this prohibition necessary to ensure that active duty military consumers are able easily to obtain their free electronic credit monitoring service? Do consumer reporting agencies currently require customers of commercial credit monitoring services to agree to terms or conditions? If so, does this prohibition impose undue burdens on nationwide consumer reporting agencies? If so, is there a way to minimize these burdens?

Section 609.4: Timing of Credit Monitoring Services

1. The proposed rule also requires that these notices be provided within 24 hours of any material additions or modifications to a consumer’s file. Is this time requirement appropriate?

Section 609.5: Additional information to be included in electronic credit monitoring notices

1. The proposed rule requires that the electronic notifications include a link to the summary of the consumer’s rights under the Fair Credit Reporting Act. Will

requiring this link provide useful information to consumers or is there different information that would be more useful? Is there a different method of providing this information that would be more effective?

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Military Credit Monitoring Rulemaking, Matter No. R811007” on the comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public FTC website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/militarycreditmonitoringnprm> by following the instructions on the web-based form. If this Notice appears at <https://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Military Credit Monitoring Rulemaking, Matter No. R811007” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, D.C. 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington,

D.C. 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" -- as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) -- including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once

your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

V. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner’s advisor, will be placed on the public record.¹

VI. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”), 44 U.S.C. chapter 35, requires federal agencies to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons.² Under the PRA, the Commission may not conduct, or sponsor, and, notwithstanding any other provision of law, a person is not required to

¹ See 16 CFR 1.26(b)(5).

² 44 U.S.C. 3502(3)(A)(i).

respond to an information collection, unless the information displays a valid control number assigned by OMB.

As the proposed notification requirements fall upon the three nationwide consumer reporting agencies, it does not meet the PRA threshold count of ten or more persons to constitute a “collection of information.” Further, the proof of identity the proposed rule would require of those for whom the rulemaking is designed to benefit, consumers on active duty military status, falls within OMB’s general exception for disclosures that require persons to provide or display only facts necessary to identify themselves.³

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.⁴ The Commission does not expect the proposed Rule will have a significant economic impact on small entities. The proposed Rule applies to nationwide consumer reporting agencies. The Commission has not identified any nationwide consumer reporting agencies that are small entities.⁵ This document serves as notice to the Small Business Administration of the agency’s certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an

³ See 5 CFR 1320.3(h)(1).

⁴ 5 U.S.C. 603-605.

⁵ The size standard the Small Business Administration has identified by the North American Industry Classification System code for credit bureaus (code number 561450), i.e., consumer reporting agencies, is \$15 million. See 13 CFR 121.201. The Rule only applies to nationwide consumer reporting agencies. There are currently only three nationwide consumer reporting agencies, Equifax, Experian, and TransUnion, and all exceed this size standard.

Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities. The Commission invites comment on the burden on any small entities and has prepared the following analysis.

1. Reasons for the Proposed Rule

The Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174, directs the Commission to promulgate regulations to implement section 302(d)(1) of the Act, which shall at a minimum: (1) define “electronic credit monitoring service” and “material additions or modifications to the file of a consumer,” and (2) establish what constitutes appropriate proof that a consumer is an active duty military consumer. In this action, the Commission proposes, and seeks comment on, a rule that would fulfill the statutory mandate. The Act requires that the Commission promulgate this rule not later than one year after the date of enactment, or May 24, 2019.

2. Statement of Objectives and Legal Basis

The objectives of the proposed Rule are discussed above. The legal basis for the proposed rule is section 302(d) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

3. Description of Small Entities to Which the Rule Will Apply

The proposed rule will apply only to nationwide consumer reporting agencies. The Commission has not identified any nationwide consumer reporting agencies that are small entities.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Under the proposed rule, nationwide consumer reporting agencies will have to provide free electronic credit monitoring services to active duty military consumers.

There are no reporting or recordkeeping requirements, or types of professional skills necessary for preparation of any such report or record, under the proposed rule. In any event, as noted earlier, the proposed rule applies only to nationwide consumer reporting agencies, and they are not small entities.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The proposed definitions and requirements of the proposed rule have been designed to work in conjunction with the existing definitions and requirements found in the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and Regulation V, 12 CFR Part 1022. The Commission invites comment and information on that issue.

6. Discussion of Significant Alternatives

The Commission has not identified any particular alternative methods of compliance as necessary to reduce burdens on small entities, because the Commission does not believe any nationwide consumer reporting agencies subject to the proposed rule are small entities, as noted earlier.

List of Subjects in 16 CFR Part 609

Consumer reporting agencies, Consumer reports, Credit, Fair Credit Reporting Act, Trade practices.

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend chapter I, title 16, Code of Federal Regulations, as follows:

1. Revise the heading of subchapter F to read as follows:

SUBCHAPTER F – Fair Credit Reporting Act

2. Add new part 609 to subchapter F to read as follows:

Part 609 – Free Electronic Credit Monitoring for Active Duty Military

Sec.

609.1 Scope of regulations in this part.

609.2 Definitions.

609.3 Requirement to provide free electronic credit monitoring service.

609.4 Timing of electronic credit monitoring notices.

609.5 Additional information to be included in electronic credit monitoring notices.

609.6 Severability.

Authority: 15 U.S.C. 1681c-1(k).

§ 609.1 Scope of regulations in this part.

This part implements Section 605A(k)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681c-1(k)(2), which requires consumer reporting agencies that compile and maintain files on consumers on a nationwide basis to provide a free electronic credit monitoring service to active duty military consumers that, at a minimum, notifies them of any material additions or modifications to their files.

§ 609.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Active duty military consumer* means a consumer in military service as defined in

15 U.S.C. 1681a(q)(1) and 1681c-1(k)(1).

(b) *Appropriate proof of identity* has the meaning set forth in 12 CFR 1022.123.

(c) *Consumer* has the meaning provided in 15 U.S.C. 1681a(c).

(d) *Consumer report* has the meaning provided in 15 U.S.C. 1681a(d).

- (e) *Contact information* means information about a consumer, such as a consumer's first and last name and email address, that is reasonably necessary to collect in order to provide the electronic credit monitoring service.
- (f) *Credit* has the meaning provided in 15 U.S.C. 1681a(r)(5).
- (g) *Electronic credit monitoring service* means a service through which nationwide consumer reporting agencies provide, at a minimum, electronic notification of material additions or modifications to a consumer's file.
- (h) *Electronic notification* means a notice provided to the consumer via:
 - (1) a website;
 - (2) mobile application;
 - (3) email; or
 - (4) text message.
- (i) *File* has the meaning provided in 15 U.S.C. 1681a(g).
- (j) *Firm offer of credit* has the meaning provided in 15 U.S.C. 1681a(l).
- (k) *Free* means provided at no cost to the consumer.
- (l) *Material additions or modifications* means significant changes to a consumer's file, including:
 - (1) new accounts opened in the consumer's name;
 - (2) inquiries or requests for a consumer report;
 - (3) changes to a consumer's name, address, or phone number;
 - (4) changes to credit account limits; and
 - (5) negative information.

However, an inquiry made for a prescreened list obtained for the purpose of making a firm offer of credit or insurance as described in 15 U.S.C. 1681b(c)(1)(B) or for the purpose of reviewing an account of the consumer shall not be considered a material addition or modification.

(m) *Nationwide consumer reporting agency* has the meaning provided in 15 U.S.C. 1681a(p).

(n) *Negative information* has the meaning provided in 15 U.S.C. 1681s-2(a)(7)(G)(i).

§ 609.3 Requirement to provide free electronic credit monitoring service.

(a) *General requirements.* Nationwide consumer reporting agencies must provide a free electronic credit monitoring service to active duty military consumers.

(b) *Determining whether a consumer must receive electronic credit monitoring service.* Nationwide consumer reporting agencies may condition provision of the service required under paragraph (a) of this section upon the consumer providing: (1) appropriate proof of identity, (2) contact information, and (3) appropriate proof that the consumer is an active duty military consumer.

(c) *Appropriate proof of active duty military status.* A consumer's status as an active duty military consumer can be verified through:

- (1) a copy of the consumer's active duty orders;
- (2) a copy of a certification of active duty status issued by the Department of Defense;
- (3) a method or service approved by the Department of Defense; or
- (4) a certification of active duty status approved by the nationwide consumer reporting agency.

(d) *Information use and disclosure.* Any information collected from consumers as a result of a request to obtain the service required under paragraph (a) of this section, may be used or disclosed by the nationwide consumer reporting agency only:

- (1) to provide the free electronic credit monitoring service requested by the consumer;
- (2) to process a transaction requested by the consumer at the same time as a request for the free electronic credit monitoring service;
- (3) to comply with applicable legal requirements; or
- (4) to update information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e) *Communications surrounding enrollment in electronic credit monitoring service.*

- (1) Once a consumer has indicated that the consumer is interested in obtaining the service required under paragraph (a) of this section, such as by clicking on a link for services provided to active duty military consumers, any advertising or marketing for products or services, or any communications or instructions that advertise or market any products and services, must be delayed until after the consumer has enrolled in that service.

(2) Any communications, instructions, or permitted advertising or marketing shall not interfere with, detract from, contradict, or otherwise undermine the purpose of providing a free electronic credit monitoring service to active duty military consumers that notifies them of any material additions or modifications to their files.

(3) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

- i. Materials that represent, expressly or by implication, that an active duty military consumer must purchase a paid product or service in order to receive the service required under paragraph (a) of this section; or
- ii. Materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of the free electronic credit monitoring service, such as identity theft insurance, is free, or that fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(f) *Other prohibited practices.* A nationwide consumer reporting agency shall not ask or require an active duty military consumer to agree to terms or conditions in connection with obtaining a free electronic credit monitoring service.

§ 609.4 Timing of electronic credit monitoring notices.

The notice required in section 609.3(a) must be provided within 24 hours of any material additions or modifications to a consumer's file.

§ 609.5 Additional information to be included in electronic credit monitoring notices.

The notice required in section 609.3(a) shall include a hyperlink to a summary of the consumer's rights under the Fair Credit Reporting Act, as prescribed by the Bureau of Consumer Financial Protection under 15 U.S.C. 1681g(c).

§ 609.6 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed, or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,
Secretary.