



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

Office of the Secretary

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VIA ELECTRONIC MAIL

Craig A. Berrington
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
Counsel for Liberty Mut. Holding Co., Inc.

Jen Spaziano
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
Counsel for Fire Insurance Exchange

Steven E. Herman
Assistant General Counsel
Office of General Counsel
1 Nationwide Plaza 1-35-20
Columbus, Ohio 43215
Counsel for Nationwide Mut. Ins. Co.

Kevin J. Arquit
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
Counsel for The Travelers Companies, Inc.

John Roberti
Mayer Brown LLP
1909 K Street, NW
Washington, DC 20006
Counsel for USAA

Leslie Kaltenbach
CPI Whitehouse Station
202 Halls Mills Rd.
Whitehouse Station, NJ 08889
Counsel for The Chubb Corporation

David A. Clanton
Baker & McKenzie LLP
815 Connecticut Avenue, N.W.
Washington, D.C. 20006-4078
Counsel for The Allstate Corporation

John Oberdorfer
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
Counsel for American Family Mut. Ins. Co.,

Andrew M. Smith
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W., Suite 6000
Washington, DC 20006
Counsel for State Farm Mut. Auto. Insur. Co.

Re: *Credit-based Insurance Score Study – Order to File a Special Report*

To Counsel for All Respondent Insurance Companies:

The Office of the Secretary writes to describe the Commission-approved procedure for the production of personally identifiable information (“PII”) to a third-party intermediary in connection with the Federal Trade Commission’s (“FTC”) Orders to File a Special Report

(“Orders”).¹

Under the current Orders each insurance company is to send its data directly to the FTC. Instruction 1, however, allows each insurance company, upon discussion and prior approval from the Commission, to submit data and documents containing PII responsive to Specifications (2)(d), (2)(e), (2)(f), (2)(h), (2)(i), (6)(a), (10)(c), and (10)(e) to a third party (or parties) selected by the FTC. For purposes of this letter the process of sending the PII data to a third-party (or parties) (“third-party intermediary”) will be referred to as the “alternative procedure.” For those companies choosing to use the alternative procedure, the companies must require the third-party intermediary to certify that their data security practices will protect the data they receive. The FTC must receive a copy of this certification before the companies may submit their data to the third-party intermediary. Often this type of certification may be met if their practices are already independently audited.

Many key details of this alternative procedure are laid out in Instruction 1 of the Amended Orders issued on March 27, 2009.² The companies choosing to use the alternative procedure shall send their data and documents responsive to Specifications 2 through 10 to the FTC with an associated unique Policy sequence number and person identifier; this data should not include any PII. From that data and documents the FTC will select a sample set of data for which PII will be needed. The insurance companies will forward the PII for the sample chosen by the FTC (with the associated unique Policy sequence numbers and person identifiers) to a third-party intermediary chosen by the FTC. The third-party intermediary may consolidate the data and shall send the PII (as well as the Policy sequence numbers and person identifiers) to other third parties or “vendors” (*e.g.*, Social Security Administration, credit bureau(s), *etc.*) the FTC selects. These vendors will use this PII in order to provide certain information to the FTC that the FTC needs to complete the report to Congress required by Section 215 of FACTA. These vendors will not forward PII to the Commission.

In addition, for the insurers that decide to use the alternative procedure we need to ensure there is accountability for any errors as well as a certification that the information provided is complete and accurate. Upon completing production of non-PII information responsive to Specifications 2 through 10, each insurer using the third-party intermediary shall submit a Verification to the FTC in the form specified within Instruction 13 of the Orders.

After the FTC has selected the sample set of data for which PII will be needed, each insurer using the third-party intermediary and having sent its data to the third-party intermediary

¹ The Orders were issued on December 15, 2008, pursuant to Section 6(b) of the Federal Trade Commission Act and Section 215 of the Fair and Accurate Credit Transactions Act (“FACTA”). The Orders were subsequently modified on March 27, 2009.

² Companies that follow this alternative procedure also must maintain a list or other method for matching the original Policy (and Policy application or quote request) numbers to the newly created unique sequence numbers referenced in Instruction 1. Similarly, companies also must maintain a list or other method for matching the people within a Policy (or Policy application or quote request) to the person identifiers referenced in Instruction 1.

shall submit a Verification under oath to the FTC with language similar to the following:

In accordance with the process agreed upon by the FTC and [name of insurer], the FTC staff has identified certain data, for which Personally Identifiable Information is required, that may be sent to a third-party intermediary in accordance with Instruction 1 of the Amended Order of the Federal Trade Commission. The data [name of insurer] submitted to the third-party intermediary in accordance with this alternative procedure is, to the best of my knowledge, true, correct, and complete.

The FTC will provide instructions for the third-party intermediary with regard to the distribution of PII to the vendors for purposes of appending certain additional information.

Within each insurance company's contract with the third-party intermediary, the third-party intermediary must be required to submit a declaration to the FTC upon the completion of the services the intermediary is performing, affirming that the data it has supplied to the vendors is true, correct, and complete. The declaration will also describe all steps taken to ensure: (1) the security and protection of any confidential information that it received; and (2) the data supplied to the vendors the FTC selected is true, correct, and complete, including but not limited to: (a) supplying any logs or affidavits outlining the chain of custody of any data provided to the third-party intermediary by the insurer and provided to the vendor; and (b) describing the quality control measures undertaken before and after the distribution of data to the vendors to ensure that the data remained true, correct, and complete. This declaration, like the Verifications, is to be submitted under oath.

Each insurance company, third-party intermediary, vendor, or other entity involved in the transmission of data shall maintain a complete set of the data transmitted whole and separate from other data; the data may not be merged back into other files or data sets. In addition, any entities transmitting and holding data shall maintain that data until three months after the FTC issues its study pursuant to Section 215 of FACTA.

Ensuring the data, especially the PII, whether it is in the hands of the insurance company, the third-party intermediary, or during the transfer to the vendor, is maintained in a safe and secure manner is the responsibility of each insurance company. If the FTC concludes that an insurance company or the third-party intermediary is not complying with the alternative procedure, the FTC will notify the insurance company as to its conclusion and the basis for it. Unless the Commission determines otherwise, the insurance company could be required to provide all responsive data to the FTC within 30 days after receipt of the notice of non-compliance.

By direction of the Commission.

Donald S. Clark
Secretary