

Advisory Opinion to Tatelbaum (06-22-01)

June 22, 2001

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Dear Banking Agency Counsels:

This responds to your May 31 letter concerning the Federal Trade Commission staff opinion letter dated July 26, 2000, from David Medine, former Associate Director for Financial Practices, to Charles Tatelbaum. That letter was in response to Mr. Tatelbaum's request for the Commission staff's written views on whether a permissible purpose exists under the Fair Credit Reporting Act ("FCRA") for a business credit grantor to obtain a consumer report on an individual who is a principal, owner, or officer of a commercial loan applicant (a sole proprietorship, partnership, or corporation), or who signs a personal guarantee in connection with a commercial credit application by a third party. Mr. Medine's letter set forth the position of the Commission staff that neither Section 604(a)(3)(A) nor Section 604(a)(3)(F)(i) of the FCRA provides such a purpose.

Your letter advocates an alternative interpretation of Section 604(a)(3)(A), concluding that "the FCRA would permit a lender to obtain a consumer report in connection with a business credit transaction where the consumer in question is or will be personally liable on the loan, such as in the case of an individual proprietor, co-signer, or guarantor."¹ We agree that it is reasonable to view a business transaction in which an individual has accepted personal liability for the business debt as involving the consumer, thus providing a permissible purpose for the lender to obtain a consumer report under Section 604(a)(3)(A). We understand your practical reasons for desiring that all parties be able to rely on your interpretation. Therefore, we are willing to consider the Tatelbaum letter superseded to the extent that it concludes otherwise.

¹ However, we note that you "generally agree that a lender would not have a permissible purpose under section 604(a)(3)(A) of the FCRA to obtain a consumer report on an individual who will not be personally liable for repayment of the credit, such as when the individual is a shareholder, director, or officer of a corporation, but does not guarantee or co-sign the loan, and is not an individual proprietor liable for the loan."

This informal staff letter is not binding on the Commission.

Sincerely,

Joel Winston

Inactive