Fair Credit Reporting

Background

The Fair Credit Reporting Act (FCRA) deals with the rights of consumers in relation to their credit reports and the obligations of credit reporting agencies and the businesses that provide information to them. The FCRA has been revised numerous times since it took effect in 1971, notably by passage of the Consumer Credit Reporting Reform Act of 1996, the Gramm-Leach-Bliley Act of 1999, and the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

The FACT Act created new responsibilities for consumer reporting agencies and users of consumer reports, many concerning consumer disclosures and identity theft. It also created new rights for consumers, including the right to free annual consumer reports and improved access to report information, with the aim of making data in the consumer reporting system more accurate.

Coverage

Business entities that are consumer reporting agencies have significant responsibilities under the FCRA; business entities that are not consumer reporting agencies have somewhat lesser responsibilities. Generally, financial institutions are not considered consumer reporting agencies; however, those that engage in certain types of information-sharing practices can be deemed consumer reporting agencies. In addition, the FCRA applies to financial institutions that operate as

- Procurers and users of information (for example, when granting credit, purchasing dealer paper, or opening deposit accounts),
- Furnishers and transmitters of information (by reporting information to consumer reporting agencies or other third parties, or to affiliates),
- Marketers of credit or insurance products, or
- Employers.

Key Definitions

Key definitions used throughout the FCRA include the following:

Consumer

A *consumer* is an individual.

Consumer Report

A *consumer report* is any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used (or is expected to be used) or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for

- Credit or insurance to be used primarily for personal, family, or household purposes;
- Employment purposes; or
- Any other purpose authorized under FCRA, section 604.

The term "consumer report" does not include

- Any report containing information solely about transactions or experiences between the consumer and the institution making the report;
- Any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different banks that are members of the same holding company, or subsidiary companies of a bank);
- Communication of other information among persons related by common ownership or affiliated by corporate control if
  - It is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons, and
  - The consumer is given the opportunity, before the time the information is communicated, to direct that the information not be communicated among such persons;
- Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
- Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer (such as a lender who has received a request from a broker) conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to

the consumer required under FCRA, section 615; or

- A communication described in FCRA, subsection 603(o) or (x) (which relate to certain investigative reports and certain reports to prospective employers).

Person

A *person* is any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

Investigative Consumer Report

An *investigative consumer report* is a consumer report or portion thereof for which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer, or with others with whom the consumer is acquainted or who may have knowledge concerning any such information. However, such information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

Adverse Action

With regard to credit transactions, the term *adverse action* has the same meaning as used in section 701(d)(6) of the Equal Credit Opportunity Act (ECOA), Regulation B, and the official staff commentary. Under the ECOA, an ''adverse action'' is a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the same amount or on terms substantially similar to those requested. Under the ECOA, the term does not include a refusal to extend additional credit under an existing credit arrangement when the applicant is delinquent or otherwise in default, or when such additional credit would exceed a previously established credit limit.

For non-credit transactions, the term has the following additional meanings for purposes of the FCRA:

- 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
- A denial of employment, or any other decision for employment purposes that adversely affects any current or prospective employee
- A denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of any license or benefit described in FCRA, section 604(a)(3)(D)
- An action taken or determination that (1) is made in connection with an application made by, or transaction initiated by, any consumer, or in connection with a review of an account to determine whether the consumer continues to meet the terms of the account, and (2) is adverse to the interests of the consumer

Employment Purposes

A consumer report used for *employment purposes* is a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

Consumer Reporting Agency

A *consumer reporting agency* is any person that (1) for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information, or other information on consumers, for the purpose of furnishing consumer reports to third parties, and (2) uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Implementation of the FCRA

Some of the requirements for financial institutions imposed by the FCRA are written directly into the statute; others are contained in regulations issued jointly by the FFIEC agencies; still others are spelled out in regulations issued by the Federal Reserve Board and/or the Federal Trade Commission.

For examination purposes, similar requirements have been grouped together, creating a series of examination modules. The five modules that have been completed to date cover requirements applicable to financial institutions that are not consumer reporting agencies. A sixth module will cover institutions that are considered consumer reporting agencies. The five completed examination modules are listed below with the statutory or regulatory cites for the FCRA requirements they cover.[1]

1. Other FCRA provisions—including section 628 (Disposal Rules)—are covered in other functional examinations, such as safety and soundness examinations, and therefore are not part of these procedures.

Module 1: Obtaining Consumer Reports

- Permissible Purposes of Consumer Reports, and Investigative Consumer Reports—FCRA, Sections 604 and 606

Module 2: Obtaining Information and Sharing among Affiliates

- Consumer Report and Information Sharing—FCRA, Section 603(d)
- Protection of Medical Information—FCRA, Section 604(g), and Regulation V, Sections 222.30–32
- Affiliate Marketing Opt-Out—FCRA, Section 624 and Regulation V, Section 222.20

Module 3: Disclosures to Consumers and Miscellaneous Requirements

- Use of Consumer Reports for Employment Purposes—FCRA, Section 604(b)
- Prescreened Consumer Reports and Opt-Out Notice—FCRA, Sections 604(c) and 615(d); FTC Regulations, Parts 642 and 698
- Truncation of Credit and Debit Card Account Numbers—FCRA, Section 605(g)
- Disclosure of Credit Scores by Certain Mortgage Lenders—FCRA, Section 609(g)
- Adverse Action Disclosures—FCRA, Sections 615(a) and (b)
- Debt Collector Communications concerning Identity Theft—FCRA, Section 615(g)
- Risk-Based Pricing Notice—FCRA, Section 615(h)

Module 4: Duties of Users of Credit Reports and Furnishers of Consumer Report Information

- Duties of Users of Credit Reports Regarding Address Discrepancies—FCRA, Section 605(h)(1) and Regulation V, Section 222.82
- Furnishers of Information—General—FCRA, Section 623
- Prevention of Re-Pollution of Consumer Reports—FCRA, Section 623(a)(6)
- Negative Information Notice—FCRA, Section 623(a)(7)

Module 5: Consumer Alerts and Identity Theft Protections

- Fraud and Active Duty Alerts—FCRA, Section 605A(h)
- Information Available to Victims—FCRA, Section 609(e)
- Duties of Card Issuers Regarding Changes of Address—FCRA, Section 615(e)(1)(c) and Regulation V, Section 222.91

Module 6: Requirements for Consumer Reporting Agencies

Organization of Examination Procedures

The modules in this chapter contain both general information about each of the requirements and examination procedures. Preceding the modules are the objectives and initial procedures for fair credit reporting examinations.

Fair Credit Reporting
Examination Objectives and Initial Examination Procedures

EXAMINATION OBJECTIVES

1. To determine the financial institution's compliance with the FCRA
2. To assess the quality of the financial institution's compliance management systems and its policies and procedures for implementing the FCRA
3. To determine the reliance that can be placed on the financial institution's internal controls and procedures for monitoring the institution's compliance with the FCRA
4. To direct corrective action when violations of law are identified or when policies or internal controls are deficient

INITIAL EXAMINATION PROCEDURES

The initial examination procedures are designed to acquaint examiners with the operations and processes of the institution being examined. They focus on the institution's systems, controls, policies, and procedures, including audits and previous examination findings.

The applicability of the various sections of the FCRA and the implementing regulations depends on an institution's unique operations. The functional examination requirements for an institution's FCRA responsibilities are presented topically in modules 1 through 6.

Initially, examiners should

1. Through discussions with management and a review of available information, determine whether the institution's internal controls are adequate to ensure compliance in the area under review. Consider the following:
   a. Organization charts
   b. Process flowcharts
   c. Policies and procedures
   d. Loan documentation
   e. Checklists
   f. Computer program documentation (for example, records that illustrate the fields and types of data reported to consumer reporting agencies, and automated records that track customer opt-outs for FCRA affiliate information sharing)
2. Review any compliance audit material, including workpapers and reports, to determine whether
   a. The scope of the audit addresses all provisions as applicable;
   b. Corrective actions were taken to follow up on previously identified deficiencies;
   c. The testing includes samples covering all product types and decision centers;
   d. The work performed is accurate;
   e. Significant deficiencies and their causes are included in reports to management and/or to the board of directors; and
   f. The frequency of review is appropriate.
3. Review the financial institution's training materials to determine whether
   a. Appropriate training is provided to individuals responsible for FCRA compliance and operational procedures, and
   b. The training is comprehensive and covers the various aspects of the FCRA that apply to the individual financial institution's operations.
4. Through discussions with management, determine which portions of the six examination modules will apply.
5. Complete appropriate examination modules; document and form conclusions regarding the quality of the financial institution's compliance management systems and compliance with the FCRA.

Fair Credit Reporting
Examination Module 1: Obtaining Consumer Reports

Overview

Consumer reporting agencies have a significant amount of personal information about consumers. This information is invaluable in assessing a consumer's creditworthiness for a variety of products and services, including loan and deposit accounts, insurance, and telephone services. Access to this information is governed by the Fair Credit Reporting Act (FCRA) to ensure that it is obtained for permissible purposes and is not used for illegitimate purposes.

The FCRA requires any prospective ''user'' of a consumer report—for example a lender, insurer, landlord, or employer—to have a legally permissible purpose for obtaining a report.

Permissible Purposes of Consumer Reports (FCRA, Section 604) and Investigative Consumer Reports (FCRA, Section 606)

Legally Permissible Purposes

The FCRA allows a consumer reporting agency to furnish a consumer report under the following circumstances and no other:

- In response to a court order or federal grand jury subpoena
- In accordance with the written instructions of the consumer
- To a person, including a financial institution, that it has reason to believe
  - Intends to use the report in connection with a credit transaction involving the consumer (including extending, reviewing, and collecting credit);
  - Intends to use the information for employment purposes;[2]
  - Intends to use the information in connection with the underwriting of insurance involving the consumer;
  - Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality that is required by law to consider an applicant's financial responsibility;
  - Intends to use the information, as a potential investor or servicer or a current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
  - Otherwise has a legitimate business need for the information
    a. In connection with a business transaction that is initiated by the consumer, or
    b. To review an account to determine whether the consumer continues to meet the terms of the account
- In response to a request by the head of a state or local child support enforcement agency (or authorized appointee), if the person certifies various information to the consumer reporting agency regarding the need to obtain the report. (Generally, a financial institution that is not a consumer reporting agency is not involved in such a situation.)

Prescreened Consumer Reports

Users of consumer reports, such as financial institutions, are allowed to obtain prescreened consumer reports in order to make firm offers of credit or insurance to consumers, unless the consumers have elected to opt out of being included on prescreened lists. The FCRA contains many requirements, including an opt-out notice requirement, when prescreened consumer reports are used. In addition to defining prescreened consumer reports, module 3 covers these requirements.

Investigative Consumer Reports

FCRA, section 606, contains specific requirements concerning the use of investigative consumer reports. Such reports contain information about a consumer's character, general reputation, personal characteristics, or mode of living that is obtained in whole or in part through personal interviews with the consumer's neighbors, friends, or associates. If a financial institution procures an investigative consumer report, or causes one to be prepared, the institution must meet the following requirements:

- The institution must clearly and accurately disclose to the consumer that an investigative consumer report may be obtained.
- The disclosure must contain a statement of the

2. Use of consumer reports for employment purposes requires specific advance authorization and disclosure notices and, if applicable, adverse action notices. These issues are addressed in module 3 of these examination procedures.

consumer's right to request other information about the report and a summary of the consumer's rights under the FCRA.

- The disclosure must be in writing and must be mailed or otherwise delivered to the consumer not later than three business days after the date on which the report was first requested.
- The financial institution procuring the report must certify to the consumer reporting agency that it has complied with the disclosure requirements and will comply in the event that the consumer requests additional disclosures about the report.

Institution Procedures

Given the preponderance of electronically available information and the growth of identity theft, financial institutions should manage the risks associated with obtaining and using consumer reports. They should employ procedures, controls, or other safeguards to ensure that consumer reports are obtained and used only in situations for which there are permissible purposes. Access to, storage of, and destruction of this information should be dealt with under an institution's information-security program; however, obtaining consumer reports initially must be done in compliance with the FCRA.

Fair Credit Reporting—Module 1
Examination Procedures

Permissible Purposes of Consumer Reports (FCRA, Section 604) and Investigative Consumer Reports (FCRA, Section 606)

1. Determine whether the financial institution obtains consumer reports.
2. Determine whether the financial institution obtains prescreened consumer reports and/or reports for employment purposes. If it does, complete the appropriate sections of module 3.
3. Determine whether the financial institution procures, or causes to be prepared, investigative consumer reports. If it does, determine whether the appropriate disclosure is given to consumers within the required time periods. In addition, determine whether the institution certifies compliance with the disclosure requirements to the consumer reporting agency.
4. Evaluate the financial institution's procedures to ensure that consumer reports are obtained only for permissible purposes. Confirm that the institution certifies to the consumer reporting agency the purposes for which it will obtain reports. (The certification is usually contained in the institution's contract with the consumer reporting agency.)
5. If procedural weaknesses or other risks requiring further investigation are noted, such as the receipt of several consumer complaints, review a sample of consumer reports obtained from a consumer reporting agency and determine whether the financial institution had permissible purposes for obtaining the reports. For example,
   - Obtain a copy of a billing statement or other list of consumer reports obtained by the financial institution from the consumer reporting agency over a period of time.
   - Compare this list, or a sample from this list, with the institution's records to ensure that there was a permissible purpose for obtaining the report(s)—for instance, the consumer applied for credit, insurance, or employment. The institution may also obtain a report in connection with the review of an existing account.

Fair Credit Reporting

Examination Module 2: Obtaining Information and Sharing among Affiliates

Overview

The Fair Credit Reporting Act (FCRA) sets forth many substantive compliance requirements for consumer reporting agencies that are designed to help ensure the accuracy and integrity of the consumer reporting system. As noted in the first section of this FCRA chapter, a consumer reporting agency is a person that generally furnishes consumer reports to third parties. By their very nature, banks, credit unions, and thrifts hold a significant amount of consumer information that could constitute a consumer report. Communication of this information could cause the institution to become a consumer reporting agency. The FCRA contains several exceptions that enable a financial institution to communicate this type of information, within strict guidelines, without becoming a consumer reporting agency.

Rather than containing strict information-sharing prohibitions, the FCRA creates a business disincentive such that if a financial institution shares consumer report information outside of the exceptions, the institution becomes a consumer reporting agency and is subject to the significant, substantive requirements of the FCRA applicable to those entities. Typically, a financial institution will structure its information-sharing practices within the exceptions to avoid becoming a consumer reporting agency. This examination module generally covers the information-sharing practices within these exceptions.

If upon completion of this module, examiners determine that the financial institution's information-sharing practices fall outside of these exceptions, the institution may be considered a consumer reporting agency, and the examination procedures in module 6 should be completed.

Consumer Report and Information Sharing (FCRA, Section 603(d))

FCRA, section 603(d), defines a consumer report to include information about a consumer that bears on a consumer's creditworthiness, character, and credit capacity, among other characteristics. Communication of this information may cause a person, including a financial institution, to become a consumer reporting agency. The statutory definition contains key exceptions to this definition that enable a financial institution to share this type of information under certain circumstances without becoming a consumer reporting agency. Specifically, the term ''consumer report'' does not include the following:

- A report containing information solely related to transactions or experiences between the consumer and the financial institution making the report. A person, including a financial institution, may share information strictly related to its own transactions or experiences with a consumer (such as the consumer's record with a loan or savings account at an institution) with any third party, without regard to affiliation, without becoming a consumer reporting agency. This type of information sharing may, however, be restricted under the Privacy of Consumer Financial Information regulations that implement the Gramm-Leach-Bliley Act (GLBA) because the information meets the definition of nonpublic personal information under the Privacy regulations; sharing it with nonaffiliated third parties may be subject to opt-out provisions under the Privacy regulations. In turn, the FCRA may restrict activities that the GLBA permits. For example, the GLBA permits a financial institution to share lists of its customers and information about those customers, such as their credit scores, with another financial institution for the purpose of jointly marketing or sponsoring other financial products or services. Such a communication may be considered a consumer report under the FCRA and could cause the sharing institution to become a consumer reporting agency.
- Communication of such transaction or experience information among persons, including financial institutions, related by common ownership or affiliated by corporate control.
- Communication of other information (that is, other than transaction or experience information) among persons, including financial institutions, related by common ownership or affiliated by corporate control (1) if it is clearly and conspicuously disclosed to the consumer that the information will be communicated among such entities and (2) if, before the information is initially communicated, the consumer is given the opportunity to opt out of the communication. Thus, a financial institution is allowed to share information (other than information about its own transactions or experiences) that could otherwise constitute a consumer report without becoming a consumer reporting agency under the following circumstances:
  - The sharing of the ''other'' information is done with affiliates

- Consumers are provided with the notice and an opportunity to opt out of this sharing before the information is first communicated among affiliates

  ''Other'' information can include, for example, information provided by a consumer on an application form concerning accounts with other financial institutions. It can also include information obtained by a financial institution from a consumer reporting agency, such as the consumer's credit score. If a financial institution shares other information with affiliates without providing a notice and an opportunity to opt out, the institution may become a consumer reporting agency subject to the FCRA requirements.

  The opt-out right required by this section must be stated in a financial institution's privacy notice, as required by the GLBA and its implementing regulations.

Other Exceptions

Specific Extensions of Credit

In addition, the term ''consumer report'' does not include the communication of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device. For example, this exception allows a lender to communicate an authorization through a credit card network to a retailer, to enable a consumer to complete a purchase using a credit card.

Credit Decision to Third Party

The term ''consumer report'' also does not include any report in which a person, including a financial institution, that has been requested by a third party (such as an automobile dealer) to make a specific extension of credit directly or indirectly to a consumer conveys the decision with respect to the request. The third party must advise the consumer of the name and address of the financial institution to which the request was made, and the financial institution must make the adverse action disclosures when required by FCRA, section 615. For example, this exception allows a lender to communicate a credit decision to an automobile dealer that is arranging financing for the purchase of an automobile by a consumer who requires a loan to finance the transaction.

''Joint User'' Rule

The Federal Trade Commission staff commentary discusses another exception, known as the Joint User Rule. Under this exception, users of consumer reports, including financial institutions, may share information with each other if they are jointly involved in the decision to approve a consumer's request for a product or service, provided that each has a permissible purpose for obtaining a consumer report on the individual. For example, a consumer applies for a mortgage loan that will have a high loan-to-value ratio, and thus the lender will require private mortgage insurance (PMI) in order to approve the application. The PMI will be provided by an outside company. The lender and the PMI company may share consumer report information about the consumer because both entities have permissible purposes for obtaining the information and they are jointly involved in the decision to grant products to the consumer.

This exception applies both to entities that are affiliated and to nonaffiliated third parties. It is important to note that the GLBA still applies to the sharing of nonpublic personal information with nonaffiliated third parties; therefore, financial institutions should be aware that sharing under the FCRA Joint User Rule may still be limited or prohibited by the GLBA.

Protection of Medical Information (FCRA, Section 604(g); and Regulation V, Subpart D)

Section 604(g) generally prohibits creditors from obtaining and using medical information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. The statute contains no prohibition regarding creditors' obtaining or using medical information for other purposes that are not in connection with a determination of the consumer's eligibility, or continued eligibility, for credit.

Section 604(g)(5)(A) required the FFIEC agencies to prescribe regulations that permit transactions determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes) and that are consistent with the congressional intent to restrict the use of medical information for inappropriate purposes. The agencies published final rules in the *Federal Register* (70 FR 70664) on November 22, 2005; subpart D of Regulation V implements the requirements for entities supervised by the Federal Reserve. The rules contain the general prohibition regarding obtaining or using medical information and provide exceptions for the limited circumstances under which medical information may be used. The rules define ''credit'' and ''creditor'' as having the same meanings as in section 702 of the Equal Credit Opportunity Act.

Obtaining and Using Unsolicited Medical Information (Regulation V, § 222.30(c))

A creditor does not violate the prohibition on obtaining medical information if it receives the medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information. However, the creditor may use this medical information only in connection with a determination of the consumer's eligibility, or continued eligibility, for credit in accordance with either the financial information exception or one of the specific other exceptions provided in the rules. These exceptions are discussed below.

Financial Information Exception (Regulation V, § 222.30(d))

A creditor is allowed to obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, so long as all of the following conditions are met:

- The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of the loan proceeds.
- The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction.
- The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

The financial information exception is designed in part to allow a creditor to consider a consumer's medical debts and expenses in the assessment of that consumer's ability to repay the loan according to the loan terms. The financial information exception also allows a creditor to consider the dollar amount and continued eligibility for disability income, worker's compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment.

The creditor may use the medical information in a manner and to an extent that is *no less favorable* than it would use comparable nonmedical information. For example, a consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other is to a retailer. The creditor may use and consider the debt to the hospital in the same manner in which it considers the debt to the retailer, such as including the debts in the calculation of the consumer's proposed debt-to-income ratio. In addition, the consumer's history of payment of the debt to the hospital may be considered in the same manner as payment of the debt to the retailer. For example, if the creditor does not grant loans to applicants who have debts that are ninety days past due, the creditor could consider the past-due status of a debt to the hospital in the same manner as it considers the past-due status of a debt to the retailer.

A creditor may use medical information in a manner that is more favorable to the consumer, according to its regular policies and procedures. For example, if a creditor has a routine policy of declining consumers who have a ninety-day past-due installment loan to a retailer but does not decline consumers who have a ninety-day past-due debt to a hospital, the financial information exception would allow the creditor to continue this policy without violating the rules, because in such a case, the creditor's treatment of the hospital debt is more favorable to the consumer.

A creditor may not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any determination regarding the consumer's eligibility, or continued eligibility, for credit. The creditor may consider only the financial implications as discussed above, such as the status of a debt to a hospital or the continuance of disability income.

Specific Exceptions for Obtaining and Using Medical Information (Regulation V, § 222.30(e))

In addition to the financial information exception, the rules provide for the following nine specific exceptions under which a creditor may obtain and use medical information in its determination of the consumer's eligibility, or continued eligibility, for credit:

1. To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate, or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as a legal representative for a consumer on the basis of an asserted medical condition or event. For example, if person A is attempting to act on behalf of person B under a power of attorney that is invoked on the basis of a medical event, a creditor is allowed to obtain and use medical information to verify that person B has experienced a medical condition or event such that

person A is allowed to act under the power of attorney.

2. To comply with applicable requirements of local, state, or federal laws
3. To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is
   - Designed to meet the special needs of consumers with medical conditions, and
   - Established and administered pursuant to a written plan that
     - Identifies the class of persons that the program is designed to benefit, and
     - Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program
4. To the extent necessary for purposes of fraud prevention or detection
5. In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of the loan and the use of the proceeds
6. Consistent with safe and sound banking practices, if the consumer or the consumer's legal representative requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit to accommodate the consumer's particular circumstances, and such request is documented by the creditor. For example, at the consumer's request, a creditor may grant an exception to its ordinary policy to accommodate a medical condition that the consumer has experienced. This exception allows a creditor to consider medical information in this context, but it does not require a creditor to make such an accommodation, nor does it require a creditor to grant a loan that is unsafe or unsound.
7. Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer. For example, if a creditor has a policy of delaying foreclosure in cases in which a consumer is experiencing a medical hardship, this exception allows the creditor to use medical information to determine if the policy would apply to the consumer. Like exception 6 above, this exception does not require a creditor to grant forbearance; it merely provides an exception so that a creditor may consider medical information in these instances.
8. To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt-cancellation contract or debt-suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement
9. To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product

Limits on Redisclosure of Information (Regulation V, § 222.31(b))

If a creditor subject to the medical information rules receives medical information about a consumer from a consumer reporting agency or its affiliate, the creditor must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed or as otherwise permitted by statute, regulation, or order.

Sharing Medical Information with Affiliates (Regulation V, § 222.32(b))

In general, the exclusions from the definition of ''consumer report'' in FCRA, section 603(d)(2), allow the sharing of information among affiliates. With regard to medical information, FCRA, section 603(d)(3), provides that the exclusions in section 603(d)(2) do not apply when a person subject to the medical information rules shares information of the following types with an affiliate:

- Medical information
- An individualized list or description based on the payment transactions of the consumer for medical products or services
- An aggregate list of identified consumers based on payment transactions for medical products or services

If a person that is subject to the medical rules shares with an affiliate information of one of the types listed above, the exclusions from the definition of ''consumer report'' do not apply. Effectively, this means that if a person shares medical information, that person becomes a consumer reporting agency, subject to all the other substantive requirements of the FCRA.

The rules provide exceptions to these limitations on sharing medical information with affiliates (Regulation V, section 222.32(c)). A covered entity, such as a state member bank, may share medical information with its affiliates without becoming a consumer reporting agency under one or more of the following circumstances:

- In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003)
- For any purpose permitted without authorization under the regulations issued by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- For any purpose referred to in section 1179 of HIPAA
- For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act
- In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with the financial information exceptions or specific exceptions
- As otherwise permitted by order of an FFIEC agency

Affiliate Marketing Opt-Out (Regulation V, § 222.20)

Section 624 gives a consumer the right to restrict an entity, with which it does not have a pre-existing business relationship, from *using* certain information obtained from an affiliate to make solicitations to that consumer. This provision is distinct from section 603(d)(2)(A)(iii) which gives a consumer the right to restrict the *sharing* of certain consumer information amongst affiliates.[3]

Under section 624, an entity may not use information received from an affiliate to market its products or services to a consumer, unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of the making of such solicitations. The affiliate marketing opt-out applies to information that an entity has obtained from transactions or its experience with a consumer. The opt-out also applies to ''other'' information, such as information the entity obtains about a consumer from credit reports and credit applications. On November 7, 2007, the federal financial institution regulators published final regulations in the Federal Register to implement this section (72 FR 62910).[4]

Exceptions to the notice and opt-out requirements apply when an entity uses eligibility information in certain ways, as described later in these procedures.

Key Definitions (Regulation V, § 222.20)[5]

1. *Eligibility information (12 CFR 222.20(b)(3))* includes not only transaction and experience information, but also the type of information found in consumer reports, such as information from third-party sources and credit scores. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.[6]
2. *Pre-existing business relationship (12 CFR 222.20(b)(4))*[7] means a relationship between a person, such as a financial institution (or a person's licensed agent), and a consumer based on
   a. A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation;
   b. The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force, or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation; or
   c. An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation.
3. *Solicitation (12 CFR 222.20(b)(5))* means the marketing of a product or service initiated by a person, such as a financial institution, to a particular consumer that is

3. See Module 2, Consumer Report and Information Sharing (Section 603(d)), for provisions pertaining to the sharing of consumer information. Under section 603(d)(2)(A)(iii) of the FCRA, entities are responsible for complying with the affiliate *sharing* notice and opt-out requirement, where applicable. Thus, under the FCRA, certain consumer information will be subject to two opt-outs, a sharing opt-out (section 603(d)) and a marketing use opt-out (section 624). These two opt-outs may be consolidated.

4. See 12 CFR 222.20(a) for the scope of entities covered by Subpart C of 12 CFR 222.

5. See 12 CFR 222.20 for other definitions.

6. Specifically, ''eligibility information'' is defined in the affiliate marketing regulation as ''any information the communication of which would be a consumer report if the exclusions from the definition of 'consumer report' in Section 603(d)(2)(A) of the [Fair Credit Reporting] Act did not apply.''

7. See 12 CFR 222.20(b)(4)(ii) and (iii) for examples of pre-existing business relationships and situations where no pre-existing business relationship exists.

a. Based on eligibility information communicated to that person by its affiliate, and

b. Intended to encourage the consumer to purchase or obtain such product or service.

Examples of a solicitation include a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate. A solicitation *does not* include marketing communications that are directed at the general public (for example, television, general circulation magazine, and billboard advertisements).

Initial Notice and Opt-Out Requirement (Regulation V, §§ 222.21(a), 222.24, and 222.25)

A financial institution and its subsidiaries (''financial institution'') generally may not use eligibility information about a consumer that it receives from an affiliate to make a solicitation for marketing purposes to the consumer, unless

1. It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that the financial institution may use eligibility information about that consumer that it received from an affiliate to make solicitations for marketing purposes to the consumer;
2. The consumer is provided a reasonable opportunity and a reasonable and simple method to ''opt out'' (that is, the consumer prohibits the financial institution from using eligibility information to make solicitations for marketing purposes to the consumer);[8] and
3. The consumer has not opted out.

For example, a consumer has a homeowner's insurance policy with an insurance company. The insurance company shares eligibility information about the consumer with its affiliated depository institution. Based on that eligibility information, the depository institution wants to make a solicitation to the consumer about its home equity loan products. The depository institution does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The depository institution may not use eligibility information it received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the insurance company gave the consumer a notice and opportunity to opt out and the consumer does not opt out.

8. See 12 CFR 222.24 and 222.25 for examples of ''a reasonable opportunity to opt out'' and ''reasonable and simple methods for opting out.''

Making Solicitations (Regulation V, § 222.21(b))[9]

A financial institution (or a service provider acting on behalf of the financial institution) makes a solicitation for marketing purposes if

1. The financial institution receives eligibility information from an affiliate, including when the affiliate places that information into a common database that the financial institution may access;
2. The financial institution uses that eligibility information to do one or more of the following:
   a. Identify the consumer or type of consumer to receive a solicitation;
   b. Establish criteria used to select the consumer to receive a solicitation; or
   c. Decide which of the financial institution's products or services to market to the consumer or tailor the financial institution's solicitation to that consumer; and
3. As a result of the financial institution's use of the eligibility information, the consumer is provided a solicitation.

A financial institution does *not* make a solicitation for marketing purposes (and therefore the affiliate marketing regulation, with its notice and opt-out requirements, does not apply) in the situations listed below, commonly referred to as ''constructive sharing.'' Constructive sharing occurs when a financial institution provides criteria to an affiliate to use in marketing the financial institution's product and the affiliate uses the criteria to send marketing materials to the affiliate's own customers that meet the criteria. In this situation, the financial institution is not *using* shared eligibility information to make solicitations.

1. The financial institution provides criteria for consumers to whom it would like its affiliate to market the financial institution's products. Then, based on this criteria, the affiliate uses eligibility information that the affiliate obtained in connection with its own pre-existing business relationship with the consumer to market the financial institution's products or services (or directs its service provider to use the eligibility information in the same manner and the financial institution does not communicate with the service provider regarding that use).
2. A service provider, applying the financial institution's criteria, uses information from an affiliate, such as that in a shared database, to market the financial institution's products or services to the

9. See 12 CFR 222.21(b)(6) for examples of making solicitations.

consumer, so long as it meets certain requirements, including

a. The affiliate controls access to, and use of, its eligibility information by the service provider under a written agreement between the affiliate and the service provider;

b. The affiliate establishes, in writing, specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market the financial institution's products and services (or those of affiliates generally) to the consumer;

c. The affiliate requires the service provider, under a written agreement, to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of the financial institution's products or services;

d. The affiliate is identified on or with the marketing materials provided to the consumer; and

e. The financial institution does not directly use its affiliate's eligibility information in the manner described above under ''Making Solicitations (Regulation V, § 222.21(b)),'' item 2.

Exceptions to Initial Notice and Opt-out Requirements (Regulation V, § 222.21(c))[10]

The initial notice and opt-out requirements do not apply to a financial institution if it uses eligibility information that it receives from an affiliate

1. To make a solicitation for marketing purposes to a consumer with whom the financial institution has a pre-existing business relationship;
2. To facilitate communications to an individual for whose benefit the financial institution provides employee benefit or other services pursuant to a contract with an employer;
3. To perform services on behalf of an affiliate (but this would not allow solicitation where the consumer has opted out);
4. In response to a communication about the financial institution's products or services initiated by the consumer;
5. In response to a consumer's authorization or request to receive solicitations; or
6. If the financial institution's compliance with the affiliate marketing regulation would prevent it from complying with State insurance laws pertaining to unfair discrimination in any state in which the financial institution is lawfully doing business.

Contents of Opt-out Notice (Regulation V, § 222.23)

A financial institution must provide to the consumer a reasonable and simple method for the consumer to opt out. The opt-out notice must be clear, conspicuous, and concise, and must accurately disclose specific information outlined in 12 CFR 222.23(a), including that the consumer may elect to limit the use of eligibility information to make solicitations to the consumer. See Appendix C to the regulation for the model notices contained in the affiliate marketing regulation.

Alternative contents. An affiliate that provides a consumer a broader right to opt out than that required by the affiliate marketing regulation may satisfy the regulatory requirements by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

Coordinated, consolidated, and equivalent notices. Opt-out and renewal notices may be coordinated and consolidated with any other notice or disclosure required under any other provision of law, such as the Gramm-Leach-Bliley Act (GLBA), 15 USC 6801 et seq. Renewal notices, which have additional required content (12 CFR 222.27), may be consolidated with the annual GLBA privacy notices.

Delivery of the Opt-Out Notice (Regulation V, §§ 222.21(a)(3) and 222.26)[11]

An affiliate that has or previously had a pre-existing business relationship with the consumer must provide the notice either individually or as part of a joint notice from two or more members of an affiliated group of companies. The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. A consumer may *not* reasonably be expected to receive actual notice if, for example, the affiliate providing the notice sends the notice via e-mail to a consumer who has not agreed to receive electronic

10. See 12 CFR 222.21(d) for examples of exceptions to the initial notice and opt-out requirement.

11. See 12 CFR 222.26(b) and (c) for examples of ''reasonable expectation of actual notice'' and ''no reasonable expectation of actual notice.''

disclosures by e-mail from the affiliate providing the notice.[12]

Scope of Opt-Out (Regulation V, §§ 222.22(a) and 222.23(a)(2))[13]

As a general rule, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate, described in the notice, to make solicitations to the consumer. If two or more consumers jointly obtain a product or service, any of the joint consumers may exercise the right to opt out. It is impermissible to require all joint consumers to opt out before implementing any opt-out direction.

Menu of alternatives. A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by

1. Electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice,
2. Electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or
3. Electing to prohibit solicitations by certain methods of delivery but not other methods of delivery.

One of the alternatives, however, must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

Continuing relationship. If the consumer establishes a continuing relationship with a financial institution or its affiliate, an opt-out notice may apply to eligibility information obtained from one or more continuing relationships (such as a deposit account, a mortgage loan, or a credit card), if the notice adequately describes the continuing relationships covered. The opt-out notice can also apply to future continuing relationships if the notice adequately describes the continuing future relationships that would be covered.

Special rule for a notice following termination of all continuing relationships. After all continuing relationships with a financial institution or its affiliate(s) are terminated, a consumer must be given a new opt-out notice if the consumer later establishes another continuing relationship with the financial institution or its affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election that applies to eligibility information obtained in connection with a terminated relationship.

No continuing relationship (isolated transaction). If the consumer does not establish a continuing relationship with a financial institution or its affiliate, but the financial institution or its affiliate obtains eligibility information about the consumer in connection with a transaction with the consumer (such as an ATM cash withdrawal, purchase of traveler's checks, or a credit application that is denied), an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

Time, Duration, and Renewal of Opt-Out (Regulation V, §§ 222.22(b) and (c) and 222.27)

A consumer may opt out at any time. The opt-out must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer later revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period may be set at more than five years, including an opt-out that does not expire unless the consumer revokes it.

Renewal after opt-out period expires. After the opt-out period expires, a financial institution may not make solicitations based on eligibility information it receives from an affiliate to a consumer who previously opted out, unless

1. The consumer receives a renewal notice and opportunity to opt out, and the consumer does not renew the opt-out; or
2. An exception to the notice and opt-out requirements applies.[14]

Contents of renewal notice. The renewal notice must be clear, conspicuous, and concise, and must accurately disclose most of the elements of the original opt-out notice, as well as the facts that

1. The consumer previously elected to limit the use of certain information to make solicitations to the consumer;
2. The consumer's election has expired or is about to expire;
3. The consumer may elect to renew the consumer's previous election; and
4. If applicable, that the consumer's election to

12. For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions of 12 CFR 222.24(b)(2) and 222.24(b)(3) or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq.

13. See 12 CFR 222.22(a) for examples of the scope of the opt-out, including examples of continuing relationships.

14. See 12 CFR 222.21(c) for exceptions.

renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires.

See 12 CFR 222.27(b) for all the content requirements of renewal notice.

Renewal period. Each opt-out renewal must be effective for a period of at least five years.

Affiliate who may provide the notice. The renewal notice must be provided by the affiliate that provided the previous opt-out notice, or its successor; or as part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

Timing of the renewal notice. A renewal notice may be provided to the consumer either at a reasonable period of time before the expiration of the opt-out period[15] or at any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

Prospective Application (Regulation V, § 222.28(c))

A financial institution may use eligibility information received from an affiliate to make solicitations to a consumer if it received such information prior to October 1, 2008, the mandatory compliance date of the affiliate marketing regulation. An institution is deemed to have received eligibility information when such information is placed into a common database and is accessible by the institution prior to that date.

Model Forms for Opt-Out Notices (Regulation V, § 222, Appendix C)

Appendix C of the affiliate marketing regulation contains model forms that may be used to comply with the requirement for clear, conspicuous, and concise notices. The five model forms are

C-1 Model Form for Initial Opt-out Notice (Single-Affiliate Notice)

C-2 Model Form for Initial Opt-out Notice (Joint Notice)

C-3 Model Form for Renewal Notice (Single-Affiliate Notice)

C-4 Model Form for Renewal Notice (Joint Notice)

C-5 Model Form for Voluntary ''No Marketing'' Notice

Use of the model forms is not required and a financial institution may make certain changes to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Institutions making such extensive revisions will lose the ''safe harbor'' that Appendix C provides. Examples of acceptable changes are provided in Appendix C to the regulation.

15. An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt-out. If a financial institution provides an annual privacy notice under the Gramm-Leach-Bliley Act, providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases. 12 CFR 222.27(d)

Fair Credit Reporting—Module 2
Examination Procedures

Consumer Report and Information Sharing (FCRA, Section 603(d))

1. Review the financial institution's policies, procedures, and practices concerning the sharing of consumer information with third parties, including both affiliated and nonaffiliated third parties. Determine the type of information shared and with whom the information is shared. (This portion of the examination may overlap with a review of the institution's compliance with Regulation P, Privacy of Consumer Financial Information, which implements the Gramm-Leach-Bliley Act.)
2. Determine whether the financial institution's information-sharing practices fall within the exceptions to the definition of a consumer report. If they do not, the financial institution could be considered a consumer reporting agency, in which case the examination procedures in module 6 should be completed.
3. If the financial institution shares information other than transaction and experience information with affiliates subject to opt-out provisions, determine whether the institution's GLBA privacy notice contains information regarding how to opt out, as required by Regulation P.
4. If procedural weaknesses or other risks requiring further investigation are noted, obtain a sample of opt-out rights exercised by consumers and determine whether the financial institution honored the opt-out requests by not sharing "other information" about those consumers with the institution's affiliates after receiving the opt-out requests.

Protection of Medical Information (FCRA, Section 604(g); and Regulation V, Subpart D)

1. Review the financial institution's policies, procedures, and practices concerning the collection and use of consumer medical information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.
2. If the financial institution's policies, procedures, and practices allow for obtaining and using consumer medical information in the context of a credit transaction, determine whether there are adequate controls in place to ensure that the information is used only subject to the financial information exception or one of the specific exceptions set forth in Regulation V.
3. If procedural weaknesses or other risks requiring further investigation are noted, obtain samples of credit transactions to determine whether the use of consumer medical information was done strictly under the financial information exception or one of the specific exceptions in Regulation V.
4. Determine whether the financial institution has adequate policies and procedures in place to limit the redisclosure of consumer medical information that was received from a consumer reporting agency or an affiliate.
5. Determine whether the financial institution shares medical information about a consumer with its affiliates. If it does, determine whether the sharing occurred in accordance with an exception in Regulation V that enables the institution to share the information without becoming a consumer reporting agency.

Affiliate Marketing Opt-Out (FCRA, Section 624; and Regulation V, Section 222.20)

1. Determine whether the financial institution receives consumer eligibility information from an affiliate. Stop here if it does not because Subpart C of 12 CFR 222 does not apply.
2. Determine whether the financial institution uses consumer eligibility information received from an affiliate to make a solicitation for marketing purposes that is subject to the notice and opt-out requirements. If it does not, stop here.
3. Evaluate the institution's policies, procedures, practices, and internal controls to ensure that, where applicable, the consumer is provided with an appropriate notice, a reasonable opportunity, and a reasonable and simple method to opt out of the institution's using eligibility information to make solicitations for marketing purposes to the consumer, and that the institution is honoring the consumer's opt-outs.
4. If compliance risk management weaknesses or other risks requiring further investigation are noted, obtain and review a sample of notices to ensure technical compliance and a sample of opt-out requests from consumers to determine if the institution is honoring the opt-out requests.
   a. Determine whether the opt-out notices are clear, conspicuous, and concise and contain

the required information, including the name of the affiliate(s) providing the notice, a general description of the types of eligibility information that may be used to make solicitations to the consumer, and the duration of the opt out. (12 CFR 222.23(a))

b. Review opt-out notices that are coordinated and consolidated with any other notice or disclosure that is required under other provisions of law for compliance with the affiliate marketing regulation. (12 CFR 222.23(b))

c. Determine whether the opt-out notices and renewal notices provide the consumer a reasonable opportunity to opt out and a reasonable and simple method to opt out. (12 CFR 222.24 and 222.25)

d. Determine whether the opt-out notice and renewal notice are provided (by mail delivery or electronically) so that a consumer can reasonably be expected to receive that actual notice. (12 CFR 222.26)

e. Determine whether, after an opt-out period expires, a financial institution provides a consumer a renewal notice prior to making solicitations based on eligibility information received from an affiliate. (12 CFR 222.27)

Fair Credit Reporting
Examination Module 3: Disclosures to Consumers and Miscellaneous Requirements

Overview

The Fair Credit Reporting Act (FCRA) requires financial institutions to provide consumers with various notices and information under a variety of circumstances. This module deals with examination responsibilities for these various areas.

Use of Consumer Reports for Employment Purposes (FCRA, Section 604(b))

FCRA, section 604(b), sets forth specific requirements for financial institutions that obtain consumer reports on its employees or prospective employees prior to, and/or during, the term of employment. The FCRA generally requires the written permission of the consumer to procure a consumer report for ''employment purposes.'' Moreover, a clear and conspicuous disclosure that a consumer report may be obtained for employment purposes must be provided in writing to the consumer prior to procuring a report.

Prior to taking any adverse action involving employment that is based in whole or in part on the consumer report, the user generally must provide to the consumer

- A copy of the report, and
- A description in writing of the rights of the consumer, as prescribed by the Federal Trade Commission (FTC) in FCRA, section 609(c)(1).

At the time a financial institution takes adverse action in an employment situation, the consumer must also be provided with an adverse action notice, as required by FCRA, section 615, and described later in this module.

Prescreened Consumer Reports and Opt-Out Notice (FCRA, Sections 604(c) and 615(d); and FTC Regulations, Parts 642 and 698)

FCRA, section 604(c)(1)(B), allows persons, including financial institutions, to obtain and use consumer reports on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, for the purpose of making firm offers of credit or insurance. This process, known as *prescreening*, occurs when a financial institution obtains, from a consumer reporting agency, a list of consumers who meet certain predetermined creditworthiness criteria and who have not elected to be excluded from such lists. These lists may contain only the following information:

- The name and address of a consumer
- An identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer
- Other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity

Each name on the list is considered an individual consumer report. In order to obtain and use these lists, the financial institution must make a ''firm offer of credit or insurance,'' as defined in FCRA, section 603(l), to each person on the list. The institution is not required to grant credit or insurance if the consumer is found to be not creditworthy or insurable or cannot furnish required collateral, provided that the underwriting criteria are determined in advance.

> *Example 1*. Assume that a home mortgage lender obtains from a consumer reporting agency a list of everyone in county X who has a current home mortgage loan and a credit score of 700. The lender will use this list to market a second-lien home equity loan product. Besides the criteria used to create the prescreened list for this product, the lender's criteria include a total debt-to-income ratio (DTI) of 50 percent or less. Some of these other criteria can be screened by the consumer reporting agency, but others, such as the DTI, must be determined from an application or other sources when consumers respond to the offer. If a consumer who responds to the offer has a DTI of 60 percent, the lender does not have to grant the loan.

In addition, the financial institution is allowed to obtain a full consumer report on anyone responding to the offer in order to verify that the consumer continues to meet the creditworthiness criteria. If the consumer no longer meets those criteria, the institution does not have to grant the loan.

> *Example 2*. On January 1, a credit card lender obtains from a consumer reporting agency a list of consumers in county Y who have credit scores of 720 and no previous bankruptcy records. On January 2, the lender mails solicitations offering a preapproved credit card to everyone on the list. On January 31, a consumer responds to the offer and the lender obtains and reviews a full consumer report, which shows that a bankruptcy record was added on January 15. Since this

consumer no longer meets the lender's predetermined criteria, the lender is not required to issue the credit card.

These basic requirements seek to ensure that financial institutions that obtain prescreened lists follow through with an offer of credit or insurance. An institution must maintain a list of the criteria used for the product (including the criteria used to generate the prescreened list and any other criteria, such as collateral requirements) on file for three years, beginning on the date that the offer was made to the consumer.

Technical Notice and Opt-Out Requirements

FCRA, section 615(d), sets forth consumer protections and technical notice requirements concerning prescreened offers of credit or insurance. The FCRA requires consumer reporting agencies that operate nationwide to jointly operate an "opt-out" system whereby consumers can elect to be excluded from prescreened lists by calling a toll-free number.

When a financial institution obtains and uses such lists, it must provide consumers with a "prescreen opt-out notice" along with a written offer of credit or insurance. The notice alerts consumers that they are receiving the offer because they meet certain creditworthiness criteria. The notice must also provide the toll-free telephone number operated by the nationwide consumer reporting agencies for consumers to call to opt out of prescreened lists.

The FCRA sets forth the basic requirement concerning the provision of notices to consumers at the time prescreened offers are made. The FTC's implementing regulation, which spells out the technical requirements of the notice, are at 16 CFR 642 and 698. This regulation—which is applicable to anyone, including banks, credit unions, and thrifts, that obtains and uses prescreened consumer reports—became effective on August 1, 2005; however, the requirement to provide a notice containing the toll-free opt-out telephone number has existed under the FCRA for many years.

Requirements Beginning August 1, 2005

The FTC regulations—16 CFR 642 and 698—require that a "short" notice and a "long" notice of the "prescreen opt-out" information be given with each written solicitation made to consumers on the basis of prescreened consumer reports. These regulations, which were published on January 31, 2005, at 70 FR 5022, also contain specific requirements concerning the content and appearance of these notices. The requirements are listed below.

The short notice must be a clear and conspicuous, simple, and easy-to-understand statement, as follows:

- *Content*. The short notice must state that the consumer has the right to opt out of receiving prescreened solicitations, must provide the toll-free number, must direct consumers to the existence and location of the long notice, and must state the title of the long notice. It *may not* contain any other information.
- *Form*. The short notice must be in a type size larger than the principal text on the same page, but it may not be smaller than 12 point type. If the notice is provided by electronic means, it must be larger than the type size of the principal text on the same page.
- *Location*. The short notice must be on the front side of the first page of the principal promotional document in the solicitation or, if provided electronically, on the same page and in close proximity to the principal marketing message. The statement must be located so that it is distinct from other information, such as inside a border, and must be in a distinct type style, such as bolded, italicized, underlined, and/or in a color that contrasts with the principal text on the page, if the solicitation is provided in more than one color.

The long notice must also be a clear and conspicuous, simple, and easy-to-understand statement, as follows:

- *Content*. The long notice must state the information required by FCRA, section 615(d), and may not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the notice.
- *Form*. The long notice must appear in the solicitation and be in a type size that is no smaller than the type size of the principal text on the same page; for solicitations provided other than by electronic means, the type size may not be smaller than 8-point. The notice must begin with a heading, in capital letters and underlined, identifying the long notice as the "PRESCREEN & OPT OUT NOTICE." Also, the notice must be in a type style that is distinct from the principal type style used on the same page, such as bolded, italicized, underlined, and/or in a color that contrasts with the principal text, if the solicitation is in more than one color. Further, the notice must be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

Model prescreen opt-out notices developed by the FTC, along with complete sample solicitations showing context, appear in appendix A to 16 CFR 698. The model notice text is shown below.

Sample Short Notice

You can choose to stop receiving "prescreened" offers of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. See PRESCREEN & OPT-OUT NOTICE on other side [or other location] for more information about prescreened offers.

Sample Long Notice

PRESCREEN & OPT-OUT NOTICE: This "prescreened" offer of [credit or insurance] is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]. If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address].

Truncation of Credit and Debit Card Account Numbers (FCRA, Section 605(g))

FCRA, section 605(g), provides that persons, including financial institutions, that accept debit and credit cards for the transaction of business are prohibited from issuing electronically generated receipts that contain more than the last five digits of the card number, or the card expiration date, at the point of sale or transaction. This requirement applies only to electronically developed receipts and does not apply to handwritten receipts or those developed with an imprint of the card.

For automatic teller machines (ATMs) and point-of-sale (POS) terminals or other machines that were put into operation before January 1, 2005, this requirement is effective on December 4, 2006. For those that were put into operation on or after January 1, 2005, the effective date is the date of installation.

Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA, Section 609(g))

FCRA, section 609(g), requires financial institutions that make or arrange mortgage loans using credit scores to provide the score, with accompanying information, to applicants.

Credit Score

For purposes of this section, *credit score* is defined as a numerical value or a categorization derived from a statistical tool or modeling system used by a person that makes or arranges a loan to predict the likelihood of certain credit behaviors, including default (the numerical value or the categorization derived from such analysis may also be referred to as a "risk predictor" or "risk score"). A credit score does not include

- Any mortgage score or rating by an automated underwriting system that considers one or more factors in addition to credit information, such as the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer, or
- Any other elements of the underwriting process or underwriting decision.

Covered Transactions

The disclosure requirement applies to both closed-end and open-end loans that are for consumer purposes and are secured by one- to four-family residential real properties, including purchase and refinance transactions. The requirement does not apply in circumstances that do not involve a consumer purpose, such as when a borrower obtains a loan secured by his or her residence to finance his or her small business.

Specific Required Notice

Financial institutions that are engaged in covered transactions and that use credit scores must provide a disclosure containing the specific language shown below, which is contained in FCRA, section 609(g)(1)(D):

Notice to the Home Loan Applicant

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your credit scores.

The credit score is a computer generated summary calculated at the time of the request and based on information that a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another.

If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decision on a loan application.

If you have questions concerning the terms of the loan, contact the lender.

The notice must include the name, address, and telephone number of each consumer reporting agency that provided a credit score that was used.

Credit Score and Key Factors Disclosed

In addition to providing the notice to home loan applicants, financial institutions must disclose the credit score, the range of possible scores, the date on which the score was created, and the ''key factors'' used in calculating the score. *Key factors* are all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance based on their effect on the credit score. The total number of factors to be disclosed must not exceed four. However, if one of the key factors is the number of inquiries into a consumer's credit information, then the total number of factors must not exceed five. These key factors come from information supplied by the consumer reporting agencies with any consumer report that was furnished containing a credit score. (FCRA, section 605(d)(2))

This disclosure requirement applies to any application for a covered transaction, regardless of the final action on the application taken by the lender. The FCRA requires a financial institution to disclose all of the credit scores that were used in these transactions. For example, if two applicants jointly apply for a mortgage loan to purchase a single-family residence and the lender uses the credit scores of both, then both scores need to be disclosed. The statute specifically does not require that more than one disclosure be provided per loan; therefore, if multiple scores are used, all of them can be included in one disclosure containing the Notice to the Home Loan Applicant.

If a financial institution uses a credit score that was not obtained directly from a consumer reporting agency but may contain some information from a consumer reporting agency, this disclosure requirement can be satisfied by providing a score and associated key factor information that were supplied by the consumer reporting agency. For example, certain automated underwriting systems generate scores used in credit decisions. These systems are often populated by data obtained from consumer reporting agencies. If a financial institution uses such an automated system, the disclosure requirement can be satisfied by providing the applicants with a score and list of key factors supplied by a consumer reporting agency based on the data, including the credit score(s), that were imported into the automated system. Doing so will provide applicants with information about their credit history and its role in the credit decision, in the spirit of this section of the statute.

Timing

The statute requires that the disclosure be provided as soon as is reasonably practicable after the credit score is used.

Adverse Action Disclosures (FCRA, Sections 615(a) and (b))

The FCRA requires certain disclosures when adverse actions are taken with respect to consumers on the basis of information received from third parties. Specific disclosures are required depending on whether the source of the information is a consumer reporting agency, a third party other than a consumer reporting agency, or an affiliate. The disclosure requirements are discussed separately below.

Information Obtained from a Consumer Reporting Agency

Section 615(a) provides that when adverse action is taken with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the financial institution must do all of the following:

- Provide oral, written, or electronic notice of the adverse action to the consumer
- Provide to the consumer, orally, in writing, or electronically,
  - The name, address, and telephone number of the consumer reporting agency from which it received the information (including a toll-free telephone number established by the agency, if the agency maintains files on a nationwide basis)
  - A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to give the

consumer the specific reasons for the adverse action

- Provide to the consumer an oral, written, or electronic notice of (1) the consumer's right to obtain a free copy of the consumer report from the consumer reporting agency, within sixty days of receiving notice of the adverse action, and (2) the consumer's right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency

Information Obtained from a Source Other Than a Consumer Reporting Agency

Section 615(b)(1) provides that if credit for personal, family, or household purposes involving a consumer is denied or if the charge for such credit is increased, partially or wholly on the basis of information that was obtained from a person other than a consumer reporting agency and that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the financial institution,

- At the time the adverse action is communicated to the consumer, must clearly and accurately disclose the consumer's right to file a written request for the reasons for the adverse action, and
- If it receives such a request within sixty days after the consumer learns of the adverse action, must disclose, within a reasonable period of time, the nature of the adverse information. The information should be sufficiently detailed to enable the consumer to evaluate its accuracy. The source of the information need not be, but may be, disclosed. In some instances, it may be impossible to identify the nature of certain information without also revealing the source.

Information Obtained from an Affiliate

Section 615(b)(2) provides that if a person, including a financial institution, takes an adverse action involving credit (in connection with a transaction initiated by a consumer), insurance, or employment in whole or in part on the basis of information provided by an affiliate, it must notify the consumer that the information

- Is furnished to the person taking the action by a person related by common ownership, or affiliated by common corporate control, to the person taking the action;
- Bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;
- Is not information solely involving transactions or experiences between the consumer and the person furnishing the information; and
- Is not information in a consumer report.

The notification must inform the consumer of the adverse action and that the consumer may obtain a disclosure of the nature of the information relied on by making a written request within sixty days of transmittal of the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information received from the affiliate not later than thirty days after receiving the request.

Debt Collector Communications concerning Identity Theft (FCRA, Section 615(g))

Section 615(g) sets forth specific requirements for financial institutions that act as debt collectors, that is, financial institutions that collect debts on behalf of a third party that is a creditor or other user of a consumer report. The requirements do not apply when a financial institution is collecting its own loans. When a financial institution is notified that any information relating to a debt that it is attempting to collect may be fraudulent or may be the result of identity theft, the institution must notify the third party of this fact. In addition, if the consumer to whom the debt purportedly relates requests information about the transaction, the financial institution must provide all of the information the consumer would otherwise be entitled to if the consumer wished to dispute the debt under other provisions of law applicable to the financial institution.

Risk-Based Pricing Notice (FCRA, Section 615(h))

Section 615(h) requires users of consumer reports that grant credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers who get credit from or through that person to provide a notice to those consumers who did not receive the most favorable terms. Implementing regulations for this section are currently (as of August 2006) under development jointly by the Federal Reserve Board and the Federal Trade Commission. Financial institutions do not have to provide this notice until final regulations are implemented and effective. This section of the examination procedures will be written upon publication of final rules.

Fair Credit Reporting—Module 3
Examination Procedures

Use of Consumer Reports for Employment Purposes (FCRA, Section 604(b))

1. Determine whether the financial institution obtains consumer reports on current or prospective employees.
2. Assess the financial institution's policies and procedures to determine if appropriate disclosures are provided to current and prospective employees when consumer reports are obtained for employment purposes, including in situations in which adverse actions are taken on the basis of consumer report information.
3. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of the disclosures to determine if they are accurate and in compliance with the technical FCRA requirements.

Prescreened Consumer Reports and Opt-Out Notice (FCRA, Sections 604(c) and 615(d); and FTC Regulations, Parts 642 and 698)

1. Determine whether the financial institution obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.
2. Evaluate the institution's policies and procedures to determine if a list of the criteria used for prescreened offers, including all post-application criteria, is maintained in the institution's files and the criteria are applied consistently when consumers respond to the offers.
3. Determine whether written solicitations contain the required disclosures of consumers' right to opt out of prescreened solicitations and comply with all requirements applicable at the time of the offer.
4. If procedural weaknesses or other risks requiring further investigation are noted, obtain and review a sample of approved and denied responses to the offers to ensure that criteria were appropriately applied.

Truncation of Credit and Debit Card Account Numbers (FCRA, Section 605(g))

1. Determine whether the financial institution's policies and procedures ensure that electronically generated receipts from automated teller machines and point-of-sale terminals or other machines do not contain more than the last five digits of the card number and do not contain the expiration date.
2. For ATMs and POS terminals or other machines that were put into operation before January 1, 2005, determine if the institution has brought the terminals into compliance or has begun a plan to ensure that these terminals comply by the mandatory compliance date of December 4, 2006.
3. If procedural weaknesses or other risks requiring further investigation are noted, review samples of actual receipts to ensure compliance.

Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA, Section 609(g))

1. Determine whether the financial institution uses credit scores in connection with applications for closed-end or open-end loans secured by one- to four-family residential real property.
2. Evaluate the institution's policies and procedures to determine whether accurate disclosures are provided to applicants as soon as is reasonably practicable after using credit scores.
3. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of disclosures given to home loan applicants to determine technical compliance with the requirements.

Adverse Action Disclosures (FCRA, Sections 615(a) and (b))

1. Determine whether the financial institution's policies and procedures adequately ensure that appropriate disclosures are provided when adverse action is taken against consumers on the basis of information received from consumer reporting agencies, other third parties, and/or affiliates.
2. Review the financial institution's policies and procedures for responding to requests for information in response to these adverse action notices.
3. If procedural weaknesses or other risks requiring further investigation are noted, review a

sample of adverse action notices to determine if they are accurate and in technical compliance.

Debt Collector Communications concerning Identity Theft (FCRA, Section 615(g))

1. Determine whether the financial institution collects debts for third parties.
2. Determine whether the financial institution has policies and procedures to ensure that the third parties are notified if the financial institution obtains any information that may indicate that the debt in question is the result of fraud or identity theft.
3. Determine if the institution has effective policies and procedures for providing information to consumers to whom the fraudulent debts relate.
4. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of instances in which consumers have alleged identity theft and requested information related to transactions to determine if all of the appropriate information was provided to the consumers.

Risk-Based Pricing Notice (FCRA, Section 615(h))

Section 615(h) requires users of consumer reports that grant credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers who get credit from or through that person to provide a notice to those consumers who did not receive the most favorable terms. Implementing regulations for this section are currently (as of August 2006) under development jointly by the Federal Reserve Board and the Federal Trade Commission. Financial institutions do not have to provide this notice until final regulations are implemented and effective. This section of the examination procedures will be written upon publication of final rules.

Fair Credit Reporting

Examination Module 4: Duties of Users of Credit Reports and Furnishers of Consumer Information

Overview

The Fair Credit Reporting Act (FCRA) sets forth many responsibilities for financial institutions that use credit reports and furnish information to consumer reporting agencies. Those responsibilities generally concern ensuring the accuracy of the data that are placed in the consumer reporting system. This examination module addresses the various areas associated with users of credit reports and furnishers of information; it does not apply to financial institutions that do not furnish information to consumer reporting agencies.

Duties of Users of Credit Reports Regarding Address Discrepancies (Regulation V, Section 222.82)

Section 605(h)(1) of the Fair Credit Reporting Act requires that, when providing a consumer report to a person that requests the report (a user), a nationwide consumer reporting agency (NCRA) must provide a notice of address discrepancy to the user if the address provided by the user in its request "substantially differs" from the address the NCRA has in the consumer's file. Section 605(h)(2) requires the federal banking agencies and the National Credit Union Administration (collectively, the Agencies) and the Federal Trade Commission to prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of address discrepancy. On November 9, 2007, the agencies published final rules in the Federal Register (72 FR 63718) implementing this section.

Definitions

1. *Nationwide consumer reporting agency.* Section 603(p) defines an NCRA as one that compiles and maintains files on consumers on a nationwide basis and regularly engages in the practice of assembling or evaluating and maintaining the following two pieces of information about consumers residing nationwide for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity:
   a. Public record information, and
   b. Credit account information from persons who furnish that information regularly and in the ordinary course of business.
2. *Notice of address discrepancy (12 CFR 222.82(b)).* A "notice of address discrepancy" is a notice sent to a user by an NCRA (section 603(p)) that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the NCRA's file for the consumer.

Requirement to Form a Reasonable Belief (12 CFR 222.82(c)).

A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that the consumer report relates to the consumer whose report was requested, when the user receives a notice of address discrepancy in connection with a new or existing account.

The rules provide the following examples of reasonable policies and procedures for forming a reasonable belief that a consumer report relates to the consumer whose report was requested:

1. Comparing information in the consumer report with information the user
   a. Has obtained and used to verify the consumer's identity as required by the Customer Identification Program rules (31 CFR 103.121);
   b. Maintains in its records; or
   c. Obtains from a third party.
2. Verifying the information in the consumer report with the consumer.

Requirement to Furnish a Consumer's Address to an NCRA (12 CFR 222.82(d)).

A user must develop and implement reasonable policies and procedures for furnishing to the NCRA an address for the consumer that the user has reasonably confirmed is accurate when the user

1. Can form a reasonable belief that the report relates to the consumer whose report was requested;
2. Establishes a continuing relationship with the consumer (that is, in connection with a new account); and
3. Regularly, and in the ordinary course of business, furnishes information to the NCRA that provided the notice of address discrepancy.

A user's policies and procedures for furnishing a consumer's address to an NCRA must require the user to furnish the confirmed address as part of the information it regularly furnishes to the NCRA during the reporting period when it establishes a continuing relationship with the consumer.

The rules also provide the following examples of how a user may reasonably confirm an address is accurate:

1. Verifying the address with the consumer whose report was requested
2. Reviewing its own records
3. Verifying the address through third-party sources or
4. Using other reasonable means

Furnishers of Information—General (FCRA, Section 623)

The examination procedures for this subsection will be amended upon completion of interagency guidance for institutions regarding the accuracy and integrity of information furnished to consumer reporting agencies (the guidance is required by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act)). An interagency working group will develop and publish the guidance for comment and will finalize it at a later date. The agencies will also, at a later date, write regulations regarding when furnishers must handle direct disputes from consumers.

In the interim, institutions that furnish information to consumer reporting agencies must comply with the existing FCRA requirements, which generally require accurate reporting and prompt investigation and resolution of disputes over accuracy. The examination procedures presented here are based largely on the procedures last approved by the FFIEC Task Force on Consumer Compliance in March 2000, but they have been revised to include new requirements under the 2003 amendments to the FCRA that do not require implementing regulations.

Duties of Furnishers to Provide Accurate Information

Section 623(a) states that a person, including a financial institution, may, but need not, specify an address to which consumers may send notices concerning inaccurate information. If the financial institution specifies such an address, then it may not furnish information relating to a consumer to any consumer reporting agency if (1) the institution has been notified by the consumer, at the specified address, that the information is inaccurate and (2) the information is in fact inaccurate. If the financial institution does not specify an address, then it may not furnish any information relating to a consumer to any consumer reporting agency if it knows or has reasonable cause to believe that the information is inaccurate.

When a financial institution that (regularly and in the ordinary course of business) furnishes information to one or more consumer reporting agencies about its transactions or experiences with any consumer determines that any such information is not complete or accurate, the institution must promptly notify the consumer reporting agency of that determination. Corrections to that information or any additional information necessary to make the information complete and accurate must be provided to the consumer reporting agency. Further, any information that remains incomplete or inaccurate must not thereafter be furnished to the consumer reporting agency.

If the completeness or accuracy of any information furnished by a financial institution to a consumer reporting agency is disputed by a consumer, that financial institution may not furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer.

Voluntary Closures of Accounts

Section 623(a)(4) requires that any person, including a financial institution, that (regularly and in the ordinary course of business) furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that institution notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

Notice Involving Delinquent Accounts

Section 623(a)(5) requires that a person, including a financial institution, that furnishes information to a consumer reporting agency about a delinquent account being placed for collection, charged off, or subjected to any similar action, not later than ninety days after furnishing the information to the agency, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

Duties upon Notice of Dispute

Section 623(b) requires the financial institution to do the following whenever it receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information provided by the institution to the agency pursuant to FCRA, section 611 (Procedure in Case of Disputed Accuracy):

- Conduct an investigation regarding the disputed information
- Review all relevant information provided by the consumer reporting agency along with the notice
- Report the results of the investigation to the consumer reporting agency
- If the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information
- If the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, for purposes of reporting to the consumer reporting agency,
  - Modify the item of information,
  - Delete the item of information, or
  - Permanently block the reporting of that item of information

The investigations, reviews, and reports required to be made must be completed within thirty days. The time period may be extended for fifteen days if a consumer reporting agency receives additional relevant information from the consumer.

Prevention of Re-Pollution of Consumer Reports (FCRA, Section 623(a)(6))

Section 623(a)(6) has specific requirements for furnishers of information, including financial institutions, to a consumer reporting agency that receives notice from a consumer reporting agency that the information furnished may be fraudulent as a result of identity theft. FCRA, section 605B, requires consumer reporting agencies to notify furnishers of information, including financial institutions, that the information may be fraudulent as a result of identity theft, that an identity theft report has been filed, and that a block has been requested. Section 623(a)(6) requires financial institutions, upon receiving such notice, to establish and follow reasonable procedures to ensure that this information is not re-reported to the consumer reporting agency, thus ''re-polluting'' the victim's consumer report.

FCRA, section 615(f), also prohibits a financial institution from selling or transferring debt resulting from an alleged identity theft.

Negative Information Notice (FCRA, Section 623(a)(7))

Section 623(a)(7) requires financial institutions to provide consumers with a notice either before negative information is provided to a nationwide consumer reporting agency or within thirty days after reporting the negative information.

Financial institutions may provide this disclosure on or with any notice of default, any billing statement, or any other materials provided to the customer, as long as the notice is clear and conspicuous. Institutions may also choose to provide this notice to all customers as an abundance of caution. However, this notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

Negative Information

For these purposes, *negative information* is any information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

Nationwide Consumer Reporting Agency

FCRA, section 603(p), defines a *consumer reporting agency that compiles and maintains files on consumers on a nationwide basis* as one that regularly engages in the practice of assembling or evaluating and maintaining the following two pieces of information about consumers residing nationwide, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing, or credit capacity:

- Public record information
- Credit account information from persons who furnish that information regularly and in the ordinary course of business

Model Notices

As required by the FCRA, the Federal Reserve Board developed the following model notices that financial institutions may use to comply with these requirements. One model notice is to be used when an institution chooses to provide a notice before furnishing negative information. The other is to be used when an institution provides a notice within thirty days after reporting negative information:

- *Notice prior to communicating negative information (model B-1).* ''We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.''

- *Notice within thirty days after communicating negative information (model B-2).* ''We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.''

Use of the model notices is not required; however, proper use of the model notices provides financial institutions with a safe harbor from liability. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the models, but the changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the models. Institutions making such extensive revisions will lose the safe harbor from liability that the model notices provide. Acceptable changes include, for example,

- Rearranging the order of the references to ''late payment(s)'' or ''missed payment(s)'';
- Pluralizing the terms ''credit bureau,'' ''credit report,'' and ''account'';
- Specifying the particular type of account on which information may be furnished, such as ''credit card account''; and
- Rearranging, in model B-1, the phrases ''information about your account'' and ''to credit bureaus'' such that it would read ''We may report to credit bureaus information about your account.''

Examination Procedures

1. Determine whether a user of consumer reports has policies and procedures to recognize notices of address discrepancy that it receives from a nationwide consumer reporting agency (NCRA)[16] in connection with consumer reports.
2. Determine whether a user that receives notices of address discrepancy has policies and procedures to form a reasonable belief that the consumer report relates to the consumer whose report was requested (12 CFR 222.82(c)).
   See examples of reasonable policies and procedures "to form a reasonable belief" in 12 CFR 222.82(c)(2).
3. Determine whether a user that receives notices of address discrepancy has policies and procedures in place to furnish to the NCRA an address for the consumer that the user has reasonably confirmed is accurate, if the user
   a. Can form a reasonable belief that the report relates to the consumer;
   b. Establishes a continuing relationship with the consumer; and
   c. Regularly, and in the ordinary course of business, furnishes information to the NCRA (12 CFR 222.82(d)(1)).
      See examples of reasonable confirmation methods in 12 CFR 222.82(d)(2).
4. Determine whether the user's policies and procedures require it to furnish the confirmed address as part of the information it regularly furnishes to an NCRA during the reporting period when it establishes a relationship with the consumer (12 CFR 222.82(d)(3)).
5. If procedural weaknesses or other risks requiring further information are noted, obtain a sample of consumer reports requested by the user from an NCRA that included notices of address discrepancy and determine
   a. How the user established a reasonable belief that the consumer reports related to the consumers whose reports were requested; and
   b. If a consumer relationship was established,
      i. Whether the institution furnished a consumer's address that it reasonably confirmed to the NCRA from which it received the notice of address discrepancy; and
      ii. Whether it furnished the address in the reporting period during which it established the relationship.

Conclusion: On the basis of examination procedures completed, form a conclusion about the ability of the user's policies and procedures to meet regulatory requirements for the proper handling of address discrepancies reported by an NCRA.

Furnishers of Information—General (FCRA, Section 623)

1. Determine whether the financial institution provides information to consumer reporting agencies.
2. Review the financial institution's policies and procedures for ensuring compliance with the FCRA requirements for furnishing information to consumer reporting agencies.
3. If procedural weaknesses or other risks requiring further investigation are noted, such as a high number of complaints from consumers regarding the accuracy of their consumer report information furnished by the financial institution, select a sample of reported items and the corresponding loan or collection file to determine that the institution did the following:
   a. Did not report information that it knew, or had reasonable cause to believe, was inaccurate (§ 623(a)(1)(A))
   b. Did not report information to a consumer reporting agency if it was notified by the consumer that the information was inaccurate and the information was, in fact, inaccurate (§ 623(a)(1)(B))
   c. Provided the consumer reporting agency with corrections or additional information to make the information complete and accurate, and thereafter did not send the consumer reporting agency the inaccurate or incomplete information (§ 623(a)(2))
   d. Furnished a notice to a consumer reporting agency of a dispute in situations in which a consumer disputed the completeness or accuracy of any information the institution furnished, and the institution continued furnishing the information to a consumer reporting agency (§ 623(a)(3))
   e. Notified the consumer reporting agency of a

16. An NCRA compiles and maintains files on consumers on a nationwide basis. As of the effective date of the rule (January 1, 2008), there were three such consumer reporting agencies: Experian, Equifax, and TransUnion (section 603(p) of FCRA (15 USC 1681a)).

voluntary account-closing by the consumer, and did so as part of the information regularly furnished for the period in which the account was closed (§ 623(a)(4))

f. Notified the consumer reporting agency of the month and year of commencement of a delinquency that immediately preceded the action of placing the delinquent account for collection, charging it off, or similar action. The notification to the agency must be made within ninety days of furnishing information to the agency about a delinquent account being placed for collection, charged off, or subjected to any similar action (§ 623(a)(5))

4. If weaknesses within the financial institution's procedures for investigating errors are revealed, review a sample of notices of disputes received from a consumer reporting agency and determine whether the institution did the following:
   a. Conducted an investigation with respect to the disputed information (§ 623(b)(1)(A))
   b. Reviewed all relevant information provided by the consumer reporting agency (§ 623(b)(1)(B))
   c. Reported the results of the investigation to the consumer reporting agency (§ 623(b)(1)(C))
   d. Reported the results of the investigation to all other nationwide consumer reporting agencies to which the information was furnished, if the investigation found that the reported information was inaccurate or incomplete (§ 623(b)(1)(D))
   e. Modified, deleted, or blocked the reporting of information that could not be verified

Prevention of Re-Pollution of Consumer Reports (FCRA, Section 623(a)(6))

1. If the financial institution provides information to a consumer reporting agency, review the institution's policies and procedures for ensuring that items of information blocked because of an alleged identity theft are not re-reported to the consumer reporting agency.
2. If weaknesses are noted within the financial institution's policies and procedures, review a sample of notices from a consumer reporting agency of allegedly fraudulent information due to identity theft furnished by the financial institution, to determine whether the institution does not re-report the item to a consumer reporting agency.
3. If procedural weaknesses or other risks requiring further investigation are noted, verify that the financial institution has not sold or transferred a debt that resulted from an alleged identity theft.

Negative Information Notice (FCRA, Section 623(a)(7))

1. If the financial institution provides negative information to a nationwide consumer reporting agency, verify that the institution's policies and procedures ensure that the appropriate notices are provided to customers.
2. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of notices provided to consumers to determine compliance with the technical content and timing requirements.

Fair Credit Reporting

Examination Module 5: Consumer Alerts and Identity Theft Protections

Overview

The Fair Credit Reporting Act (FCRA) contains several provisions for both consumer reporting agencies and users of consumer reports, including financial institutions, that are designed to help combat identity theft. This module applies to financial institutions that are not consumer reporting agencies but are users of consumer reports. In addition, this module applies to debit and credit card issuers.

There are two primary requirements for users of consumer reports: (1) a user of a consumer report that contains a fraud or active duty alert must take steps to verify the identity of the individual to whom the consumer report relates and (2) a financial institution must disclose certain information when consumers allege that they are the victim of identity theft.

The primary responsibility for card issuers is to assess the validity of address changes before issuing additional or replacement cards.

Fraud and Active Duty Alerts (FCRA, Section 605A(h))

Initial Fraud and Active Duty Alerts

A consumer who suspects that he or she may be the victim of fraud, including identity theft, may ask nationwide consumer reporting agencies to place initial fraud alerts in his or her consumer reports. These alerts must remain in the consumer's report for no less than ninety days. In addition, members of the armed services who are called to active duty may request that active duty alerts be placed in their consumer reports. Active duty alerts must remain in these service members' files for no less than twelve months.

Section 605A(h)(1)(B) requires users of consumer reports, including financial institutions, to verify a consumer's identity if a consumer report includes a fraud or active duty alert. Unless the financial institution uses reasonable policies and procedures to form a reasonable belief that it knows the identity of the person making the request, the financial institution may not

- Establish a new credit plan or extension of credit (other than under an open-end credit plan) in the name of the consumer,
- Issue an additional card on an existing account, or
- Increase a credit limit.

Extended Alerts

Consumers who allege that they are the victim of identity theft may also place an extended alert, which lasts seven years, on their consumer report. Extended alerts require consumers to submit identity theft reports and appropriate proof of identity to the nationwide consumer reporting agencies.

Section 605A(h)(2)(B) requires a financial institution that obtains a consumer report that contains an extended alert to contact the consumer in person, or by the method listed by the consumer in the alert, prior to taking any of the three actions listed above.

Information Available to Victims (FCRA, Section 609(e))

Section 609(e) requires financial institutions to provide records of fraudulent transactions to victims of identity theft within thirty days after receiving a request for the records. These records include the application and business transaction records under the control of the financial institution, whether maintained by the institution or another person on behalf of the institution (such as a service provider). This information should be provided to one of the following:

- The victim
- Any federal, state, or local government law enforcement agency or officer specified by the victim in the request
- Any law enforcement agency investigating the identity theft that was authorized by the victim to take receipt of these records

The request for the records must be made by the victim in writing and must be sent to the financial institution to the address specified by the institution for this purpose. The financial institution may ask the victim to provide information, if known, regarding the date of the transaction or application and any other identifying information, such as an account or transaction number.

Unless the financial institution, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making the request for information, before disclosing any information to the victim it must take prudent steps to positively identify the person requesting the information. Proof of identity can include any of the following:

- A government-issued identification card
- Personally identifying information of the same type that was provided to the financial institution by the unauthorized person
- Personally identifying information that the financial institution typically requests from new applicants or for new transactions

At the election of the financial institution, the victim must also provide the institution with proof of an identity theft complaint, which may consist of a copy of a police report evidencing the claim of identity theft and a properly completed affidavit. The affidavit may be either the standardized affidavit form prepared by the Federal Trade Commission (published in April 2005 in the *Federal Register* at 70 FR 21792) or an ''affidavit of fact'' that is acceptable to the financial institution for this purpose.

When these conditions are met, the financial institution must provide the information at no charge to the victim. However, the institution is not required to provide any information if, acting in good faith, it determines that

- Section 609(e) does not require disclosure of the information;
- It does not have a high degree of confidence in knowing the true identity of the requestor, based on the identification and/or proof provided;
- The request for information is based on a misrepresentation of fact by the requestor; or
- The information requested is Internet navigational data or similar information about a person's visit to a web site or online service.

Duties of Card Issuers Regarding Changes of Address (FCRA, Section 615(e)(1)(c) and Regulation V, Section 222.91)

Background

Section 615(e)(1)(C) of the Fair Credit Reporting Act requires the federal banking agencies (agencies) and the Federal Trade Commission to prescribe regulations for debit and credit card issuers regarding the assessment of the validity of address changes for existing accounts. The regulations require card issuers to have procedures to assess the validity of an address change if the card issuer receives a notice of change of address for an existing account, and within a short period of time (during at least the first 30 days) receives a request for an additional or replacement card for the same account. On November 9, 2007, the agencies published final rules in the Federal Register (72 FR 63718) implementing this section.

Definitions (12 CFR 222.91(b))

The following definitions pertain to the rules governing the duties of card issuers regarding changes of address:

1. A *cardholder* is a consumer who has been issued a credit or debit card.
2. *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

Address Validation Requirements (12 CFR 222.91(c))

A card issuer must establish and implement policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. In such situations, the card issuer must not issue an additional or replacement card until it assesses the validity of the change of address in accordance with its policies and procedures.

The policies and procedures must provide that the card issuer will

1a. Notify the cardholder of the request for an additional or replacement card

  (i) At the cardholder's former address, *or*

  (ii) By any other means of communication that the card issuer and the cardholder have previously agreed to use, *and*

1b. Provide to the cardholder a reasonable means of promptly reporting incorrect address changes, *or*

2. Assess the validity of the change of address according to the procedures the card issuer has established as a part of its Identity Theft Prevention Program (12 CFR 222.90).

Alternative Timing of Address Validation (12 CFR 222.91(d))

A card issuer may satisfy the requirements of these rules prior to receiving any request for an additional or replacement card by validating an address (by one of the methods in 12 CFR 222.91(c)) when it receives an address change notification.

Form of Notice (12 CFR 222.91(e))

Any written or electronic notice that a card issuer provides to satisfy these rules must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

Examination Procedures

Fraud and Active Duty Alerts (FCRA, Section 605A(h))

1. Determine whether the financial institution has effective policies and procedures in place to verify the identity of consumers in situations in which consumer reports include fraud and/or active duty military alerts.
2. Determine if the financial institution has effective policies and procedures in place to contact consumers in situations in which consumer reports include extended alerts.
3. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of transactions in which consumer reports including these types of alerts were obtained. Verify that the financial institution complied with the identity verification and/or consumer contact requirements.

Information Available to Victims (FCRA, Section 609(e))

1. Review financial institution policies, procedures, and/or practices to determine whether identities and claims of fraudulent transactions are verified and whether information is properly disclosed to victims of identity theft and/or appropriately authorized law enforcement agents.
2. If procedural weaknesses or other risks requiring further investigation are noted, review a sample of requests of these types to determine whether the financial institution properly verified the requestor's identity prior to disclosing the information.

Duties of Card Issuers Regarding Changes of Address (FCRA, Section 615(e))

1. Verify that the card issuer has policies and procedures to assess the validity of a change of address if
   - It receives notification of a change of address for a consumer's debit or credit card account; and
   - Within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account (12 CFR 222.91(c)).
2. Determine whether the policies and procedures prevent the card issuer from issuing additional or replacement cards until it
   - Notifies the cardholder at the cardholder's former address or by any other means previously agreed to and provides the cardholder a reasonable means to promptly report an incorrect address change (12 CFR 222.91(c)(1)(i)-(ii)); or
   - Assesses the validity of the address change in accordance with its procedures established under its Identity Theft Prevention Program (12 CFR 222.91(c)(2)).

   In the alternative, a card issuer may validate a change of address request when it is received, using the above methods, *prior* to receiving any request for an additional or replacement card (12 CFR 222.91(d)).
3. Determine whether any written or electronic notice sent to cardholders for purposes of validating a change of address request is clear and conspicuous and is provided separately from any regular correspondence with the cardholder (12 CFR 222.91(e)).
4. If procedural weaknesses or other risks requiring further information are noted, obtain a sample of notifications from cardholders of changes of address and requests for additional or replacement cards to determine whether the card issuer complied with the regulatory requirement to evaluate the validity of the notice of address change before issuing additional or replacement cards.

Conclusion: On the basis of examination procedures completed, form a conclusion about whether a card issuer's policies and procedures effectively meet regulatory requirements for evaluating the validity of change of address requests received in connection with credit or debit card accounts.

Fair Credit Reporting

Examination Module 6: Requirements for Consumer Reporting Agencies

Module 6, covering institutions that are considered consumer reporting agencies, will be added later.