

Fair Credit Reporting Act

Compliance Bankers for Compliance School

LENDING

2016

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Consultants to the Financial Industry

Young & Associates, Inc.

121 E. Main Street
P.O. Box 711
Kent, OH 44240

Phone: 330.678.0524
Fax: 330.678.6219
www.younginc.com

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Section 1: Overview

Introduction

Effective July 21, 2011, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for the Fair Credit Reporting Act (FCRA) from the Federal Banking Regulators to the CFPB.

In light of the transfer, the CFPB published an interim final rule establishing Regulation V. Regulation V is located at 12 CFR part 1022, and implements the provisions of the FCRA for which the CFPB now has rulemaking authority. However, some parts of the FCRA are not subject to Regulation V. This manual discusses those issues.

This Manual

The FCRA contains a number of requirements, which directly impact consumer reporting agencies (CRAs). For financial institution purposes, these requirements should not impact the bank unless it becomes a consumer reporting agency under the definition within the FCRA. For this reason, many of these requirements are omitted from this manual. We have included CRA sections that we believe are relevant information for banks.

Section 2: Introduction

Introduction

The Fair Credit Reporting Act (FCRA) and implementing provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) primarily relate to the use of consumer credit report information. The FCRA, primarily the Federal Trade Commission's (Commission) responsibility, is a compilation of rules and regulations that govern the following general functions typically found within the banking industry:

- Permissible purposes to obtain a consumer credit report (consumer report)
- Uses for consumer reports by persons:
 - To solicit credit and/or insurance business from consumers
 - To make credit decisions
 - To underwrite insurance requests
 - To grant automated teller machine (ATM) / Debit cards to consumers
- Disclosures related to the use of consumer reports
- Furnishing consumer credit information to credit reporting agencies
- Resolving consumer disputes to reported credit information
- Handling of "identity theft" information related to consumer credit

As of July 21, 2011, the Consumer Financial Protection Bureau (CFPB) assumed some of the Commission's FCRA responsibilities under Regulation V.

While the text of this manual is primarily comprised of the Act's content, we have taken the liberty of reorganizing the order of the Act to better relate to specific banking functions. While the manual is not in numeric order of the Act, the regulatory citations do appear throughout the manual to provide a quick reference to the location within the FCRA. Throughout this section of the manual, we will refer to the codified regulations by the Federal Trade Commission (Commission) as found in 16 C.F.R.

Background

The Consumer Credit Reporting Reform Act of 1996 (Reform Act), signed into law September 30, 1996, substantially amended the Fair Credit Reporting Act (FCRA). The changes incorporated by the Reform Act have a significant effect on banks that use information from and furnish information to consumer reporting agencies.

One major change contained in the Reform Act permitted the Board of Governors of the Federal Reserve System (Federal Reserve Board) to issue interpretations on how the FCRA may apply to banks, savings associations, credit unions, and their holding companies. Previously, the Federal Trade Commission was solely responsible for issuing all interpretations.

Substantive changes made by the Reform Act included:

- The ability of affiliates to share information from consumer reports between affiliates if certain compliance procedures are established and followed
- The ability of a bank to disclose to a consumer the contents of the consumer report when adverse action is taken because of information in the consumer report
- Expanded requirements and disclosures when taking adverse action on the basis of information contained in consumer reports
- Substantial new requirements for persons who furnish information to consumer reporting agencies. These were not previously covered.
- Clarification of rules involving prescreening of potential clients from consumer reporting agency files
- New civil and criminal liability provisions for violations of the FCRA by any person

One requirement, wholly unrelated to the credit-granting process, that substantially affected the human resource activities of financial institutions, involved the use of credit reports for employment purposes. New requirements and disclosures are set out in the FCRA whenever a consumer report is used for employment purposes.

The amendments to the FCRA became effective on September 30, 1997.

FACT Act

The FCRA was amended to implement the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which became law on December 4, 2003. The FACT Act strives to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports (i.e., credit reports), and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information.

Short Title [§ 601]

This lengthy section of the act simply states that this title may be cited as the “Fair Credit Reporting Act.”

Purpose of the FCRA [§602]

Accuracy and Fairness of Credit Reporting

The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence that is essential to the continued functioning of the banking system.

An elaborate mechanism has been developed for investigating and evaluating the credit - worthiness, credit standing, credit capacity, character, and general reputation of consumers.

Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers. There is a need to ensure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

Reasonable Procedures

One purpose of the revised FCRA is to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner that is fair and equitable to the consumer with regards to the confidentiality, accuracy, relevance, and proper utilization of such information.

Section 3: Selected Definitions [§ 603]

Introduction

All of the relevant definitions within the FCRA appear within this section of the manual. In addition, key definitions may also appear within a specific section, as necessary. As some definitions are now the exclusive province of Regulation V, they have been omitted here. Throughout the presentation, some sections will begin with a review of those “key” definitions related to the topics within that section.

Definitions

Account

This term has the same meaning as in Section 903 of the Electronic Fund Transfer Act, which is a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. The term does not include an account held by a financial institution under a bona fide trust agreement.

Adverse Action

The term adverse action has the same meaning as in the Equal Credit Opportunity Act. Adverse action is:

- A refusal to grant credit in substantially the amount or on substantially the terms requested in an application, unless a creditor makes a counter offer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered. A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor’s procedures.
- A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor’s accounts.
 - Move from service area. If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer’s service area, the termination is “adverse action” unless termination on this ground was explicitly provided for in the credit agreement between the parties.
 - Termination based on credit limit. If a creditor terminates credit accounts that have low credit limits (for example, under \$400) but keeps open accounts with higher credit limits, the termination is adverse action.
- A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

Adverse action does not include the following:

- A change in the terms of an account expressly agreed to by an applicant

- Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account. A creditor's termination of an account when the account holder is currently in default or delinquent on that account is not considered adverse action. However, it would be considered adverse action if a creditor's action is based on a past delinquency or default on the account.
- A refusal or failure to authorize an account transaction at a point of sale or loan, except:
 - When the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of a creditor's accounts; or
 - When the refusal is a denial of an application for an increase in the amount of credit available under the account
- Point-of-sale transactions. Denial of credit at the point of sale is not adverse action except under the circumstances specified above. For example, denial at point of sale is not adverse action in the following situations:
 - A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.
 - The amount of a transaction exceeds a cash advance or credit limit.
 - The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.
 - The authorization facilities are not functioning.
 - Billing statements have been returned to the creditor for lack of a forwarding address.
- A refusal to extend credit because applicable law prohibits a creditor from extending the credit requested.
- A refusal to extend credit because a creditor does not offer the type of credit or credit plan requested. However, when an applicant applies for credit and a creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of down payment), a denial of the application for that reason is adverse action (unless the creditor makes a counter offer that is accepted by the applicant).

The FCRA expands the definition of adverse action found in Regulation B to include the following:

- 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.
- An action taken or determination that is:
 - Made in connection with an application that was made by, or a transaction that was initiated by, any consumer or in connection with a review of an account, and

- Adverse to the interests of the consumer.

Card Issuer

In the case of a credit card, it is the credit card issuer. In the case of a debit card, it is the debit card issuer.

Commission

The Federal Trade Commission.

Consumer

An individual.

Consumer Report

Any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or 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 expressly stated as permissible in Section 604 of the FCRA.

The term consumer report does not include, subject to Section 624, any:

- Any report containing information solely as to transactions or experiences between the consumer and the person making the report;
- Any communication of that information among persons related by common ownership or affiliated by corporate control; or
- Any 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 that the information is initially communicated, to direct that such information not be communicated among such persons;

In addition, the term does not include the following:

- 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 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 required disclosures to the consumer (FCRA Section 615); or

- A communication expressly excluded by definition of the term as defined in excluded communications or exclusion of certain communications for employee investigations (see below in Excluded Communications and Exclusion of Certain Communications for Employee Investigations).

Consumer Reporting Agency

Any person who, 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 who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Consumer Reporting Agency that Compiles and Maintains Files on Consumers on a Nationwide Basis

A consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

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

Credit and Creditor

These terms have the same meanings as in Section 702 of the Equal Credit Opportunity Act. "Credit" means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment thereof. "Creditor" means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of credit.

Credit Card

This term has the same meaning as in Section 103 of the Truth in Lending Act.

Credit or Insurance Transaction that is Not Initiated by the Consumer

This term does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of:

- Reviewing the account or insurance policy or
- Collecting the account.

Debit Card

Any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

Definitions Relating to Fraud Alerts

Active Duty Military Consumer

A consumer in military service who is on active duty or is a reservist performing duty under a call or order to active duty and is assigned to service away from the usual duty station of the consumer.

Fraud Alert and Active Duty Alert

Means a statement in the file of a consumer that notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable and is presented in a manner that facilitates a clear and conspicuous view of the statement by any person requesting such consumer report.

Identity Theft

A fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation.

Identity Theft Report

It means, at a minimum, a report that alleges an identity theft; that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other governmental agency deemed appropriate by Commission; and the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.

New Credit Plan

A new account under an open end credit plan (as defined in Section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.

Other Definitions

Electronic Fund Transfer

This term has the same meaning as in Section 903 of the Electronic Fund Transfer Act, which is any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

Employment Purposes

The term employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

Excluded Communications

A communication is considered to be an excluded communication if it is a communication:

- That would be an investigative consumer report;
- That is made to a prospective employer for the purpose of
 - Procuring an employee for the employer or
 - Procuring an opportunity for a natural person to work for the employer;
- That is made by a person who regularly performs such procurement;
- That is not used by any person for any purpose other than to procure an employee or procure an opportunity for a natural person to work for the employer; or
- With respect to which:
 - The consumer who is the subject of the communication
 - Consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;
 - Consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and
 - In the case where the above-mentioned consumer consents orally, is provided written confirmation of that consent by the person making the communication not later than three business days after the receipt of the consent by that person;
 - The person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable federal or state equal employment opportunity law or regulation; and
 - The person who makes the communication
 - Discloses in writing to the consumer who is the subject of the communication, not later than five business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request; and
 - Notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the above information.

Exclusion of Certain Communications for Employee Investigations

A communication is described in this subsection if the communication would be a consumer report; is made to an employer in connection with an investigation of suspected misconduct relating to employment or compliance with laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer; is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and is not provided to any person except:

- The employer or agent of the employer;
- To any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

- To any self-regulatory organization with regulatory authority over the activities of the employer or employee;
- As otherwise required by law; or
- Pursuant to Section 608.

Federal Banking Agency

This term has the same meaning as in Section 3 of the Federal Deposit Insurance Act.

File

The term file, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency, regardless of how the information is stored.

Financial Institution

A State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account belonging to a consumer.

Firm Offer of Credit or Insurance

Any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

- The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on creditworthiness or insurability, as applicable, that are established:
 - Before selection of the consumer for the offer and
 - For the purpose of determining whether to extend credit or insurance pursuant to the offer.
- Verification that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the creditworthiness or insurability of the consumer.
- Verification of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on creditworthiness or insurability.
- The consumer's furnishing any collateral that is a requirement for the extension of the credit or insurance that was:
 - Established before selection of the consumer for the offer of credit or insurance and
 - Disclosed to the consumer in the offer of credit or insurance

Investigative Consumer Report

A consumer report or portion thereof in 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 reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall 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.

Nationwide Specialty Consumer Reporting Agency

A consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to:

- Medical records or payments;
- Residential or tenant history;
- Check writing history;
- Employment history; or
- Insurance claims.

Person

Any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

Reseller

A consumer reporting agency that assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities and does not maintain a database of the assembled or merged information from which new consumer reports are produced.

State

Any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

Section 4: Permissible Purposes of Consumer Reports [§ 604]

Introduction

The next few sections of the manual will address the permissible purposes of when a person may obtain a consumer report. In brief, these sections will examine:

- General permissible circumstances to obtain consumer reports;
- Specific rules relating to obtaining and using consumer reports for employment purposes;
- Firm offers of credit or insurance products to consumers in connection with consumer report lists; and
- Procuring investigative reports.

Permissible Purposes of Consumer Reports [§ 604]

General Guidelines for Providing/Requesting Consumer Reports [§ 604(a)]

The FCRA contains a specific listing of permissible purposes for a person to request and use a consumer report. These permissible purposes allow banks, among others, to obtain consumer reports for covered transactions. Generally, any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

1. In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a federal grand jury.
2. In accordance with the written instructions of the consumer to whom it relates.
3. To a person which it has reason to believe:
 - a. Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or
 - b. Intends to use the information for employment purposes; or
 - c. Intends to use the information in connection with the underwriting of insurance involving the consumer; or
 - d. 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 required by law to consider an applicant's financial responsibility or status; or
 - e. Intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
 - f. Otherwise has a legitimate business need for the information:
 - i In connection with a business transaction that is initiated by the consumer; or

- ii To review an account to determine whether the consumer continues to meet the terms of the account.
4. In response to a request by the head of a state or local child support enforcement agency (or a state or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that:
 - a. The consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;
 - b. The paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with state laws under which the obligation arises (if required by those laws);
 - c. The person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and
 - d. The consumer report will be kept confidential and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.
5. To an agency administering a state plan under Section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.
6. To the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) as part of its preparation for its appointment or as its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable federal or state law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

Suggested Procedures to Document Requests for Consumer Reports

A consumer report request for an application for credit is likely the most common type of transaction a bank would request for credit information. From a safety and soundness perspective, the use of a consumer's credit report assists the bank in determining whether the applicant is creditworthy. Outside of loan requests, banks also commonly use a consumer report to determine whether certain products or services are granted to the consumer, such as ATM / Debit cards.

Before submitting a request to a consumer reporting agency for a consumer report, banks need to establish sound procedures to demonstrate compliance with the Act's permissible purpose provisions. While the Act does allow, in general form, a person to obtain a consumer report in connection with a business transaction that is initiated by a consumer, it is generally recommended that banks obtain a consumer authorization to remove any suspicion that the bank inappropriately obtained the consumer report.

Documenting Consumer Authorization

While the Act is written in a manner to not necessarily always evidence express, written consumer authorization prior to obtaining a consumer report, banks should employ standard procedures to evidence compliance with obtaining the reports in a permissible manner. The

following is a sample excerpt that should appear within (usually above the consumer's signature) a loan application form or other account form used to initiate a request:

I certify that everything I have stated in this application and on any attachments is correct. You may keep this application whether or not it is approved. By signing below, I authorize you to check my credit and employment history and to answer questions others may ask you about my credit record with you. I understand that I must update credit information at your request if any financial condition changes.

Certain Use or Obtaining of Information Prohibited [§ 604(f)]

A person must not use or obtain a consumer report for any purpose unless:

- The consumer report is obtained for a purpose for which the consumer report is expressly authorized by the FCRA to be furnished; and
- The purpose is properly certified (Section 607) by a prospective user of the report through a general or specific certification.

Section 5: Conditions for Furnishing and Using Consumer Reports for Employment Purposes

[§ 604(b)]

Introduction

Banks may elect to obtain consumer reports on prospective and/or existing bank employees. Obtaining reports for employment purposes is an area that should reside within the bank's human resources department or with the individual responsible for this area.

The FCRA contains specific rules relating to when an employer may request a consumer report on an employee, disclosures provided before procuring such a report, and disclosures to provide if the employer takes "adverse action" regarding employment. While not the purview of today's presentation, any federal and/or state rules relating to employment will need to be followed as they relate to obtaining and using consumer reports for employment purposes.

Certification from User

A consumer reporting agency may furnish a consumer report for employment purposes only if:

- The person who obtains the report from the agency certifies to the agency that:
 - He or she has complied with the disclosure and written authorization requirements listed below and will comply with the adverse action notification requirements listed below, if applicable; and
 - Information from the consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation; and
- The consumer reporting agency provides with the report a summary of the consumer's rights under the FCRA, as prescribed by the Federal Trade Commission (Section 609(c)(3)).

Disclosure to Consumer

A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless:

- A clear and conspicuous disclosure has been made in writing to the consumer, at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes; and
- The consumer has authorized in writing the procurement of the report by that person.

Conditions on Use for Adverse Actions

In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates:

- A copy of the report; and
- A description in writing of the rights of the consumer under the FCRA, as prescribed by the Federal Trade Commission (Section 609(c)(3)).

Section 6: Credit / Insurance Transactions Not Consumer Initiated [§§ 604(c) 604(e)]

Introduction

This section of the FCRA specifically addresses the responsibility of the credit bureaus. While there are no direct issues for banks in this section, it is included to assure that there is an understanding of the entire FCRA.

Furnishing Reports in Connection with Credit or Insurance Transactions That Are Not Initiated by the Consumer [§ 604(c)]

A consumer reporting agency may furnish a consumer report relating to any consumer in connection with any credit or insurance transaction that is not initiated by the consumer only if:

- The consumer authorizes the agency to provide the report to such person; or
- The transaction consists of a firm offer of credit or insurance; the consumer reporting agency has complied with the appropriate procedures to exclude customers from lists provided in connection with a credit or insurance transaction that is not initiated by the consumer (listed below); and there is not in effect an election by the consumer to have the consumer's name and address excluded from lists of names provided by the agency in connection with a credit or insurance transaction that is not initiated by the consumer.

Limits on Information

In connection with the type of request above, a person may receive 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; and
- 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.

Information Regarding Inquiries

A consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer (other than to a consumer upon proper request by the consumer).

Election of Consumer to Be Excluded from Lists [§ 604(e)]

A consumer may elect to have his or her name and address excluded from any list provided by a consumer reporting agency in connection with a credit or insurance transaction that is not

initiated by the consumer, by notifying the agency that he or she does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.

The rules within this section of the Act discuss the following as they relate to the consumer's rights:

- Manner of notification by the consumer to the credit reporting agency;
- Response by the credit reporting agency to the consumer on receipt of a consumer request;
- The effect of the consumer's election to be excluded from credit reporting agencies lists, including:
 - The request must become effective beginning five business days after the date on which the consumer notifies the agency; and
 - The request must remain in effect during the five-year period beginning five business days after the date on which the consumer notifies the agency of the election but does not submit a signed notice of election form issued by the agency for this purpose; or
 - Until the consumer notifies the agency that the election is no longer effective if the consumer submitted a signed notice of election form issued by the agency for this purpose; and
 - The request must not be effective after the date on which the consumer properly notifies the agency that the election is no longer effective; and
 - The request must be effective with respect to each affiliate of the agency;
- The notification system on how a consumer may submit a request.

Section 7: Investigative Reports [§ 606]

Disclosure of Investigative Consumer Reports [§ 606]

Disclosure of Fact of Preparation

A person must not procure or cause to be prepared an investigative consumer report on any consumer unless:

- It is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made and this disclosure:
 - Is made in a writing mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested; and
 - Includes a statement informing the consumer of his or her right to request the additional disclosures (see following section) and the written summary of the rights of the consumer under the FCRA; and
- The person certifies or has certified to the consumer reporting agency that:
 - The person has made the required disclosures to the consumer; and
 - The person will comply with the required disclosure on requests of the nature and scope of an investigation.

Disclosure on Request of Nature and Scope of Investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer must, upon written request made by the consumer within a reasonable period of time after the receipt by him or her of the above-mentioned required disclosure, make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure must be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for the disclosure was received from the consumer or the report was first requested, whichever is later.

Limitation on Liability upon Showing of Reasonable Procedures for Compliance with Provisions

No person may be held liable for any violation of the requirements for proper disclosure of investigative consumer reports if the person shows by a preponderance of the evidence that at the time of the violation he or she maintained reasonable procedures to assure compliance with these requirements.

Prohibitions

Certification

A consumer reporting agency shall not prepare or furnish an investigative consumer report unless the agency has received a certification from the person who requested the report that the

requesting person has made the required disclosures to the consumer and will comply with the required disclosure on requests of the nature and scope of an investigation.

Inquiries

A consumer reporting agency must not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable federal or state equal employment opportunity law or regulation.

Certain Public Record Information

Except as otherwise provided in the FCRA (Section 613), a consumer reporting agency must not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

Certain Adverse Information

A consumer reporting agency must not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of such item of information, unless

- The agency has followed reasonable procedures to obtain confirmation of the information from an additional source that has independent and direct knowledge of the information; or
- The person interviewed is the best possible source of the information.

Section 8: Adverse Action [§ 615]

Duties of Users Taking Adverse Actions on the Basis of Information Contained in Consumer Reports [§ 615(a)]

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person must:

- 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 (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
- Provide to the consumer an oral, written, or electronic notice of the consumer's right:
 - To obtain a free copy of a consumer report on the consumer from the consumer reporting agency which must include an indication of the 60-day period for obtaining such a copy; and
 - To dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

Adverse Action Based on Information Obtained from Third Parties Other Than Consumer Reporting Agencies [§ 615(b)]

General

Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information must, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after learning of such adverse action, disclose the nature of the information to the consumer.

The user of this information must clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

Duties of Person Taking Certain Actions Based on Information Provided by Affiliate

If a person takes an adverse action (defined below) with respect to a consumer, based in whole or in part on information, the person must:

- Notify the consumer of the action, including a statement that the consumer may obtain a disclosure as to the nature of the information upon which the action is based, and
- Upon a written request from the consumer received within 60 days after transmittal of this notice, disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request.

For the purposes of making the above disclosure, the following actions are considered adverse actions:

- One that meets the definition of the term as found in Regulation B taken in connection with a transaction initiated by the consumer;
- 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.

For the purposes of making the above disclosure the term information is considered to be information that:

- 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 on the creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and
- Does not include:
 - Information solely as to transactions or experiences between the consumer and the person furnishing the information; or
 - Information in a consumer report.

Reasonable Procedures to Assure Compliance [§ 615(c)]

No person shall be held liable for any violation of the requirements to provide proper notification of adverse action if the person shows by a preponderance of the evidence that at the time of the alleged violation he or she maintained reasonable procedures to assure compliance with the provisions of this section.

Section 9: Identity Theft-Related Requirements

Introduction

On November 9, 2007, the federal banking agencies (the Agencies) issued their final rules to implement sections 114 and 315 of the FACT Act. Specifically, these final rules contained requirements involving the:

- Request for new / replacement credit / debit card issuance following a change of address;
- Handling address discrepancies contained within a consumer report; and
- Establishment of reasonable policies and procedures for implementing the identity theft guidelines.

Although the above final rules were implemented via the FCRA, the rules were separately issued by each agency and do not formally appear within the FCRA.

For each of the implementing regulations, the Agencies issued joint final rules and guidelines. The participating agencies included the Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (FTC or Commission).

Each agency has its own version of the regulations; however, the language is consistent between all regulators. Bankers can find the regulations as follows:

Office of the Comptroller of the Currency (OCC)	12 C.F.R § 41
Board of Governors of the Federal Reserve System (Board)	12 C.F.R § 222
Federal Deposit Insurance Corporation (FDIC)	12 C.F.R § 334

Credit / Debit Card Rules

Introduction

In all cases, the subsection number for this part of the rule is 91. Throughout this section, we will use __.91 to describe the subsection numbers. For an OCC institution, this should be interpreted as 12 C.F.R. § 41.91, for a Board institution, this should be interpreted as 12 C.F.R. § 222.91, etc.

These regulations must ensure that 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, the issuer must follow reasonable policies and procedures to assess the validity of the change of address through one of three methods.

The card issuer may not issue the card unless it:

- notifies the cardholder of the request at the cardholder's former address and provides the cardholder with a means to promptly report an incorrect address;
- notifies the cardholder of the address change request by another means of communication previously agreed to by the issuer and the cardholder; or
- uses other means of evaluating the validity of the address change in accordance with the reasonable policies and procedures established by the card issuer to comply with the joint regulations regarding identity theft.

Scope [§__.91(a)]

This section applies to a financial institution that is [each agency identifies its own constituency here], or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

Definitions [§__.91(b)]

Cardholder

A cardholder means a consumer who has been issued a credit or debit card.

Clear and conspicuous

Clear and conspicuous means reasonably understandable and designed to call attention to the nature and significance of the information presented.

Address Validation Requirements [§ __.91(c)]

A card issuer must establish and implement reasonable 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. Under these circumstances, the card issuer may not issue an additional or replacement card, until, in accordance with its reasonable policies and procedures and for the purpose of assessing the validity of the change of address, the card issuer:

1. Performs the following actions:
 - a. Notifies the cardholder of the request:
 - 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
 - b. Provides to the cardholder a reasonable means of promptly reporting incorrect address changes; or
 - c. Otherwise assesses the validity of the change of address in accordance with the policies and procedures the card issuer has established pursuant to §__.90 of this part.

Alternative timing of address Validation [§ __.91(d)]

A card issuer may satisfy the requirements of this section if it validates an address pursuant to the methods in paragraph (c)(1) or (c)(2) of this section when it receives an address change notification, before it receives a request for an additional or replacement card.

Form of Notice [§ __.91(e)]

Any written or electronic notice that the card issuer provides under this paragraph must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

Identity Theft Prevention Program

Introduction

The rules implementing Section 114 require each financial institution to develop and implement a written Identity Theft Prevention Program (Program) to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts. The Agencies also issued guidelines to assist financial institutions in the formulation and maintenance of a Program that satisfies the requirements of the rules.

In all cases, the subsection number is __.90. Throughout this manual, we will use __.90 to describe the subsection numbers. For an OCC institution, this should be interpreted as 12 C.F.R § 41.90, for an FRB institution, this should be interpreted as 12 C.F.R § 222.90, etc.

Purpose and Scope [§ __.90(a)]

This section applies to a financial institution that is [each agency identifies its constituency here], or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

Definitions

Account

Account means a continuing relationship established by a person with a financial institution to obtain a product or service for personal, family, household, or business purposes.

Account includes:

- An extension of credit, such as the purchase of property or services involving a deferred payment
- A deposit account

Board of Directors

The term board of directors includes:

- In the case of a branch or agency of a foreign bank, the managing official in charge of the branch or agency
- In the case of any other creditor that does not have a board of directors, a designated employee at the level of senior management

Covered Account

- An account that a financial institution offers or maintains, primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transactions such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account
- Any other account that the financial institution offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution from identity theft, including financial, operational, compliance, reputation, or litigation risks

Credit

Credit has the same meaning as in 15 U.S.C. § 1681a(r)(5).

Creditor

Creditor has the same meaning as in 15 U.S.C. § 1681a(r)(5), and includes lenders such as banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies.

Customer

Customer means a person that has a covered account with a financial institution.

Financial Institution

Financial institution has the same meaning as in 15 U.S.C. § 1681a(t).

Identity Theft

Identity theft has the same meaning as in 16 C.F.R. § 603.2(a).

Red Flag

Red Flag means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

Service Provider

Service provider means a person that provides a service directly to the financial institution.

Periodic Identification of Covered Accounts [§ __.90(c)]

Each financial institution must periodically determine whether it offers or maintains covered accounts. As a part of this determination, a financial institution must conduct a risk assessment to determine whether it offers or maintains covered accounts, taking into consideration:

- The methods it provides to open its accounts
- The methods it provides to access its accounts
- Its previous experiences with identity theft

Establishment of an Identity Theft Prevention Program [§ __.90(d)]

Program Requirement

Each financial institution that offers or maintains one or more covered accounts must develop and implement a written Identity Theft Prevention Program (Program) that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The Program must be appropriate to the size and complexity of the financial institution and the nature and scope of its activities.

Elements of the Program

The Program must include reasonable policies and procedures to:

- Identify relevant Red Flags for the covered accounts that the financial institution offers or maintains, and incorporate those Red Flags into its Program
- Detect Red Flags that have been incorporated into the Program of the financial institution
- Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft
- Ensure the Program (including the Red Flags determined to be relevant) is updated periodically to reflect changes in risks to customers, and to the safety and soundness of the financial institution from identity theft

Administration of the Program [§ __.90(e)]

Each financial institution that is required to implement a Program must provide for the continued administration of the Program and must:

- Obtain approval of the initial written Program from either its board of directors or an appropriate committee of the board of directors;
- Involve the board of directors, an appropriate committee thereof, or a designated employee at the level of senior management in the oversight, development, implementation and administration of the Program;
- Train staff, as necessary, to effectively implement the Program; and
- Exercise appropriate and effective oversight of service provider arrangements.

Identity Theft Prevention Program Guidelines [§ __.90(f)]

Each financial institution that is required to implement a Program must consider the guidelines in Appendix J of this Part and include in its Program those guidelines that are appropriate.

Appendix J to Part 41—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

Section 41.90 of this part requires each financial institution and creditor that offers or maintains one or more covered accounts, as defined in § 41.90(b)(3) of this part, to develop and provide for the continued administration of a written Program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. These guidelines are intended to assist financial institutions and creditors in the formulation and maintenance of a Program that satisfies the requirements of § 41.90 of this part.

I. The Program

In designing its Program, a financial institution or creditor may incorporate, as appropriate, its existing policies, procedures, and other arrangements that control reasonably foreseeable risks to customers or to the safety and soundness of the financial institution or creditor from identity theft.

II. Identifying Relevant Red Flags

Risk Factors. A financial institution or creditor should consider the following factors in identifying relevant Red Flags for covered accounts, as appropriate:

- The types of covered accounts it offers or maintains;
- The methods it provides to open its covered accounts;
- The methods it provides to access its covered accounts; and
- Its previous experiences with identity theft.

Sources of Red Flags. Financial institutions and creditors should incorporate relevant Red Flags from sources such as:

- Incidents of identity theft that the financial institution or creditor has experienced;
- Methods of identity theft that the financial institution or creditor has identified that reflect changes in identity theft risks; and
- Applicable supervisory guidance.

Categories of Red Flags. The Program should include relevant Red Flags from the following categories, as appropriate. Examples of Red Flags from each of these categories are appended as Supplement A to this Appendix J.

- Alerts, notifications, or other warnings received from consumer reporting agencies or service providers, such as fraud detection services;
- The presentation of suspicious documents;
- The presentation of suspicious personal identifying information, such as a suspicious address change;
- The unusual use of, or other suspicious activity related to, a covered account; and
- Notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the financial institution or creditor.

III. Detecting Red Flags

The Program's policies and procedures should address the detection of Red Flags in connection with the opening of covered accounts and existing covered accounts, such as by:

- Obtaining identifying information about, and verifying the identity of, a person opening a covered account, for example, using the policies and procedures regarding identification and verification set forth in the Customer Identification Program rules implementing 31 U.S.C. 5318(l) (31 CFR 103.121); and
- Authenticating customers, monitoring transactions, and verifying the validity of change of address requests, in the case of existing covered accounts.

IV. Preventing and Mitigating Identity Theft

The Program's policies and procedures should provide for appropriate responses to the Red Flags the financial institution or creditor has detected that are commensurate with the degree of risk posed. In determining an appropriate response, a financial institution or creditor should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer's account records held by the financial institution, creditor, or third party, or notice that a customer has provided information related to a covered account held by the financial institution or creditor to someone fraudulently claiming to represent the financial institution or creditor or to a fraudulent website. Appropriate responses may include the following:

- Monitoring a covered account for evidence of identity theft;
- Contacting the customer;
- Changing any passwords, security codes, or other security devices that permit access to a covered account;
- Reopening a covered account with a new account number;
- Not opening a new covered account;
- Closing an existing covered account;
- Not attempting to collect on a covered account or not selling a covered account to a debt collector;
- Notifying law enforcement; or
- Determining that no response is warranted under the particular circumstances.

V. Updating the Program

Financial institutions and creditors should update the Program (including the Red Flags determined to be relevant) periodically, to reflect changes in risks to customers or to the safety and soundness of the financial institution or creditor from identity theft, based on factors such as:

- The experiences of the financial institution or creditor with identity theft;
- Changes in methods of identity theft;
- Changes in methods to detect, prevent, and mitigate identity theft;
- Changes in the types of accounts that the financial institution or creditor offers or maintains; and

- Changes in the business arrangements of the financial institution or creditor, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

VI. Methods for Administering the Program

Oversight of Program. Oversight by the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management should include:

- Assigning specific responsibility for the Program's implementation;
- Reviewing reports prepared by staff regarding compliance by the financial institution or creditor with § 41.90 of this part; and
- Approving material changes to the Program as necessary to address changing identity theft risks.

Reports. Staff of the financial institution or creditor responsible for development, implementation, and administration of its Program should report to the board of directors, an appropriate committee of the board, or a designated employee at the level of senior management, at least annually, on compliance by the financial institution or creditor with § 41.90 of this part.

Contents of report. The report should address material matters related to the Program and evaluate issues such as: the effectiveness of the policies and procedures of the financial institution or creditor in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts; service provider arrangements; significant incidents involving identity theft and management's response; and recommendations for material changes to the Program.

Oversight of service provider arrangements. Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft. For example, a financial institution or creditor could require the service provider by contract to have policies and procedures to detect relevant Red Flags that may arise in the performance of the service provider's activities, and either report the Red Flags to the financial institution or creditor, or to take appropriate steps to prevent or mitigate identity theft.

VII. Other Applicable Legal Requirements

Financial institutions and creditors should be mindful of other related legal requirements that may be applicable, such as:

- For financial institutions and creditors that are subject to 31 U.S.C. 5318(g), filing a Suspicious Activity Report in accordance with applicable law and regulation;
- Implementing any requirements under 15 U.S.C. 1681c-1(h) regarding the circumstances under which credit may be extended when the financial institution or creditor detects a fraud or active duty alert;
- Implementing any requirements for furnishers of information to consumer reporting agencies under 15 U.S.C. 1681s-2, for example, to correct or update inaccurate or incomplete information, and to not report information that the furnisher has reasonable cause to believe is inaccurate; and

- Complying with the prohibitions in 15 U.S.C. 1681m on the sale, transfer, and placement for collection of certain debts resulting from identity theft.

Supplement A to Appendix J

In addition to incorporating Red Flags from the sources recommended in the Guidelines in Appendix J of this part, each financial institution may consider incorporating Red Flags into its Program, whether singly or in combination, from the following illustrative examples in connection with covered accounts:

Alerts, Notifications or Warnings from a Consumer Reporting Agency

1. A fraud or active duty alert is included with a consumer report
2. A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report
3. A consumer reporting agency provides a notice of address discrepancy, as defined in § __ .82(b) of this part
4. A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as
 - a. A recent and significant increase in the volume of inquiries
 - b. An unusual number of recently established credit relationships
 - c. A material change in the use of credit, especially with respect to recently established credit relationships
 - d. An account that was closed for cause or identified for abuse of account privileges by a financial institution

Suspicious Documents

1. Documents provided for identification appear to have been altered or forged.
2. The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
3. Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
4. Other information on the identification is not consistent with readily accessible information that is on file with the financial institution, such as a signature card or a recent check.
5. An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

Suspicious Personal Identifying Information

1. Personal identifying information provided is inconsistent when compared against external information sources used by the financial institution. For example:
 - a. The address does not match any address in the consumer report,
 - b. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

2. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
3. Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the financial institution. For example:
 - a. The address on an application is the same as the address provided on a fraudulent application,
 - b. The phone number on an application is the same as the number provided on a fraudulent application.
4. Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the financial institution. For example:
 - a. The address on an application is fictitious, a mail drop, or prison,
 - b. The phone number is invalid, or is associated with a pager or answering service.
5. The SSN provided is the same as that submitted by other persons opening an account or other customers.
6. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of other persons opening accounts or other customers.
7. The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
8. Personal identifying information provided is not consistent with personal identifying information that is on file with the financial institution.
9. For financial institutions that use challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report

Unusual Use of, or Suspicious Activity Related to, the Covered Account

1. Shortly following the notice of a change of address for a covered account, the institution or creditor receives a request for new, additional, or replacement cards or a cell phone, or for the addition of authorized users on the account.
2. A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example:
 - a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (e.g., electronics equipment or jewelry),
 - b. The customer fails to make the first payment or makes an initial payment but no subsequent payments.
3. A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example
 - a. Nonpayment when there is no history of late or missed payments,

- b. A material increase in the use of available credit,
 - c. A material change in purchasing or spending patterns,
 - d. A material change in electronic fund transfer patterns in connection with a deposit account,
 - e. A material change in telephone call patterns in connection with a cellular phone account.
4. A covered account that has been inactive for a reasonably lengthy period is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).
 5. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.
 6. The financial institution is notified that the customer is not receiving paper account statements.
 7. The financial institution is notified of unauthorized charges or transactions in connection with a customer's covered account.

Notice from Customers, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection with Covered Accounts Held by the Financial Institution or Creditor

1. The financial institution is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

Section 10: Miscellaneous Bank Impacts

[§§ 605(g) and 628]

Truncation of Credit Card and Debit Card Numbers [§ 605(g)]

In general, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction. This rule shall only apply to receipts that are electronically printed. The rule will become effective:

- Three years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and
- One year after the date of enactment of this subsection for any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

Disposal of Records [§ 628]

Overview

To implement the requirements set forth in Section 628 of the Act, the Commission and federal agencies have issued final regulations as follows:

- OCC – 12 C.F.R. § 30 and 41
- FRB – 12 C.F.R. § 208, 211, 222 and 225
- FDIC – 12 C.F.R. § 334 and 364
- OTS – 12 C.F.R. § 568, 570 and 571
- FTC – 12 C.F.R. § 682

Each agency adopted identical regulations under their respective authorities. Below is a summary of the interagency final regulations. The regulatory requirement of this section in the FCRA actually steps outside of FCRA and into the commonly known “customer information security” requirements set forth for financial institutions. The need for the regulatory requirements is a result of the direct relationship to the subject records (i.e., consumer reports) and their coverage under the FCRA.

Interagency Guidelines Establishing Standards for Safeguarding Customer Information

Change in Title of Interagency Guidance

Revising the heading titled “Interagency Guidelines Establishing Standards for Safeguarding Customer Information” to read “Interagency Guidelines Establishing Information Security Standards.”

Definitions

Consumer Information. Any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not identify an individual.

Examples of consumer information include:

- A consumer report that a bank obtains;
- Information from a consumer report that the bank obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;
- Information from a consumer report that the bank obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;
- Information from a consumer report that the bank obtains about an individual who guarantees a loan (including a loan to a business entity); or
- Information from a consumer report that the bank obtains about an employee or prospective employee.

Consumer information does not include:

- Aggregate information, such as the mean credit score, derived from a group of consumer reports; or
- Blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

Service Provider. Any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the bank.

Objectives of Standards for Information Security

The final rules add a fourth objective to ensure the proper disposal of customer information and consumer information.

Managing and Controlling Risk

The final rules add the following requirement to a bank's information security program as it relates to managing and controlling risks, "Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements set forth in the regulation."

Effective Dates

The effective date for measures relating to the disposal of consumer information was July 1, 2005.

Exceptions. Notwithstanding the requirement above, a bank's contracts with its service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

Related Fair Credit Reporting Act Changes for each Federal Regulatory Agency (Parts 41, 222, 334, and 571)

In concert with the above changes to the Interagency Guidelines, each federal regulatory agency made the following changes to its FCRA regulation.

Purpose

The purpose of this part is to establish standards for banks regarding consumer report information. In addition, the purpose of this part is to specify the extent to which banks may obtain, use, or share certain information. This part also contains a number of measures banks must take to combat consumer fraud and related crimes.

Definitions

Consumer. Means an individual.

Disposal of Consumer Information

For purposes of this part, a "bank" means banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries.

In General. Each bank must properly dispose of any consumer information that it maintains or otherwise possesses in accordance with the Interagency Guidelines Establishing Information Security Standards to the extent that the bank is covered by the scope of the Guidelines.

Rule of Construction. Nothing in this section shall be construed to:

- Require a bank to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or
- Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Section 11: Fraud Alerts [§ 605A]

Introduction

The introduction of fraud alerts provide consumers with the ability to inform users of consumer reports of the existence of any fraudulent activity resulting from confirmed or possible identity theft impacting the consumer.

Banks need to employ procedures to identify the existence of a consumer fraud alert and take appropriate action when a consumer fraud alert is present within a consumer report. The following discusses the procedures consumers may follow to initiate a fraud alert, as well as actions to be taken by users before extending credit when a fraud alert is present.

One-Call Fraud Alerts

Initial Alerts

A consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, may notify a consumer reporting agency of such fact. The consumer reporting agency that maintains a file on the consumer and has received appropriate proof of identity of the requester must:

- Include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, for a period of not less than 90 days, beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose; and
- Refer the information regarding the fraud alert to each of the other consumer reporting agencies in accordance with procedures developed under Section 621(f).

Access to Free Reports

Whenever a consumer reporting agency includes a fraud alert in the file of a consumer, the consumer reporting agency shall disclose to the consumer that the consumer may request a free copy of the file of the consumer and provide to the consumer all disclosures required to be made under Section 609, without charge to the consumer, not later than three business days after any alert request.

Extended Alerts

Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who submits an identity theft report to a consumer reporting agency that maintains a file on the consumer, if the agency has received appropriate proof of identity of the requester, the agency must:

- Include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, during the seven-year period beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of identity of the requester for such purpose;
- During the five-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or such representative requests that such exclusion be rescinded before the end of such period; and
- Refer the information regarding the extended fraud alert to each of the other consumer reporting agencies in accordance with procedures developed under Section 621(f).

Access to Free Reports

Whenever a consumer reporting agency includes an extended fraud alert in the file of a consumer, the consumer reporting agency shall disclose to the consumer that the consumer may request two free copies of the file of the consumer during the 12-month period beginning on the date on which the fraud alert was included in the file and provide to the consumer all disclosure required to be made under Section 609, without charge to the consumer, not later than three business days after any alert request.

Procedures of Consumer Reporting Agencies

Each consumer reporting agency shall develop policies and procedures to comply with this section, including procedures that inform consumers of the availability of initial, extended, and active duty alerts and procedures that allow consumers and active duty military consumers to request initial, extended or active duty alerts in a simple and easy manner, including by telephone.

Referrals of Alerts

Each consumer reporting agency that receives a referral of a fraud alert or active duty alert from another consumer reporting agency shall follow the procedures described above for the applicable type of fraud alert, with the exception of making additional referrals to other consumer reporting agencies, as though the agency received the request from the consumer directly.

Duty of Reseller to Reconvey Alert

A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer by another consumer reporting agency.

Duty of Other Consumer Reporting Agencies to Provide Contact Information

If a consumer contacts any consumer reporting agency not described in the definition of a consumer reporting agency of this regulation to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Commission and the consumer reporting agencies described in the regulation to obtain more detailed information and request alerts.

Limitations on Use of Information for Credit Extensions

Requirements for Initial and Active Duty Alerts

Notification

Each initial fraud alert and active duty alert shall include information that notifies all prospective users of a consumer report on the consumer to which the alert relates that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than an open-end credit plan, in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except as noted below.

Limitation on Users - In General

No prospective user of a consumer report that includes an initial fraud alert or an active duty alert may establish a new credit plan or extension of credit, other than under an open-end credit plan, in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or grant any increase in credit limit on an existing credit account requested by a consumer, unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.

Verification

If a consumer requesting the alert has specified a telephone number to be used for identity verification purposes, before authorizing any new credit plan or extension of credit described above in the name of the consumer, a user of such consumer report shall contact the consumer using that telephone number or take reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft.

Requirements for Extended Alerts

Notification

Each extended alert shall include information that notifies all prospective users of a consumer report on the consumer relating to a consumer with notification that the consumer does not authorize the establishment of any new credit plan or extension of credit, other than an open-end credit plan, in the name of the consumer, or issuance of an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, except as noted below, and a telephone number or other reasonable contact method designated by the consumer.

Limitation on Users

No prospective user of a consumer report or of a credit score generated using the information in the file of a consumer that includes an extended alert may establish a new credit plan or extension of credit, other than under an open-end credit plan, in the name of the consumer, or issue an additional card on an existing credit account requested by a consumer, or any increase in credit limit on an existing credit account requested by a consumer, unless the user contacts the consumer in person or using the contact method designated by the consumer to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.

Section 12: Credit-Related Disclosures

[§§ 623 and 609]

Negative Information [§ 623(a)(7)]

Notice to Consumer Required – In General

If a financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing negative information, in writing, to the customer.

After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

Definitions Relating to this Section

The term “negative information” means information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

The terms “customer” and “financial institution” have the same meanings as in Section 509 Public Law 106-102 (i.e., Gramm-Leach-Bliley Act).

Timing

The required notice must be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency. If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under Section 127(a) of the Truth in Lending Act (i.e., home equity line of credit products or other open-end credit products secured by the customer’s principal dwelling).

The required notice may be included on or with any notice of default, any billing statement, or any other materials provided to the customer and must be clear and conspicuous.

Model Disclosure

The Board has prescribed two brief model disclosures, which may be found in Regulation V that a financial institution may use to comply with this notice requirement. While the model notices are not required to be used by a financial institution, a financial institution shall be deemed to be in compliance with the notice content requirements of this part if the financial institution uses any such model form prescribed by the Board. A financial institution may rearrange the format of the model forms as long as the changes are not substantive. The model notices in Regulation V are as follows:

- ***Model Notice B-1:*** “We may report information about your account to credit reporting agencies. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.”

- **Model Notice B-2:** “We have told a credit reporting agency about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.”

Use of Notice without Submitting Negative Information

A financial institution that has provided a customer with the required notice is not required to furnish negative information about the customer to a consumer reporting agency.

Safe Harbor

A financial institution shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

Disclosure of Credit Scores by Certain Mortgage Lenders [§ 609(g)]

In General

Any person who makes or arranges loans and uses a consumer credit score in connection with an application initiated or sought by a consumer for a closed-end loan or the establishment of an open-end loan for a consumer purpose that is secured by a 1-4 family residential home shall provide a copy of the information below that was obtained from a consumer reporting agency or was developed and used by the user of the information, as applicable:

- The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;
- The range of possible credit scores under the model used;
- All of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed four, except that if a key factor includes the number of inquiries made with respect to a consumer report, that factor shall be included without regard to the numerical limitation of four.
- The date on which the credit score was created; and
- The name of the person or entity that provided the credit score or credit file upon which the credit score was created.

In addition, the person shall provide the notice found at the end of this section, which shall include the name, address, and telephone number of each consumer reporting agency providing a credit score that was used. All items must be provided to the consumer as soon as reasonably practicable.

Disclosures in Case of Automated Underwriting System

If the person uses an automated underwriting system to underwrite a loan, that person may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency. If a numerical credit score is generated by an automated underwriting system used by an enterprise, and that score is disclosed to the person,

the score shall be disclosed to the consumer by disclosing a credit score and associated key factors supplied by a consumer reporting agency. For purposes of this subsection, an “enterprise” has the same meaning as in paragraph (6) of Section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which are FNMA or the FHLMC and any affiliates thereof. Additionally, a person does not include an enterprise.

Disclosures of Credit Scores not obtained from a Consumer Reporting Agency

A person that is subject to the provisions of this subsection and that uses a credit score, other than a credit score provided by a consumer reporting agency, may satisfy the obligation to provide a credit score by disclosing a credit score and associated key factors supplied by a consumer reporting agency.

Actions Not Required Under This Subsection

This subsection does not require any person to:

- Explain the information provided;
- Disclose any information other than a credit score or key factors;
- Disclose any credit score or related information obtained by the user after a loan has closed;
- Provide more than one disclosure per loan transaction; or
- Provide the disclosure required when another person has made the disclosure to the consumer for than loan transaction.

No Obligation for Content

The obligation of any person pursuant to this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency. No person has liability for the content of that information or for the omission of any information within the report provided by the consumer reporting agency.

Prohibition on Disclosure Clauses Null and Void

Finally, any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer reporting agency is void. Furthermore, a lender shall have no liability under any contractual provision for disclosure of a credit score pursuant to this subsection.

Sample Notice

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 scores 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.

Name, Address and Phone Number of Consumer Reporting Agencies providing the credit score(s):

[List names, address and phone number of all consumer reporting agencies here.]

Score Date: _____

Credit Score: _____

Range of Scores: _____

Key Factors: _____

Section 13: Issues Arising During the Servicing of a Customer Relationship

[§§ 605, 609, 611, 615, and 623]

Block of Information Resulting from Identity Theft [§ 605B]

One important impact of the FACT Act implementing regulations is the ability of consumers to preserve their credit rating despite becoming a victim of identity theft. The ability to block the reporting of credit extensions resulting from identity theft is one such important protection. The following explores the process a consumer may follow to block such credit from being reported to consumer reporting agencies.

Initiating the Block Request

A consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, no later than four business days after the date of receipt by such agency of:

- Appropriate proof of identity of the consumer;
- A copy of an identity theft report;
- The identification of such information by the consumer; and
- A statement by the consumer that the information is not information relating to any transaction by the consumer.

Notification to the Furnisher of Information

A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer above:

- That the information may be a result of identity theft;
- That an identity theft report has been filed;
- That a block has been requested; and
- Of the effective date of the block.

Authority to Decline or Rescind

A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer, if the consumer reporting agency determines that:

- The information was blocked in error or a block was requested by the consumer in error;
- The information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the block; or
- The consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

Notification to Consumer

If a block of information is declined or rescinded, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under Section 611(a)(5)(B). In brief, this means that the consumer reporting agency must notify the consumer of the reinsertion in writing not later than five business days after the reinsertion or by any other means authorized by the consumer and available to the agency.

Significance of Block

If a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

Exception for Resellers

No Reseller File

This section shall not apply to a consumer reporting agency, if the consumer reporting agency:

- Is a reseller;
- Is not, at the time of the request of the consumer, otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and
- Informs the consumer, by any means, that the consumer may report the identity theft to the Commission to obtain consumer information regarding identity theft.

Reseller with File

A consumer reporting agency shall block the consumer report maintained by the consumer reporting agency from any subsequent use, if:

- The consumer identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and
- The consumer reporting agency is a reseller of the identified information.

Notice

A reseller shall promptly provide a notice to the consumer of the decision to block the file. The notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

Exception for Verification Companies

The blocking provisions do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments. If such a company receives appropriate proof of identity of a consumer; a copy of an identity theft report; and the identification of such information by a consumer, then the company, beginning four business days after receipt of such information, shall not report to a national consumer reporting agency, any information identified in the subject identity theft report as resulting from identity theft.

Access to Blocked Information by Law Enforcement Agencies

No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.

Responsibilities of Furnishers of Information to Consumer Reporting Agencies [§ 623]

Duty of Furnishers to Provide Accurate Information [§ 623(a)]

Prohibition

Reporting Information with Actual Knowledge of Errors. A person must not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate. The term “reasonable cause to believe that the information is inaccurate” means having specific knowledge, other than sole allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

Reporting Information after Notice and Confirmation of Errors. A person shall not furnish information relating to a consumer to any consumer reporting agency if:

- The person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate and
- The information is, in fact, inaccurate.

No Address Requirement. A person who clearly and conspicuously specifies to the consumer an address for notification of inaccurate information will not be subject to the prohibition against furnishing any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate. However, nothing requires a person to specify such an address.

Duty to Correct and Update Information [§ 623(a)(2)]

A person who:

- Regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer; and
- Has furnished to a consumer reporting agency information that the person determines is not complete or accurate shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate. In addition, the person must not thereafter furnish to the agency any of the information that remains not complete or accurate.

Duty to Provide Notice of Dispute [§ 623(a)(3)]

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

Duty to Provide Notice of Closed Accounts [§ 623(a)(4)]

A person who 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 person must notify the agency of the voluntary closure of the account by the consumer. This notification must be contained in information regularly furnished for the period in which the account is closed.

Duty to Provide Notice of Delinquency of Accounts [§ 623(a)(5)]

In General. A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action must, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency that immediately preceded the action.

Rule of Construction. A person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph if:

- The person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;
- The creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or
- The creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained, the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

Duties of Furnishers Upon Notice of Identity Theft-Related Information [§ 623(a)(6)]

Reasonable Procedures. A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency relating to information resulting from identity theft, to prevent that person from furnishing such blocked information.

Information Alleged to Result from Identity Theft. If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer

reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

Duty to Provide Notice of Status as Medical Information Furnisher [§ 623(a)(9)]

A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.

Duty of Furnishers of Information Upon Notice of Dispute [§ 623(b)]

In General

After receiving proper notification (i.e., within five business days from when the CRA received notice from consumer) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person must:

- Conduct an investigation with respect to the disputed information;
- Review all relevant information provided by the consumer reporting agency (see Section 611(a)(2));
- Report the results of the investigation to the consumer reporting agency; and
- If the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.
- If an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation, for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly:
 - Modify that item of information;
 - Delete that item of information; or
 - Permanently block the reporting of that item of information.

Deadline

A person must complete all the required investigations, reviews, and reports regarding information provided by the person to a consumer reporting agency before the expiration of the period (generally within 30 days of notification of the dispute from the consumer) within which the consumer reporting agency is required to complete its actions regarding the disputed information.

Limitation on Liability [§ 623(c)]

Civil liability (sections 616 and 617) does not apply to any failure to comply with the guidelines that address that furnishers of information provide accurate information except in the case of state actions.

Limitation on Enforcement [§ 623(d)]

The guidelines that require furnishers of information to provide accurate information will be enforced exclusively by the appropriate federal agencies and officials and the appropriate state officials.

Accuracy Guidelines and Regulations Required [§ 623(e)]

The agencies published their final rule on July 1, 2009, with an effective date of July 1, 2010. The actual final rule is covered in a separate section of this manual.

Guidelines

Section 312(a) of the FACT Act requires the Federal banking agencies, the NCUA, and the Commission shall issue regulations that:

- Establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and
- Prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines.

Criteria

The FCRA sets forth criteria to be used by the agencies in developing the guidelines above. The agencies are directed to:

- Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;
- Review the methods, including technological means, used to furnish information relating to consumers to consumer reporting agencies;
- Determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and
- Examine the policies and procedures that persons that furnish information to consumer reporting agencies employ to conduct a reinvestigation and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

Procedures in Case of Disputed Accuracy [§ 611]

Reinvestigations of Disputed Information [§ 611(a)]

Reinvestigation Required [§ 611(a)(1)]

In General. If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall free of charge, conduct a reasonable investigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file, before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.

Extension of Period to Reinvestigate. The 30-day period may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

Limitations on Extension of Period to Reinvestigate. This extension of the period to reinvestigate does not apply to any reinvestigation in which, during the 30-day period, the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

Prompt Notice of Dispute to Furnisher of Information [§ 611(a)(2)]

In General. Before the expiration of the five-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer or reseller, the agency must provide notification of the dispute to any person who provided any item of information in dispute at the address and in the manner established with the person. The notice must include all relevant information regarding the dispute that the agency has received from the consumer or reseller.

Provision of Other Information from Consumer. The consumer reporting agency must promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer or the reseller after notification of the dispute to any person who provided any item of information in dispute and before the end of the 30-day time period.

Determination That Dispute Is Frivolous or Irrelevant [§ 611(a)(3)]

In General. A consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

Notice of Determination. Upon making a determination that a dispute is frivolous or irrelevant, a consumer reporting agency must notify the consumer of such determination, not later than five business days after making this determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

Contents of Notice. The notice that a determination that a dispute is frivolous or irrelevant has been made must include:

- The reasons for the determination, and
- Identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

Consideration of Consumer Information [§ 611(a)(4)]

In conducting any reinvestigation with respect to disputed information in the file of any consumer, the consumer reporting agency must review and consider all relevant information submitted by the consumer in the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

Treatment of Inaccurate or Unverifiable Information [§ 611(a)(5)]

In General. If, after any reinvestigation of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency must promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation. In addition, the consumer reporting agency must notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.

Requirements Relating to Reinsertion of Previously Deleted Material. If any information is deleted from a consumer's file because it is inaccurate, incomplete, or unverifiable, the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

If any information that has been deleted from a consumer's file because it is inaccurate, incomplete, or unverifiable is reinserted in the file, the consumer reporting agency must notify the consumer of the reinsertion in writing not later than five business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

As part of, or in addition to, this notice, a consumer reporting agency must provide to a consumer in writing not later than five business days after the date of the reinsertion:

- A statement that the disputed information has been reinserted;
- The business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and
- A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

Procedures to Prevent Reappearance. A consumer reporting agency must maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted due to being inaccurate, incomplete, or unverifiable (other than information that is reinserted in accordance with the above guidelines).

Automated Reinvestigation System. Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis must implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

Notice of Results of Reinvestigation [§ 611(a)(6)]

In General. A consumer reporting agency must provide written notice to a consumer of the results of a reinvestigation, not later than five business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.

Contents. As part of, or in addition to, this notice, a consumer reporting agency must provide to a consumer in writing before the expiration of the five-day period:

- A statement that the reinvestigation is completed;
- A consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;
- A notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information must be provided to the

consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

- A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and
- A notice that the consumer has the right to request that the consumer reporting agency furnish notifications that the item has been deleted to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

Description of Reinvestigation Procedure [§ 611(a)(7)]

A consumer reporting agency must provide to a consumer a description of the procedure used to determine the accuracy and completeness of the information, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available, by not later than 15 days after receiving a request from the consumer for that description.

Expedited Dispute Resolution [§ 611(a)(8)]

If a dispute regarding an item of information purported to be inaccurate, incomplete, or unverifiable in a consumer's file at a consumer reporting agency is resolved by the deletion of the disputed information by not later than three business days after the date on which the agency receives notice of the dispute from the consumer, then the agency will not be required to:

- Send prompt notice of dispute to the furnisher of the information;
- Send written notice of the results of the reinvestigation to the consumer; and
- Provide to a consumer a description of the procedure used to determine the accuracy and completeness of the information by not later than 15 days after receiving a request from the consumer for that description if the agency:
 - provides prompt notice of the deletion to the consumer by telephone;
 - includes in that notice, or in a written notice that accompanies the written confirmation and consumer report a statement of the consumer's right to request that the agency furnish notifications that the item has been deleted to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information; and
 - provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than five business days after making the deletion.

Statement of Dispute [§ 611(b)]

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

Notification of Consumer Dispute in Subsequent Consumer Reports [§ 611(c)]

Whenever a statement of a dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency must, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

Notification of Deletion of Disputed Information [§ 611(d)]

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency must, at the request of the consumer, furnish notification that the item has been deleted or clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

Disclosures to Consumers [§ 609]

Information Available to Victims [§ 609(e)]

In General

For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim (see procedures below), and subject to verification of identity of the victim and the claim of identity theft (see below), a business entity that has provided credit to, provided for consideration of products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of the application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to:

- The victim;
- Any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; and
- Any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records.

Verification of Identity and Claim

Unless the business entity has a high degree of confidence that it knows the identity of the victim making the request, the victim shall be required to provide to the business entity:

- As proof of positive identification of the victim, at the election of the business entity:
 - The presentation of a government-issued identification card;
 - Personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

- Personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including documentation described above.
- As proof of claim of identity theft, at the election of the business entity:
 - A copy of a police report evidencing the claim of the victim of identity theft; and
 - A properly completed:
 - Copy of a standardized affidavit of identity theft developed and made available by the Commission; or
 - An affidavit of fact that is acceptable to the business entity for that purpose.

Procedures

Any request made by a victim shall be in writing; be mailed to an address specified by the business entity, if any; and if requested by the business entity, include relevant information about any transaction alleged to be a result of identity theft including the following if known by the victim:

- The date of the application or transaction; and
- Any other identifying information such as an account or transaction number.

No Charge to Victim and Authority to Decline to Provide Information

A victim may not be charged for the information provided to him or her under this section. In certain circumstances, a business entity may decline to provide information required under this part to the victim if, in exercise of good faith, the business entity determines that:

- Disclosure is not required under this section;
- The business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;
- The request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or
- The information requested is Internet navigational data or similar information about a person's visit to a Web site or online service.

No business entity may be held civilly liable under any provision of Federal, State, or other local law for disclosure, made in good faith under this section. Additionally, nothing in this section creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of business or under other applicable law. Business entities may not deny disclosure of requested information to the victim under the Privacy rules in the Gramm-Leach-Bliley Act.

In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that:

- the business entity has made a reasonably diligent search of its available business records; and

- the records requested under this subsection do not exist or are not reasonably available.

For purposes of this subsection, the term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or similar crime.

Other Requirements on Users of Consumer Reports [§ 615]

Prohibition on Sale or Transfer of Debt Caused by Identity Theft [§ 615(f)]

No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under Section 605B has resulted from identity theft. The prohibitions in this subsection shall apply to all persons collecting such a debt after the date of a notification regarding identity theft.

Nothing in this subsection shall be construed to prohibit:

- The repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;
- The securitization of a debt or the pledging of a portfolio of debt as collateral in connection with a borrowing; or
- The transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.

Debt Collector Communications Concerning Identity Theft [§ 615(g)]

If a person acting as a debt collector on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person must:

- Notify the third party that the information may be fraudulent or may be the result of identity theft; and
- Upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.

Section 14: Civil Liability and Enforcement

[§§ 612, 616, 617, 618, 619, 620, 621, 625]

Civil Liability for Willful Noncompliance [§ 616]

General [§ 616(a)]

Any person who willfully fails to comply with any requirement imposed under the FCRA with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- Any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000 or, in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;
- Such amount of punitive damages as the court may allow; and
- In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Civil Liability for Knowing Noncompliance [§ 612(b)]

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000, whichever is greater.

Attorney's Fees [§ 612(c)]

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under the FCRA was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

Civil Liability for Negligent Noncompliance [§ 617]

General [§ 617(a)]

Any person who is negligent in failing to comply with any requirement imposed under the FCRA with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- Any actual damages sustained by the consumer as a result of the failure and
- In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Attorney's Fees [§ 617(b)]

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under the FCRA was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

Jurisdiction of Courts/Limitation of Actions [§ 618]

An action to enforce any liability created under the FCRA may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of two years after the date of discovery by the plaintiff of the violation that is the basis for such liability or five years after the date on which the violation that is the basis for such liability occurs.

Obtaining Information Under False Pretenses [§ 619]

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under Title 18, United States Code, imprisoned for not more than two years, or both.

Unauthorized Disclosures by Officers or Employees [§ 620]

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined under Title 18, United States Code, imprisoned for not more than two years, or both.

Administrative Enforcement § [621]

Enforcement by Federal Trade Commission [§ 621(a)]

Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act [15 U.S.C. §§ 41 et seq.] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of Section 5(a) of the Federal Trade Commission Act [15 U.S.C. § 45(a)] and shall be subject to enforcement by the Federal Trade Commission under Section 5(b) thereof [15 U.S.C. § 45(b)] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall

have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

In the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than \$2,500 per violation.

In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

Notwithstanding paragraph addressing a “knowing violation,” a court may not impose any civil penalty on a person for a violation of Section 623(a)(1) [§ 1681s-2] unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

Enforcement by Other Agencies [§ 621(b)]

Compliance with the requirements imposed by the FCRA with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information shall be enforced under:

- Section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818), in the case of:
 - National banks, and federal branches and federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
 - Member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under Section 25 or 25(a) (25A) of the Federal Reserve Act (12 U.S.C. §§ 601 et seq., §§ 611 et seq.), by the Board of Governors of the Federal Reserve System; and
 - Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured state branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
- Section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
- The Federal Credit Union Act (12 U.S.C. §§ 1751 et seq.), by the Administrator of the National Credit Union Administration (National Credit Union Administration Board) with respect to any federal credit union;

- Subtitle IV of title 49 [49 U.S.C. §§ 10101 et seq.], by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board
- The Federal Aviation Act of 1958 [49 U.S.C. Appx §§ 1301 et seq.], by the Secretary of Transportation with respect to any carrier or foreign air carrier subject to that Act [49 U.S.C. Appx §§ 1301 et seq.]; and
- The Packers and Stockyards Act, 1921 [7 U.S.C. §§ 181 et seq.](except as provided in Section 406 of that Act [7 U.S.C. §§ 226 and 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

State Action for Violations [§ 621(c)]

Authority of States. In addition to such other remedies as are provided under state law, if the chief law enforcement officer of a state, or an official or agency designated by a state, has reason to believe that any person has violated or is violating this title, the state:

- May bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;
- May bring an action on behalf of the residents of the State to recover:
 - Damages for which the person is liable to such residents under sections 616 and 617 as a result of the violation;
 - In the case of a violation of the duties of furnishers of information to provide accurate information, damages for which the person would, but for Section 623(c), be liable to such residents as a result of the violation; or
 - Damages of not more than \$1,000 for each willful or negligent violation; and
- In the case of any successful action shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

The terms used in the paragraph relating to Section 8 of the FDIC Act above that are not defined in this title or otherwise defined in Section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. §1813(s)) shall have the meaning given to them in Section 1(b) of the International Banking Act of 1978 (12 U.S.C. § 3101).

Rights of Federal Regulators. The State shall serve prior written notice of any action relating to Section 8 of the FDIC Act upon the Federal Trade Commission or the appropriate Federal regulator and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right:

- to intervene in the action;
- upon so intervening, to be heard on all matters arising therein;
- to remove the action to the appropriate United States district court; and
- to file petitions for appeal.

Investigatory Powers. For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by

the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

Limitation on State Action While Federal Action Pending. If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under Section 8 of the Federal Deposit Insurance Act for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this title that is alleged in that complaint.

Limitations on State Actions for Certain Violations

Violation of Injunction Required. A State may not bring an action against member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under Section 25 or 25(a) (25A) of the Federal Reserve Act (12 U.S.C. §§ 601 et seq., §§ 611 et seq.), by the Board of Governors of the Federal Reserve System for a violation described in any of paragraphs (1) through (3) of Section 623(c), unless:

- the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and
- the person has violated the injunction.

Limitation on Damages Recoverable. In an action against a person described in the preceding paragraph for a violation described in any of paragraphs (1) through (3) of Section 623(c), a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.

Enforcement Under Other Authority [§ 621(d)]

For the purpose of the exercise by any agency referred to above (i.e., Enforcement of Other Agencies) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to for such agencies, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law.

Regulatory Authority [§ 621(e)]

The Federal banking agencies shall jointly prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under the paragraphs for their purview, and the Board of Governors of the Federal Reserve System shall have authority to prescribe regulations consistent with such joint regulations with respect to bank holding companies and affiliates (other than depository institutions and consumer reporting agencies) of such holding companies.

The Board of the National Credit Union Administration shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraphs for their purview.

Coordination of Consumer Complaint Investigations [§ 621(f)]

Each consumer reporting agency described in Section 603(p) shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the

agency alleging identity theft, or requesting a fraud alert under Section 605A or a block under Section 605B.

Model Form and Procedure for Reporting Identity Theft

The Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

Annual Summary Reports

Each consumer reporting agency described in Section 603(p) shall submit an annual summary report to the Commission on consumer complaints received by the agency on identity theft or fraud alerts.

FTC Regulation of Coding of Trade Names [§ 621(f)]

If the Commission determines that a person described in paragraph (9) of Section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures, as necessary to ensure that such person complies with such paragraph.

Relation to State Laws [§ 625]

Generally, the Fair Credit Reporting Act does not annul, alter, affect, or exempt any person subject to its provisions from complying with the laws of any state with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of the FCRA, and then only to the extent of the inconsistency. (If your state laws are inconsistent with any provision of the FCRA, please refer to Section 625 of the FCRA for further details.)