

Module 3: Disclosures to Consumers and Miscellaneous Requirements

Overview

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

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

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

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

1. A copy of the report; and
2. A description in writing of the rights of the consumer under this title, as prescribed by the FTC under section (609)(c)(3).

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

Examination Procedures

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

Sections 604(c) and 615(d) of FCRA - Prescreened Consumer Reports and Opt out Notice [and Parts 642 and 698 of Federal Trade Commission Regulations]

Section 604(c)(1)(B) allows persons, including financial institutions, to obtain and use consumer reports on any

consumer in connection with any credit or insurance transaction that is not initiated by the consumer, to make firm offers of credit or insurance. This process, known as prescreening, occurs when a financial institution obtains a list from a consumer reporting agency of consumers who meet certain predetermined creditworthiness criteria and who have not elected to be excluded from such lists. These lists may only contain the following information:

1. The name and address of a consumer;
2. 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
3. Other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

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

Example 1: Assume a home mortgage lender obtains a list from a consumer reporting agency of everyone in County X, with a current home mortgage loan and a credit score of 700. The lender will use this list to market a 2nd lien home equity loan product. The lender’s other non-consumer report criteria, in addition to those used in the prescreened list for this product, include a maximum total debt-to-income ratio (DTI) of 50% or less. Some of the criteria can be screened by the consumer reporting agency, but others, such as the DTI, must be determined individually when consumers respond to the offer. If a consumer responds to the offer, but already has a DTI of 60%, the lender does not have to grant the loan.

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

Example 2: On January 1, a credit card lender obtains a list from a consumer reporting agency of consumers in County Y who have credit scores of 720, and no previous bankruptcy records. The lender mails solicitations offering a pre-approved credit card to everyone on the list on January 2. On January 31, a consumer responds to the offer and the lender obtains and reviews a full consumer report which shows that a bankruptcy record was added

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on January 15. Since this consumer no longer meets the lender's predetermined criteria, the lender is not required to issue the credit card.

These basic requirements help prevent financial institutions from obtaining prescreened lists without following through with an offer of credit or insurance. The financial institution must maintain the criteria used for the product (including the criteria used to generate the prescreened report and any other criteria such as collateral requirements) on file for a period of three years, beginning on the date that the offer was made to the consumer.

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

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

The FCRA contains the basic requirement to provide notices to consumers at the time the prescreened offers are made. The Federal Trade Commission published an implementing regulation containing the technical requirements of the notice at 16 CFR Parts 642 and 698. This regulation is applicable to anyone, including banks, credit unions, and thrifts that obtain and use prescreened consumer reports. These requirements became effective on August 1, 2005; however, the requirement to provide a notice containing the toll-free opt out telephone number has existed under the FCRA for many years.

Requirements Beginning August 1, 2005. 16 CFR 642 and 698 of the FTC regulations require a "short" notice and a "long" notice of the prescreened opt out information be given with each written solicitation made to consumers using prescreened consumer reports. These regulations also contain specific requirements concerning the content and appearance of these notices. The requirements are listed within the following paragraphs of these procedures. The regulations were published on January 31, 2005, in 70 Federal Register 5022.

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

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

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

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

The FTC developed model Prescreened Opt Out Notices, which are contained in Appendix A to 16 CFR 698 of the FTC's regulations. Appendix A contains complete sample solicitations for context. The prescreen notice text is contained in the following:

Sample Short Notice:

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

Sample Long Notice:

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

Examination Procedures

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

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

Section 605(g) provides that persons, including financial institutions that accept debit and credit cards for the transaction of business will be prohibited from issuing electronic receipts that contain more than the last five digits of the card number, or the card expiration dates, at the point of sale or transaction. This requirement applies only to electronically developed receipts and does not apply to hand-written receipts or those developed with an imprint of the card.

For Automatic Teller Machines (ATMs) and Point-of-Sale (POS) terminals or other machines that were put into operation before January 1, 2005, this requirement is effective on December 4, 2006. For ATMs and POS terminals or other machines that were put into operation on or after January 1, 2005, the effective date is the date of installation.

Examination Procedures

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

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

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

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

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

Covered transactions. The disclosure requirement applies to both closed-end and open-end loans that are for consumer purposes and are secured by 1-to-4 family residential real properties, including purchase and refinance transactions. This requirement will not apply in circumstances that do not involve a consumer purpose, such as when a borrower obtains a loan secured by his or her residence to finance his or her small business.

Specific required notice. Financial institutions in covered transactions that use credit scores must provide a disclosure containing the following specific language, which is contained in section 609(g)(1)(D):

Notice to The Home Loan Applicant

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

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

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

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

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

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

Credit score and key factors disclosed. In addition to the notice, financial institutions must also disclose the credit score, the range of possible scores, the date that the score was created, and the “key factors” used in the score calculation. “Key factors” are defined as all relevant elements or reasons adversely affecting the credit score for the particular

individual, listed in the order of their importance based on their effect on the credit score. The total number of factors to be disclosed shall not exceed four factors. However, if one of the key factors is the number of inquiries into a consumer’s credit information, then the total number of factors shall not exceed five. These key factors come from information supplied by the consumer reporting agencies with any consumer report that was furnished containing a credit score. (Section 605(d)(2)).

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

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

Timing. With regard to the timing of the disclosure, the statute requires that it be provided as soon as is reasonably practicable after using a credit score.

Examination Procedures

1. Determine whether the financial institution uses credit scores in connection with applications for closed-end or open-end loans secured by 1 to 4 family residential real property.
2. Evaluate the institution’s policies and procedures to determine whether accurate disclosures are provided to applicants as soon as is reasonably practicable after using credit scores.

3. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of disclosures given to home loan applicants to ensure technical compliance with the requirements.

Section 615(a) and (b) Adverse Action Disclosures

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

Information Obtained From a Consumer Reporting Agency.

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

1. Provide oral, written, or electronic notice of the adverse action to the consumer;
2. Provide to the consumer orally, in writing, or electronically,
 - a. the name, address, and telephone number of the consumer reporting agency from which it received the information (including a toll-free telephone number established by the agency, if the consumer reporting agency maintains files on a nationwide basis); and
 - b. 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
3. Provide the consumer an oral, written or electronic notice of the consumer's right to obtain a free copy of the consumer report from the consumer reporting agency, within 60 days of receiving notice of the adverse action, and the consumer's right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency.

Information Obtained from a Source Other Than a

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

1. At the time an adverse action is communicated to a consumer, must clearly and accurately disclose the

consumer's right to file a written request for the reasons for the adverse action; and

2. If it receives such a request within 60 days after the consumer learns of the adverse action, must disclose, within a reasonable period of time, the nature of the adverse information. The information should be sufficiently detailed to enable the consumer to evaluate its accuracy. The source of the information need not be, but may be, disclosed. In some instances, it may be impossible to identify the nature of certain information without also revealing the source.

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

1. 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;
2. Bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;
3. Is not information solely involving transactions or experiences between the consumer and the person furnishing the information; and
4. Is not information in a consumer report.

The notification must inform the consumer of the action and that the consumer may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of transmittal of the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information received from the affiliate not later than 30 days after receiving the request.

Examination Procedures

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

Section 615(g) Debt Collector Communications Concerning Identity Theft

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

Examination Procedures

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

Section 615(h) Risk-Based Pricing Notice

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