Module 5: Consumer Alerts and Identity Theft Protections

Overview

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

Two primary requirements exist: first, a user of a consumer report that contains a fraud or active duty alert must take steps to verify the identity of an individual to whom the consumer report relates, and second, a financial institution must disclose certain information when consumers allege that they are the victims of identity theft.

Section 605A(h) Fraud and Active Duty Alerts

Initial fraud and active duty alerts. Consumers who suspect that they may be the victims of fraud including identity theft may request nationwide consumer reporting agencies to place initial fraud alerts in their consumer reports. These alerts must remain in a consumer's report for no less than 90 days. In addition, members of the armed services who are called to active duty may also request that active duty alerts be placed in their consumer reports. Active duty alerts must remain in these service members' files for no less than 12 months.

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

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

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

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

Examination Procedures

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

Section 609(e) Information Available to Victims

Section 609(e) requires financial institutions to provide records of fraudulent transactions to victims of identity theft within 30 days after the receipt of a request for the records. These records include the application and business transaction records under the control of the financial institution whether maintained by the financial institution or another person on behalf of the institution (such as a service provider). This information should be provided to:

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

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

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

1. A government-issued identification card;
2. Personally identifying information of the same type that was provided to the financial institution by the unauthorized person; or

3. Personally identifiable information that the financial institution typically requests from new applicants or for new transactions.

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

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

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

Examination Procedures

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

References

Other resources for FCRA may be found at:

FIL 61-2001: Guidance on the Permissible Use of Consumer Reports in Certain Business Related Extensions of Credit
http://www.fdic.gov/news/news/financial/2001/fil0161.html

FIL 18-2006: Interagency Fair Credit Reporting Act Revised Examination Procedures
http://www.fdic.gov/news/news/financial/2006/fil06018.html

Electronic version of FFIEC FCRA Examination Procedures
http://fdic01/division/dsc/compliance.html

Statute: Fair Credit Reporting Act
http://www.fdic.gov/regulations/laws/rules/6500-1100.html#6500601

Job Aids

Statutory and Regulatory Matrix

The followwing table contains the statutory or regulatory cites for each provision of the FCRA covered by these examination procedures that are applicable to financial institutions that are not consumer reporting agencies[3]. Some of the requirements are self-executing by the statute, while others are contained in interagency regulations, while others still are contained in regulations published by only one or two of the regulatory agencies. Some requirements are subject to regulations that are not yet finalized and thus are listed as to-be-determined (TBD) in the table below. The regulatory agencies are listed in the first horizontal line and the various compliance responsibilities are presented in the order that they appear in the various examination modules in the first column. Financial institutions are subject to the list of cites in the column containing their primary federal regulator.

3 Other FCRA provisions applicable to non-consumer reporting agency banks, thrifts, and credit unions are covered in other examinations, such as risk management, information technology, etc. and are thus not part of these procedures. These provisions include Sections 605 (Reconciling Addresses); 615 (Red Flag Guidelines); and 628 (Disposal Rules).