

## VIII. Privacy – FCRA

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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:

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*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>

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

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

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

### Job Aids

#### Statutory and Regulatory Matrix

The following 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<sup>3</sup>. 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.

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<sup>3</sup> 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).