

Fair Credit Reporting Act Certification

Study Guide

INTRODUCTION

This Fair Credit Reporting Act (FCRA) Certification Study Guide is for employees of members of the National Consumer Reporting Association (NCRA) and is designed to set forth all procedures to be followed in the consumer relations departments of member companies in dealing with consumers who inquire about their consumer reports which have been issued by members' employees in the course of consumer reporting activities. This Study Guide is designed to be used in conjunction with NCRA's sister

publication, the Fair Credit Reporting Act Manual for Consumer Reporting Agencies and Users of Consumer Reports ("FCRA Manual").

At the outset it is necessary to understand the difference between traditional consumer reporting and the type of activity in which mortgage reporting companies are engaged.

The three main consumer reporting repositories and their affiliates collect, maintain and report consumer financial information from credit grantors, public record sources and others relating to specific consumers and report such information to other credit grantors in order that such creditors may make informed judgments about whether to grant credit to such individuals. Consumer reporting agencies also report such information to potential insurers, employers, landlords and others when consumers apply for insurance, employment, leases, etc.

Under the federal FCRA and various state laws dealing with consumer reporting, there are a number of procedures and activities required of consumer reporting agencies and users of their information. In general, consumer reporting agencies are required to utilize reasonable procedures to assure maximum possible accuracy of the information which they collect, maintain and report and only report such information when a user certifies that it has a "permissible purpose" for utilizing such information (i.e., when a consumer has applied for credit, employment, insurance or when a user has a legitimate business transaction involving the consumer.)

When a user of a consumer report denies the consumer a benefit (such as a denial of credit) based in whole or in part on information contained in a consumer report, the user is required to notify the consumer of the name, address and telephone number of the consumer reporting agency which issued the report and to notify the consumer of his right to obtain a free copy of the report within 60 days and his right to dispute the accuracy or completeness of any information in the report. Such a denial is called "adverse action" under the FCRA. In July 2011, the credit score disclosure requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act went into effect. If a credit score is used in setting material terms of credit or in taking adverse action, the statute requires creditors to disclose credit scores and related information to consumers in notices under the Fair Credit Reporting Act (FCRA). An example of an adverse action notice is in Form 1 of the FCRA Manual

Upon the presentation of reasonable identification, a consumer-reporting agency is required to disclose the contents of information maintained in its files (including recipients of the report within the previous 12 months) to consumers. If a consumer has been denied credit, employment, insurance or other benefits within 60 days of the request for disclosure, the consumer-reporting agency is required to disclose such information free of charge. Otherwise, a charge of \$11.50 may be made for the disclosure (less in some states). This charge may be increased every 12 months based on the Consumer Price Index. The current allowable charge is \$11.50.

In the event a consumer disputes information which had been reported by the consumer reporting agency, the agency is required to reinvestigate the information (usually by contacting the source of the information), reverify it if it is correct, delete or change it if it is incorrect, and send corrected copies to users specified by the consumer so that the user may reconsider it previous denial. Generally, a consumer reporting agency is required to notify the original furnisher of the information within 5 days of receipt of a dispute, notify the consumer of the results of the reinvestigation within 5 days of completion of it, and complete the reinvestigation within 30 days of receipt of a dispute.

Mortgage reporting companies, of course, do not maintain a database of consumer information from which they report such information to credit grantors. Their function in the consumer reporting process is to *merge and update* information collected, maintained and reported by the consumer reporting repositories and their affiliates and those merged and updated reports are then made to credit grantors. Because of the definition of "consumer reporting agency" in the FCRA¹, mortgage-reporting companies

¹ The term "consumer reporting agency" means 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

qualify as "consumer reporting agencies" and must comply with the requirements of the FCRA in dealing with consumer inquiries.

Therefore, while mortgage reporting companies technically must comply with the disclosure, reinvestigation, dispute resolution and correction procedures required of consumer reporting agencies in general, in practical terms they cannot *change* information in a repository's data base nor can they send corrected copies to affected credit grantors. Mortgage reporting and other specialized reporting companies must work with the repositories and their affiliates to perform those functions and make all practical efforts to comply with the FCRA's requirements. These efforts include performing the required disclosures and reinvestigations and *with respect to the report issued to the mortgage lender or other user* correct that report where necessary, even though any correction would not permanently be reflected on the repository report until and unless the consumer disputes the information directly with the repository.

The FCRA is policed by the CFPB, which has rulemaking and enforcement powers, although it does not explicitly supervise consumer reporting agencies that are not "larger participants". The Dodd-Frank Act authorizes the CFPB to supervise certain non-bank providers, including those who are "larger participants" in the consumer reporting market, defined as those that have more than \$7 million in annual receipts from consumer reporting activities. Given this shifting regulatory framework, increased state and federal regulation, and an increase in litigation surrounding the FCRA, consumer reporting agencies must stay abreast of the FCRA's requirements and the CFPB's rulemaking and enforcement activities.

The procedures set forth in this Study Guide are designed to show what must be disclosed to the consumer and how to handle such disclosures, including all forms necessary to be utilized in the process. Before discussing the procedures, a thorough analysis of the FCRA is discussed. The appendix contains the "FCRA Certification Test", designed to test employees' knowledge of the FCRA and required procedures and obtain certification from the NCRA that the employee is certified in the knowledge of the Act and appropriate procedures.

The test you will be taking consists of two parts with a total of 46 questions:

Part I: Multiple Choice (24 questions)

Part II: True or False (22 questions)

Each part asks questions about the various sections within the Fair Credit Reporting Act. Certain sections of the law are emphasized more than others based on their operations importance.

You have 20 minutes to complete the exam. You will need to get 85% correct to pass the exam.

You will be able to take the test as many times in order to pass within a 24-hour time period. It is recommended that you certify yourself every year as laws will change and amend from time to time.

Once you have passed the exam, you will receive a certification from the National Consumer Reporting Association.

The key topics will be:

- Permissible Purposes of Reports
- Information Requirements
- Disclosures to Consumers
- Disputes
- Need to Know Information

for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. Section 603(f)

The study guide that follows will help you to achieve your goal of certification.

READ ON AND GOOD LUCK!!

FCRA ANALYSIS OF CONSUMER REPORTING AGENCY RESPONSIBILITIES UNDER THE FCRA

The following is an outline of consumer reporting agencies' responsibilities under the Fair Credit Reporting Act. It is designed to explain to employees the requirements of the FCRA and procedures that must be followed for the Company to be in compliance with it.

A. Definitions and Rules of Construction (Parts pertaining to Section 603). The following definitions are important for you to know:

(d) CONSUMER REPORT:

(1) IN GENERAL: The term means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which 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;

- (a) credit or insurance to be used primarily for personal, family, or household purposes;
- (b) employment purposes; or
- (c) any other purpose authorized under section 604.

(2) EXCLUSIONS- The term "consumer report" does not include;

(a) any;

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report, or

(ii) communication of that information among persons related by common ownership or affiliated by corporate control, or

(iii) 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, prior to the time that the information is initially communicated, to direct that such information not be communicated among such persons,

(b) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device,

(c) 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 disclosures to the consumer required under section 615; or

(d) a communication described in subsection (o).

(e) The term "investigative consumer report" means 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.

(f) The term "consumer reporting agency" means any person which, 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 which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) 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.

(h) 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.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

B. Limit Access to Users with Permissible Purposes, Section 604

Consumer reporting agencies are required to limit access to consumer reports to the following purposes:

- As permitted by order of a court;
- For any purpose if the consumer gives permission in writing;
- For the extension of credit, or the review or collection of a consumer's account;
- For employment purposes;
- For the underwriting of insurance;
- When there is a legitimate business need;
- To review a consumer's account;
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality
- For use by a potential investor or servicer, or current insurer;
- For use by state and local officials in connection with the determination of child support payments;

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making unsolicited offers of credit or insurance, so long as a firm offer of credit actually is extended to the consumer.

These limited purposes are generally enforced by contract between the consumer reporting agency and the user and thus if a user violates the law, it also violates the contract and should give rise to a termination of service by the consumer reporting agency.

Under Section 607(d), consumer-reporting agencies are required to provide a notice to their users and to persons furnishing information to them as to their responsibilities under the FCRA.

(a) INFORMATION EXCLUDED FROM CONSUMER REPORTS: Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years – more simply put, 10 years from the date of filing for Chapter 13 Bankruptcies, and 10 years from the date of filing for Chapter 7 Bankruptcies.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) EXEMPTED CASES: The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with;

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000 or more.

(c) RUNNING OF REPORTING PERIOD:

(1) IN GENERAL: The 7-year period referred to in paragraphs (4) and (6) of subsection (a) shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action. (I.e., the collection or charge off can be reported for 7 years plus 180 days from the date of the first delinquency that was never brought current).

(2) EFFECTIVE DATE: Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996.

(d) INFORMATION REQUIRED TO BE DISCLOSED: Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title II, United States Code, shall include in the report an identification of the chapter of such title II under which such case arises if provided by the source of the information. If any case arising or filed under title II, United States Code, is withdrawn by the consumer prior to a final judgment, the

consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(e) INDICATION OF CLOSURE OF ACCOUNT BY CONSUMER: If a consumer reporting agency is notified pursuant to section 623(a)(4) that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) INDICATION OF DISPUTE BY CONSUMER: If a consumer reporting agency is notified pursuant to section 623(a)(3) that information regarding a consumer that was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

A. Compliance Procedures, Section 607

Section 607 requires:

- Consumer reporting agencies to "maintain reasonable procedures designed to avoid violations of Section 605" (relating the reporting of obsolete information) and to limit the furnishing of reports for permissible purposes under Section 604. These procedures include identifying prospective users, having them certify the purposes for which the information is sought and that the information will be used for no other purpose.
- Consumer reporting agencies to "maintain reasonable procedures to assure maximum possible accuracy of the information." These procedures include the proper checking of identification information, public record information, employment, etc.
- Consumer reporting agencies to <u>not</u> prohibit a user of their consumer reports from disclosing the contents of the report to the consumer if adverse action has been taken by the user based in whole or in part on the report.
- Consumer reporting agencies to provide a notice to information furnishers and to users of their responsibilities under the FCRA
- Consumer reporting agencies to obtain disclosures from resellers (including other consumer reporting agencies) regarding the identity of the end-user of the information and each permissible purpose for which the report is furnished to the end-user.
- Resellers (including consumer reporting agency resellers) to establish reasonable procedures to ensure that the report is resold only for a permissible purpose, including by requiring that each person who resells the report identify the end user, certify each purpose for the report and that it will be used for no other purpose, and make reasonable efforts to verify the identifications and certifications before reselling the report.

Section 607(a) procedures should include a strong contractual agreement between consumer reporting agency and the user relating to accessing reports for permissible purposes, and obtaining copies of user contracts with consumers, business licenses, etc. to further document that the user, in fact, has permissible purposes to access reports. Other 607(a) procedures include auditing the report by experienced personnel to ensure that obsolete information is not reported in violation of section 605.

The resale provisions of section 607(e) are designed to require that some controls be placed on agencies, which sell reports for further resale. Each reseller must identify the end user, the purpose for the use and certify that the report will not be used for any other purpose.

C. Disclosures to Consumers, Sections 609 and 610

Upon request and proper identification, the FCRA requires consumer-reporting agencies to disclose all information in the consumer's file at the time of the request except credit scores or other risk scores relating to the consumer. The prior FCRA's requirement of disclosing the 'nature and substance' of the information is now replaced with the requirement of full disclosure, meaning basically a consumer copy of the information in the agency's files.

In addition, the agency is required to disclose the name (and trade name) of all persons obtaining the consumer's report during the previous two years for employment purposes and previous one year for all other purposes. If the consumer so requests, the agency must also disclose the address and telephone number of such inquirers. In practice, agencies should consider disclosing the name, address and telephone number as a matter of course, rather than doing so only when requested by the consumer.

Under the amended FCRA, Section 609(c) when written disclosures are made to the consumer, disclosure of the information in the file and the name of previous inquirers must be accompanied by a written summary of the consumer's rights under the Act. This written summary was prescribed by the FTC (see section 609(c)(3)). While agencies are not required to utilize the form prescribed by the Commission, they must provide some form of written summary and use of the Commission's form will be deemed to be in compliance. Use of the Commission's form is therefore recommended.

D. Procedures in Case of Disputed Accuracy, Section 611

The dispute, reinvestigation and resolution process by consumer reporting agencies has been completely revised in the FCRA amendments. New processes include:

- The reinvestigation process must be completed within 30 days from the time the agency receives the notice of the dispute from the consumer, unless during that time the agency receives additional information relevant to the investigation from the consumer, in which case the reinvestigation period may be extended for an additional 15 days. Section 611(a)(1)
- The agency must notify the furnisher of information of the dispute within 5 business days of receiving it and include all relevant information regarding the dispute. If it later receives additional relevant information, it must forward that to the information furnisher as well. Section 611(a)(2)
- The agency may terminate a reinvestigation if it reasonably determines that the dispute is frivolous or irrelevant. If it does so, it must notify the consumer within 5 days of making such a determination and inform the consumer of the reasons for the determination and identify additional information it needs to investigate further, and if it receives such information it is required to review and consider it. Section 611(a)(3) and (4)
- If information is found to be inaccurate or incomplete or cannot be verified, the agency must 'promptly' delete it. If information is deleted from a consumer's file because it was found to be unverifiable or inaccurate, it may not be reinserted into the file unless (1) the information furnisher certifies to its accuracy and (2) notifies the consumer that the item has been reinserted, the business name and address of the information furnisher, and a notice that the consumer has the right to add a statement to the consumer's file disputing the completeness or accuracy of the information. The agency must maintain reasonable procedures designed to prevent the reappearance of deleted information in a consumer's file. Section 611(a)(5)
- An agency must notify the consumer within 5 business days of completing the reinvestigation, which (1) states that the reinvestigation is complete, (2) encloses a copy of the consumer report as a result of the reinvestigation, (3) offers a description of the reinvestigation procedure (see Form R-16) if requested by the consumer (which such

description must then be sent to the consumer within 15 days of receiving such a request), (4) provides a statement of the consumer's right to add a statement to the file, and (5) informs the consumer that he has the right to request, following the deletion of any information or addition of any notation of dispute, that notifications of such deletions or notations be sent to any person who has received a consumer report from the agency within the previous two years for employment purposes or six months for any other purpose. Section 611(a)(6) See Form R-15 in the Manual.

An expedited resolution procedure is available if within 3 business days of the receipt of the dispute the agency resolves the dispute by deleting the disputed information. If such is the case, the agency need not send notice of the dispute to the information furnisher, send written notice of the results of the reinvestigation to the consumer or provide a notice of the description of the reinvestigation procedure if it (1) provides prompt notice of the deletion to the consumer by telephone, (2) includes in that notice or a written confirmation a statement of the consumer's right to request notifications to previous report recipients, and (3) within 5 business days thereafter sends a copy of the report to the consumer. Section 611(a)(8)

E. Charges for Disclosures, Section 612

This section, too, has been extensively revised in the FCRA amendments.

- The disclosures under section 609 must be made without charge if within 60 days (not 30) of a consumer's request for disclosure the consumer has been sent a notice of adverse action under section 615.
- These disclosures must also be made without charge once in every 12-month period if the consumer certifies that he is unemployed and intends to apply for employment within the next 60 days, or is the recipient of public welfare assistance, or has reason to believe that the information in the agency's file is inaccurate due to fraud.
- Otherwise, the disclosures may be performed at a charge to the consumer, which (1) may not exceed \$11.50 (subject to annual changes in the Consumer Price Index), and (2) must be disclosed to the consumer prior to making the disclosures.
- The agency may also charge for making notifications to previous recipients of the report following a reinvestigation, but such charges (1) must not exceed the price the agency would charge each designated recipient for a consumer report and (2) must be disclosed to the consumer prior to furnishing the information.

F. Public Record Information for Employment Purposes, Section 613

Section 613 requires consumer reporting agencies issuing reports for employment purposes to either (1) notify the consumer at the time the report is issued that public record information is being reported (if in fact it is being reported) or (2) maintain strict procedures to insure that when public record information which is likely to have an adverse effect on the consumer's ability to obtain employment, it is complete and up to date (i.e. the current public record status is reported). It is for this reason that consumer reporting agencies maintain special access codes to be utilized by users when using reports for employment purposes. If a user were to obtain a report without informing the agency that it is for an employment purpose, the user would be in violation of Section 604(f) and it might put the agency in violation of Section 613.

Sec. 614 Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

§ 615. Requirements on users of consumer reports [15 U.S.C. § 1681m]

(a) Duties of users taking adverse actions on the basis of information contained in consumer reports. 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 shall

- (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 (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
 - (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 to the consumer an oral, written, or electronic notice of the consumer's right

- (A) to obtain, under section 612 [§ 1681j], a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and
- (B) to dispute, under section 611 [§ 1681i], with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.
- (b) Adverse action based on information obtained from third parties other than consumer reporting agencies.
 - (1) In 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 credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall 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.
 - (2) Duties of person taking certain actions based on information provided by affiliate.
 - (A) Duties, generally. If a person takes an action described in subparagraph with respect to a consumer, based in whole or in part on information described in subparagraph (C), the person shall
 - (i) notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii); and
 - (ii) upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (I), 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.

- (B) Action described. An action referred to in subparagraph (A) is an adverse action described in section 603(k)(1)(A) [§ 1681a], taken in connection with a transaction initiated by the consumer, or any adverse action described in clause (i) or (ii) of section 603(k)(1)(B) [§ 1681a].
- (C) Information described. Information referred to in subparagraph (A)
 - (i) except as provided in clause (ii) is information that
 - (I) 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; and
 - (II) bears on the credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living of the consumer; and
 - (ii) does not include
 - (I) information solely as to transactions or experiences between the consumer and the person furnishing the information; or
 - (II) information in a consumer report.
- (c) Reasonable procedures to assure compliance. No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of this section.
- (d) Duties of users making written credit or insurance solicitations on the basis of information contained in consumer files.
 - (1) In general. Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, that is provided to that person under section 604(c)(1)(B) [§ 1681b], shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that
 - (A) information contained in the consumer's consumer report was used in connection with the transaction;
 - (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;
 - (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;
 - (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and
 - (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [§ 1681b].
 - (2) Disclosure of address and telephone number. A statement under paragraph (1) shall include the address and toll-free telephone number of the appropriate notification system established under section 604(e) [§ 1681b].
 - (3) Maintaining criteria on file. A person who makes an offer of credit or insurance to a consumer under a credit or insurance transaction described in paragraph (1) shall maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or

insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the 3-year period beginning on the date on which the offer is made to the consumer.

(4) Authority of federal agencies regarding unfair or deceptive acts or practices not affected. This section is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit or insurance transaction that is not initiated by the consumer.

(e) Additional Score Disclosure Required under the Dodd-Frank Act

Companies that use credit scores to set material terms of credit or take an adverse action also must disclose the following information to consumers:

- 1. The numerical credit score used in taking the adverse action;
- 2. The range of possible credit scores under the model used;
- 3. The factors that adversely affected the credit score of the consumer, which should be ranked in the order of their importance and should not exceed four factors unless the number of credit inquiries is a factor and is not already reflected in the top four, in which case, five factors must be disclosed (i.e., the top four, plus the "inquiries" factor);
- 4. The date on which the credit score was created;
- 5. The name of the consumer reporting agency or other person providing the score; and
- 6. A prescribed statement explaining credit scores.
- (§ 1100F Dodd-Frank Act).

Sec. 616 Civil liability for willful noncompliance

- (a) IN GENERAL: Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of;
 - (1)(A) 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

(B) 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;

(2) such amount of punitive damages as the court may allow; and

(3) 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.

(b) CIVIL LIABILITY FOR KNOWING NONCOMPLIANCE: 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.

(c) ATTORNEY'S FEES: Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section 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.

G. Civil Liability, Sections 616, 617

Sections 616 and 617 establish civil liability for willful and negligent noncompliance with the

In the case of willful noncompliance, the court may allow actual damages of not less than \$100 nor more than \$1,000 and punitive damages, plus costs and attorney fees. In the case of a willful obtaining of a consumer report under false pretenses or knowingly without a permissible purpose, the court may assess actual damages or \$1,000, whichever is greater, plus punitive damages, costs and attorney fees.

In the case of negligent noncompliance, the court may allow any actual damages, plus costs and attorney fees.

In both cases, either party may receive its attorney fees in the event the other party files an unsuccessful pleading, motion or other paper.

Sec. 618 Jurisdiction of Courts; Limitation of Actions

An action to enforce any liability created under this title 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, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

H. Criminal Liability (Sections 619 & 620)

Any person who knowingly or willfully obtains a consumer report from a consumer reporting agency under false pretenses, or any officer or employee who knowingly or willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined or imprisoned not more than 2 years, or both.

I. Administrative Enforcement (Section 621)

Federal enforcement was left largely to the Federal Trade Commission, and now the Consumer Financial Protection Bureau, although a laundry list of federal agencies which regulate banks, credit unions, air carriers, etc. are authorized to enforce the Act with respect to their regulated institutions, but federal agencies regulating banks, savings associations and credit unions may not conduct examinations regarding compliance with the Act except in response to a complaint. The Federal Reserve Board may issue interpretations of the Act with respect to certain financial institutions.

The CFPB has procedural, investigative and enforcement powers to enforce the FCRA and may commence actions to recover civil penalties and to enjoin violations of the Act. Information furnishers, however, may not be given civil penalties for violating section 623(a)(1) (reporting information with actual knowledge of errors or after notice or confirmation of errors) unless they have been previously enjoined from doing so and have violated the terms of such an injunction.

As to state enforcement, states are authorized to bring an action to enjoin any violation of the Act, bring an action on behalf of its residents to seek damages, seek penalties of not more than \$1,000 for each willful or negligent violation, plus costs and reasonable attorney fees. If a state determines to bring any such action it must notify the CFPB before doing so, and the CFPB has the right to intervene in the action and remove it to federal court. If a federal action is pending, no state may bring a state action during the pendency of the federal proceeding.

Act.

Sec. 622 Information on Overdue Child Support Obligations

Notwithstanding any other provision of this subchapter, a consumer-reporting agency shall include in any consumer report furnished by the agency in accordance with section 604 of this title, any information on the failure of the consumer to pay overdue support which;

- (1) is provided;
 - (A) to the consumer reporting agency by a State or local child support enforcement agency; or
 - (B) to the consumer reporting agency and verified by any local, State, or Federal Government agency; and
- (2) antedates the report by 7 years or less.

Sec. 623 Responsibilities of Furnishers of Information to Consumer Reporting Agencies

- (a) Duty of furnishers of information to provide accurate information:
 - (1) Prohibition:
 - (A) Reporting information with actual knowledge of errors. A person shall not furnish any information relating to a consumer to any consumer-reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.
 - (B) Reporting information after notice and confirmation of errors. A person shall not furnish information relating to a consumer to any consumer reporting agency if--
 - (i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and
 - (ii) the information is, in fact, inaccurate.
 - (C) No Address Requirement. A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.
 - (2) Duty to Correct and Update Information. A person who;
 - (A) 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
 - (B) 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, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

- (3) Duty to Provide Notice of Dispute. If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.
- (4) Duty To Provide Notice of Closed Accounts. 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 shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed
- (5) Duty to Provide Notice of Delinquency of Accounts. 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 shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.
- (b) Duties of Furnishers of Information Upon Notice of Dispute.
 - (1) In General: After receiving notice pursuant to section 611(a)(2) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall;
 - (A) conduct an investigation with respect to the disputed information;
 - (B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2);
 - (C) report the results of the investigation to the consumer reporting agency; and
 - (D) 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.
 - (2) Deadline: A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, prior to the expiration of the period under section 611(a)(1) within which the consumer reporting agency is required to complete actions required by that section regarding that information.

The Consumer Financial Protection Bureau has issued guidance on data furnishers' responsibility to investigate disputes and review "all relevant" information provided by consumer reporting agencies about the disputes. The CFPB expects each furnisher to comply with the FCRA by:

- (1) Maintaining a system reasonably capable of receiving from CRAs information regarding disputes, including supporting documentation;
- (2) Conducting an investigation of the disputed information including reviewing:

a. "all relevant information" forwarded by the CRA and;

- b. the furnisher's own information with respect to the dispute;
- (3) Reporting the results of the investigation to the CRA that sent the dispute;
- (4) Providing corrected information to every nationwide CRA that received the information if the information is inaccurate or incomplete; and
- (5) Modifying or deleting the disputed information, or permanently blocking the reporting of the information if the information is incomplete or inaccurate, or cannot be verified.
- (CFPB Bulletin 2013-09)
- (c) Limitation on Liability. Sections 616 and 617 do not apply to any failure to comply with subsection (a), except as provided in section 621(c)(1)(B).
- (d) Limitation on Enforcement. Subsection (a) shall be enforced exclusively under section 621 by the Federal agencies and officials and the State officials identified in that section.

J. Relation to State Laws (Section 624)

This provision is rather complicated and was drafted in the legislative trade-off between those members of Congress who wanted to completely preempt state credit reporting laws and those who were against any preemption whatsoever.

In general, all state laws respecting (1) prescreening, (2) time requirements in section 611 on reinvestigations (except those state laws in effect on September 30, 1996), (3) duties of persons under section 615 taking adverse action, (4) obsolescence periods under section 605 for information in consumer reports (except those state laws in effect on September 30, 1996), (5) responsibilities of information furnishers under section 623 (except the laws of Massachusetts and California), (6) information exchanged between persons affiliated by common ownership or control (except Vermont), and (7) the form and content of disclosures under section 609(c) are preempted.

The above limitations do not apply to state laws enacted after January 1, 2004, which state explicitly that they are intended to supplement federal law and give greater protection to the consumer.

K. Disclosure to FBI for Counterintelligence Purposes (Section 625)

The Federal Bureau of Investigation is given greater rights to obtain information in the files of consumer reporting agencies, provided certain certifications are made by the Director of the FBI or the FBI obtains court orders.