REGULATIONS OF CREDIT BUREAUS: THE AMERICAN EXPERIENCE

INCLUDING THE EGYPTIAN CREDIT BUREAU MODEL

EGYPT FINANCIAL SERVICES PROJECT
TECHNICAL REPORT #61

July 2006
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DATA PAGE

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Submitted to:	EFS CTO: Paul Bruning EFS DCTO: Ingi Lotfi Private Sector Programs Office of Policy and Private Sector USAID Mission to Egypt
Task:	Task 4: Establish a Broad-Based Credit Information System
KRA:	KRA 4.1 Strengthen Capacity of CBE for Oversight of Private Information Systems and Protection of Consumer Rights
Activity:	Activity 4.1.7. Training for Central bank of Egypt Activity 4.1.4. Assist the CBE in consolidating its role as the authority that will oversee consumer protection as pertains to credit bureau operations
Author:	Federal Trade Commission: Bethany Matz, Legal Advisor to the Director of the Bureau of Consumer Protection, FTC Dr. Kenneth Kelly, Economist, Division of Consumer Protection, Bureau of Economics, FTC David P. Lafleur, Policy Analyst, Federal Deposit Insurance Corporation Egypt Financial Services: Marian Mishriki, Task Leader
Date:	July 2006

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ACRONYMS

AI	Appraisal Institute
ABS	Asset-backed Securities
BDA	Bond Dealers Association
CAPMAS	Central Agency for Public Mobilization and Statistics
CASE	Cairo and Alexandria Stock Exchanges
CBE	Central Bank of Egypt
CMA	Capital Market Authority
CRA	Commercial Registry Authority
CTO	Cognizant Technical Officer
EAA	Egyptian Appraisers Association
EBA	Egyptian Bankers Association
ECMA	Egyptian Capital Market Association
EFS	Egypt Financial Services Project
EHFC	Egyptian Housing Finance Company
EIMA	Egyptian Investment Management Association
EISA	Egyptian Insurance Supervisory Authority
EJA	Egyptian Judges Association
ELA	Egyptian Lawyers Association
EMBA	Egyptian Mortgage Brokers Association
ESA	Egyptian Survey Authority
EREA	Egyptian Real Estate Association
ERESA	Egyptian Real Estate Surveyors Association
GAFI	General Authority for Free Zones and Investment
GOE	Government of Egypt
IFS	International Federation of Surveyors (Egypt Chapter)
IPF	Investors Protection Fund
KRA	Key Results Area
MBA	Mortgage Bankers Association
MCDR	Misr for Clearing, Depository, and Registry
MFA	Mortgage Finance Authority
MLS	Multiple-listing Service
MSAD	Ministry of State for Administrative Development
MOF	Ministry of Finance
MOH	Ministry of Housing
MOJ	Ministry of Justice
MOI	Ministry of Investment
MOU	Memorandum of Understanding
NASD	National Association for Securities Dealers
NIB	National Investment Bank
PGF	Payment Guarantee Fund (Guarantee Fund)
PIN	Parcel Identification Number
SEC	Securities and Exchange Commission
SII	Securities and Investment Institute
UCD	Universal Cadastral Database
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development
YEBA	Young Egyptian Bankers Association

TABLE OF CONTENTS

Introduction: Training Brochure

Regulations of Credit Bureaus: The American Experience

Including the Egyptian Credit Bureau Model

5-day expert practical workshop designed to equip participants with the skills and knowledge on credit bureaus framework, operations and regulations including:

- U. S financial system and credit bureaus regulatory framework
- Role of regulators
- Compliance and Examination in practice
- Consumer protection and privacy issues
- Real and hypothetical case studies
- Egyptian credit bureau project

Date: June 25 – June 29, 2006 (8:30 am – 4:30 pm)

Venue: Grand Hyatt Hotel
Garden City
Park Building
Palm D'OR Meeting room

Course Objectives:

In the past thirty years, credit bureaus have developed all over the world. Many developing countries have recently allowed privately owned credit bureaus to incorporate.
Different countries have different models. In the US and Canada, there are private registries. Elsewhere, there are public registries and some countries have both public and private registries.

In many countries credit bureaus have started without legislation or regulation when there was nothing prohibitive in their laws. Legislation/regulations later followed. In other countries, credit bureaus are self regulatory institutions or were regulated by law.

As countries with recently formed private registries seek to establish their own model and develop the regulatory concept and approach that best fits their own culture and set of conditions, this program provides the participants with a unique opportunity to learn first hand from the experience of practitioners and to exchange ideas in a comfortable learning environment.

Who Should Attend?

- Central Banks
- Regulators
- Credit Bureau executives
- Commercial Banks
- Commercial enterprises
- Nonbank financial institutions
- Microfinance institutions
- Government agencies

Language of Instruction:

English with simultaneous translation to Arabic

Teaching Methodology:

Pre course reading of the materials is required

Course Level:
This course is suitable for any executive whose institution has a stake in credit bureaus

To Register:

By maximum: ***June 15, 2006***

Personal Details required:
Name:
Title:
Institution:
Address
Telephone
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Mobile:
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Day One:
Session One
Introduction
(Opening Remarks by USAID/EFS)
- General objectives of the program
- Ice Breaker: Trainers and participants introductions & expectations

The Egyptian Credit Bureau Project: Status and Prospects
(Power point presentation by Marian Mishriki)
- Overview of Egypt's financial system
- Egyptian Banking law changes
- Overview of the regulations
- Public registry
- Challenges

Session Two
Overview of U.S financial system
(Lecture, Dr. Kenneth Kelly)
- The financial sector in the US economy: Banks, thrifts, credit unions, insurers, others and their regulation
- Sources & uses of credit reports

Session Three
Overview of U.S Legislation: Fair Credit Reporting Act (FCRA)
(power point presentation, Bethany Matz)
- History of credit reporting in the U.S.
- Basic summary of the FCRA

Day Two: Session one
Role of Federal Trade Commission
(Lecture, Power point presentation, Bethany Matz)
- Background on the Federal Trade Commission
- FTC oversight and enforcement of FCRA
- Oversight of consumer reporting agencies (CRAs) and non-CRAs
- How FTC conducts investigations and brings cases
- FTC v. Choice Point

Session Two
(Lecture, Bibliography provided, Dr. Kenneth Kelly)
The Economics of Credit Reporting & Regulation

Session Three
Hypothetical Case Studies
(Group discussion)
- FTC enforcement hypothetical # 1 involving potential FCRA violations

Day Three:
Session One
Role of Federal Banking Agencies
(Power point Presentation, David Lafleur)
- Background on Oversight of financial institutions
- Specific responsibilities for banks, including FCRA requirements for users of reports, disclosures, furnishers of information, etc

Session Two
(Power point presentation, David Lafleur)
- Overview of examination procedures
- Overview of enforcement process
- Consumer complaint process and its impact on examination

Session Three
- FDIC enforcement hypothetical involving FCRA violations and examination process

Day Four:
Session One
(Lecture, Dr. Kenneth Kelly)
Developments in the consumer reporting industry in the U.S
- Recent FCRA studies

Session Two
Privacy and Data Security laws in the U.S., with emphasis on the Gramm-Leach-Bliley Act's Safeguards Rule
(Power point presentation, Bethany Matz)
- Overview of various privacy and data security laws
- Emphasis on the Safeguards Rule and recent FTC cases involving that Rule

Session Three
- FTC enforcement hypothetical # 2 involving potential FCRA violations

Day Five:
Session One
Developing Egypt's regulatory model
Group Work: Participants will work in groups to provide recommendations on examination procedures for credit bureaus in Egypt

Session Two
Recommendations for Egypt
Group Presentations
- Lessons learned from the American experience
- What can be applied in Egypt
- Future prospects for the market

Wrap up of the program /closing remarks

Program Trainers:

Ms. Marian Mishriki, Task Leader, Credit Information Systems, Egypt Financial Service Project/ USAID. Since December 2004 Ms Mishriki has been leading the credit bureau technical assistance component of Egypt Financial Service project and has established knowledge of Egypt's credit bureau situation, working closely with the Central Bank of Egypt, the Egyptian Credit bureau & other stakeholders. She is a senior finance and credit expert with over 23 years practical experience in Egypt's financial, banking and investment sectors and in financial consulting assignments in the Egyptian financial sector with donor organizations. Past experience includes credit at Egyptian American Bank, corporate finance at KPMG and investment banking at a financial institution. She is also a financial trainer with more than ten years experience and special skills in developing new financial training programs and an academic instructor of Economics and Finance at several universities including the American University in Cairo. She has a BA and an MA in Economics from the American University in Cairo and an MA in Finance and Investment from Exeter University, UK.

Ms. Bethany Matz, a legal advisor to the Director of the Bureau of Consumer Protection (BCP), one of the Federal Trade Commission's two law enforcement bureaus. With a staff of about 270 and a budget of $100 million, BCP enforces a wide range of laws designed to prevent fraud and deception in the commercial marketplace, as well as to provide consumers with important information about the goods and services they purchase. As a legal advisor to the Director, Ms. Matz works on a wide range of consumer protection policy and law enforcement issues. She specializes in financial privacy issues and credit related matters, including enforcement and implementation of the newly amended Fair Credit Reporting Act. Ms. Matz joined the FTC in 2001 as a staff attorney in the Division of Financial Practices. There, she led several investigations involving fraud and financial privacy issues and advised companies on compliance with the Gramm-Leach-Bliley Act. Prior to joining the Federal Trade Commission, Ms. Matz worked on civil litigation matters at Williams & Connolly LLP. Ms. Matz received her J.D. degree from Harvard Law School and her B.A. from the University of Texas at Austin.

Dr. Kenneth Kelly, CFA , Economist, Division of Consumer Protection, Bureau of Economics, Federal Trade Commission (October, 2004-present). In recent years, has testified on behalf of the FTC in a number of consumer protection matters, in litigation involving pyramid schemes, advertising substantiation, investment fraud, deceptive advertising, and mortgage lending. He produces studies of the financial services industry, and conducts independent research on antitrust and industrial organization issues, commercial policy, and forensic economics. Since 1973 he has held positions in several government agencies including the Federal Trade Commission and the International Trade Commission. Dr. Kelly is also Adjunct Professor, Department of Applied Economics, Johns Hopkins University where he teaches graduate Financial Economics. He has published numerous articles. He was awarded the Ph.D. in Economics and the M.S. in Applied Math & Statistics in 1979 by the State University of New York at Stony Brook and the B.S. in Economics-Business in 1973 by Hofstra University, and is a Chartered Financial Analyst.

David P. Lafleur, CRCM Policy Analyst, Compliance, Federal Deposit Insurance Corporation. As a compliance examiner (1996 -2002) with the Federal Deposit Insurance Corporation and Federal Reserve Bank of San Francisco, Mr. Lafleur conducted examinations of financial institutions, consumer compliance examinations of highly complex financial institutions. Presently and since 2002, Policy Analyst, Compliance, Federal Deposit Insurance Corporation. He is a nation wide expert on the Fair Credit Reporting Act & privacy regulations, involved in drafting regulations, examinations procedures and policies, leads interagency groups through the Federal Financial Institutions Examination Council. Throughout the past years Mr. Lafleur provided training to staff members and provided guidance in compliance. He is a Certified Regulatory Compliance Manager (CRCM), awarded by the Institute of Certified Bankers and holds a Bachelor of Science Accounting from Southern NH University (formerly NH College) Manchester NH, 1993.

List of Speakers and Participants

Regulations of Credit Bureaus: The American Experience Including the Egyptian Credit Bureau Model 25- 29 June 2006

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Attachment 1: Day One-Session One- Credit Bureaus and the Egyptian Credit Bureau Model

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Credit Bureaus and the Egyptian Credit Bureau Model

Regulations of Credit Bureaus: The American Experience
Including the Egyptian Credit Bureau Model
Training Program
June 25 - June 29, 2006
Cairo, Egypt

Marian Mishriki - Component Leader - EFS

June 25, 2006

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Agenda

1. The Credit Bureau Concept
2. Private versus public registries / Importance of private registries
3. Credit information systems related issues
4. Egyptian Credit Bureau Model
5. Credit Bureaus and the non bank sector in Egypt

What is a credit bureau?

- Deals with information that bears on credit worthiness of consumers
- Agency
- Computerized system (hardware & sophisticated software)

3

Personal Information

Name
Identity
Address (s)
Birth date
Marital status- spouse name
Employment history

Public record

Bankruptcies

Criminal/ civil judgments

Others

Credit Report Contents

Payment habits

Types of credit
Dates
Balances
Days overdue
Monthly payment
Other

Inquiries

Who
Date

Does not include discriminatory information such as religion, ethnicity, political affiliation

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Negative versus Positive information

- Negative: late payments, nonpayment, delinquencies and defaults. May also include bad checks, unpaid bills of exchange

- Positive:
  All current & historical credit arrangements that have been handled as agreed and paid on time.

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Value added services by credit bureaus: Scoring

- Calculated automatically from information with the credit bureau based on an objective statistical analysis of historical data
- Scores: numbers from 0 to 1000
- How it is reached: payment history (35%) , amount owed (30%), length of credit history (15%), new credit (10%), types of credit in use(10%).
- Higher score, the lower the risk.

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Value added services: Fraud detection systems

- Identity theft, stolen credit card, lost credit card
- Credit bureau systems provide alerts when there are inaccuracies, such as alternate addresses or different dates of birth

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Other value added services

- Portfolio Monitoring
- Processing of large scale applications for credit
- Verification/completion of information.
- Early warning systems

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Private versus Public registries Importance of private registries

Public registries

- Government regulated and controlled
- Focus on large loan size
- Supervisory purposes
- Questionable data quality
- Not service oriented
- Limited information
- No interest in developing ancillary products
- No access by borrowers

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Private credit information systems

- More & better credit information
- Accurate credit risk evaluation
- Efficiency gains
- Better allocation of credit
- Lower default rates
- Lower lending rates
- Allows for mass credit-large volumes of credit requests
- Past behavior predicts future

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Private Sector Credit Bureaus have substantial effects:

- Macroeconomic impact
- Support development of financial and commercial sectors

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Credit Information Systems Related Issues

1. Information Systems issues

- Type of data
- Quality of data
- Completeness
- Accuracy & reliability
- Historical availability
- Payment habits
- Update
- Timeliness

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2. Legal Framework

- Should not impede: enabling legislation or non preventive
- Laws related to collection and disclosure
- Liability protections: libel and similar laws.

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3. Operations

- Permissible use of information:
  - Credit
  - Collection of debt
  - Underwriting of insurance
  - Employment
  - Court order
  - Issuing a license as required by some government agencies
- Initiated by consumer

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- Data security: protect against improper data access
- Data integrity: keep negative data even if a past due has been paid

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4. Public Policy

- Credit bureaus can be used to combat societal discrimination (*race, gender, national origin, political affiliation)* – equalizing treatment of borrowers.
- Obsolescence: negative information should not be reported beyond a certain period of time, ex: seven years, such as in bankruptcy, court judgments, loan defaults. By contrast, there might be other types of negative information ex: convictions of serious crimes that are in society's interest to report for longer periods of time or even indefinitely

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5. Privacy

- Structuring a system with the consent of data subject but giving consumers control over their databases will make persons with poor credit history exclude themselves or limit their access to their complete credit history

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- Transparency about the credit information system:
  - Consumers have the right to know about the existence of credit information systems.
  - Data subjects should have access to their own information
  - Right to dispute inaccurate or incomplete information & mechanism to investigate disputes and errors
  - Timely consideration of the disputes

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6. Enforcement /Supervision

- Credit information systems tools to supervise institutions
- Effective enforcement systems
- Sanctions for violations of laws regulating credit information systems

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Egyptian Credit Bureau Model

Credit Information System

Banks
Mortgage Finance
Financial Leasing ↔ Central Bank of Egypt

1. Banks, mortgage finance & financial leasing only provide own customers information to Central Bank. They alone can access Central Bank. No other data is supplied from other sources about their borrowers.
2. Data subjects are borrowers who have debts/credit facilities.
3. Borrowers/consumers cannot access their credit reports

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Egyptian Parliament approved changes in the banking law no 88 for 2003 as follows:

- Incorporation of private sector credit bureaus
- CBE licensor
- CBE has wide authority to put rules and regulations: (1) working system of credit bureau (2) CBE supervision system (3) rules of exchange of information
- Credit information can be shared with a new entity (private sector credit bureau)
- Articles pertaining to the public registry unchanged

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First Egyptian Credit Bureau was established under the banking law with the participation of 28 banks and the Social Fund for Development and obtained a preliminary approval

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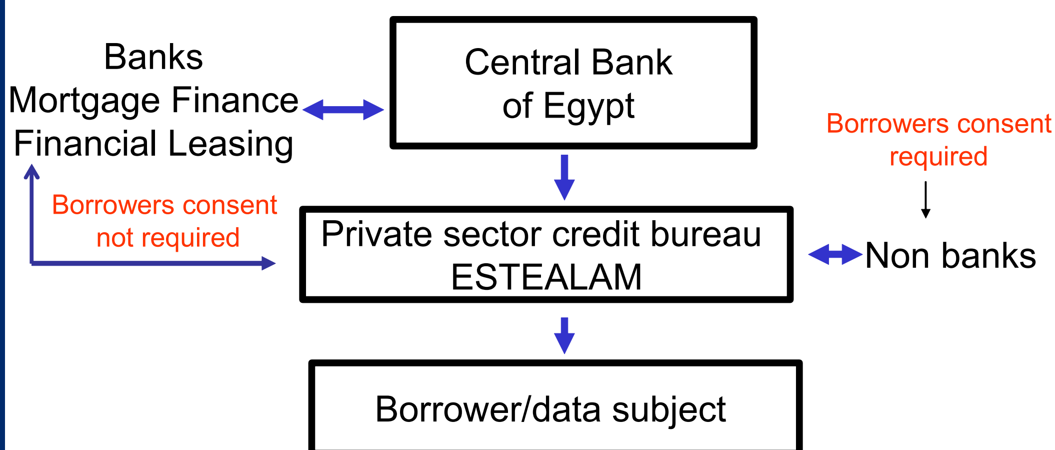
Status after amendment in the banking law



The right to obtain credit report
The right to complaint if information is erroneous

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Main Features of the Egyptian Rules and Regulations

- Drafted within the Egyptian legal framework: The constitution and Egyptian laws including the banking law
- Guided by legislation and codes of conduct in other countries.
- Reviewed by international credit bureau advisers.

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Permissible purposes under the Egyptian regulation of credit bureaus

- As per a court order
- Providing credit
- Accepting a guarantee
- Determining the credit score
- As per consumer's consent

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- Membership of credit bureaus is restricted to corporate entities. Natural persons cannot be members.
- Members should sign an agreement with the credit bureau
- Banks, financial leasing & mortgage finance companies can exchange information with Central Bank and credit bureaus without consumer consent. Other entities need to get consumer consent.

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- Information exchanged is still secret and confidential, and should be secure.
- Credit bureau is only responsible for its own system and does do not provide recommendations
- More than one credit bureau can exchange information in the future.

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Consumer obtains
Credit report

15 days

Complain submitted

10 days

Noted in
credit report

Sent to
information
Provider

15 days

Error
Fixed

Complaint
Not accepted
Consumer notified

Credit Bureau

Informs consumer
of investigation results

Informs inquirers

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Credit Bureaus and the Non bank Sector in Egypt

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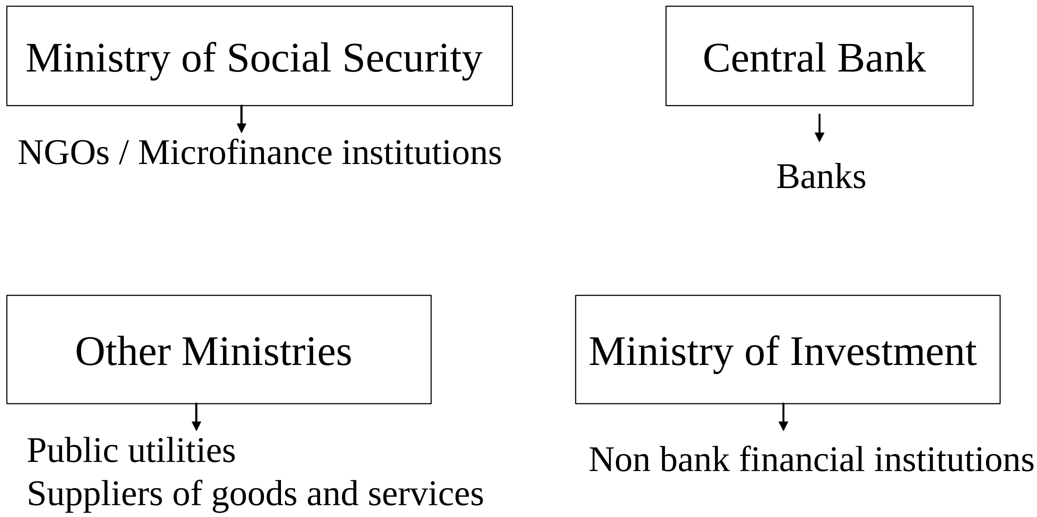

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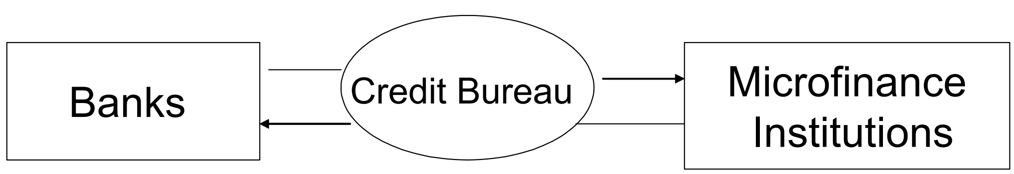
Microfinance Institutions



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Ministry of Investment

Capital Market Authority

Mortgage Finance Authority

Egyptian Insurance Supervisory Authority

General Authority for Investment and Free Zones

Public Enterprises

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Use of credit bureaus for compliance and support of Non Bank Financial Services

Insurance

Employment of staff in portfolio and brokerage firms

Factoring

Securitization

Licensing

Loans and Credit
Mortgage finance loans
Margin trading

Leasing

Money Laundering

Know your Customer rule

Direct Investment

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To summarize:

- Credit Bureaus new in Egypt
- Complex
- Needs time to develop
- Relies on reciprocity principle

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Attachment 2: Day One - Session Three: Overview of U.S. Legislation: Fair Credit Reporting Act

Overview of U.S. Legislation: Fair Credit Reporting Act

Bethany Matz
U.S. Federal Trade Commission

June 25, 2006
Day One – Session Three

Disclaimers

- My remarks do not necessarily reflect the views of the Federal Trade Commission or any Commissioner
- Focus on consumer credit reporting, not business credit reporting

History of Credit Reporting

- In US during mid-20th Century:
  - Many small (regional) credit bureaus (Note: credit bureaus are NOT government agencies)
    - Consumers less mobile
    - Credit relationships were more personal
  - Most credit extended by retailers (e.g., local stores)
    - Retailers voluntarily shared primarily negative information about customers who did not pay their bills
    - In exchange, credit bureaus furnished information regarding prospective customers

History of Credit Reporting

- Changes over time:
  - Retail markets became larger, expanding to national chains
  - Lending moved from local to national markets
  - Banks and finance companies became primary source of consumer credit
  - Computer advances
    - Made it possible to transmit, store, and retrieve data more quickly and efficiently
    - Computerization of creditor records enabled credit bureaus to accept automated account data

History of Credit Reporting

- By the end of the 1980’s, three credit reporting companies dominated the U.S. market
  - Equifax, Experian, and Trans Union
- Mostly repositories for consumer credit histories, but also specialized information on checkwriting, rental history, employment screening, etc.

What is in a Consumer (credit) file?

- Identifying information
  - Name, address, Date of Birth, Social Security Number
- Credit account information
  - Mortgages, car loans, credit cards
- Public records
  - Bankruptcies, foreclosures, civil judgments, tax liens
- Collection accounts (delinquent debts)
- Inquiries

What is the Value of a Consumer Report?

- Creditors analyze credit report data in order to assess risk of default
- Consumer report data is used to develop credit scores for consumers

General process

- Consumer applies for credit, insurance, employment, etc.
- Business obtains report from credit bureau
- Business grants or denies application, based on report (in part or whole)

Who provides information to credit bureaus?

- Furnishers – those who furnish information about the consumer such as creditors or other lenders
- Furnishers provide information to credit bureaus voluntarily
- The credit bureaus maintain files on 215 million U.S. consumers from 30,000 data furnishers

Fair Credit Reporting Act

- First enacted in 1970
- Reasons for regulation:
  - Lack of restrictions on who could obtain credit reports
  - Consumers unaware that credit reports even existed
  - Inability of consumers to challenge errors because they often did not know files about them existed or who had them
  - Growing concerns about the reports' accuracy and the harm inaccurate information might have on consumers

Fair Credit Reporting Act

"The Congress makes the following findings:

(1) 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 which is essential to the continued functioning of the banking system. . . ."

15 U.S.C. § 1681(a).

Fair Credit Reporting Act

"It is the purpose of this title 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 which is fair and equitable to the consumer . . . ."

15 U.S.C. § 1681(b).

FCRA Overview

- Basic structure: market (rather than government) determines what information is collected and used
  - no legal requirements on what information may or may not be collected
  - consumer consent not required to report information

- **If** information is collected and used to evaluate consumers for credit, insurance, employment or other services, **then** FCRA applies (and those that collect, provide and use data have obligations)

FCRA Overview

- FCRA covers *any* data collected that is used for certain purposes –not just “credit” data
  - Example: certain medical information, employment information, public record information
- Data collected: positive and negative
  - Data very important to making better risk evaluations
- Also collected: public record data
  - Judgments, tax liens, criminal records

FCRA Guiding Principles

- Privacy
  - Limited access to credit reports
  - Same limits on government access, with certain exceptions
- Accuracy
  - Responsibilities of credit bureaus and creditors
  - Consumer dispute process
- Fairness
  - Adverse action notices
  - Obsolete information deleted

Privacy:
Permissible Purposes

- Basic principle: must have "permissible purpose" to obtain a credit report
- Credit bureaus must have procedures to make sure that they distribute credit reports only to those with a permissible purpose

Privacy:
Permissible Purposes

Include:

- Written permission of consumer
- Credit transaction
  - Collection of credit account
  - Review of credit account
- Insurance underwriting
- Employment
  - But must obtain written permission of consumer

Privacy:
Government Access

- Generally, government agencies treated no differently
- Exceptions:
  - A government agency may obtain limited identifying information (name, current or former address, current or former employment)
  - Certain exceptions for counterintelligence purposes and antiterrorism

Accuracy:
Why do credit reports have errors?

- Problems with data provided by furnisher
  - Furnisher may send credit bureau inaccurate or incomplete information
- Problems with assigning data to proper consumer file
  - CRA may place data in wrong consumer file – similarity of names or addresses
- Problems with file retrieval
  - CRA may send file on wrong consumer

Accuracy

FCRA requirements:

- Credit bureaus must "follow reasonable procedures to assure maximum possible accuracy"
- Creditors cannot provide to credit bureaus any information that it "knows or has reasonable cause to believe is inaccurate"
- Consumers have a right to know what is in their credit report and to dispute inaccurate or incomplete information

Accuracy: Credit Information Disputes

When a consumer notifies credit bureau of dispute:

- Credit bureau must send dispute to creditor
- Creditor must investigate dispute and report back to credit bureau
- Credit bureau must notify consumer of results
- If no changes to credit report, consumer has a right to file a dispute statement
- Must be completed generally in 30 days

Fairness

Two examples:

- Consumers have a right to know if a credit report was used to deny credit (or take other "adverse action" against them)
  - Also right to know who has obtained credit report ("inquiries")
- "Obsolete" information is eventually deleted -- consumers can start over

Fairness: Adverse Action Notice

- If credit denied because of information in credit report, creditor must notify consumer
  - Name, address and telephone number of the credit bureau where obtained report
- If adverse action, consumer has a right to a free copy of his credit report

A consumer is entitled to a free credit report if:

- he is the victim of identity theft and places a fraud alert in his file;
- his file contains inaccurate information as a result of fraud;
- he is on public assistance;
- he is unemployed but expects to apply for employment within 60 days; and
- a person has taken adverse action against the consumer because of information in his credit report.

In addition, all consumers are entitled to one free credit report per year from each of the three main credit bureaus.

Fairness: Obsolete Information

- Credit bureaus must delete obsolete information typically after 7 years
- Exceptions:
  - Bankruptcies: 10 years
  - Unpaid judgments: 10 years
  - Criminal convictions: no limit

FCRA Amendments

- Since 1970, FCRA has been amended by Congress to deal with new issues
- 1996 amendments
  - Dispute resolution procedures for credit bureaus
  - New responsibilities for "furnishers" (e.g., creditors)
  - Expanded responsibilities for those that use credit reports (particularly employers)
- In 2003, Fair and Accurate Credit Transaction Act ("FACTA") further expanded responsibilities, including new areas (e.g., identity theft protection)

FCRA Enforcement

- Civil enforcement by many agencies:
  - FTC and federal banking agencies
  - State attorneys general
  - Consumers: private right of action in some cases
- Criminal enforcement: federal or state prosecutors (e.g., information obtained under false pretenses, unauthorized disclosure by credit bureau employees)

FCRA Enforcement

Structure designed to be self-enforcing:

- Consumers learn of adverse action, have incentive to check report and dispute any errors
- Even if no errors, consumers learn more about what is driving decisions, and can change behavior

Consumer Guidance

Many financial planners recommend that consumers review their credit report once a year

– especially before applying for a home loan or some other benefit where their credit report could affect the outcome.

Questions?

Attachment 3: Day Two- Session One: Role of Federal Trade Commission

The Role of the U.S. Federal Trade Commission in Enforcing the Fair Credit Reporting Act

Bethany Matz
U.S. Federal Trade Commission

June 26, 2006
Day Two – Session One

AGENDA

- •Overview of the FTC
- •FTC enforcement of the Fair Credit Reporting Act
    - Credit Bureaus
    - Furnishers of information to credit bureaus (creditors, etc.)
    - Users of consumer reports (creditors, etc.)
- •A typical non-public investigation
- •Recent FTC case involving the FCRA
    - ChoicePoint
- •Consumer and business education

WHAT IS THE FTC?

- Nation's only general jurisdiction consumer protection agency
- Enforcement through federal district court and administrative litigation
- Relatively small agency
- *www.ftc.gov*

FTC JURISDICTION

- FTC Act (Section 5) prohibits unfair or deceptive acts and practices
- FTC also enforces 45 other statutes and more than 30 trade regulation rules

FTC FUNDAMENTALS

- **Deceptive practices are representations, omissions, or practices that:**
  - Are likely to mislead consumers acting reasonably under the circumstances
  - Representation, omission, or practice must be material

FTC FUNDAMENTALS

- **Unfair practices are those that:**
  - Cause or are likely to cause substantial injury
  - Are not outweighed by the benefits, and
  - Are not reasonably avoidable by the consumer

FCRA ENFORCEMENT

- Civil Enforcement
  - FTC and federal banking agencies
  - State attorneys general
  - Consumers: private right of action
- Criminal Enforcement
  - Federal and state prosecutors

FCRA ENFORCEMENT

- FCRA grants jurisdiction to the federal banking agencies for depository institutions
- and, with minor exceptions, to the FTC for all others subject to the FCRA:
  - credit bureaus
  - furnishers (e.g., creditors, debt collectors, retailers, and insurers)
  - users (e.g., same as above, plus landlords and employers)

ROLE OF FTC

Enforcement:

- Conduct investigations
  - Do not conduct "examinations" or "audits"
  - Do not have resources to investigate individual consumer complaints (look for patterns)
  - Power to subpoena information
- If bring legal action – right to obtain civil penalties (knowing violations and "pattern or practice")

TRIGGERS FOR FTC INVESTIGATIONS

- Consumer complaints
- Congressional inquiries
- News reports
- Business complaints

CONFIDENTIALITY

Generally, FTC investigations are non-public to protect both the investigation and the company.

A TYPICAL NON-PUBLIC INVESTIGATION

- The Hypothetical
  - FTC staff observes a pattern of complaints against a credit bureau
  - FTC staff analyzes the complaints to assess severity and whether they suggest a *systematic* problem

A TYPICAL NON-PUBLIC INVESTIGATION

- **FTC staff contacts target company**
- **Purpose: to obtain information about the company's policies and procedures in the areas at issue**
- **Request for documents**
  - access letters
    - voluntary production
  - civil investigative demand
    - FTC authorized to use compulsory process in non-public investigations to compel production of existing documents

CID: Specifications for Documentary Material

- All manuals, instructions, and computer programs that govern the insertion of information into a consumer's file
- Random sample of consumer files
- Consumer complaints

CID: Specifications for Written Interrogatories

- Has the relevant department undergone any audits in the past five years?
  - If yes, by whom and what were the results?
- Names and titles of all current and former employees who work in the relevant department

A TYPICAL NON-PUBLIC INVESTIGATION

- FTC staff decides whether oral testimony is necessary to obtain information and/or explain information obtained already

Interviews & Hearings

CIVIL INVESTIGATIVE DEMAND
Oral Testimony

1. TO	2. FROM
John Smith President and CEO Acme Credit Bureau 100 Main Street Anytown, U.S.A. 51230	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 6.

3. LOCATION OF HEARING	4. YOUR APPEARANCE WILL BE BEFORE / 5. DATE AND TIME OF HEARING
Federal Trade Commission Bureau of Consumer Protection 600 Pennsylvania Ave., N.W. Washington, DC 20580	4. YOUR APPEARANCE WILL BE BEFORE Bethany Matz, Attorney, Federal Trade Commission 5. DATE AND TIME OF HEARING Wednesday, July 5, 2006 at 10:00 am

6. SUBJECT OF INVESTIGATION

Compliance with Sections 604 and 607 of the Fair Credit Reporting Act. *See* attached specifications.

A TYPICAL NON-PUBLIC INVESTIGATION

- FTC staff analyzes information received from the company (and perhaps other sources)

- FTC staff determines whether law violations appear to have occurred

A TYPICAL NON-PUBLIC INVESTIGATION

- FTC staff recommends next step:
  - closing the case if insufficient evidence of violations

    or

  - issuing a complaint

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A TYPICAL NON-PUBLIC INVESTIGATION

- If the company agrees to discuss settlement, negotiations are held with the company
- If settlement is reached, the company signs a “consent agreement”
- FTC staff forwards the proposed settlement to the Commission recommending acceptance. If accepted, the settlement is filed in the appropriate court.
- If no settlement is reached, the Commission (or DOJ) may file the complaint and proceed to trial

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v
CHOICEPOINT INC., a corporation,
Defendant.

Civil Action No.
1 06-CV-0198

COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
CHOICEPOINT INC., a corporation,
Defendant.

Civil Action No.

STIPULATED FINAL JUDGMENT AND ORDER FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the

THE COMPLAINT:

Count I

- **ChoicePoint violated the FCRA by providing consumer reports to customers that did not have a permissible purpose to obtain a consumer report.**

THE COMPLAINT:

Count II

- **ChoicePoint violated the FCRA by failing to maintain reasonable procedures to limit the provision of consumer reports to customers with permissible purposes, which included:**
  - **Reasonable efforts to verify prospective new customers' identities**
  - **Reasonable efforts to verify prospective customers' purposes**

THE COMPLAINT:

Count II Continued

- ChoicePoint violated the FCRA by providing consumer reports to customers when ChoicePoint had reasonable grounds for believing that the reports would be used for impermissible purposes.

THE COMPLAINT:

Count III

- ChoicePoint violated the FTC Act by failing to employ reasonable and appropriate security measures to protect consumers' personal information.

THE COMPLAINT:

Count IV

- **ChoicePoint violated the FTC Act by misrepresenting that it had implemented reasonable and appropriate measures to maintain and protect the confidentiality and security of consumers' personal information.**

STIPULATED FINAL JUDGMENT & ORDER:

Conduct Provisions

- Requires ChoicePoint to implement new procedures to ensure that it provides consumer reports only to legitimate businesses for permissible purposes
- Establish and maintain a comprehensive information security program
- Obtain audits by an independent third-party security professional every other year for the next 20 years
- Comply with standard record-keeping and reporting provisions

STIPULATED FINAL JUDGMENT & ORDER:

Monetary Relief

•Record $10 million civil penalty for violations of the FCRA

•$5 million in consumer redress for identity theft victims

ChoicePoint

- Lessons Learned:
  - Know your customers
  - Guard the front door (as well as the back door)

FTC Also Provides Guidance to Consumers and Businesses about the FCRA

- To help consumers understand their rights
- To help businesses comply with the law

Consumer Education

- "How to Dispute Credit Report Errors"
- "Want a Free Annual Credit Report?"

Business Guidance

- "Consumer Reports: What Insurers Need to Know?"
- "Using Consumer Reports: What Employers Need to know"

Questions?

Attachment 4: Day Two- Session Two: The Economic of Credit Reporting and Regulations

Bibliography

The Economics of Credit Reporting

Ausubel, Lawrence M., “The Failure of Competition in the Credit Card Market,” *American Economic Review*, Vol. 81 (March, 1991), pp. 50-81.

____, “Adverse Selection in the Credit Card Market,” June 17, 1999.

Avery, Robert B., Raphael W. Bostic, Paul S. Calem and Glenn B. Canner, “An Overview of Consumer Data and Credit Reporting,” *Federal Reserve Bulletin* (February, 2003).

Avery, Robert B., Paul S. Calem and Glenn B. Canner, “Credit Reporting Accuracy and Access to Credit,” *Federal Reserve Bulletin* (Summer, 2004)

Hauswald, Robert and Robert Marquez, “Competition and Strategic Information Acquisition in Credit Markets,” (March, 2002).

Hunt, Robert M., “A Century of Consumer Credit Reporting in America,” Working Paper NO. 05-13, Research Department, Federal Reserve Bank of Philadelphia (June, 2005).

___, “What’s in the File? The Economics and Law of Consumer Credit Bureaus,” *Business Review* (Q2, 2002), pp. 17-24.

Jappelli, Tulio and Marco Pagano, “Information Sharing in Credit Markets: The European Experience,” CSEF Working Paper No. 36 (March, 2000).

_____, “Information Sharing, Lending and Defaults: Cross Country Evidence,” (October, 2000).

Marquez, Robert, “Competition, Adverse Selection, and Information Dispersion in the Banking Industry,” *Review of Financial Studies*, Vol. 15 (3) (Summer, 2002), pp. 901-926.

Pagano, Marco and Tullio Jappelli, “Information Sharing in Credit Markets,” *Journal of Finance* Vol. 48(5) (December, 1993), pp. 1693-1718.

Stiglitz, Joseph E. and Andrew Weiss, “Credit Rationing in Markets with Imperfect Information,” *American Economic Review*, Vol 71 (1981), pp. 393-410.

Vercammen, James A., “Credit Bureau Policy and Sustainable Reputation,” *Economica*, Vol. 62(248), pp. 461-78.

Wilson, James A., “Fishing for Knowledge,” *Land Economics*, Vol. 66(1) (February, 1990), pp. 12-29.

Attachment 5: Day Two- Session Three-: Hypothetical Case Studies

Introduction to Hypotheticals

On Days 2 and 4 of our program we will be conducting training exercises set in the fictional country of Marazula.

The Republic of Marazula is located on the equator, on the Northeast coast of South America. Its capital and largest city, Fortuna, is located on a plateau in the Central Highlands. Its main port and second largest city is Brianna.

The country has a diverse and competitive market for financial services, including credit information.

The enforcement of consumer protection regulations for financial services is done by a branch of the Central Bank of Marazula. For the purpose of this exercise, we are all professional staff of this branch.

Attached is a summary of the consumer protection regulations of Marazula.

Law of Marazula

Credit Reporting Agencies

Consumer Disputes. If a consumer disputes the completeness or accuracy of an item in his or her file directly with the credit bureau, the credit bureau must:

- complete a reasonable investigation within 30 days after receiving the dispute;
- review and consider all relevant information submitted by the consumer; and
- notify the creditor of the dispute within 5 business days of receiving the dispute, and include all relevant information that the credit bureau received from the consumer.
    - If a credit bureau makes a reasonable determination that a consumer dispute is frivolous or irrelevant, then the credit bureau may terminate its investigation of that consumer dispute.

After receiving a dispute from a credit bureau, the creditor must:

- conduct an investigation with respect to the disputed information;
- report the results of the investigation to the credit bureau; and
- complete the investigation before the end of the 30-day period that the credit bureau has to complete its reinvestigation.

If the credit bureau finds that a disputed item is inaccurate, incomplete, or cannot be verified, the credit bureau must delete or modify the item, and then notify the creditor of any action taken. No later than 5 business days after completion of the investigation, the credit bureau must provide written notice to the consumer of the results of the investigation.

Accuracy of Consumer Reports. All credit bureaus shall follow reasonable procedures to assure the maximum possible accuracy of information in their consumer reports.

Permissible Purposes. A credit bureau must protect the confidentiality of its consumer reports and may provide consumer reports only in the following circumstances

- in response to a court order;
- at the written request of a consumer;
- in connection with a credit transaction involving the consumer;
- in order to provide or underwrite insurance for the consumer;

in connection with a business transaction initiated by the consumer

for employment purposes, but the employer must (1) disclose its intent to obtain the consumer report and (2) obtain the consumer's written consent, before it obtains the consumer report.

A credit bureau shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user before furnishing such user a consumer report. No credit bureau may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a permissible purpose.

Exclusions. No consumer report may contain any of the following information:

- lawsuits, including bankruptcy cases, that antedate the consumer report by 7 years;
- delinquent accounts that antedate the report by 7 years;
- the name or address of any health care provider; or
- the religion, political affiliation, or voting records of any consumer.

Inquiries. A credit bureau must include in every consumer report a list of all entities that obtained a consumer report from that credit bureau during the previous one year period. This list must include the address and telephone number of all such entities.

Adverse Action Notices. If any person or company takes any adverse action against a consumer that is based in whole or in part on information contained in a consumer report, the person shall:

- provide notice of the adverse action to the consumer;
- provide to the consumer the name, address, and telephone number of the credit bureau along with a statement that the credit bureau did not make the decision to take the adverse action.

Truncation of Account Numbers in Credit Reports. No credit bureau shall print more than the last five digits of account numbers on any consumer report.

Furnishers of Credit Information

Consumer Disputes. Any firm that provides credit shall, upon receipt of a valid letter from a consumer that disputes a charge on the consumer's invoice must reply to the consumer within 30 days, conduct a thorough investigation of the dispute, and resolve the dispute within 90 days. A valid letter is one which states the account number, describes why the consumer believes the charge not to be valid, and is sent within thirty days of receipt of the invoice in question. Amounts that are in dispute must not be reported to a credit reporting agency

Consumer Affairs Department
Central Bank of Marazula
675 Columbus Avenue
Fortuna 42736

Dear Sir or Madam:

I am writing to tell you of a disaster that has befallen me over the last year. I have spent countless hours trying to escape from this nightmare, and I turn to you because no one else has been able to help me.

Ten months ago, I applied for a loan so that I could buy a new truck. I work as a painter, and a truck is important to carry my equipment to jobs. When I applied for a loan, the lender told me I did not qualify because of my poor credit history. I told him that I didn't understand this, because I have always paid my bills on time. When he showed me the report, I couldn't believe my eyes. They were saying that I had borrowed money on three different credit cards that I had never paid back, and even said that I had been arrested for check fraud. I've never been arrested in my life, or even stopped by the police! Then I noticed the address listed on the report. They said I used to live at 456 Tortilla Street. That's where my no-good brother Pepe used to live before he left the country. He could never hold a job, and was always getting into trouble. I figured out that what was going on was that information about Pepe was getting mixed up with my credit report. I don't know how this could happen, since I don't see how someone could get "Pepe" and "Pedro" confused. Anyway, I explained this to the lender, but he said I would have to talk to the credit bureau.

When I called the credit bureau (Fortuna CIS), they told me they would take care of it. But when I went to apply for the loan again, the bad accounts were still showing up. I called Fortuna CIS again, but the person I talked to had no idea what I was talking about and said I would have to call the lenders who are reporting the information. I tried that, but it was useless too. I have spent hours trying to talk to these people, but no one cares about my problem, and no one wants to help. I'm going to apply for a new job soon, and I'm worried that they won't hire me because they're going to think I'm a thief and a criminal. I can't believe these companies can just ruin your life and they don't care about it at all. Please help me – you are my only hope to get out of this mess.

Sincerely,

Pedro Gonzales

Fortuna CIS – Serving Businesses and Consumers Since 1945

MEMORANDUM

TO: Roberto

FROM: Jorgé

DATE: May 15, 2006

SUBJECT: Mixed-up Files

I understand you've been getting some complaints from lenders about mixed-up files, where one file contains accounts for two different people. I know this is a hassle for them, but there's not much we can do about it. The problem is that we can't always tell whether accounts belong to the same person or to two separate people. A lot of people in our files use different versions of their name, or change their address when they move. In order to keep all their information together, we have to match together accounts that have slightly different names or different addresses. The problem tends to be worst for people in the same family, since their names are similar and they often live at the same address. There's also a problem with people who have similar names and live in the same apartment building.

Anyway, the technical people tell us there's no good way to avoid the problem without either spending a lot of money or throwing away a lot of data. We might even have to go over the files by hand to separate out the data, and even then the problem might keep reoccurring. The best thing to tell these lenders is that they're going to have to live with some degree of mixed files, and if it's really a problem for them they can try to separate out the information themselves.

By the way, attached is another letter from the dingbat who claims that he does not owe the Bank of Fortuna penalties or interest. I took this home to show my wife and kids, and we all had a good laugh!

To whoever will listen:

I am writing to tell you about my difficulties with Fortuna CIS. On January 15, 2006, I was turned down for an auto loan on the basis of information supplied by this firm. I applied for, and received a copy of my credit report from Fortuna CIS. From this report, I learned that negative information from an account that I no longer have is still being used against me.

The negative information stems from my dispute with Bank of Fortuna. On June 8, 2004 I mailed payment in full of 732.59 pesos on my VISA statement at my office building. On July 2 I received a VISA bill from Bank of Fortuna that showed no payment, and billed me for interest of 12.82 pesos and a penalty of 35 pesos. On July 3 I sent payment of 697.42 pesos for new charges, and a letter explaining that I had already paid 732.59 pesos on June 8, and therefore did not owe any interest or penalties. On August 2 I received a VISA bill from Bank of Fortuna that continued to show an unpaid balance of 793.45 pesos. That same day I cut my card in two, and sent them a letter informing them that I had paid what I owed them on June 8 and July 3.

In September I learned that my payment had been caught in a blockage that prevented mail from reaching first floor mail box from the upper floors of my office building.

I fail to understand why I should have to pay interest or penalties for something that was clearly not my fault. Despite this, the Bank of Fortuna continues to bill me, and Fortuna CIS refuses to correct my credit record.

Sincerely,

Diego Campos

CONFIDENTIAL

May 24, 2006

Consumer Affairs Department
Central Bank of Marazula
675 Columbus Avenue
Fortuna 42736

To Whom It May Concern:

I work for a credit bureau called Fortuna CIS, and I am convinced that my employer is violating the law. I ask you to investigate this matter immediately. I have worked in the so-called "Compliance Department" at Fortuna CIS for three years, and I have witnessed all kinds of unlawful behavior.

For example, the law requires credit bureaus to take consumer complaints seriously. But when consumers ask Fortuna CIS to correct inaccurate information in their credit reports, the company does nothing!!! That's right – nothing!!! In fact, just yesterday my boss told everyone in my department that consumers who complain about their credit reports are crazy, and he instructed us to ignore consumer complaints. He said it would be even better if we could "accidentally" lose these complaints. Someone asked about the law, and he told us not to worry about that. He said "that's why we have a Legal Department."

In addition, as you know, the law requires credit bureaus to take care when it puts information from creditors into consumer files. But Fortuna CIS doesn't care if information is placed in the correct files. We have received lots of complaints lately from consumers who have the same name, such as Juan Valdez, or similar names. They have been complaining that there is a lot of information in their files that doesn't belong to them – and it's no surprise this is happening here!

The bottom line is that you have to take immediate action. If you don't do something about Fortuna CIS, then I will contact *The Country and the World* newspaper!

Very truly yours,

Julio D. Whistleblower

Attachment 6: Day Three- Sessions One and Two: Role of Federal Banking Agencies.

Role of Federal Banking Agencies

David P. Lafleur
Federal Deposit Insurance Corporation

Day 3 - June 27, 2006
Sessions 1 and 2

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Oversight of Financial Institutions

- Background – FFIEC Agencies
  - Federal Deposit Insurance Corporation (state chartered banks that are not members of the Federal Reserve System)
  - Federal Reserve Board (state chartered banks that are members of the Federal Reserve System)
  - Office of Comptroller of the Currency (nationally charted banks)
  - Office of Thrift Supervision (thrifts)
  - National Credit Union Administration (NCUA)

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Oversight of Financial Institutions

- Consistent responsibilities
- Consistent examination procedures
- Implementation Differences

Oversight of Financial Institutions

- Routine Examinations
  - Generally conducted every 2 to 3 years.
  - Includes many different consumer protection laws.
  - Concludes with issuance of written Report of Examination.
    - Banks must formally respond to findings.
    - Management & Directorate must commit to correct deficiencies
  - Compliance Examination Ratings
    - FDIC rating based on overall assessment of institution's compliance management system

Oversight of Financial Institutions

- Enforcement Actions
  - Formal
    - Cease and Desist Order
    - Civil Money Penalties
  - Informal
    - Memorandum of Understanding
    - Board Resolution

General Structure of Bank Operations & the FCRA

- Banks are generally not consumer reporting agencies.
  - Compliance costs, burdens, and risks.
- FCRA contains many requirements for entities that are not consumer reporting agencies.
- General evaluation and examination of banks.

Legal Requirements for Banks

1. Permissible Purposes to Obtain Consumer Reports

- Court Order or Federal Grand Jury Subpoena.
- By written instruction of the consumer.
- General Bank purposes:
  - Credit transactions (extending, renewing, collections)
  - Employment Purposes
  - Underwriting of Insurance
  - Determine eligibility for license or other government benefit
  - Invest, service, or insure existing credit obligations
  - Other legitimate business need
- Child Support Enforcement

2. Employment Purposes

- Written permission from consumer.
- Written disclosure to consumer advising that report will be obtained.
- Before denying or terminating employment based on report, consumer must receive:
  - Copy of the report, AND
  - A description of the consumers rights.

3. Prescreened Consumer Reports

– Contents of Report.

– Selection criteria.

– Firm offers of credit or insurance.

– Consumers' Right to opt-out.

3. Prescreened Consumer Reports (continued)

– Bank Responsibilities

- Selection and maintenance of pre-screen and post-screen criteria.
- Firm offers of credit or insurance.
- Disclose right to opt-out.
- Prohibition on "bait and switch" tactics.

4. Investigative Consumer Reports

– Contain information obtained in whole or part through personal interviews.

– Special Disclosure Requirements
  - Fact that report will be obtained.
  - Consumer's rights.
  - Timing of Disclosure.
  - Certification of compliance.

5. Sharing Consumer Report Information

– A "consumer report" is 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 in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:
  - Credit or insurance for personal purposes;
  - Employment purposes; or
  - Any other "permissible purpose."

5. Sharing Consumer Report Information (Continued)

- The definition of "consumer report" excludes:
  - Communication of a bank's own transaction and experience information (with affiliated or non-affiliated third parties).
  - Communication of "other" non-transaction and experience information with affiliated parties only, but consumers must be given the right to opt-out of the sharing of this information.
- These exceptions allow sharing of information for most routine bank functions.
- Exceptions establish a deterrent scheme rather than a prohibition.

6. Protection of Medical Information

- "Medical Information" includes information or data that relates to:
  - Past, present, or future physical, mental, or behavioral health or condition of the individual;
  - The provision of health care to an individual; OR
  - The payment for the provision of health care to an individual.

6. Protection of Medical Information (continued)

– Creditors generally may obtain or use medical information in credit transactions.
  - Financial Information Exception
    - Routine financial information.
    - "No less favorable" standard.
    - Assessment of health or prognosis.
  - Other exceptions

7. Credit Score Disclosure

– Disclosure to consumers when credit score is "used" in decision to grant credit or set terms of credit for residential, real properties:
  - Credit score(s) used.
  - Key factors impacting the score must be disclosed.
  - Notice to home loan applicant.

8. Adverse Action Disclosure

- Disclosure to consumers when adverse actions are taken based on information in a consumer report:
  - Adverse action taken.
  - Name, address, and telephone number of the consumer reporting agency.
  - Statement that the consumer reporting agency did not take the action.
- Consumer has right to a free copy of the consumer report from the consumer reporting agency.

9. Furnishers of Information

- Voluntary reporting system.
- Responsibility for accurate information
- Error correction rules:
  - Conduct investigation.
  - Review all relevant material provided by consumer.
  - Report results of investigation to consumer reporting agency.
  - Report correct information to all nationwide consumer reporting agencies to which incorrect information was previously given.
  - Correct, modify, delete, or permanently block reporting of incorrect information.

10. "Re-Pollution" Rules

- Special rules for errors or inaccurate reporting due to identity theft.
  - Bank may not report information related to an account that may be the result of an identity theft.
  - Bank must ensure that information is permanently blocked and not subsequently reported.

11. Negative Information Notice

- Bank must provide notice to consumers when negative information is reported to a consumer reporting agency.
  - Notice must be given only once.
  - Any time before negative information is reported or
  - Within 30 days after reporting the information.

12. Fraud and Active Duty Alerts

– New tools to prevent identity thieves from opening fraudulent accounts.

– Both alerts require banks to verify identities of applicants or customers.

– Fraud Alert term: 90 days.

– Active Duty Alert: Up to 2 years.

13. Information Available to Victims of Identity Theft

– Enables victims to begin to correct consumer reports.

– Identification and standards of proof prior to disclosure.

Consumer Complaint Process

Consumers may file complaints with:

- Consumer reporting agencies
- Banks
- Federal Banking Regulators, including the FDIC
- Federal Trade Commission

FDIC Consumer Complaint Process

- Complaints are investigated by either:
  - Direct contact with bank regarding the complaint, or
  - During a routine examination.
- Written responses are sent to consumers.
- Regardless of outcome, complaints are considered in the risk-scope analysis of all examinations.

Examination Procedures

Examination Procedures

– Similar requirements grouped into functional modules.

– Actual examination steps are designed to be "risk-focused."

– Examiners determine scope and complete only the parts of the procedures that relate to identified risks.

Attachment 7: FFIEC Fair Credit Reporting Examination Procedures

Table of Contents

Background and Summary

The Fair Credit Reporting Act ("FCRA") (15 U.S.C. §§ 1681-1681u) became effective on April 25, 1971. The FCRA is a part of a group of acts contained in the Federal Consumer Credit Protection Act (15 U.S.C. § 1601 *et seq.*), such as the Truth in Lending Act and the Fair Debt Collection Practices Act. Congress subsequently passed the Consumer Credit Reporting Reform Act of 1996 (Pub. L. No. 104-208, 110 Stat. 3009-426), which substantially revised the FCRA. These revisions generally became effective on September 30, 1997. Minor amendments to the FCRA were made in 1997 and 1998. The Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)) made additional changes, including provisions removing a previous statutory prohibition against conducting routine FCRA examinations, and permitting regulations to be adopted to implement the requirements of the FCRA.

The FCRA was substantively amended in 2003 upon the passage of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (Pub. L. No. 108-159, 117 Stat. 1952). The FACT Act created many new responsibilities for consumer reporting agencies and users of consumer reports. It contained many new consumer disclosure requirements as well as provisions to address identity theft. In addition, it provided free annual consumer report rights for consumers and improved access to consumer report information to help increase the accuracy of data in the consumer reporting system.

The FCRA contains significant responsibilities for business entities that are consumer reporting agencies and lesser responsibilities for those that are not. Generally, financial institutions are not considered to function as consumer reporting agencies; however, depending on the degree to which their information sharing business practices approximate those of a consumer reporting agency, they can be deemed as such.

In addition to the requirements related to financial institutions acting as consumer reporting agencies, FCRA requirements also apply to financial institutions that operate in the following capacities:

1. Procurers and users of information (for example, as credit grantors, purchasers of dealer paper, or when opening deposit accounts);
2. Furnishers and transmitters of information (by reporting information to consumer reporting agencies or other third parties, or to affiliates);
3. Marketers of credit or insurance products; or
4. Employers.

Structure and Overview of Examination Modules

The examination procedures are structured as a series of modules, grouping similar requirements together. General information about each of the requirements is contained in each of the modules. The actual examination procedures for each of the modules are contained in Appendix A.

Financial institutions are subject to a number of different requirements under the FCRA, of which some are contained directly in the statute, while others are in regulations issued jointly by the FFIEC agencies, while others still are contained in regulations issued by the Federal Reserve Board and/or the Federal Trade Commission. Appendix B contains a matrix of the different statutory and regulatory cites applicable to financial institutions that are not consumer reporting agencies. This matrix is sorted by federal regulator.

Important Definitions

There are a number of definitions used throughout the FCRA. Key definitions include the following:

Consumer
A "consumer" is defined as an individual.

Consumer Report
A "consumer report" is any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, 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:

1. Credit or insurance to be used primarily for personal, family, or household purposes;
2. Employment purposes; or

Any other purpose authorized under section 604 (15 U.S.C. § 1681b).
The term "consumer report" does not include:

1. Any report containing information solely about transactions or experiences between the consumer and the institution making the report;
2. Any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different banks that are members of the same holding company, or subsidiary companies of a bank);
3. Communication of other information among persons related by common ownership or affiliated by corporate control if:
   a. It is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons; and
   b. The consumer is given the opportunity, before the time that the information is communicated, to direct that the information not be communicated among such persons;
4. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
5. 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, such as a lender who has received a request from a broker, 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 (15 U.S.C. § 1681m); or

A communication described in subsection (o) or (x) of section 603 [15 U.S.C. § 1681a(o)] (which relates to certain investigative reports and certain reports to prospective employers).

Person
A "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

Investigative Consumer Report
An "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 does 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.

Adverse Action

The term "adverse action" has the same meaning as used in section 701(d)(6) [15 U.S.C.1691(d)(6)] of the Equal Credit Opportunity Act ("ECOA"). Under the ECOA, it means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the same amount or on terms substantially similar to those requested. Under the ECOA, the term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

The term has the following additional meanings for purposes of the FCRA:

1. 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;
2. A denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
3. 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 described in section 604(a)(3)(D) [15 U.S.C. § 1681b(a)(3)(D)]; and
4. An action taken or determination that is (a) made in connection with an application made by, or transaction initiated by, any consumer, or in connection with a review of an account to determine whether the consumer continues to meet the terms of the account, and (b) adverse to the interests of the consumer.

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.

Consumer Reporting Agency

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.

Module 1: Obtaining Consumer Reports

Overview

Consumer reporting agencies have a significant amount of personal information about consumers. This information is invaluable in assessing a consumer's creditworthiness for a variety of products and services, including loan and deposit accounts, insurance, and utility services, among others. Access to this information is governed by the Fair Credit Reporting Act (FCRA) to ensure that it is obtained for permissible purposes and not exploited for illegitimate purposes.

The FCRA requires any prospective "user" of a consumer report, for example a lender, insurer, landlord, or employer, among others, to have a legally permissible purpose to obtain a report.

Section 604 Permissible Purposes of Consumer Reports and Section 606 Investigative Consumer Reports

Legally Permissible Purposes. The FCRA allows a consumer reporting agency to furnish a consumer report for the following circumstances and no other:

1. In response to a court order or Federal Grand Jury subpoena.
2. In accordance with the written instructions of the consumer.
3. To a person, including a financial institution, which it has reason to believe:
    a. Intends to use the report in connection with a credit transaction involving the consumer (includes extending, reviewing, and collecting credit);
    b. Intends to use the information for employment purposes;[1]
    c. Intends to use the information in connection with the underwriting of insurance involving the consumer;
    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 that is required by law to consider an applicant's financial responsibility;
    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 authorized appointee) if the person certifies various information to the consumer reporting agency regarding the need to obtain the report. (Generally, this particular purpose does not impact a financial institution that is not a consumer reporting agency.)

Prescreened Consumer Reports. Users of consumer reports, such as financial institutions, may obtain prescreened consumer reports to make firm offers of credit or insurance to consumers, unless the consumers have elected to opt out of being included on prescreened lists. The FCRA contains many requirements, including an opt out notice requirement when

[1] Use of consumer reports for employment purposes requires specific advanced authorization, disclosure, and adverse action notices. These issues are contained in Module 3 of the examination procedures.

prescreened consumer reports are used. In addition to defining prescreened consumer reports, Module 3 covers these requirements.

Investigative Consumer Reports. Section 606 contains specific requirements for use of an investigative consumer report. This type of consumer report contains information about a consumer's character, general reputation, personal characteristics, or mode of living that is obtained in whole or in part through personal interviews with neighbors, friends, or associates of the consumer. If a financial institution procures an investigative consumer report, or causes one to be prepared, the institution must meet the following requirements:

1. The institution clearly and accurately discloses to the consumer that an investigative consumer report may be obtained.
2. The disclosure contains a statement of the consumer's right to request other information about the report, and a summary of the consumer's rights under the FCRA.
3. The disclosure is in writing and is mailed or otherwise delivered to the consumer not later than three business days after the date on which the report was first requested.
4. The financial institution procuring the report certifies to the consumer reporting agency that it has complied with the disclosure requirements and will comply in the event that the consumer requests additional disclosures about the report.

Module 2: Obtaining Information and Sharing Among Affiliates

Overview

The Fair Credit Reporting Act (FCRA) contains many substantive compliance requirements for consumer reporting agencies that are designed to help ensure the accuracy and integrity of the consumer reporting system. As noted in the definitions section, a consumer reporting agency is a person that generally furnishes consumer reports to third parties. By their very nature, banks, credit unions, and thrifts have a significant amount of consumer information that could constitute a consumer report, and thus communication of this information could cause the institution to become a consumer reporting agency. The FCRA contains several exceptions that enable a financial institution to communicate this type of information, within strict guidelines, without becoming a consumer reporting agency.

Rather than containing strict information sharing prohibitions, the FCRA creates a business disincentive such that if a financial institution shares consumer report information outside of the exceptions, then the institution is a consumer reporting agency and will be subject to the significant, substantive requirements of the FCRA applicable to those entities. Typically, a financial institution will structure its information sharing practices within the exceptions to avoid becoming a consumer reporting agency. This examination module generally covers the various information sharing practices within these exceptions.

If upon completion of this module, examiners determine that the financial institution's information sharing practices fall outside of these exceptions, the financial institution will be considered a consumer reporting agency and Module 6 of the examination procedures should be completed.

Section 603(d) Consumer Report and Information Sharing

Section 603(d) defines a consumer report to include information about a consumer such as that which bears on a consumer's creditworthiness, character, and capacity among other factors. Communication of this information may cause a person, including a financial institution, to become a consumer reporting agency. The statutory definition contains key exemptions to this definition that enable financial institutions to share this type of information under certain circumstances, without becoming consumer reporting agencies. Specifically, the term "consumer report" does not include:

1. A report containing information solely as to transactions or experiences between the consumer and the financial institution making the report. A person, including a financial institution, may share information strictly related to its own transactions or experiences with a consumer (such as the consumer's payment history, or an account with the institution) with any third party, without regard to affiliation, without becoming a consumer reporting agency. This type of information sharing may, however, be restricted under the Privacy of Consumer Financial Information regulations that implement the Gramm-Leach-Bliley Act (GLBA) because it meets the definition of non-public personal information under the Privacy regulations; therefore sharing it with non-affiliated third parties may be subject to an opt out under the privacy regulations. In turn, the FCRA may also restrict activities that the GLBA permits. For example, the GLBA permits a financial institution to share a list of its customers and information such as their credit scores with another financial institution to jointly market or sponsor other financial products or services. This communication may be considered a consumer report under the FCRA and could potentially cause the sharing financial institution to become a consumer reporting agency.

2. Communication of such transaction or experience information among persons, including financial institutions related by common ownership or affiliated by corporate control.

3. Communication of other information (e.g., other than transaction or experience information) among persons and financial institutions related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information will be communicated among such entities, and before the information is initially communicated, the consumer is given the opportunity to opt out of the communication. This allows a financial institution to share other information (that is, information other than its own transaction and experience information) that could otherwise be a consumer report, without becoming a consumer reporting agency under the following circumstances:

    a. The sharing of the "other" information is done with affiliates; and
    b. Consumers are provided with the notice and an opportunity to opt out of this sharing before the information is first communicated among affiliates.

    For example, "other" information can include information provided by a consumer on an application form concerning accounts with other financial institutions. It can also include information obtained by a financial institution from a consumer reporting agency, such as the consumer's credit score. If a financial institution shares other information with affiliates without providing a notice and an opportunity to opt out, the financial institution may become a consumer reporting agency subject to all of the other requirements of the FCRA.

    The opt out right required by this section must be contained in a financial institution's Privacy Notice, as required by the GLBA and its implementing regulations.

Other Exceptions

Specific Extensions of Credit. In addition, the term "consumer report" does not include the communication of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device. For example, this exception allows a lender to communicate an authorization through the credit card network to a retailer, to enable a consumer to complete a purchase using a credit card.

Credit Decision to Third Party (e.g., auto dealer). The term "consumer report" also does not include any report in which a person, including a financial institution, who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, conveys the decision with respect to the request. The third party must advise the consumer of the name and address of the financial institution to which the request was made, and such financial institution makes the adverse action disclosures required by section 615 of the FCRA. For example, this exception allows a lender to communicate a credit decision to an automobile dealer who is arranging financing for a consumer purchasing an automobile and who requires a loan to finance the transaction.

Joint User Rule. The Federal Trade Commission staff commentary discusses another exception known as the "Joint User Rule." Under this exception, users of consumer reports, including financial institutions, may share information if they are jointly involved in the decision to approve a consumer's request for a product or service, provided that each has a permissible purpose to obtain a consumer report on the individual. For example, a consumer applies for a mortgage loan that will have a high loan-to-value ratio, and thus the lender will require private mortgage insurance (PMI) in order to approve the application. The

PMI will be provided by an outside company. The lender and the PMI company can share consumer report information about the consumer because both entities have permissible purposes to obtain the information and both are jointly involved in the decision to grant the products to the consumer. This exception applies to entities that are affiliated or non-affiliated third parties. It is important to note that the GLBA will still apply to the sharing of non-public, personal information with non-affiliated third parties; therefore, financial institutions should be aware that sharing under the FCRA joint user rule may still be limited or prohibited by the GLBA.

Section 604(g) Protection of Medical Information

Section 604(g) generally prohibits creditors from obtaining and using medical information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. The statute contains no prohibition on creditors obtaining or using medical information for other purposes that are not in connection with a determination of the consumer's eligibility, or continued eligibility for credit.

Section 604(g)(5)(A) requires the FFIEC agencies to prescribe regulations that permit transactions that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes), consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes. On November 22, 2005, the FFIEC Agencies published final rules in the Federal Register (70 FR 70664). The rules contain the general prohibition on obtaining or using medical information, and provide exceptions for the limited circumstances when medical information may be used. The rules define "credit" and "creditor" as having the same meanings as in section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a).

Obtaining and Using Unsolicited Medical Information. A creditor does not violate the prohibition on obtaining medical information if it receives the medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information. However, the creditor may only use this medical information in connection with a determination of the consumer's eligibility, or continued eligibility, for credit in accordance with either the financial information exception or one of the specific other exceptions provided in the rules. These exceptions are discussed below.

Financial Information Exception. The rules allow a creditor to obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility or continued eligibility for credit, so long as:

1. The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of the loan proceeds;
2. The creditor uses the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; AND
3. The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.

The financial information exception is designed in part to allow creditors to consider a consumer's medical debts and expenses in the assessment of that consumer's ability to repay the ***loan according to the loan terms.*** In addition, the financial information exception also allows a creditor to consider the dollar amount and continued eligibility for disability income, worker's compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment.

The creditor may use the medical information in a manner and to an extent that is no less favorable than it would use comparable, non-medical information. For example, a consumer includes on an application for credit information about two $20,000 debts. One debt is to a hospital; the other is to a retailer. The creditor may use and consider the debt to the hospital in the same manner in which they consider the debt to the retailer, such as including the debts in the calculation of the consumer's proposed debt-to-income ratio. In addition, the consumer's payment history of the debt to the hospital may be considered in the same manner as the debt to the retailer. For example, if the creditor does not grant loans to applicants who have debts that are 90-days past due, the creditor could consider the past-due status of a debt to the hospital, in the same manner as the past-due status of a debt to the retailer.

A creditor may use medical information in a manner that is more favorable to the consumer, according to its regular policies and procedures. For example, if a creditor has a routine policy of declining consumers who have a 90-day past due installment loan to a retailer, but does not decline consumers who have a 90-day past due debt to a hospital, the financial information exception would allow a creditor to continue this policy without violating the rules because in these cases, the creditor's treatment of the debt to the hospital is more favorable to the consumer.

A creditor may not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any determination regarding the consumer's eligibility, or continued eligibility for credit. The creditor may only consider the financial implications as discussed above, such as the status of a debt to a hospital, continuance of disability income, etc.

Specific Exceptions for Obtaining and Using Medical Information. In addition to the financial information exception, the rules also provide for the following nine specific exceptions under which a creditor can obtain and use medical information in its determination of the consumer's eligibility, or continued eligibility for credit:

1. To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate, or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as a legal representative for a consumer based on an asserted medical condition or event. For example, if Person A is attempting to act on behalf of Person B under a Power of Attorney that is invoked based on a medical event, a creditor is allowed to obtain and use medical information to verify that Person B has experienced a medical condition or event such that Person A is allowed to act under the Power of Attorney.
2. To comply with applicable requirements of local, state, or Federal laws.
3. To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit related assistance program that is:
    a. Designed to meet the special needs of consumers with medical conditions; AND
    b. Established and administered pursuant to a written plan that:
        i. Identifies the class of persons that the program is designed to benefit; and
        ii. Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program.
4. To the extent necessary for purposes of fraud prevention or detection.

5. In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of the loan and the use of the proceeds.
6. Consistent with safe and sound banking practices, if the consumer or the consumer's legal representative requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor. For example, at the consumer's request, a creditor may grant an exception to its ordinary policy to accommodate a medical condition that the consumer has experienced. This exception allows a creditor to consider medical information in this context, but it does not require a creditor to make such an accommodation nor does it require a creditor to grant a loan that is unsafe or unsound.
7. Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer. For example, if a creditor has a policy of delaying foreclosure in cases where a consumer is experiencing a medical hardship, this exception allows the creditor to use medical information to determine if the policy would apply to the consumer. Like the exception listed in item 6 above, this exception does not require a creditor to grant forbearance, it merely provides an exception so that a creditor may consider medical information in these instances.
8. To determine the consumer's eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement.
9. To determine the consumer's eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product.

Limits on redisclosure of information. If a creditor subject to the medical information rules receives medical information about a consumer from a consumer reporting agency or its affiliate, the creditor must not disclose that information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

Sharing medical information with affiliates. In general, the exclusions from the definition of "consumer report" in section 603(d)(2) of the FCRA allow the sharing of information among affiliates. With regard to medical information, section 603(d)(3) of the FCRA provides that the exclusions in section 603(d)(2) do not apply when a person subject to the medical information rules shares the following information with an affiliate:

1. Medical information;
2. An individualized list or description based on the payment transactions of the consumer for medical products or services; or
3. An aggregate list of identified consumers based on payment transactions for medical products or services.

If a person who is subject to the medical rules shares with an affiliate the type of information discussed above, the exclusions from the definition of "consumer report" do not apply. Effectively, this means that if a person shares medical information, that person becomes a consumer reporting agency, subject to all of the other substantive requirements of the FCRA.

The rules provide exceptions to these limitations on sharing medical information with affiliates. A person, such as a bank, thrift, or credit union, may share medical information with its affiliates without becoming a consumer reporting agency under the following circumstances:

1. In connection with the business of insurance or annuities (including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners, as in effect on January 1, 2003);
2. For any purpose permitted without authorization under the regulations promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. For any purpose referred to in section 1179 of HIPAA;
4. For any purpose described in section 502(e) of the Gramm-Leach-Bliley Act;
5. In connection with a determination of the consumer's eligibility, or continued eligibility, for credit consistent with the financial information exceptions or specific exceptions; or
6. As otherwise permitted by order of an FFIEC agency.

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.

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 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.

<u>Technical Notice and Opt Out Requirements</u>. 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.

<u>Requirements Beginning August 1, 2005</u>. 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 below:

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:

<u>PRESCREEN & OPT-OUT NOTICE</u>: 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].

<u>Section 609(g) Disclosure of Credit Scores by Certain Mortgage Lenders</u>

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.

<u>Credit score</u>. 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.

<u>Covered transactions</u>. 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.

<u>Specific required notice</u>. 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.

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.

Module 4: Financial Institutions as Furnishers of Information

Overview

The Fair Credit Reporting Act (FCRA) contains many responsibilities for financial institutions that furnish information to consumer reporting agencies. These requirements generally involve ensuring the accuracy of the data that is placed in the consumer reporting system. This examination module includes reviews of the various areas associated with furnishers of information. This module will not apply to financial institutions that do not furnish any information to consumer reporting agencies.

Section 623 Furnishers of Information - General

This subsection of the examination procedures will be amended upon completion of inter-agency guidance for institutions regarding the accuracy and integrity of information furnished to consumer reporting agencies. This guidance is required by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). An interagency working group will develop and publish guidance for comment, and will finalize this guidance at a later date. The agencies will also write, at a later date, rules regarding when furnishers must handle direct disputes from consumers.

In the interim period, institutions that furnish information to consumer reporting agencies must comply with the existing requirements in the FCRA. These requirements generally require accurate reporting and prompt investigation and resolution of accuracy disputes. The examination procedures within this sub-section are based largely on the procedures last approved by the FFIEC Task Force on Consumer Compliance in March 2000, but have been revised to include new requirements under the 2003 amendments to the FCRA that do not require implementing regulations. Upon completion of the inter-agency guidance for the accuracy and integrity of information furnished to consumer reporting agencies, this subsection will be significantly revised.

Duties of furnishers to provide accurate information. Section 623(a) states that a person, including a financial institution, may, but need not, specify an address for receipt of notices from consumers concerning inaccurate information. If the financial institution specifies such an address, then it may not furnish information relating to a consumer to any consumer reporting agency, if (a) the financial institution has been notified by the consumer, at the specified address, that the information is inaccurate, and (b) the information is in fact inaccurate. If the financial institution does not specify an address, then it may not furnish any information relating to a consumer to any consumer reporting agency if the financial institution knows or has reasonable cause to believe that the information is inaccurate.

When a financial institution that (regularly and in the ordinary course of business) furnishes information to one or more consumer reporting agencies about its transactions or experiences with any consumer determines that any such information is not complete or accurate, the financial institution must promptly notify the consumer reporting agency of that determination. Corrections to that information or any additional information necessary to make the information complete and accurate must be provided to the consumer reporting agency. Further, any information that remains incomplete or inaccurate must not thereafter be furnished to the consumer reporting agency.

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

Voluntary closures of accounts. Section 623(a)(4) requires that any person, including a financial institution, that (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 financial institution, must notify the consumer reporting agency of the voluntary closure of the account by the consumer in information regularly furnished for the period in which the account is closed.

Notice involving delinquent accounts. Section 623(a)(5) requires that a person, including a financial institution, that furnishes information to a consumer reporting agency about a delinquent account being placed for collection, charged off, or subjected to any similar action, must, not later than 90 days after furnishing the information to the consumer reporting agency, notify the consumer reporting agency of the month and year of the commencement of the delinquency that immediately preceded the action.

Duties upon notice of dispute. Section 623(b) requires that whenever a financial institution receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information provided by the financial institution to a consumer reporting agency pursuant to section 611 (Procedure in Case of Disputed Accuracy), that financial institution must, pursuant to section 623(b):

1. Conduct an investigation regarding the disputed information;
2. Review all relevant information provided by the consumer reporting agency along with the notice;
3. Report the results of the investigation to the consumer reporting agency; and
4. If the disputed information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information.
5. If the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, the financial institution must promptly, for purposes of reporting to the consumer reporting agency:
    a. Modify the item of information,
    b. Delete the item of information, or
    c. Permanently block the reporting of that item of information.

The investigations, reviews and reports required to be made must be completed within 30 days. The time period may be extended for 15 days if a consumer reporting agency receives additional relevant information from the consumer.

Section 623(a)(6) Prevention of Re-Pollution of Consumer Reports

Section 623(a)(6) has specific requirements for furnishers of information, including financial institutions, to a consumer reporting agency that receive notice from a consumer reporting agency that furnished information may be fraudulent as a result of identity theft. Section 605B requires consumer reporting agencies to notify furnishers of information, including financial institutions, that the information may be the result of identity theft, an identity theft report has been filed, and that a block has been requested. Upon receiving such notice, section 623(a)(6) requires financial institutions to establish and follow reasonable procedures to ensure that this information is not re-reported to the consumer reporting agency, thus “re-polluting” the victim’s consumer report.

Section 615(f) of the FCRA also prohibits a financial institution from selling or transferring debt caused by an alleged identity theft.

<u>Section 623(a)(7) Negative Information Notice</u>

Section 623(a)(7) requires financial institutions to provide consumers with a notice either before negative information is provided to a nationwide consumer reporting agency, or within 30 days after reporting the negative information.

<u>Negative information</u>. For these purposes, negative information means any information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

<u>Nationwide consumer reporting agency</u>. Section 603(p) defines a consumer reporting agency as one that compiles and maintains files on consumers on a nationwide basis and regularly engages in the practice of assembling or evaluating and maintaining the following two pieces of information about consumers residing nationwide for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity:

1. Public Record Information.
2. Credit account information from persons who furnish that information regularly and in the ordinary course of business.

Institutions may provide this disclosure on or with any notice of default, any billing statement, or any other materials provided to the customer, as long as the notice is clear and conspicuous. Institutions may also choose to provide this notice to all customers as an abundance of caution. However, this notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

<u>Model text</u>. As required by the FCRA, the Federal Reserve Board developed the following model text that institutions can use to comply with these requirements. The first model contains text to be used when institutions choose to provide a notice before furnishing negative information. The second model form contains text to be used when institutions provide notice within 30 days after reporting negative information:

1. <u>Notice prior to communicating negative information (Model B-1)</u>:

   "We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report."

2. <u>Notice within 30 days after communicating negative information (Model B-2)</u>:

   "We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report."

Use of the model form(s) is not required; however, proper use of the model forms provides financial institutions with a safe harbor from liability. Financial institutions may make certain changes to the language or format of the model notices without losing the safe harbor from liability provided by the model notices. The changes to the model notices may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model notices. Financial institutions making such extensive revisions will lose the safe harbor from liability that the model notices provide. Acceptable changes include, for example,

1. Rearranging the order of the references to "late payment(s)," or "missed payment(s);"
2. Pluralizing the terms "credit bureau," "credit report," and "account;"

3. Specifying the particular type of account on which information may be furnished, such as “credit card account;” or
4. Rearranging in Model Notice B-1 the phrases “information about your account” and “to credit bureaus” such that it would read “We may report to credit bureaus information about your account.”

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.

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.

Appendix A: Examination Procedures

Examination Objectives

1. To determine the financial institution's compliance with the FCRA.

2. To assess the quality of the financial institution's compliance management systems and its policies and procedures for implementing the FCRA.

3. To determine the reliance that can be placed on the financial institution's internal controls and procedures for monitoring the institution's compliance with the FCRA.

4. To direct corrective action when violations of law are identified or when policies or internal controls are deficient.

Initial Procedures

The initial procedures are designed to acquaint examiners with the individual operations and processes of the institution under examination. These initial steps focus on an institution's systems, controls, policies, and procedures, including audits and previous examination findings.

The applicability of the various sections of the FCRA and implementing regulations depend on an institution's unique operations. The functional examination requirements for these responsibilities are presented topically in Modules 1 through 6 of these procedures. (Module 6 will be included in a subsequent amendment to these procedures.)

The FCRA contains many different requirements that a financial institution must follow, even if it is not a consumer reporting agency. Subsequent to the passage of the FACT Act, some of the individual compliance responsibilities are set forth directly in the statute, while others are within joint, inter-agency regulations, while still others are set forth in regulations set by some of the regulatory agencies. The modules present examination responsibilities by subject matter, versus strict regulatory or statutory construction.

Initially, examiners should:

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance in the area under review. Consider the following:
    a. Organization charts
    b. Process flowcharts
    c. Policies and procedures
    d. Loan documentation
    e. Checklists
    f. Computer program documentation (for example, records illustrating the fields and types of data reported to consumer reporting agencies; automated records tracking customer opt outs for FCRA affiliate information sharing; etc.)

2. Review any compliance audit material including work papers and reports to determine whether:
    a. The scope of the audit addresses all provisions as applicable;
    b. Corrective actions were taken to follow-up on previously identified deficiencies;
    c. The testing includes samples covering all product types and decision centers;

   d. The work performed is accurate;
   e. Significant deficiencies and their causes are included in reports to management and/or to the board of directors; and
   f. The frequency of review is appropriate.

3. Review the financial institution's training materials to determine whether:
   a. Appropriate training is provided to individuals responsible for FCRA compliance and operational procedures; and
   b. The training is comprehensive and covers the various aspects of the FCRA that apply to the individual financial institution's operations.

4. Through discussions with management, determine which portions of the six examination modules will apply.

5. Complete appropriate examination modules, document and form conclusions regarding the quality of the financial institution's compliance management systems and compliance with the FCRA.

Module 1: Obtaining Consumer Reports

Section 604 Permissible Purposes of Consumer Reports and
Section 606 Investigative Consumer Reports

1. *Determine whether the financial institution obtains consumer reports.*

2. *Determine whether the institution obtains prescreened consumer reports and/or reports for employment purposes. If so, complete the appropriate sections of Module 3.*

3. *Determine whether the financial institution procures or causes to be prepared an investigative consumer report. If so, ensure that the appropriate disclosure is given to the consumer within the required time periods. In addition, ensure that the financial institution certified compliance with the disclosure requirements to the consumer reporting agency.*

4. *Evaluate the institution's procedures to ensure that consumer reports are obtained only for permissible purposes. Confirm that the institution certifies to the consumer reporting agency the purposes for which it will obtain reports. (The certification is usually contained in a financial institution's contract with the consumer reporting agency.)*

5. *If procedural weaknesses are noted or other risks requiring further investigation are noted, such as the receipt of several consumer complaints were received, review a sample of consumer reports obtained from a consumer reporting agency and determine whether the financial institution had permissible purposes to obtain the reports.*

   - *For example, obtain a copy of a billing statement or other list of consumer reports obtained by the financial institution from the consumer reporting agency for a period of time.*
   - *Compare this list, or a sample from this list to the institution's records to ensure that there is a permissible purpose for the report(s) obtained. This could include any permissible purpose, such as the consumer applied for credit, insurance, or employment, etc. The financial institution may also obtain a report in connection with the review of an existing account.*

Module 2: Obtaining Information and Sharing Among Affiliates

<u>Section 603(d) Consumer Report and Information Sharing</u>

1. *Review the financial institution's policies, procedures, and practices concerning the sharing of consumer information with third parties, including both affiliated and non-affiliated third parties. Determine the type of information shared and with whom the information is shared. (This portion of the examination process may overlap with a review of the institution's compliance with the Privacy of Consumer Financial Information Regulations that implement the Gramm-Leach-Bliley Act.)*

2. *Determine whether the financial institution's information sharing practices fall within the exceptions to the definition of a consumer report. If they do not, the financial institution could be considered a consumer reporting agency, in which case Module 6 of the examination procedures should be completed.*

3. *If the financial institution shares information other than transaction and experience information with affiliates subject to an opt out, ensure that information regarding how to opt out is contained in the institution's GLBA Privacy Notice, as required by the Privacy of Consumer Financial Information regulations.*

4. *If procedural weaknesses are noted or other risks requiring further investigation are noted, obtain a sample of opt out rights exercised by consumers and determine if the financial institution honored the opt out requests by not sharing "other information" about the consumers with the institution's affiliates subsequent to receiving a consumer's opt out direction.*

<u>Section 604(g) Protection of Medical Information</u>

1. *Review the financial institution's policies, procedures, and practices concerning the collection and use of medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility for credit.*

2. *If the financial institution's policies, procedures, and practices allow for obtaining and using medical information pertaining to a consumer in the context of a credit transaction, assess whether there are adequate controls in place to ensure that the information is only used subject to the financial information exception in the rules, or under a specific exception within the rules.*

3. *If procedural weaknesses are noted or other risks requiring further investigation are noted, obtain samples of credit transactions to determine if the use of medical information pertaining to a consumer was done strictly under the financial information exception or the specific exceptions under the regulation.*

4. *Determine whether the financial institution has adequate policies and procedures in place to limit the redisclosure of medical information about a consumer that was received from a consumer reporting agency or an affiliate.*

5. *Determine whether the financial institution shares medical information about a consumer with affiliates. If information is shared, determine whether it occurred under an exception in the rules that enables the financial institution to share the information without becoming a consumer reporting agency.*

Module 3: Disclosures to Consumers and Miscellaneous Requirements

Section 604(b)(2) Use of Consumer Reports for Employment Purposes

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]

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

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

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

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

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.*

Module 4: Financial Institutions as Furnishers of Information

Section 623 Furnishers of Information - General

1. *Determine whether the institution provides information to consumer reporting agencies.*

2. *Review the institution's policies and procedures to ensure compliance with the FCRA requirements for furnishing information to consumer reporting agencies.*

3. *If procedural weaknesses are noted or other risks requiring further investigation are noted, such as a high number of consumer complaints regarding the accuracy of their consumer report information from the financial institution, select a sample of reported items and the corresponding loan or collection file to determine that the financial institution:*
    a. *Did not report information that it knew, or had reasonable cause to believe, was inaccurate. Section 623(a)(1)(A) [15 U.S.C § 1681s-2(a)(1)(A)];*
    b. *Did not report information to a consumer reporting agency if it was notified by the consumer that the information was inaccurate and the information was, in fact, inaccurate. Section 623(a)(1)(B) [15U.S.C. § 1681s-2(a)(1)(B)];*
    c. *Did provide the consumer reporting agency with corrections or additional information to make the information complete and accurate, and thereafter did not send the consumer reporting agency the inaccurate or incomplete information in situations where the incomplete or inaccurate information was provided. Section 623(a)(2) [15 U.S.C. § 1681s-2(a)(2)];*
    d. *Furnished a notice to a consumer reporting agency of a dispute in situations where a consumer disputed the completeness or accuracy of any information the institution furnished, and the institution continued furnishing the information to a consumer reporting agency. Section 623(a)(3) [15 U.S.C § 1681s-2(a)(3)];*
    e. *Notified the consumer reporting agency of a voluntary account-closing by the consumer, and did so as part of the information regularly furnished for the period in which the account was closed. Section 623(a)(4) [15 U.S.C.§1681s-2(a)(4)];*
    f. *Notified the consumer reporting agency of the month and year of commencement of a delinquency that immediately preceded the action. The notification to the consumer reporting agency must be made within 90 days of furnishing information about a delinquent account that was being placed for collection, charged-off, or subjected to any similar action. Section 623(a)(5) [15 U.S.C. § 1681s-2(a)(5)].*

4. *If weaknesses within the financial institution's procedures for investigating errors are revealed, review a sample of notices of disputes received from a consumer reporting agency and determine whether the institution:*
    a. *Conducted an investigation with respect to the disputed information. Section 623(b)(1)(A) [15 U.S.C. § 1681s-2(b)(1)(A)];*
    b. *Reviewed all relevant information provided by the consumer reporting agency. Section 623(b)(1)(B) [15 U.S.C. § 1681s-2(b)(1)(B)];*
    c. *Reported the results of the investigation to the consumer reporting agency. Section 623(b)(1)(C) [15 U.S.C. § 1681s-2(b)(1)(C);*
    d. *Reported the results of the investigation to all other nationwide consumer reporting agencies to which the information was furnished, if the investigation found that the reported information was inaccurate or incomplete. Section 623(b)(1)(D) [15 U.S.C. § 1681s-2)(b)(1)(D)]; and*

e. *Modified, deleted, or blocked the reporting of information that could not be verified.*

Section 623(a)(6) Prevention of Re-Pollution of Consumer Reports

1. *If the financial institution provides information to a consumer reporting agency, review the institution's policies and procedures to ensure that items of information blocked due to an alleged identity theft are not re-reported to the consumer reporting agency.*

2. *If weaknesses are noted within the financial institution's policies and procedures, review a sample of notices from a consumer reporting agency of allegedly fraudulent information due to identity theft furnished by the financial institution to ensure that the institution does not re-report the item to a consumer reporting agency.*

3. *If procedural weaknesses are noted or other risks requiring further investigation are noted, verify that the financial institution has not sold or transferred a debt that was caused by an alleged identity theft.*

Section 623(a)(7) Negative Information Notice

1. *If the financial institution provides negative information to a nationwide consumer reporting agency, verify that the institution's policies and procedures ensure that the appropriate notices are provided to customers.*

2. *If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of notices provided to consumers to determine compliance with the technical content and timing requirements.*

Module 5: Consumer Alerts and Identity Theft Protections

Section 605A(h) Fraud and Active Duty Alerts

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

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.*

Attachment 8: Day Three- Session Three: - FDIC Enforcement Hypothetical

Hypothetical Enforcement Case: FCRA Examination of a Bank – Part I

Background and Scenario

You have been assigned to conduct the Fair Credit Reporting Act review during an upcoming examination of Sample Bank. The Examiner-in-Charge has asked you to evaluate the risks associated with the bank's FCRA program in order to determine the appropriate scope of the FCRA examination process.

Description of the Bank and Pre-Examination Data

Sample Bank is a state-charted financial institution that is not a member of the Federal Reserve System. It is a wholly-owned subsidiary of Sample Holding Company. Sample Holding Company also owns Sample Insurance Company, which sells consumer insurance products. Sample Bank provides a variety of loans to consumers, including installment, credit card, residential mortgage, and home equity lines of credit. The bank has assets of $500 million and operates five branch offices within the same state.

The previous examination was conducted two years ago and the bank was assigned a rating of "2" which represents satisfactory performance. With regard to consumer report issues, the bank's normal policy is to obtain and use consumer reports for all consumer lending, including real estate loans. The bank also obtains consumer reports for all prospective employees before they are hired. On an ongoing basis, the bank obtains consumer reports for existing employees once every three years.

The quarterly financial reports of the bank show a 50% increase in the credit card loan portfolio since the previous examination. Preliminary discussions with the bank revealed that this growth was due to a marketing campaign consisting of pre-approved offers of credit to local consumers who met certain criteria.

During the previous examinations, the Bank's senior management team was often argumentative and did not want to commit resources to compliance. Despite this situation, the bank's overall compliance management system was deemed satisfactory overall because the examination did not discover a significant amount of exceptions or violations.

Summary of Consumer Complaints Received by the FDIC

During the time since the previous examination, the FDIC received a total of 15 consumer complaints. The issues included the following:

- 10 complaints from consumers who paid off their loans with the bank, but their credit reports show these accounts as open and delinquent.
- 2 complaints from consumers whose reports contain inquiries by Sample Bank, but the consumers had no relationship with the institution, nor had they applied for any products at the bank.
- 3 complaints from consumers who responded to the bank's "pre-approved" credit card solicitations but were denied loans.

Summary of Initial Interview with Management

During the first day of the on-site examination, you meet with the bank's Compliance Officer to discuss the bank's FCRA compliance process in general. Through the discussion, you learn several general issues including the following:

- The bank has no written FCRA procedures.
- Any bank employee may obtain consumer reports from the consumer reporting agency through their desktop computers. Also, each employee may override any controls or warnings in the system so that they may obtain complete reports for any consumer.
- The last training for bank staff on FCRA issues was conducted over one year ago.
- With regard to loan underwriting, the bank considers credit scores in the underwriting of every loan product; however, there are no set requirements for minimum scores to approve loans.
- The Compliance Officer was not aware that consumer reports may now contain fraud or active duty alerts.

Examination Scope and Discussion Questions

1. Based on your preliminary review of the previous examination data, financial information, consumer complaints, and the issues discussed in the preliminary meeting with bank management, what are the significant risks that you should consider when setting the examinations scope?

2. Using the risks identified, which examination modules or parts of the modules should be completed?

Hypothetical Enforcement Case: FCRA Examination of a Bank – Part II

You have now completed the substantive examination of Sample Bank's FCRA program. Through discussions with bank staff, management, and a review of files, you have determined the following:

- Any employee may in fact download a consumer report on their desktop computer. The bank's bill from the consumer reporting agency shows that over the past 2 years, 5,000 consumer reports were purchased. Other records show that the bank received only 1,200 loan applications and 500 employment applications during the same period.

- The bank's customer database is fully accessible by the affiliated insurance company. This database contains all of the information used in credit underwriting. All employees of the insurance company may readily access this information.

- The bank uses credit scores in underwriting all loans. Disclosures of these scores were given only to borrowers wholes loans were secured by residential real estate.

- With regard to the bank's pre-approved credit card marketing program, records show that the bank mailed 15,000 solicitations to consumers during the review period. Approximately 4,000 consumers responded and 2,500 consumers were in fact granted credit cards.

- The bank routinely provides information about its transactions with customers to a consumer reporting agency each month. No one at the bank is assigned the responsibility to research and correct any errors.

- The bank has not obtained or used any medical information in the evaluation of or underwriting of credit.

Discussion Questions

1. Based on your findings, has the bank violated any of the requirements of the FCRA? If so, which ones?

2. What corrective actions, if any should be suggested to the bank?

3. Based solely on the FCRA findings, how would you rate this bank, on a scale of 1 to 5, with 1 being the best rating and 5 representing the worst? Why?

4. Would you recommend an enforcement action against this bank? If yes, what type of action would you recommend?

Attachment 9: Day Four- Session One- Development in the consumer reporting industry in the U.S

Report to Congress

Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003

Federal Trade Commission

December 2004

This report is about 120 pages
You can find info about the study and a link to the report at:
http://www.ftc.gov/opa/2004/12/factarpt.htm

Attachment 10: Day Four- Session Two: Privacy and Data Security Laws in the United States

Privacy and Data Security Laws in the United States

Bethany Matz
U.S. Federal Trade Commission

June 28, 2006
Day Four – Session Two

AGENDA

- ❑ **Overview**
- ❑ **The Gramm-Leach-Bliley Act**
  - **The Privacy Rule**
  - **Anti-pretexting Provisions**
  - **The Safeguards Rule**
- ❑ **The Disposal Rule**

Legal Framework

- ❑ There is no single law that governs privacy and security in the United States
- ❑ Instead, there is a collection of federal laws and regulations governing specific industries and practices
- ❑ Also must be aware of state laws and international rules, as well as private causes of action
- ❑ With certain exceptions, there is no general obligation to have any particular privacy practices

Examples of U.S. Laws that Protect Certain Types of Information

- Fair Credit Reporting Act (“FCRA”)
- Gramm-Leach-Bliley Act (“GLBA”)
- Health Insurance Portability and Accountability Act (“HIPAA”)
- Children’s Online Privacy Protection Act (“COPPA”)

What the Public Wants

Most consumers:

- Express concern about privacy of their information
- Say that privacy notices are important, but don’t understand them
- Don’t trust businesses with their personal information
- Are more likely to do business with websites that post privacy notices

FTC Approach to Privacy

- Focus on injury to consumers
  - economic (ID theft)
  - physical (child predators)
  - unwanted intrusions (telemarketers)
- U.S. economy is fueled by information sharing
- Problem is not sharing per se, but uses that create potential for harm
- Benefits of information sharing must be weighed against the privacy harms

Data Security - the Problem

- ❑ Increasing dependence on information
- ❑ Growth in information databases
- ❑ Greater accessibility of public record information
- ❑ Social Security number as key identifier and authenticator
- ❑ Explosion of identity theft
- ❑ Security breaches

Identity Theft

- Fraud committed when one uses personal information about a consumer to pose as that consumer
  - to use established credit account
  - to open a new account
- Challenge to credit marketplace and regulation of system
- Information about fraudulent charges or accounts reported to credit bureaus

Identity Theft

- Consumer often does not know until too late, and must:
  - Dispute fraudulent charges
  - Correct credit report – sometimes again and again
- FTC Survey
  - Almost 10 million consumer victims - 5% of US adult population
  - $48 billion in losses to businesses, $5 billion in losses to consumer victims, victims spent 300 million hours dealing with consequences

Identity Theft

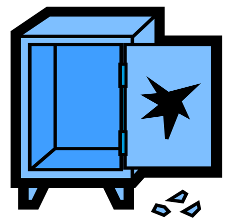
- Many causes – lost or stolen wallets, stolen mail, theft by family/friends, dumpster diving, misuse following transaction, phishing. **But,** half don't know the cause.
- **Ultimate solution**: better authentication methods for consumers

Data Breaches

- Over 100 reported incidents in 2005
- Over 56 million affected consumers
- Breached organizations include data brokers, financial institutions, service providers, retailers, hospitals, universities, and government

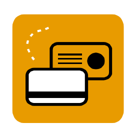
Types of Breaches

- **Hacking (CardSystems, DSW)**
- **Lost data (Citifinancial)**
- **Stolen computers**
- **Insiders (Bank of America)**
- **Impersonation (ChoicePoint)**



Kinds of Information Breached

- Social Security numbers
- Credit card/checking account numbers
- Employee records
- Medical history



Why Are Breaches Happening?

- Fast-developing problem and some entities are slow to change
- Greater information flows
- Thieves have become more sophisticated
- Thriving black market in personal information
- Some institutions not taking it seriously enough
- Laws are not clear

What Should We Do?

Need a multi-pronged approach

- ❑ Consumer education – prevention
- ❑ Prosecution of thieves
- ❑ Implementation of FACT Act anti-identity theft provisions
- ❑ Legislation
- ❑ Law enforcement against businesses that fail to protect consumer data

Gramm-Leach-Bliley Act

- Comprehensive banking legislation enacted in 1999
  - Contains provisions that address:
    - o Privacy
    - o Pretexting
    - o Security

Privacy

- Requires financial institutions to give their customers privacy notices that explain their information collection and sharing practices
- In turn, customers have the right to limit the sharing of their information – with some exceptions
- "The Privacy Rule"

Pretexting

- Prohibits the use of false pretenses to obtain "customer information of a financial institution"

- Exceptions

Security

- Requires financial institutions to ensure the "security and confidentiality of customer records and information"

- "The Safeguards Rule"

GLBA Safeguards Rule

- Must develop and implement comprehensive information security program:
  - Physical, technical, and procedural safeguards to protect customer information
  - Written and accessible to employees
  - Flexible framework, but there are required elements

GLBA Safeguards Rule

- Required elements:
  - Designate employee(s) to coordinate program
  - Identify and assess risks to customer information
  - Design and implement safeguards, and test and monitor effectiveness over time
  - Oversee service providers
  - Periodically update/adjust program to address developments

GLBA Safeguards Rule

- To assess risks and design safeguards, look at all relevant areas of operation, including:
  - Employee training and management
  - Information systems
  - Detecting, managing and responding to attacks, intrusions, and other systems failures

GLBA Safeguards Rule

- FTC enforcement actions:
  - Sunbelt Lending
  - Nationwide Mortgage Group
  - Superior Mortgage

The FACTA Disposal Rule

- Requires businesses to take reasonable and appropriate measures to prevent the unauthorized access to – or use of – consumer report information.
  - Burn, pulverize, or shred papers
  - Destroy or erase electronic files or media
  - Select third-party disposal companies with care
  - Ensure third-party disposal companies follow rules

The Bottom Line

1. Information security is an ongoing process
2. A company's security procedures must be reasonable and appropriate in light of the circumstances
3. Good security is good business (consumers care about privacy and security)

Questions?