

## 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;

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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; and
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.

### Examination Procedures

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) [15 USC §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 USC §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 USC§1681s-2(a)(4)]; and
  - 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 USC §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 USC §1681s-2(b)(1)(A)];
    - b. Reviewed all relevant information provided by the consumer reporting agency. Section 623(b)(1)(B) [15 USC §1681s-2(b)(1)(B)];
    - c. Reported the results of the investigation to the consumer reporting agency. Section 623(b)(1)(C) [15 USC §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 USC §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

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.

**Examination Procedures**

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.

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

**Section 623(a)(7) Negative Information Notice.** 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.

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

**Nationwide consumer reporting agency.** 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.

**Model text.** 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. *Notice prior to communicating negative information (Model B-1):*

“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. *Notice within 30 days after communicating negative information (Model B-2):*

“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.”

**Examination Procedures**

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.