

Fair Credit Reporting Act¹

Introduction

The Fair Credit Reporting Act (FCRA) (15 USC §§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 USC §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 followed by the examination steps.

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. **Job Aids** at the end of this section 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.

Key Definitions

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

“**Consumer**” is defined as an individual.

“**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
3. Any other purpose authorized under section 604 (15 USC §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);

¹ This section fully incorporates the examination procedures issued under DSC RD Memo 06-005: Revised Interagency Examination Procedures for the Fair Credit Reporting Act and DSC RD Memo 06-011: Fair Credit Reporting Act-Medical Information Regulation Examination Procedures.

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

“**Person**” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

“**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**” has the same meaning as used in section 701(d)(6) [15 USC1691(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 USC §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**” 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**” 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.

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.