Fair Credit Reporting Act

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 contained in regulations issued by the Consumer Financial Protection Bureau (Bureau), 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);
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.

Examination Procedures

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.

(This page intentionally left blank.)

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 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.

Institution Procedures. Given the preponderance of electronically available information and the growth of identity theft, financial institutions should manage the risks associated with obtaining and using consumer reports. Financial institutions should employ procedures, controls, or other safeguards to ensure that consumer reports are obtained and used only in situations for which there are permissible

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.

purposes. Access to, and storage and destruction of this information is dealt with under an institution's Information Security Program; however, obtaining consumer reports initially must be done in compliance with the FCRA.

Examination Procedures

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

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.

Examination Procedures

Section 603(d) Consumer Report and Information Sharing

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.

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 USC 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.

Examination Procedures

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.

Section 624 Affiliate Marketing Opt Out

Section 624 gives a consumer the right to restrict an entity, with which it does not have a pre-existing business relationship, from using certain information obtained from an affiliate to make solicitations to that consumer. This provision is distinct from Section 603(d)(2)(A)(iii) which gives consumer the right to restrict the sharing of certain consumer information amongst affiliates.[2]

Under Section 624, an entity may not use information received from an affiliate to market its products or services to a consumer, unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of the making of such solicitations. The affiliate marketing opt-out applies to both transaction or experience information and "other" information, such as information from credit reports and credit applications. On November 7, 2007, the federal financial institution regulators published final regulations in the Federal Register to implement this section (72 FR 62910).[3]

Exceptions to the notice and opt out requirements apply when an entity uses eligibility information in certain ways, as described later in these procedures.

Key Definitions (12 CFR 1022.20)[4]

1. "**Eligibility information"** (12 CFR 1022.20(b)(3)) includes not only transaction and experience information, but also the type of information found in consumer reports, such as information from third party sources and credit scores. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.[5]

2. "**Pre-existing business relationship"** (12 CFR 1022.20(b)(4))[6] means a relationship between a person, such as a financial institution (or a person's licensed agent), and a consumer based on:
   a. A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation;
   b. The purchase, rental, or lease by the consumer of the person's goods or services, or a financial transaction (including holding an active account or a policy in force, or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation; or
   c. An inquiry or application by the consumer regarding a product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by the affiliate marketing regulation.
3. "**Solicitation"** (12 CFR 1022.20(b)(5) means the marketing of a product or service initiated by a person, such as a financial institution, to a particular consumer that is:
   a. Based on eligibility information communicated to that person by its affiliate; and
   b. Intended to encourage the consumer to purchase or obtain such product or service.

Examples of a solicitation include a telemarketing call, direct mail, e-mail, or other form of marketing communication directed to a particular consumer that is based on eligibility information received from an affiliate. A solicitation does not include marketing communications that are directed at the

2 *See* Module 2, Section 603(d) Consumer Report and Information Sharing, for provisions pertaining to the sharing of consumer information. Under section 603(d)(2)(A)(iii) of the FCRA, entities are responsible for complying with the affiliate sharing notice and opt-out requirement, where applicable. Thus, under the FCRA, certain consumer information will be subject to two opt-outs, a sharing opt-out (section 603(d)) and a marketing use opt-out (section 624). These two opt-outs may be consolidated.

3 *See* 12 CFR 1022.20(a) for the scope of entities covered by Subpart C of 12 CFR 1022.

4 *See* 12 CFR 1022.20 for other definitions.

5 Specifically, "eligibility information" is defined in the affiliate marketing regulation as "any information the communication of which would be a consumer report if the exclusions from the definition of "consumer report" in Section 603(d)(2)(A) of the [Fair Credit Reporting] Act did not apply."

6 *See* 12 CFR 1022.20(b)(4)(ii) and (iii) for examples of pre-existing business relationships and situations where no pre-existing business relationship exists.

general public (e.g., television, general circulation magazine, and billboard advertisements).

Initial Notice and Opt-out Requirement (12 CFR 1022.21(a), 1022.24, and 1022.25). A financial institution and its subsidiaries ("financial institution") generally may not use eligibility information about a consumer that it receives from an affiliate to make a solicitation for marketing purposes to the consumer, unless:

1. It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that the financial institution may use eligibility information about that consumer that it received from an affiliate to make solicitations for marketing purposes to the consumer;
2. The consumer is provided a reasonable opportunity and a reasonable and simple method to "opt out" (that is, the consumer prohibits the financial institution from using eligibility information to make solicitations for marketing purposes to the consumer);[7] and
3. The consumer has not opted out.

For example, a consumer has a homeowner's insurance policy with an insurance company. The insurance company shares eligibility information about the consumer with its affiliated depository institution. Based on that eligibility information, the depository institution wants to make a solicitation to the consumer about its home equity loan products. The depository institution does not have a pre-existing business relationship with the consumer and none of the other exceptions apply. The depository institution may not use eligibility information it received from its insurance affiliate to make solicitations to the consumer about its home equity loan products unless the insurance company gave the consumer a notice and opportunity to opt out and the consumer does not opt out.

Making Solicitations (12 CFR 1022.21(b)).[8] A financial institution (or a service provider acting on behalf of the financial institution) makes a solicitation for marketing purposes if:

1. The financial institution receives eligibility information from an affiliate, including when the affiliate places that information into a common database that the financial institution may access;
2. The financial institution uses that eligibility information to do one or more of the following:
   a. Identify the consumer or type of consumer to receive a solicitation;
   b. Establish criteria used to select the consumer to receive a solicitation; or
   c. Decide which of the financial institution's products or services to market to the consumer or tailor the financial institution's solicitation to that consumer; and
3. As a result of the financial institution's use of the eligibility information, the consumer is provided a solicitation.

A financial institution does not make a solicitation for marketing purposes (and therefore the affiliate marketing regulation, with its notice and opt-out requirements, does not apply) in the situations listed below, commonly referred to as "constructive sharing." Constructive sharing occurs when a financial institution provides criteria to an affiliate to use in marketing the financial institution's product and the affiliate uses the criteria to send marketing materials to the affiliate's own customers that meet the criteria. In this situation, the financial institution is not using shared eligibility information to make solicitations.

1. The financial institution provides criteria for consumers to whom it would like its affiliate to market the financial institution's products. Then, based on this criteria, the affiliate uses eligibility information that the affiliate obtained in connection with its own pre-existing business relationship with the consumer to market the financial institution's products or services (or directs its service provider to use the eligibility information in the same manner and the financial institution does not communicate with the service provider regarding that use).
2. A service provider, applying the financial institution's criteria, uses information from an affiliate, such as that in a shared database, to market the financial institution's products or services to the consumer, so long as it meets certain requirements, including:
   a. The affiliate controls access to and use of its eligibility information by the service provider under a written agreement between the affiliate and the service provider;
   b. The affiliate establishes, in writing, specific terms and conditions under which the service provider may access and use the affiliate's eligibility information to market the financial institution's products and services (or those of affiliates generally) to the consumer;
   c. The affiliate requires the service provider, under a written agreement, to implement reasonable policies and procedures designed to ensure that the service provider uses the affiliate's eligibility information in accordance with the terms and conditions established by the affiliate relating to the marketing of the financial institution's products or services;

7 *See* 12 CFR 1022.24 and 1022.25 for examples of "a reasonable opportunity to opt out" and "reasonable and simple methods for opting out."

8 *See* 12 CFR 1022.21(b)(6) for examples of making solicitations.

d. The affiliate is identified on or with the marketing materials provided to the consumer; and

e. The financial institution does not directly use its affiliate's eligibility information in the manner described above under "Making Solicitations (12 CFR 1022.21(b))," item 2.

Exceptions to Initial Notice and Opt-out Requirements (12 CFR 1022.21(c)).[9] The initial notice and opt-out requirements do not apply to a financial institution if it uses eligibility information that it receives from an affiliate:

1. To make a solicitation for marketing purposes to a consumer with whom the financial institution has a pre-existing business relationship;
2. To facilitate communications to an individual for whose benefit the financial institution provides employee benefit or other services pursuant to a contract with an employer;
3. To perform services on behalf of an affiliate (but this would not allow solicitation where the consumer has opted out);
4. In response to a communication about the financial institution's products or services initiated by the consumer;
5. In response to a consumer's authorization or request to receive solicitations; or
6. If the financial institution's compliance with the affiliate marketing regulation would prevent it from complying with State insurance laws pertaining to unfair discrimination in any state in which the financial institution is lawfully doing business.

Contents of Opt-out Notice (12 CFR 1022.23). A financial institution must provide to the consumer a reasonable and simple method for the consumer to opt out. The opt-out notice must be clear, conspicuous, and concise, and must accurately disclose specific information outlined in 12 CFR 1022.23(a), including that the consumer may elect to limit the use of eligibility information to make solicitations to the consumer. *See* Appendix C to the regulation for the model notices contained in the affiliate marketing regulation.

Alternative contents. An affiliate that provides a consumer a broader right to opt out than that required by the affiliate marketing regulation may satisfy the regulatory requirements by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

Coordinated, consolidated, and equivalent notices. Opt-out and renewal notices may be coordinated and consolidated with any other notice or disclosure required under any other provision of law, such as the Gramm-Leach-Bliley Act (GLBA), 15 USC 6801 et seq. Renewal notices, which have additional required content (12 CFR 1022.27), may be consolidated with the annual GLBA privacy notices.

Delivery of the Opt-out Notice (12 CFR 1022.21(a)(3) and 1022.26)[10] An affiliate that has or previously had a pre-existing business relationship with the consumer must provide the notice either individually or as part of a joint notice from two or more members of an affiliated group of companies. The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice. A consumer may not reasonably be expected to receive actual notice if, for example, the affiliate providing the notice sends the notice via e-mail to a consumer who has not agreed to receive electronic disclosures by e-mail from the affiliate providing the notice.[11]

Scope of Opt-out (12 CFR 1022.22(a) and 1022.23(a)(2)).[12] As a general rule, the consumer's election to opt out prohibits any affiliate covered by the opt-out notice from using eligibility information received from another affiliate, described in the notice, to make solicitations to the consumer. If two or more consumers jointly obtain a product or service, any of the joint consumers may exercise the right to opt out. It is impermissible to require all joint consumers to opt out before implementing any opt-out direction.

Menu of alternatives. A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by:

1. Electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice,
2. Electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or
3. Electing to prohibit solicitations by certain methods of delivery but not other methods of delivery.

One of the alternatives, however, must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

9 *See* 12 CFR 1022.21(d) for examples of exceptions to the initial notice and opt-out requirement.

10 *See* 12 CFR 1022.26(b) and (c) for examples of "reasonable expectation of actual notice" and "no reasonable expectation of actual notice."

11 For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions of 12 CFR 1022.24(b)(2) and 1022.24(b)(3) or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

12 *See* 12 CFR 1022.22(a) for examples of the scope of the opt-out, including examples of continuing relationships.

Continuing relationship. If the consumer establishes a continuing relationship with a financial institution or its affiliate, an opt-out notice may apply to eligibility information obtained from one or more continuing relationships (such as a deposit account, a mortgage loan, or a credit card), if the notice adequately describes the continuing relationships covered. The opt-out notice can also apply to future continuing relationships if the notice adequately describes the continuing future relationships that would be covered.

Special rule for a notice following termination of all continuing relationships. After all continuing relationships with a financial institution or its affiliate(s) are terminated, a consumer must be given a new opt-out notice if the consumer later establishes another continuing relationship with the financial institution or its affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election that applies to eligibility information obtained in connection with a terminated relationship.

No continuing relationship (isolated transaction). If the consumer does not establish a continuing relationship with a financial institution or its affiliate, but the financial institution or its affiliate obtains eligibility information about the consumer in connection with a transaction with the consumer (such as an ATM cash withdrawal, purchase of traveler's checks, or a credit application that is denied), an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

Time, Duration, and Renewal of Opt-out (12 CFR 1022.22(b) and (c) and 1022.27). A consumer may opt out at any time. The opt-out must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer later revokes the opt-out in writing or, if the consumer agrees, electronically. An opt-out period may be set at more than five years, including an opt-out that does not expire unless the consumer revokes it.

Renewal after opt-out period expires. After the opt-out period expires, a financial institution may not make solicitations based on eligibility information it receives from an affiliate to a consumer who previously opted out, unless:

1. The consumer receives a renewal notice and opportunity to opt out, and the consumer does not renew the opt-out; or
2. An exception to the notice and opt-out requirements applies.[13]

13 *See* 12 CFR 1022.21(c) for exceptions.

Contents of renewal notice. The renewal notice must be clear, conspicuous, and concise, and must accurately disclose most of the elements of the original opt-out notice, as well as the facts that:

1. The consumer previously elected to limit the use of certain information to make solicitations to the consumer;
2. The consumer's election has expired or is about to expire;
3. The consumer may elect to renew the consumer's previous election; and
4. If applicable, that the consumer's election to renew will apply for the specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires.

See 12 CFR 1022.27(b) for all the content requirements of renewal notice.

Renewal period. Each opt-out renewal must be effective for a period of at least five years.

Affiliate who may provide the notice. The renewal notice must be provided by the affiliate that provided the previous opt-out notice, or its successor; or as part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

Timing of the renewal notice. A renewal notice may be provided to the consumer either a reasonable period of time before the expiration of the opt-out period[14] or any time after the expiration of the opt-out period but before solicitations that would have been prohibited by the expired opt-out are made to the consumer.

Model forms for opt-out notices (12 CFR 1022, Appendix C). Appendix C of the affiliate marketing regulation contains model forms that may be used to comply with the requirement for clear, conspicuous, and concise notices. The five model forms are:

C-1 Model Form for Initial Opt-out Notice (Single-Affiliate Notice)

C-2 Model Form for Initial Opt-out Notice (Joint Notice)

C-3 Model Form for Renewal Notice (Single-Affiliate Notice)

C-4 Model Form for Renewal Notice (Joint Notice)

14 An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt-out. If a financial institution provides an annual privacy notice under the Gramm-Leach-Bliley Act, providing a renewal notice with the last annual privacy notice provided to the consumer before expiration of the opt-out period is a reasonable period of time before expiration of the opt-out in all cases. 12 CFR 1022.27(d)

C-5 Model Form for Voluntary "No Marketing" Notice

Use of the model forms is not required and a financial institution may make certain changes to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Institutions making such extensive revisions will lose the safe harbor that Appendix C provides. Examples of acceptable changes are provided in Appendix C to the regulation.

Examination Procedures

Section 624 Affiliate Marketing Opt Out

1. Determine whether the financial institution receives consumer eligibility information from an affiliate. Stop here if it does not because Subpart C of 12 CFR 1022 does not apply.
2. Determine whether the financial institution uses consumer eligibility information received from an affiliate to make a solicitation for marketing purposes that is subject to the notice and opt-out requirements. If it does not, stop here.
3. Evaluate the institution's policies, procedures, practices and internal controls to ensure that, where applicable, the consumer is provided with an appropriate notice, a reasonable opportunity, and a reasonable and simple method to opt out of the institution's using eligibility information to make solicitations for marketing purposes to the consumer, and that the institution is honoring the consumer's opt-outs.
4. If compliance risk management weaknesses or other risks requiring further investigation are noted, obtain and review a sample of notices to ensure technical compliance and a sample of opt-out requests from consumers to determine if the institution is honoring the opt-out requests.
   a. Determine whether the opt-out notices are clear, conspicuous, and concise and contain the required information, including the name of the affiliate(s) providing the notice, a general description of the types of eligibility information that may be used to make solicitations to the consumer, and the duration of the opt out. (12 CFR 1022.23(a))
   b. Review opt-out notices that are coordinated and consolidated with any other notice or disclosure that is required under other provisions of law for compliance with the affiliate marketing regulation. (12 CFR 1022.23(b))
   c. Determine whether the opt-out notices and renewal notices provide the consumer a reasonable opportunity to opt out and a reasonable and simple method to opt out. (12 CFR 1022.24 and 1022.25)
   d. Determine whether the opt-out notice and renewal notice are provided (by mail, delivery or electronically) so that a consumer can reasonably be expected to receive that actual notice. (12 CFR 1022.26)
   e. Determine whether, after an opt-out period expires, a financial institution provides a consumer a renewal notice prior to making solicitations based on eligibility information received from an affiliate. (12 CFR 1022.27)

(This page intentionally left blank.)

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.

Examination Procedures

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]

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.

Technical Notice and Opt Out Requirements. 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.

Requirements Beginning August 1, 2005. 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 in the following:

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:

> PRESCREEN & OPT-OUT NOTICE: 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].

Examination Procedures

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

Section 605(g) provides that persons, including financial institutions that accept debit and credit cards for the transaction of business will be prohibited from issuing electronic receipts that contain more than the last five digits of the card number, or the card expiration dates, at the point of sale or transaction. This requirement applies only to electronically developed receipts and does not apply to hand-written receipts or those developed with an imprint of the card.

For Automatic Teller Machines (ATMs) and Point-of-Sale (POS) terminals or other machines that were put into operation before January 1, 2005, this requirement is effective on December 4, 2006. For ATMs and POS terminals or other machines that were put into operation on or after January 1, 2005, the effective date is the date of installation.

Examination Procedures

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

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.

Credit score. 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.

Covered transactions. 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.

Specific required notice. 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.

Examination Procedures

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

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.

Examination Procedures

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

Section 615(g) has specific requirements for financial institutions that act as debt collectors, that is, the financial institution collects debts on behalf of a third party that is a creditor or other user of a consumer report. The requirements do not apply when a financial institution is collecting its own loans. When a financial institution is notified that any

information relating to a debt that it is attempting to collect may be fraudulent or may be the result of identity theft, the financial institution must notify the third party of this fact. In addition, if the consumer, to whom the debt purportedly relates, requests information about the transaction, the financial institution must provide all of the information the consumer would otherwise be entitled to if the consumer wished to dispute the debt under other provisions of law applicable to the financial institution.

Examination Procedures

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.

Examination Procedures
Section 615(h) Duties of Users Regarding Risk-Based Pricing (Regulation V, Subpart H)

Background

Section 615(h) of the Fair Credit Reporting Act (FCRA) generally requires a user of consumer reports, such as a financial institution, to provide a risk-based pricing notice to a consumer when the financial institution, based on a consumer report, extends credit to the consumer on terms that are "materially less favorable" than the terms the financial institution has extended to other consumers. On January 15, 2010, the Federal Reserve and the Federal Trade Commission published final rules in the Federal Register (75 FR 2724) implementing this section of the FCRA.

The risk-based pricing notice requirement is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports so that the consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. This notice provision is meant to complement an existing provision of the FCRA, Section 615(a), whereby a creditor that denies a consumer's application for credit, based in whole or in part on information in a consumer's report, must provide an adverse action notice. The new provision, Section 615(h), covers the situation where credit is offered at "materially less favorable terms," rather than being denied.

Definitions (12 CFR 1022.71)

The following definitions pertain to the rules governing the risk-based pricing regulation:

1. **"Material terms"** means in general:
   a. For open-end credit, the annual percentage rate (APR) required to be disclosed in the account opening disclosures required under Regulation Z. This does not include a temporary initial rate that is lower than the rate that will apply when the temporary rate expires, any penalty rate that applies upon the occurrence of specific events (such as a late payment), or any fixed APR option for a home equity line of credit;
   b. For credit cards (other than a credit card used to access a home equity line of credit or a charge card), the APR that applies for purchases. For credit cards without a purchase APR, "material terms" means the APR that varies based on consumer report information and that has the most significant financial impact on consumers;
   c. For closed-end credit, the APR required to be disclosed prior to consummation under the closed-end provisions of Regulation Z; and
   d. For credit that does not have an APR, the financial term that varies based on consumer report information and that has the most significant financial impact on consumers, such as an annual membership fee for a charge card.
2. **"Materially less favorable"** means, generally, that the cost of credit to a consumer would be significantly greater than the cost of credit to another consumer from or through the same creditor. Relevant factors in determining the significance of a difference in cost include the type of credit product, the term of the credit extension, and the extent of the difference.

General Requirements (12 CFR 1022.72-73)

A financial institution must provide to a consumer a notice ("risk-based pricing notice") in the form and manner prescribed by the regulation if:

1. The institution uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer for personal, family, or household purposes; and
2. Based in whole or in part on the consumer report, the institution grants, extends, or otherwise provides credit to that consumer on material terms that are materially less

favorable than the most favorable material terms available to a substantial proportion of consumers from that institution.

The obligation to provide the notice applies to the creditor to whom the obligation is initially payable, i.e. the original creditor. This interpretation excludes brokers and other intermediaries who do not themselves grant, extend, or provide credit to consumers. *See* preamble to the final regulation (75 FR at 2730 - 2731).

Determination of which consumers must receive notice (12 CFR 1022.72(b))

A financial institution may determine, on a case-by-case basis, whether a consumer has received material terms that are materially less favorable by comparing the material terms offered to the consumer to the material terms offered to other consumers for a specific type of credit product. A "specific type of credit product" means one or more credit products with similar features that are designed for similar purposes. Examples include student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans.

Because making such a direct comparison between consumers may not be operationally feasible, the rules provide the two alternative methods, a credit score proxy method and a tiered pricing method, both of which are described as follows:

1. ***Credit score proxy method*** (12 CFR 1022.72(b)(1)). If a creditor uses credit scores to set the material terms of credit, the creditor may determine a cutoff score that represents the point at which approximately 40 percent of its consumers have higher credit scores and 60 percent of its consumers have lower credit scores. The creditor may then provide a risk-based pricing notice to each consumer who has a credit score lower than the cutoff score.

Credit Score Proxy Example	
The number of all, or a representative sample of, consumers to whom the institution granted credit for a specific type of credit product	10,000
40 percent of consumers	4,000
Credit scores of the 4,000 consumers with the highest credit scores	700 or higher
Cutoff score	700
Credit scores of those consumers to whom the creditor must provide a risk-based pricing notice, because the consumers' scores are lower than cutoff score	699 or lower

Alternative to 40/60 cutoff. The regulation provides an alternative to the 40/60 cutoff discussed above for situations where more than 40 percent of consumers (e.g., 80 percent) receive the most favorable material terms. In such situations, the creditor may set a different cutoff score based on its historical experience. The cutoff score would be set at a point at which the approximate percentage of consumers who historically have received the most favorable material terms based on their credit score would not receive a notice in the future. Under this alternative, the risk-based pricing notices would be provided to the approximate percentage of consumers who historically have been granted credit on material terms other than the most favorable terms.

For example, based on a sample of credit extended in the past six months, a creditor may determine that approximately 80 percent of its consumers received credit at its lowest APR (i.e., the most favorable material terms), and 20 percent of its consumers received credit at a higher APR (i.e., material terms other than the most favorable). Approximately 80 percent of the sampled consumers had a credit score at or above 750, and 20 percent had a credit score below 750. As a result, the card issuer could select 750 s its cutoff score. Consumers who have credit scores lower than 750 would receive the risk-based pricing notice. See preamble to the final regulation (75 FR at 2733).

Recalculation. An institution must recalculate the score no less than every two years.

Specific type of product. A financial institution must calculate the cutoff score by considering the credit scores of all, or a representative sample of, the consumers who have received credit for a specific type of credit product.

New entrants or new products. For new entrants into the credit business or for new products subject to risk-based pricing, a financial institution may determine the cutoff score based on information from market research or other third-party sources. For a newly acquired credit portfolio, a financial institution may determine the cutoff score from information obtained from the party from which it acquired the portfolio. The institution must recalculate the cutoff score using the scores of its own consumers within one year after it begins using a score derived from market research, a third-party, or the party from which it acquired the portfolio. If, within that one year, it has not granted credit to a sufficient number of new consumers, thus preventing it from having sufficient data with which to recalculate a cut-off score based on the credit scores of its own consumers, it may continue to use the original cutoff score. However, within two years, it must calculate its own cutoff score if it has granted credit to some new consumers within those two years.

Use of multiple credit scores. For a financial institution that generally uses two or more credit scores to set material credit terms, the institution must determine the cutoff score using the same method used to evaluate multiple scores when making credit decisions (for example, using an average credit score). If the institution does not consistently use the same method for evaluating multiple scores, the institution must use a reasonable means. For example, the institution may use any one of the methods that the institution ordinarily uses or the average credit score of each consumer to calculate the credit score by a reasonable means.

No credit score available for a consumer. If no credit score is available for a consumer, a financial institution must assume that it is granting credit on materially less favorable terms and thus must provide a risk-based pricing notice to the consumer.

2. ***Tiered pricing method*** (12 CFR 1022.72(b)(2)). If a financial institution sets the material terms of credit by assigning each consumer to one of a discrete number of pricing tiers for a specific type of credit product, based in whole or in part on a consumer report, the institution may provide a risk-based pricing notice to each consumer who is not assigned to the top pricing tier or tiers.

   If the financial institution uses four or fewer pricing tiers, it complies by providing risk-based pricing notices to all consumers who do not qualify for the top, best-priced tier. If the institution uses five or more pricing tiers, it complies by providing the notices to all consumers who do not qualify for the two top, best-priced tiers and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

Tiered Pricing Example		
Four or fewer tiers		
Top tier = best rate	APR	Notice requirement
Tier 1 (top)	8%	No risk-based pricing notice required.
Tier 2	10%	Risk-based pricing notice required for Tiers 2-4.
Tier 3	12%	
Tier 4	14%	
Five or more tiers (5 tiers)		
Tier 1 (top)	8%	No risk-based pricing notice required for top 30% to 40% of tiers. Top two tiers comprise 2 out of 5 (40%) of the number of tiers.
Tier 2	10%	
Tier 3	12%	**Risk-based notices required for Tiers 3–5.**
Tier 4	14%	
Tier 5	16%	
Five or more tiers (9 tiers)		
Tier 1 (top)	8%	No risk-based pricing notice required for top 30% to 40% of tiers. Top three tiers comprise 3 out of 9 (33%) of the number of tiers.
Tier 2	10%	
Tier 3	12%	
Tier 4	14%	**Risk-based notices required for Tiers 4–9.**
Tier 5	16%	
Tier 6	18%	
Tier 7	20%	
Tier 8	22%	
Tier 9	24%	

Application to credit card issuers (12 CFR 1022.72(c)). A credit card issuer may use any of the methods in 12 CFR 1022.72(b) to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, the card issuer may provide the notice when:

(a) a consumer applies for a credit card in connection with an application program or in response to a solicitation, and more than one purchase APR may apply under the program or solicitation, and

(b) based in whole or in part on a consumer report, the credit card is issued to a consumer with an APR that is higher than the lowest APR available in connection with the application or solicitation.

The risk-based pricing requirements do not apply to a card issuer if the credit card program offers only a single annual APR (other than temporary initial rates or penalty rates) or if the issuer offers the consumer the lowest possible APR under the credit card program.

Content of the notice (12 CFR 1022.73(a)(1)*)*. The risk-based pricing notice must include:

1. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
2. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
3. The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
4. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
5. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
6. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
7. A statement that the terms offered, such as the APR, have been set based on information from a consumer report; and
8. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories.

See Appendix H-1 of the regulation for a model form for the risk-based pricing notice.

Account Review (12 CFR 1022.72(d)). Generally, creditors must provide an account review risk-based pricing notice to the consumer if the creditor, based in whole or in part on a consumer report, increases the consumer's APR after a review of the consumer's account, unless one of the exceptions in 12 CFR 1022.74(a), (b), or (c) applies (for example, the creditor provides an adverse action notice).

Content of account review risk-based pricing notice (12 CFR 1022.73(a)(2)). The account review risk-based pricing notice must include:

1. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
2. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
3. The identity of each consumer reporting agency that furnished a consumer report used in the account review;
4. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
5. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
6. A statement directing consumers to the web site of the Bureauto obtain more information about consumer reports;
7. A statement that the financial institution has conducted a review of the account using information from a consumer report; and
8. A statement that as a result of the review, the APR on the account has been increased based on information from a consumer report.

NOTE: Items 1 through 6 for account review risk-based pricing notice are substantially the same as items 1 through 6 for the risk-based pricing notice. Only the last two items in each list are different.

See Appendix H-2 of the regulation for a model form for the account review risk-based pricing notice.

Form of the notice (12 CFR 1022.73(b)). The risk-based pricing notices and the account review risk-based pricing notices must be clear and conspicuous and provided to the

consumer in oral, written, or electronic form. Creditors are deemed to be in compliance with the disclosure requirements through use of the optional, applicable model forms, found in Appendix H of the regulation.

Timing (12 CFR 1022.73(c)). The timing requirement depends on the specific type of credit transaction as specified below:

- For closed-end credit, a risk-based pricing notice must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.
- For open-end credit, the notice must be provided after the decision to grant credit is communicated to the consumer, but before the first transaction under the plan has been made.
- For account reviews, the notice must be provided at the time that the decision to increase the APR is communicated to the consumer. If no notice of the increase in the APR is provided to the consumer prior to the effective date of the APR change, the notice must be provided no later than five days after the effective date of the APR change.
- For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a risk-based pricing notice in the time periods described above for closed-end credit. Alternatively, the institution may arrange to have the auto dealer provide a risk-based pricing notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notices to consumers within the applicable time periods.
- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the risk-based pricing notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit.

Exceptions (12 CFR 1022.74)
The rules contain a number of exceptions to the risk-based pricing notice requirement, as follows:

1. When a consumer applies for specific terms of credit, and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report (12 CFR 1022.74(a));
2. When a creditor provides a notice of adverse action (12 CFR 1022.74(b));
3. When a creditor makes a firm offer of credit in a prescreened solicitation (12 CFR 1022.74(c));
4. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property (12 CFR 1022.74(d));
5. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is not or will not be secured by residential real property (12 CFR 1022.74(e)):
6. When an institution, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure about credit scores when no credit score is available (12 CFR 1022.74(f)).

The regulation contains specific disclosure requirements for Sections 1022.74(d)-(f) exceptions, as discussed below.

Section 1022.74(d) exception – credit score disclosure for loans secured by residential real property (12 CFR 1022.74(d)). An institution is not required to provide a risk-based pricing notice to a consumer under Sections 1022.72(a) or (c) if:

1. The consumer requests from an institution an extension of credit that is or will be secured by one to four units of residential real property; and
2. The institution generally provides to each consumer that requests such an extension of credit a notice that contains the following:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
   e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;

g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;

h. The information required to be disclosed to the consumer in Section 609(g) of the FCRA, and as described in Module 3 of these examination procedures, under "Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA), Section 609(g)"; and

i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution must:

   (i) Use the same scale as that of the credit score provided to the consumer; and

   (ii) Be presented:

   - In the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
   - By other clear and readily understandable graphical means, or
   - In a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

   The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.

Form of the notice. (1022.74(d)) The notice must be:

a. Clear and conspicuous;

b. Provided on or with the notice required by Section 609(g) of the FCRA;

c. Segregated from other information provided to the consumer, except for the notice required by Section 609(g) of the FCRA; and

d. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. (1022.74(d)) The notice must be provided to the consumer at the same time as the disclosure required by Section 609(g) of the FCRA is provided to the consumer, which must be provided as soon as reasonably practicable after the credit score has been obtained. In any event, the Section 1022.74(d) notice must be provided at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

Content of the notice when using multiple credit scores. When an institution obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the Section 1022.74(d) notice varies depending upon whether the institution only relies upon one of the credit scores or relies upon multiple credit scores.

a. If an institution only relies upon one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by using the low, middle, high, or most recent score), the notice must include that credit score and the other information required by Section 1022.74(d).

b. If an institution relies upon multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by computing the average of all the credit scores obtained), the notice must include one of those credit scores and the other information required by Section 1022.74(d).

At the institution's option, the notice may include more than one credit score, along with the additional information required by Section 1022.74(d) for each credit score disclosed.

Examples.

a. An institution uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from several consumer reporting agencies. It relies upon the low score when determining the material terms it will offer to the consumer. The institution must disclose the low score in the Section 1022.74(d) notice.

b. An institution uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from several consumer reporting agencies. The institution takes an average of all of the credit scores obtained in order to determine the material terms it will offer to the consumer, and thus relies upon all of the credit scores that it receives. The institution may choose one of these scores to include in the Section 1022.74(d) notice.

Model form. Appendix H-3 of the regulation contains a model form of the Section 1022.74(d) notice that is consolidated with the notice required by Section 609(g) of the FCRA. While use of the model form is optional, appropriate use of Model Form H-3 is deemed to comply with the requirements of Section 1022.74(d).

Section 1022.74(e) exception – credit score disclosure for loans not secured by residential real property (12 CFR 1022.74(e)). An institution is not required to provide a risk-based pricing notice to a consumer under Section 1022.72(a) or (c) if:

1. The consumer requests from an institution an extension of credit that is not or will not be secured by one to four units of residential real property; and
2. The institution provides to each consumer that requests such an extension of credit a notice that contains the following:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
   e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;
   f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
   g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
   h. The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;
   i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution must:
      - Use the same scale as that of the credit score provided to the consumer, and
      - Be presented:
        - In the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
        - By other clear and readily understandable graphical means, or
        - In a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

      The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.
   j. The range of possible credit scores under the model used to generate the credit score;
   k. The date on which the credit score was created; and
   l. The name of the consumer reporting agency or other person that provided the credit score.

   NOTE: Items a, b, c, d, e, f, g, and i for the Section 1022.74(e) notice are the same as items a, b, c, d, e, f, g, and i for the Section 1022.74(d) notice.

Form of the notice. 1022.74(e) The notice must be:

a. Clear and conspicuous;
b. Segregated from other information provided to the consumer; and
c. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. 1022.74(e) The notice generally must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan. The notice may alternatively be provided in the following manner:

1. For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a Section 1022.74(e) notice in the time periods described above . Alternatively, the institution may arrange to have the auto dealer provide a Section 1022.74(e) notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the institution arranges to have the auto dealer provide a Section 1022.74(e) notice, the institution complies if the consumer receives a notice containing a credit score obtained by the dealer, even if a different credit score is obtained and used by the institution. (12 CFR 1022.73(c)(2))

2. For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the Section 1022.74(e) notice may be provided at the earlier of:
   a. The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
   b. Within 30 days after the decision to approve the credit. 12 CFR 1022.73(c)(3))

Multiple credit scores. When an institution obtains two or more credit scores from consumer reporting agencies in setting material terms of credit, the content of the Section 1022.74(e) notice varies depending if the institution relies upon only one of the credit scores or relies upon multiple credit scores. These disclosures requirements are the same as those for the Section 1022.74(d) notices, as described previously.

Model form. Appendix H-4 of the regulation contains a model form of the Section 1022.74(e) notice. While use of the model form is optional, appropriate use of Model Form H-4 is deemed to comply with the requirements of Section 1022.74(e).

Section 1022.74(f) exception – credit score not available (12 CFR 1022.74(f)). An institution is not required to provide a risk-based pricing notice to a consumer under Section 1022.72(a) or (c) if the institution:

1. Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with Sections 1022.74(d) or (e), but a credit score is not available from the consumer reporting agency from which the institution regularly obtains credit scores for a consumer to whom the institution grants, extends, or provides credit;
2. Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and
3. Provides to the consumer a notice that contains the following:
   a. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;
   c. A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;
   d. A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   e. A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;
   f. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;
   g. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;
   h. The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and
   i. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports.

   NOTE: Items b, f, g, h, and i for the Section 1022.74(f) notice are the same as items b, f, g, h, and i for the Sections 1022.74(d) and (e) notices.

   Example. An institution uses consumer reports to set the material terms of non-mortgage credit granted, extended, or provided to consumers and regularly requests credit scores from a particular consumer reporting agency. As required by Section 1022.74(e), the institution provides those credit scores and additional information to consumers. The consumer reporting agency provides to the institution a consumer report on a particular consumer that contains one trade line, but does not provide the institution with a credit score on that consumer. If the institution does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or provides credit to the consumer, the institution may provide the Section 1022.74(f) notice. If, however, the institution obtains a credit score from another consumer reporting agency, the institution may not rely upon the Section 1022.74(f) exception, but must satisfy the requirements of Section 1022.74(e).

Form of the notice. The Section 1022.74(f) notice must be:

1. Clear and conspicuous;
2. Segregated from other information provided to the consumer; and
3. Provided to the consumer in writing and in a form that the consumer may keep.

Timing. (1022.74(f)) The notice generally must be provided to the consumer as soon as reasonably practicable after the institution has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan. The notice may alternatively be provided in the following manner:

1. For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a Section 1022.74(f) notice in the time periods described above. Alternatively, the institution may arrange to have the auto dealer provide a Section 1022.74(f) notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. 12 CFR 1022.73(c)(2))
2. For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the Section 1022.74(f) notice may be provided at the earlier of:
    a. The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
    b. Within 30 days after the decision to approve the credit. 12 CFR 1022.73(c)(3))

Model form. Appendix H-5 of the regulation contains a model form of the Section 1022.74(f) notice. While use of the model form is optional, appropriate use of Model Form H-5 is deemed to comply with the requirements of Section 1022.74(f).

Rules of Construction (12 CFR 1022.75) The rules clarify that, in general, only one risk-based pricing notice or one credit score exception notice is required to be provided per credit extension (however, an account review would still be required, if applicable). In a transaction involving two or more consumers, a financial institution must provide a risk-based pricing notice to each consumer. If the consumers have the same address, a financial institution may satisfy the requirements by providing a single risk-based pricing notice addressed to both consumers. For credit score disclosure exception notices, whether the consumers have the same address or not, the financial institution must provide a separate notice to each consumer.

Appendix H Appendix H contains five optional model forms that may be used to comply with the regulatory requirements. The five model forms are:

1. H-1 Model form for risk-based pricing notice
2. H-2 Model form for account review risk-based pricing notice
3. H-3 Model form for credit score disclosure exception for credit secured by one to four units of residential real property
4. H-4 Model form for credit score disclosure exception for loans not secured by residential real property
5. H-5 Model form for credit score disclosure exception for loans where credit score is not available

Use of the model forms is not required. A financial institution may change the forms by rearranging the format or by making technical modifications to the language of the forms. However, any change may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Institutions making such extensive revisions would lose the "safe harbor" that Appendix H provides. Examples of acceptable changes are provided in Appendix H to the regulation.

Examination Procedures

1. Determine whether the financial institution uses consumer report information in consumer credit decisions.

    If yes, determine whether the institution uses such information to provide credit on terms that are "materially less favorable" than the most favorable material terms available to a substantial proportion of its consumers. Relevant factors in determining the significance of differences in the cost of credit include the type of credit product, the term of the credit extension, and the extent of the difference.

    If "yes," the financial institution is subject to the risk-based pricing regulations.
2. Determine whether the financial institution provides a risk-based pricing notice to a consumer (12 CFR 1022.72(a)). If it does, proceed to step #3. If the institution does not provide a risk-based pricing notice, proceed to step #5 to determine whether an exception applies (12 CFR 1022.74).
3. Determine the method the financial institution uses to identify consumers who must receive a risk-based pricing notice and whether the method complies with the regulation (12 CFR 1022.72(b)).
    a. For institutions that use the direct comparison method (12 CFR 1022.72(b)), determine whether the

institution directly compares the material terms offered to each consumer and the material terms offer to the other consumers for a specific type of credit product.

b. For institutions that use the credit score proxy method: (12 CFR 1022.72(b)(1))

   i. Determine whether the institution calculates the cutoff score by considering the credit scores of all, or a representative sample, of consumers who have received credit for a specific type of credit product;

   ii. Determine whether the institution recalculates the cutoff score no less than every two years;

   iii. For new entrants into the credit business, for new products subject to risk-based pricing, or for acquired credit portfolios, determine whether the institution recalculates the cutoff scores within time periods specified in the regulation;

   iv. For institutions using more than one credit score to set material terms, determine whether the institution establishes a cutoff score according to the methods specified in the regulation; and

   v. If no credit score is available for a consumer, determine whether the institution provides the consumer a risk-based pricing notice.

c. For institutions that use the tiered pricing method: (12 CFR 1022.72(b)(2))

   i. When four or fewer pricing tiers are used, determine if the institution sends risk-based pricing notices to consumers who do not qualify for the top, best-priced tier; or

   ii. When five or more pricing tiers are used, determine if the institution provides risk-based pricing notices to consumers who do not qualify for the two top, best-priced tiers and any other tier that, combined with the top two tiers, equal no less than the top 30 percent and no more than the top 40 percent of the total number of tiers.

d. For credit card issuers:

   i. Determine whether the card issuer uses the credit score proxy method or the tiered pricing method to identify consumers to whom it must provide a risk-based pricing notice.

   ii. If the institution does not use the credit score proxy method or the tiered pricing method, determine whether the card issuer uses the following method as permitted by 12 CFR 1022.72(c) to identify consumers to whom it must provide a risk-based pricing notice.:

      - A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 1026.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and
      - Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with a purchase APR that is greater than the lowest purchase APR available in connection with the application or solicitation.

   iii. Determine whether the card issuer provides a risk-based pricing notice to each consumer that is provided a credit card with a purchase APR greater than the lowest purchase APR available under the program or solicitation.

4. Determine whether the risk based pricing notice contains: (12 CFR 1022.73(a)(1))

   a. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

   b. A statement that the terms offered, such as the APR, have been set based on information from a consumer report;

   c. A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

   e. The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

   f. A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

   g. A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies; and

   h. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports.

   Proceed to step #10.

5. If the institution does not provide a risk-based pricing notice, determine if one of the following situations that qualify for a regulatory exception applies: (12 CFR 1022.74(a)-(f))
   a. When a consumer applies for specific terms of credit, and receives them, unless those terms were specified by the creditor using a consumer report after the consumer applied for the credit and after the creditor obtained the consumer report;
   b. When a creditor provides a notice of adverse action;
   c. When a creditor makes a firm offer of credit in a prescreened solicitation;
   d. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is or will be secured by residential real property;
   e. When an institution generally provides a credit score disclosure to each consumer that requests a loan that is not or will not be secured by residential real property; and
   f. When an institution, which otherwise provides credit score disclosures to consumers that request loans, provides a disclosure for when no credit score is available.
6. For institutions that choose to provide a credit score disclosure to consumers that request a loan that is or will be secured by residential real property, determine whether the Section 1022.74(d) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;
   d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
   e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;
   f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;
   g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;
   h. The information required to be disclosed to the consumer in Section 609(g) of the FCRA, and as described in Module 3 of these examination procedures, under "Disclosure of Credit Scores by Certain Mortgage Lenders (FCRA), Section 609(g)"; and
   i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution should:
      - Use the same scale as that of the credit score provided to the consumer, and
      - Be presented:
        - In the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
        - By other clear and readily understandable graphical means, or
        - In a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

      The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements.
7. For institutions that choose to provide a credit score disclosure to consumers that request a loan that is not or will not be secured by residential real property, determine whether the Section 1022.74(e) notice generally is provided to each consumer that requests such an extension of credit and that each notice contains:
   a. A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;
   b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;
   c. A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

d. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

e. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

f. Contact information for the centralized source from which consumers may obtain their free annual consumer reports;

g. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports;

h. The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

i. The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score. The distribution should:

- Use the same scale as that of the credit score provided to the consumer, and
- Be presented:
  - in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar,
  - by other clear and readily understandable graphical means, or
  - in a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers.

The presentation may use a graph or statement obtained from the entity providing the credit score if it meets these requirements;

j. The range of possible credit scores under the model used to generate the credit score;

k. The date on which the credit score was created; and

l. The name of the consumer reporting agency or other person that provided the credit score.

8. For institutions that otherwise provide credit score disclosures to consumers that request loans, determine whether the Section 1022.74(f) notice is provided to the applicable consumers in situations where no credit score is available for the consumer, as required by 1022.74(f). Determine whether each notice contains:

a. A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

b. A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

c. A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

d. A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

e. A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

f. A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

g. A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

h. The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

i. A statement directing consumers to the web site of the Bureau to obtain more information about consumer reports.

9. For institutions that provide credit score exception notices and that obtain multiple credit scores in setting material terms of credit, determine whether the score(s) is disclosed in a manner consistent with the regulation: (12 CFR 1022.74(d)(4) and .74 (e)(4))

a. If an institution only relies upon one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by using the low, middle, high, or most recent score), determine whether the notice includes that credit score and the other information required by Section 1022.74(d).

b. If an institution relies upon multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer (for example, by

computing the average of all the credit scores obtained), determine whether the notice includes one of those credit scores and the other information required by Section 1022.74(d).

10. Regardless of whether the institution provides risk-based pricing notices or credit score exception notices, if the institution increases the consumer's APR as the result of a review of a consumer's account, determine whether the financial institution provided the consumer with an account review risk-based pricing notice (12 CFR 1022.72(d)) if an adverse action notice was not already provided.
11. Determine whether the account review risk-based pricing notice contains (12 CFR 1022.73(a)(2)):
    a. a statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;
    b. a statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;
    c. the identity of each consumer reporting agency that furnished a consumer report used in the credit decision;
    d. a statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;
    e. a statement that informs the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and provides contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;
    f. a statement that directs consumers to the web site of the Bureau to obtain more information about consumer reports;
    g. a statement that the financial institution has conducted a review of the account using information from a consumer report; and
    h. a statement that, as a result of the review, the APR on the account has been increased based on information from a consumer report.
12. For all notices, determine whether the notices are clear and conspicuous and comply with the specific format requirements for the notices (12 CFR 1022.73(b), .74(d)(2), .74(e)(2), and .74(f)(3)).
13. For all notices, determine whether the notices are provided within the required timeframes: (12 CFR 1022.73(c), .74(d)(3), .74(e)(3), and .74(f)(4))
    a. *Risk-based pricing notices and account review risk-based pricing notices*
        - For closed-end credit, the notice generally must be provided to the consumer after the decision to approve a credit request is communicated to the consumer, but before consummation of the transaction.
        - For open-end credit, the notice generally must be provided after the decision to grant credit is communicated to the consumer, but before the first transaction under the plan has been made.
        - For account reviews, the notice generally must be provided at the time that the decision to increase the APR is communicated to the consumer or no later than five days after the effective date of the change in the APR.
    b. *Credit score disclosures for loans secured by residential real property*
        - The credit score disclosure for loans secured by residential real property must be provided to the consumer at the same time as the disclosure required by Section 609(g) of the FCRA is provided to the consumer. The 609(g) notice must be provided as soon as reasonably practicable after the credit score has been obtained. In any event, the credit score disclosure for loans secured by residential real property must be provided at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.
    c. *Credit score disclosures for loans not secured by residential real property*
        - The notice generally must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.
    d. *Credit score exception notices when no credit score is available*
        - The notice generally must be provided to the consumer as soon as reasonably practicable after the institution has requested the credit score, but in any event not later than consummation of a transaction in the case of closed-end credit or when the first transaction is made under an open-end credit plan.
    e. *All notices, except credit score disclosures for loans secured by residential real property*
        - For automobile lending transactions made through an auto dealer that is unaffiliated with the institution, the institution may provide a notice in

the time periods described above. Alternatively, the institution may arrange to have the auto dealer provide a notice to the consumer on its behalf within these time periods and maintain reasonable policies and procedures to verify that the auto dealer provides the notice to the consumer within the applicable time periods. If the institution arranges to have the auto dealer provide a credit score disclosure for loans not secured by residential real property, the institution complies if the consumer receives a notice containing a credit score obtained by the dealer with these time periods, even if a different credit score is obtained and used by the institution.

- For instant credit that is granted under an open-end credit plan to a consumer in person or by telephone, the notice may be provided at the earlier of:
  - The time of the first mailing to the consumer after the decision is made to approve the credit, such as in a mailing containing the account agreement or a credit card; or
  - Within 30 days after the decision to approve the credit.

14. For all notices, determine whether the financial institution follows the rules of construction pertaining to the number of notices provided to the consumer(s) (12 CFR 1022.75). In a transaction involving two or more consumers, a financial institution must provide a risk-based notice to each consumer. If the consumers have the same address, a financial institution may satisfy the requirements by providing a single risk-based pricing notice addressed to both consumers. For credit score disclosure exception notices, whether the consumers have the same address or not, the financial institution must provide a separate notice to each consumer.
15. For all notices, determine whether the financial institution uses the model forms in Appendix H of the regulation. If yes, determine that it does not modify the model form so extensively as to affect the substance, clarity, comprehensibility, or meaningful sequence of the forms (Appendix H).

(This page intentionally left blank.)

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 605(h) Address Discrepancies

Section 605(h)(1) requires that, when providing a consumer report to a person that requests the report (a user), a nationwide consumer reporting agency (NCRA) must provide a notice of address discrepancy to the user if the address provided by the user in its request "substantially differs" from the address the NCRA has in the consumer's file. Section 605(h)(2) requires the federal banking agencies and the NCUA (the Agencies) and the FTC to prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of address discrepancy. On November 9, 2007, the agencies published final rules in the Federal Register implementing this section. (72 FR 63718)

Definitions

"Nationwide consumer reporting agency." Section 603(p) defines an NCRA 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 and
2. Credit account information from persons who furnish that information regularly and in the ordinary course of business.

"**Notice of address discrepancy** (12 CFR 1022.82(b))." A "notice of address discrepancy" is a notice sent to a user by an NCRA (section 603(p)) that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the NCRA's file for the consumer.

"Requirement to form a reasonable belief" (12 CFR 1022.82(c)). A user must develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that the consumer report relates to the consumer whose report was requested, when the user receives a notice of address discrepancy in connection with a new or existing account.

The rules provide the following examples of reasonable policies and procedures for forming a reasonable belief that a consumer report relates to the consumer whose report was requested:

1. Comparing information in the consumer report with information the user
   a. has obtained and used to verify the consumer's identity as required by the Customer Identification Program rules (31 CFR 103.121);
   b. maintains in its records; or
   c. obtains from a third party; or
2. Verifying the information in the consumer report with the consumer.

"Requirement to furnish a consumer's address to an NCRA" (12 CFR 1022.82(d)). A user must develop and implement reasonable policies and procedures for furnishing to the NCRA an address for the consumer that the user has reasonably confirmed is accurate when the user

1. can form a reasonable belief that the report relates to the consumer whose report was requested;
2. establishes a continuing relationship with the consumer (i.e., in connection with a new account); and
3. regularly furnishes information to the NCRA that provided the notice of address discrepancy.

   A user's policies and procedures for furnishing a consumer's address to an NCRA must require the user to furnish the confirmed address as part of the information it regularly furnishes to the NCRA during the reporting period when it establishes a continuing relationship with the consumer.

The rules also provide the following examples of how a user may reasonably confirm an address is accurate:

1. Verifying the address with the consumer whose report was requested;
2. Reviewing its own records;
3. Verifying the address through third-party sources; or
4. Using other reasonable means.

Examination Procedures

(12 CFR 1022.82)

1. Determine whether a user of consumer reports has policies and procedures to recognize notices of address discrepancy that it receives from a nationwide consumer

reporting agency (NCRA)[15] in connection with consumer reports.

2. Determine whether a user that receives notices of address discrepancy has policies and procedures to form a reasonable belief that the consumer report relates to the consumer whose report was requested. (12 CFR 1022.82(c))

   See examples of reasonable policies and procedures "to form a reasonable belief" in 12 CFR 1022.82(c)(2).

3. Determine whether a user that receives notices of address discrepancy has policies and procedures to furnish to the NCRA an address for the consumer that the user has reasonably confirmed is accurate, if the user
   a. can form a reasonable belief that the report relates to the consumer;
   b. establishes a continuing relationship with the consumer; and
   c. regularly furnishes information to the NCRA. (12 CFR 1022.82(d)(1))

   See examples of reasonable confirmation methods in 12 CFR 1022.82(d)(2).

4. Determine whether the user's policies and procedures require it to furnish the confirmed address as part of the information it regularly furnishes to an NCRA during the reporting period when it establishes a relationship with the consumer. (12 CFR 1022.82(d)(3)

5. If procedural weaknesses or other risks requiring further information are noted, obtain a sample of consumer reports requested by the user from an NCRA that included notices of address discrepancy and determine:
   a. How the user established a reasonable belief that the consumer reports related to the consumers whose reports were requested: and
   b. If a consumer relationship was established:
      - Whether the institution furnished a consumer's address that it reasonably confirmed to the NCRA from which it received the notice of address discrepancy; and
      - Whether it furnished the address in the reporting period during which it established the relationship.

Conclusion. On the basis of examination procedures completed, form a conclusion about the ability of user's policies and procedures to meet regulatory requirements for the proper handling of address discrepancies reported by an NCRA.

15 A NCRA compiles and maintains files on consumers on a nationwide basis. As of the effective date of the rule (January 1, 2008) there were three such consumer reporting agencies: Experian, Equifax, and TransUnion. Section 603(p) of FCRA (15 USC 1681a).

Section 615(e) Change of Address

Section 615(e)(1)(C) requires the Agencies and the FTC to prescribe regulations for debit and credit card issuers regarding the assessment of the validity of address changes for existing accounts. The regulations require card issuers to have procedures to assess the validity of an address change if the card issuer receives a notice of change of address for an existing account, and within a short period of time (during at least the first 30 days) receives a request for an additional or replacement card for the same account. On November 9, 2007, the Agencies published final rules in the Federal Register implementing this section. (72 FR 63718)

Definitions (12 CFR 334.91(b))

The following definitions pertain to the rules governing the duties of card issuers regarding changes of address:

"Cardholder" a consumer who has been issued a credit or debit card.

"Clear and conspicuous" means reasonably understandable and designed to call attention to the nature and significance of the information presented.

Address validation requirements (12 CFR 334.91(c)). A card issuer must establish and implement policies and procedures to assess the validity of a change of address if it receives notification of a change of address for a consumer's debit or credit card account and, within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. In such situations, the card issuer must not issue an additional or replacement card until it assesses the validity of the change of address in accordance with its policies and procedures.

The policies and procedures must provide that the card issuer will:

1. Notify the cardholder of the request for an additional or replacement card
   a. at the cardholder's former address; or
   b. by any other means of communication that the card issuer and the cardholder have previously agreed to use; and
2. Provide to the cardholder a reasonable means of promptly reporting incorrect address changes; or
3. Assess the validity of the change of address according to the procedures the card issuer has established as a part of its Identity Theft Prevention Program (12 CFR 334.90).

Alternative timing of address validation (12 CFR 334.91(d). A card issuer may satisfy the requirements of these rules prior to receiving any request for an additional or replacement card

by validating an address when it receives an address change notification.

Form of notice (12 CFR 334.91(e))

Any written or electronic notice that a card issuer provides to satisfy these rules must be clear and conspicuous and provided separately from its regular correspondence with the cardholder.

Change of Address Examination Procedures (12 CFR 334.91)

1. Verify that the card issuer has policies and procedures to assess the validity of a change of address if:
   a. it receives notification of a change of address for a consumer's debit or credit card account; and
   b. within a short period of time afterwards (during at least the first 30 days after it receives such notification), the card issuer receives a request for an additional or replacement card for the same account. (12 CFR 334.91(c))
2. Determine whether the policies and procedures prevent the card issuer from issuing additional or replacement cards until it:
   a. notifies the cardholder at the cardholder's former address or by any other means previously agreed to and provides the cardholder a reasonable means to promptly report an incorrect address (12 CFR 334.91(c)(1)(i)-(ii)); or
   b. uses other reasonable means of evaluating the validity of the address change; (12 CFR 334.91(c)(2)).

   In the alternative, a card issuer may validate a change of address request when it is received, using the above methods, prior to receiving any request for an additional or replacement card. (12 CFR 334.91(d))
3. Determine whether any written or electronic notice sent to cardholders for purposes of validating a change of address request is clear and conspicuous and is provided separately from any regular correspondence with the cardholder. (12 CFR 334.91(e))
4. If procedural weaknesses or other risks requiring further information are noted, obtain a sample of notifications from cardholders of changes of address and requests for additional or replacement cards to determine whether the card issuer complied with the regulatory requirement to evaluate the validity of the notice of address change before issuing additional or replacement cards.

Conclusion. On the basis of examination procedures completed, form a conclusion about whether a card issuer's policies and procedures effectively meet regulatory requirements for evaluating the validity of change of address requests received in connection with credit or debit card accounts.

Section 623 Furnishers of Information – General

Background

Section 623 of the Fair Credit Reporting Act (FCRA) requires the federal banking agencies (Agencies) and the Federal Trade Commission (FTC) to:

Issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies;

Prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines; and

Issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes concerning the accuracy of information contained in a consumer report based on a direct request from a consumer.

On July 1, 2009, the Agencies and the FTC published final rules in the Federal Register (74 FR 31484) implementing this section of FCRA.

Definitions (12 CFR 1022.41)

The following definitions pertain to the rules governing the furnishers of information to a consumer reporting agency:

"Accuracy" means that the information a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer correctly:

1. Reflects the terms of and liability for the account or other relationship;
2. Reflects the consumer's performance and other conduct with respect to the account or other relationship; and
3. Identifies the appropriate consumer.

"Direct dispute" means a dispute submitted by a consumer directly to a furnisher (including a furnisher that is a debt collector) concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer.

"Furnisher" means an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report. An entity is not a furnisher when it:

1. Provides information to a consumer reporting agency solely to obtain a consumer report in accordance with the permissible purposes outlined in sections 604(a) and (f) of the FCRA;
2. Is acting as a "consumer reporting agency" as defined in section 603(f) of the FCRA;

3. Is a consumer to whom the furnished information pertains; or
4. Is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.

"Identity theft" means a fraud committed or attempted using the identifying information of another person without authority. "Identifying information" means any name or number that may be used alone or in conjunction with any other information to identify a specific person (16 CFR 603.2).

"Integrity" means that the information a furnisher provides to a consumer reporting agency about an account or other relationship with the consumer:

1. Is substantiated by the furnisher's records at the time it is furnished;
2. Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
3. Includes:
   a. the information in the furnisher's possession about the account or other relationship that the relevant Agency has determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
   b. the credit limit, if applicable and in the furnisher's possession.

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.

Reasonable policies and procedures concerning the accuracy and integrity of furnished information (12 CFR 1022.42) and Interagency Guidelines (12 CFR 1022, Appendix E).

Each furnisher must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of consumer information that it furnishes to a consumer reporting agency. The policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities. In developing its policies and procedures, a furnisher must consider the Interagency Guidelines and may include its existing policies and procedures that are relevant and appropriate. Each furnisher must also review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

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 from a consumer reporting agency. 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.

Duties upon notice of a direct dispute from a consumer (12 CFR 1022.43).

General rule. A furnisher must conduct a reasonable investigation of a direct dispute (unless exceptions, described later, apply) if the dispute relates to:

1. The consumer's liability for a credit account or other debt with the furnisher, such as direct disputes relating to whether there is or has been identify theft or fraud against the consumer, whether there is individual or joint liability on an account, or whether the consumer is an authorized user of a credit account;
2. The terms of a credit account or other debt with the furnisher, such as, direct disputes relating to the type of account, principal balance, scheduled payment amount on an account, or the amount of the credit limit on an open-end account.
3. The consumer's performance or other conduct concerning an account or other relationship with the furnisher such as, direct disputes relating to the current payment status, high balance, payment date, the payment amount, or the date an account was opened or closed; or
4. Any other information contained in a consumer report regarding an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Exceptions. The direct dispute requirements do not apply to a furnisher if the direct dispute relates to:

1. The consumer's identifying information such as name(s), date of birth, Social Security number, telephone number(s), or address(es);
2. The identity of past or present employers;
3. Inquiries or requests for a consumer report;
4. Information derived from public records, such as judgments, bankruptcies, liens, and other legal matters (unless the information was provided by a furnisher with an account or other relationship with the consumer);
5. Information related to fraud alerts or active duty alerts; or
6. Information provided to a consumer reporting agency by another furnisher.

The direct dispute requirements also do not apply if the furnisher has a reasonable belief that the direct dispute is:

1. submitted by a credit repair organization;
2. is prepared on behalf of the consumer by a credit repair organization; or
3. is submitted on a form supplied to the consumer by a credit repair organization.

Direct Dispute Address. A furnisher is required to investigate a direct dispute only if a consumer submits a dispute notice to the furnisher at:

1. The address provided by a furnisher and listed on a consumer report relating to the consumer;
2. An address clearly and conspicuously specified by the furnisher that is provided to the consumer in writing or electronically (if the consumer has agreed to the electronic delivery of information from the furnisher); or
3. Any business address of the furnisher if the furnisher has not provided a specific address for submitting direct disputes.

Direct Dispute Notice Contents. A dispute notice from a consumer must include:

1. Sufficient information to identify the account or other relationship that is in dispute, such as an account number and the name, address, and telephone number of the consumer;
2. The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

3. All supporting documentation or other information reasonably required by the furnisher to substantiate the basis of the dispute. This documentation may include, for example, a copy of the relevant portion of the consumer report that contains the allegedly inaccurate information; a police report; a fraud or identity theft affidavit; a court order; or account statements.

Duties of a Furnisher after Receiving a Direct Dispute Notice from a Consumer. After receiving a dispute notice from a consumer, the furnisher must:

1. Conduct a reasonable investigation with respect to the disputed information;
2. Review all relevant information provided by the consumer with the dispute notice;
3. Complete its investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) of the FCRA (15 U.S.C. 1681i(a)(1)) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and
3. If the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the furnisher provided inaccurate information of investigation findings and provide to the consumer reporting agency any correction to that information that is necessary to make the information provided by the furnisher accurate.

Frivolous or Irrelevant Disputes. A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant. A dispute qualifies as frivolous or irrelevant if:

1. The consumer did not provide sufficient information to investigate the disputed information;
2. The direct dispute is substantially the same as a dispute previously submitted by or on behalf of the consumer and the dispute is one with respect to which the furnisher has already complied with the statutory or regulatory requirements. However, a direct dispute would not be "substantially the same" as the one previously submitted if the dispute includes new information required by the regulation to be provided to the furnisher, but that had not previously been provided; or
3. The furnisher is not required to investigate the direct dispute because one or more of the exceptions listed in 12 CFR 1022.43(b) applies.

Upon making a determination that a dispute is frivolous or irrelevant, the furnisher must notify the consumer of the determination not later than five business days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the furnisher. The furnisher's notice that a dispute is frivolous or irrelevant must include the reasons for such determination and identify any information required to investigate the disputed information. The notice may consist of a standardized form describing the general nature of such information.

Examination Procedures

1. Determine whether the financial institution furnishes consumer information to a consumer reporting agency about an account or other relationship with a consumer. If so, the institution is subject to 12 CFR 1022.40.
2. Determine whether the financial institution has established and implemented reasonable policies and procedures regarding the accuracy and integrity of information furnished to a consumer reporting agency (12 CFR 1022.42(a)).
3. Determine whether the institution considered the Interagency Guidelines in Appendix E of the regulation when developing its policies and procedures, and incorporated the guidelines as appropriate (12 CFR 1022.42(b)).
4. Determine whether the institution reviews its policies and procedures periodically and updates them as necessary to ensure their effectiveness (12 CFR 1022.42(c)).
5. 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)]; 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 U.S.C. § 1681s-2(a)(5)].

6. 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.

7. Determine whether the institution conducts reasonable investigations of direct disputes from consumers, including a review of all relevant information provided by the consumer (12 CFR 1022.43(e)(1) and (2)).

   a. Determine whether the institution completes the investigation and reports the results to the consumer within the required timeframe (12 CFR 1022.43(e)(3)).

   b. Determine whether the institution notifies and provides corrected information to the consumer reporting agencies when the results of its investigation find that inaccurate information was furnished to the consumer reporting agencies (12 CFR 1022.43(e)(4)).

   c. When the institution finds that a dispute is frivolous or irrelevant, determine whether the institution:

      - Notifies the consumer within five days after finding the dispute frivolous or irrelevant (12 CFR 1022.43(f)(2)), and
      - Includes in the consumer notification the reasons for the findings and the information necessary to investigate the disputed information (12 CFR 1022.43(f)(3)).

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.

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.

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. Institutions can use the following model text 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.

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.

Examination Procedures

1. Determine whether the financial institution has effective policies 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

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.

Examination Procedures

1. Review financial institution policies, procedures, and/or practices to ensure that identities and claims of fraudulent transactions are verified and that information is properly disclosed to victims of identity theft and/or appropriately authorized law enforcement agents.
2. If procedural weaknesses are noted or other risks requiring further investigation are noted, review a sample of these types of requests to ensure that the financial institution properly verified the requestor's identity prior to disclosing the information.

References

Statute

Fair Credit Reporting Act

Regulations

CFPB 12 CFR 1022

FILs

FIL 61-2001: Guidance on the Permissible Use of Consumer Reports in Certain Business Related Extensions of Credit

Job Aids

Privacy of Consumer Financial Information - FDIC Part 332 Compliance Examination Job-Aid