FAIR CREDIT REPORTING ACT (FCRA)

OVERVIEW

Overview

The Fair Credit Reporting Act (FCRA) defines the responsibilities and liabilities of those who provide information to and access data from a Consumer Reporting Agency (CRA). The FCRA was designed to promote accuracy, fairness, and privacy of information in the files of every CRA by:

- Regulating the consumer reporting industry;
- Placing disclosure obligations on users of consumer reports;
- Ensuring fair, timely, and accurate reporting of credit information;
- Restricting the use of reports on consumers; and
- In certain situations, requiring the deletion of obsolete information.

Consumer Report

A consumer report means any written, oral or other communication of any information by a CRA bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- any other purpose specifically stated in section 604 of the FCRA.

The term "consumer report" does not mean a report containing information solely about transactions or experiences between the consumer (e.g. applicants, employees, and members) and the credit union. The term "consumer report" also does not include any communication of other information among a credit union and its CUSOs if the credit union gives the consumer a clear and conspicuous disclosure about its affiliate information sharing and the consumer does not opt out of such sharing.

Consumer Reporting Agency

A CRA is 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.

The FCRA contains additional requirements for organizations which function as a CRA, in addition to the requirements imposed on users and organizations reporting information to a CRA.

Compliance with the FCRA

The FCRA applies to creditors, employers, landlords, and other businesses that exchange consumer information with CRAs, including institutions that offer checking or share draft accounts.

The FCRA also affects lenders extending credit to an individual for business purposes or to a closely held business. When an individual is or will be personally liable for repayment of a loan for business purposes, such as an individual proprietor, co-signer, or guarantor, the loan may be viewed as a consumer transaction.

Credit Union – A Consumer Reporting Agency

When one credit union provides another credit union or a CRA information about a consumer reported to it by another person or organization, the credit union is considered a CRA. It must comply with all the sections of the FCRA relating to CRAs concerning that consumer.

When a credit union provides information based solely on its own transactions and experiences with the consumer to another entity, it is not acting as a CRA. A credit union may also communicate other credit information to its affiliates (CUSOs) without becoming a CRA if the credit union gave the consumer an opportunity to opt out of the information sharing and the consumer did not opt out. Similarly, if the credit union furnishes information from outside sources to another party involved in the same transaction, the credit union is not a CRA. Such parties could include an insurer or a guarantor (as in the case of FHA, VA, private insurers or insured student loan programs), other financial institutions participating in the transaction, or a collection agency engaged in the collection of the transaction.

Using Consumer Reports

A user of a consumer report must identify itself to the CRA and certify that it will use the information it requests as specified in the FCRA and will not use the information for any other purpose.

If the credit union takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the credit union must

- provide oral, written, or electronic notice of the adverse action to the member;
- provide to the member orally, in writing, or electronically
    - the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the

agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
    - 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
- provide to the member an oral, written, or electronic notice of the consumer's right
    - to obtain a free copy of his or her consumer report from the consumer reporting agency
    - to dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer report furnished by the agency.

To do this, the credit union should supply a standard disclosure form that provides the consumer with information to gain access to the consumer report and make corrections, if necessary.

Information From Other Sources

If adverse action involving the denial of consumer credit or the increase in cost of credit occurs based on information obtained from a source other than a CRA, the credit union must disclose the applicant's right to file a written request for the nature of the information within 60 days of learning of the adverse action.

If a consumer requests it, the credit union must then disclose the nature of the information to the consumer within 30 days of the request in sufficient detail to enable the consumer to evaluate its accuracy. The credit union may disclose the source of the information, but is not required to do so.

Pre-approved/Pre-screened Credit

A credit union may offer pre-approved or pre-screened credit to a member who has not applied for credit or insurance in the following situations:

- The member authorizes the CRA to provide pre-screened consumer reports; or
- The transaction consists of a firm offer of credit or insurance.

A firm offer of credit is one that the credit union will honor if the member meets the criteria used in the pre-screened report. An offer based on a pre-screened list must be accompanied by a clear and conspicuous disclosure statement informing the member of certain information. A credit union that makes a credit offer to a member based on his or her consumer report, which is not initiated by the member, must comply with the disclosure and recordkeeping requirements outlined in Section 615.

Documenting Compliance

A credit union may disclose orally the information required under the FCRA. However, if the action resulting in a denial of credit under the FCRA also meets the definition of adverse action under Regulation B, the credit union must make additional disclosures to the member.

Although the credit union may provide the required disclosures for both the FCRA and Regulation B on the same disclosure form, they are independent and one cannot substitute for the other. To meet the requirements of both the FCRA and Regulation B, a credit union may wish to use form letters, copies of which may be kept in files with the completed application forms. That practice allows internal monitoring of compliance and provides evidence in the event of litigation.

Providing Consumer Information

Anyone who furnishes information to a CRA:

- May not furnish information that it knows or consciously avoids knowing is inaccurate;
- Must notify CRAs when members voluntarily close credit accounts. This is important because some users may interpret a closed account as an indicator of bad credit unless it is clearly disclosed that the member - not the creditor - closed the account;
- Must notify the CRA within 90 days after reporting information about a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, of the month and year the delinquency commenced that triggered reporting. It is important to note the correct date the delinquency commenced to compute how long derogatory information can be kept in a member's file; and
- Must promptly correct incomplete or inaccurate information, resubmit it to each CRA, and report only the correct information in the future.

Once a credit union is notified that a consumer disputes information it provided on the consumer report, the credit union:

- May not give that information to any CRA without also telling the CRA that the information is in dispute;
- Must investigate the dispute and review all relevant information provided by the CRA about the dispute; and

- Must report its findings to the CRA involved and all national CRAs that received the information if the investigation shows the information to be incomplete or inaccurate.

The credit union should resolve the dispute within 30 days after receipt of a dispute notice from the consumer. If the consumer provides additional relevant information during the 30-day period, the CRA has an additional 15 days to complete the investigation. The CRA must give the credit union all relevant information that it gets within five business days of receipt and must promptly give additional relevant information provided by the consumer. If a credit union does not investigate and respond within the specified time periods, the CRA must delete the disputed information from its files.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the FCRA.
- Reputation risk can occur when the credit union incurs fines and penalties or experiences decreased member confidence as a result of failure to comply with the FCRA.

FAIR CREDIT REPORTING ACT (FCRA) OPERATIONAL REQUIREMENTS

Disclosures / Notices

Adverse Action Notices, Section 615 (15 U.S.C. §1681m)

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Although the credit union may provide the required disclosures for both the FCRA and Regulation B on the same disclosure form, they are independent and one cannot substitute for the other.

Recordkeeping

Pre-approved/Pre-screened Credit, Section 615 (15 U.S.C. §1681m)

Any credit union that makes a credit offer to a member based on his or her consumer report, which is not initiated by the member, must maintain on file for three years from the date the offer is made to the member:

- All criteria bearing on credit worthiness that is the basis for determining whether or not to extend credit pursuant to the offer, and
- Any requirement for furnishing of collateral as a condition of the extension of credit.

Reports

Notice of Dispute, Sections 611 and 623, (15 U.S.C. §§1681i, 1681s-2)

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Enforcement / Liability

Administrative Enforcement Authority, Section 621 (15 U.S.C. §1681s)

The National Credit Union Administration Board has responsibility for enforcement among federal credit unions, while the Federal Trade Commission enforces the Fair Credit Reporting Act for state-chartered credit unions.

Penalties and Liabilities, Sections 616, 617, and 619 (15 U.S.C. §§1681n, 1681o, 1681q)

Credit unions may be liable for willful noncompliance or negligent noncompliance as either users of information or as CRAs. Liability may include actual damages, punitive damages, court costs, and attorney's fees, depending on the type of noncompliance. Any person that obtains a credit report under false pretenses may receive a penalty of $1,000 or actual damages, whichever is greater, and may face criminal charges that subject such person to fines and imprisonment up to 2 years.