

# Fair Credit Reporting Act

## A 2024 Regulatory Focus Area

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PRESENTED BY

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# Overview

- Background
- Regulatory Environment
- Medical Information
- Employment
- Sharing with Affiliates
- Furnishing Information
- Direct Disputes
- Prescreened Solicitations
- Risk Based Pricing Notices
- Adverse Action Notices

# Time Before Credit Scores

- 1841 – Mercantile Agency
  - Subjective Methods of Evaluation
- Mass Retailers
- 1960's – Beatles, Bob Dylan, Bad Credit Reports?
  - 2000+ Credit Bureaus
  - Statements of Character

# Fair Credit Reporting Act

- October 26, 1970
  - *“ An Act to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes. ”*
- Enacted to:
  - Promote the accuracy, fairness, and privacy of consumer information
  - Shield consumers from willful or negligent inclusion of erroneous data

# Fair Credit Reporting Act

- Revolutionary
  - Early Data Privacy Law
  - Consumers should have a right to SEE and CHALLENGE the information
  - Information should expire after a reasonable period of time

# Regulation V – 12 CFR 1022

- Implements the Fair Credit Reporting Act
- Generally, applies to:
  - Consumer Reporting Agencies,
  - Persons that obtain and use information about consumers to determine the consumer's eligibility for products, services, or employment,
  - Persons that share such information among affiliates, and
  - Furnishers of information to consumer reporting agencies.

# NCUA & Fair Credit Reporting Act

- Most common regulatory violation in 2023.
- Includes:
  - Policies & Procedures to ensure accuracy of information furnished to consumer reporting agencies
  - Disclosures when action taken based on credit report
  - Content, form, and timing of risk -based pricing notice
- 2023
  - 163 Violations Cited (42%)

# NCUA & Fair Credit Reporting Act

- 2022 Statistics
  - 1786 Complaints – Reg. V/FCRA
    - 491 – Consumer Loans
    - 429 – Vehicle Loans
    - 379 – Credit Cards
    - 220 – Checking Accounts



# Polling Question

Vehicle loans were the #2 most common product area for FCRA complaints received by the NCUA in 2022?

True

False

# Use of Medical Information - § 1022.30

- Generally, a creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility.
- Medical Information
  - Information created by or derived from a health care provider or the consumer that related to:
    - Past, present, future physical, mental, or behavioral health or conditions
    - Provision of Health Care (Medical Treatment)
    - Payment for Provision of Healthcare

# Use of Medical Information - § 1022.30

- Recent Developments
  - July 1, 2022
    - Paid medical debt no longer included on credit reports
    - Collections not appearing for 1 year
    - Medical debt collections under \$500 omitted from credit reports

# Use of Medical Information - § 1022.30

- Recent Developments
  - June 11, 2024 – CFPB Issues Proposed Rule
    - Eliminating the Special Medical Debt Exception
      - Lenders would still be permitted to factor medical information pertaining to disability income and similar benefits, along with medical information relevant to the purpose of the loan, provided the lender adheres to particular conditions.
    - Establishing Strict Guidelines for Credit Reporting Companies
    - Prohibiting the Repossession of Medical Devices

# Use of Medical Information

- § 1022.30

- Exceptions:
  - Unsolicited
    - No violation to use information if not requested and the creditor can rely on one of the two outlined exceptions
  - Use Consistent With:
    - Financial Information Exception
    - Other Specific Exceptions

# Use of Medical Information - § 1022.30

- Financial Information Exception
  - Information is of the type routinely used in making credit eligibility determinations
    - Debts, Expenses, Use of Proceeds
  - Used in a manner no less favorable than comparable non - medical information
  - Physical, mental, or behavioral health, condition or history, treatment, prognosis is not used in determination

# Employment

- Clear and Conspicuous disclosure
  - In writing
  - Before the report is procured or caused to be procured
  - Standalone document
    - Cannot be in the employment application
- Consumer authorizes – in writing

# Employment

- Before an Adverse Action
  - A copy of the consumer report relied on to make the decision
  - A copy of the “A Summary of Your Rights Under the Fair Credit Reporting Act” notice.
  - Exception for applications by mail, telephone, computer, or other similar means
    - Credit Union is responsible for providing a copy of the report within 3 business days of receiving the request



# Polling Question

Applicants are entitled to receive a copy of the credit report used to deny employment within 7 business days?

True

False

# Affiliate Marketing - § 1022.20

- Affiliate
  - “Any company that is related by common ownership or common corporate control with another company.”
    - Examples:
      - CUSOs
      - Title Companies
      - Insurance Agencies

# Affiliate Marketing - § 1022.21 - .27

- May not use eligibility information about a consumer that you receive from an affiliate to make a solicitation for marketing purposes
  - It is clearly and conspicuously disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise notice that you may use eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to the consumer;
  - The consumer is provided a reasonable opportunity and a reasonable and simple method to “opt out,” or prohibit you from using eligibility information to make solicitations for marketing purposes to the consumer; and
  - The consumer has not opted out.

# Furnishing Information - § 1022.42

- Establish and implement *reasonable written* policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency.
- Consider the guidelines in Appendix E and incorporate, as appropriate.
- Review policies and procedures periodically.
  - Update as necessary to ensure their effectiveness.

# Furnishing Information - § 1022.42

- Appendix E
  - Appropriate for nature, size, complexity, and scope of the furnisher's activities
  - Reasonably designed to promote:
    - Furnishing accurate information;
    - Information has integrity;
    - Reasonable investigation of disputes; and,
    - Update information as necessary.
  - Establishing & Implementing Policies & Procedures
  - Specific Components of Policies and Procedures

# Direct Disputes - § 1022.43

- Consumer Requirements:
  - Submits a dispute notice to the furnisher.
  - Notice must include:
    - 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, if applicable;
    - The specific information that the consumer is disputing and an explanation of the basis for the dispute; and

# Direct Disputes - § 1022.43

- Notice must include, continued:
  - 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.

# Direct Disputes - § 1022.43

- Credit Union Requirements:
  - Conduct a reasonable investigation
  - Review all information provided by the Consumer
  - Complete investigation timely
  - Promptly notify Consumer Reporting Agencies if inaccurate information is discovered and correct that information



# Direct Disputes - § 1022.43

- Frivolous or Irrelevant Disputes:
  - Not required to investigate if frivolous or irrelevant
    - Consumer did not provide sufficient information to investigate the disputed information
    - Substantially the same dispute as previously submitted
    - Dispute relates to information not controlled by furnisher
  - Notice of Determination:
    - Not later than 5 business days after making the determination
    - Reason for determination
    - Any information required to investigate the disputed information

# Prescreened Solicitations - § 1022.54

- Short Notice
  - Consumer has the right to opt out & toll -free number
  - Direct consumer to long notice, including heading for long notice
  - Font size larger than principal text and not smaller than 12 -point
  - Front side of first page
  - Distinct from other text – border, **BOLD** , *italicized* , etc.

# Prescreened Solicitations - § 1022.54

- Long Notice
  - Consumer's report used in making the prescreened offer
  - Received the prescreened offer because the member met the selection criteria for the offer
  - Possibility that the credit may not be extended after the consumer accepts the prescreened offer if the consumer no longer meets the original selection criteria
  - Consumer has a right to opt out of receiving prescreened credit offers
  - Consumer can opt out by using the notification system authorized by the FCRA

# Prescreened Solicitations - § 1022.54

- Long Notice
  - Address and the toll -free number of the notification system
  - Font size larger than principal text and not smaller than 8 -point
  - “PRESCREEN & OPT -OUT NOTICE”
  - Distinct from other text – border, **BOLD**, *italicized*, etc.

# Polling Question

Prescreened solicitations required both the short and long opt-out notice on each solicitation?

True

False

# Risk Based Pricing Notice - § 1022.73

- Timing
  - Closed -end Credit
    - Before consummation but not earlier than when the decision is communicated to the consumer
  - Open -end Credit
    - Before first transaction but not earlier than when the decision is communicated to the consumer
  - Review of Credit
    - At the time of the decision to increase the APR

# Risk Based Pricing Notice - § 1022.73

- Indirect Lending - § 1022.73(c)(2)
  - Satisfies FCRA requirements if Dealer provides disclosure if:
    - Arranges to have the auto dealer or other party provide a notice and
    - *Maintains reasonable policies and procedures to verify that the auto dealer or other party provides such notice to the consumer within the applicable time periods.*
    - Satisfied even if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the person on whose behalf the notice is provided.

# Risk Based Pricing Notice - § 1022.74

- Exceptions
  - Specific Terms (Firm Offers of Credit)
  - Adverse Action Notices
    - FCRA 615(a)
  - Prescreened Solicitations
  - Credit Score Disclosure Exception Notice



# Adverse Action Notices - FCRA

- What is an Adverse Action?
  - Denial/revocation of credit, a change in terms of an existing credit arrangement, or refusal to grant credit in substantially same amount/terms requested.
  - Denial of or adverse action in employment or related to govt. license.
  - Action in connection with an account review that is adverse to the consumer's interest.

# Adverse Action Notices - FCRA

- When is notice required?
  - Taken adverse action based in whole or in part on information in a consumer report;
  - Denied consumer credit or increased a charge for credit based on information obtained from third parties other than CRAs bearing upon the consumer's creditworthiness, credit standing, credit capacity, character, reputation, characteristics, or mode of living;
  - Taken adverse action based on information furnished by a corporate affiliate of the person taking the action.

# Adverse Action Notices - FCRA

- Who gets the notice?
  - Any consumer defined as an individual, including co - applicants
    - Excludes business entities
  - Multiple Applicants
    - *Statutory interpretation indicates notice shall be delivered to all consumers against whom adverse action is taken if the action taken was based on information in a consumer report.*
- When should it be provided?
  - The FCRA does not have specific timing requirements.

# Adverse Action Notices - FCRA

- Required Content:
  - Statement that action was taken based on information obtained from CRA
  - The consumer's right to:
    - Obtain a free copy of his/her consumer report from the CRA providing the information if requested within 60 days
    - To dispute the accuracy or completeness of any information in a consumer report furnished by the CRA

# Adverse Action Notices - FCRA

- Required Content, continued:
  - Name/Address/Phone of CRA that furnished the report
  - Statement that CRA did not make the credit decision & is unable to provide reasons for adverse action
  - Credit score disclosures if credit was factor in taking adverse action.

# FCRA – Lawsuit

- July 26, 2024
- Acima Holdings, LLC; Acima Digital, LLC; and Aaron Allred
  - Fair Credit Reporting Act
    - Furnishing inaccurate information to CRAs
    - Failing to establish and implement policies and procedures regarding accuracy and integrity of information furnished to CRAs
    - Failing to conduct reasonable investigations in to disputes
    - Failing to notify consumers when reporting negative information

# FCRA – Consent Order

- Bank of America – July 11, 2023
  - Fair Credit Reporting Act
    - Using or obtaining credit reports without a permissible purpose.
  - Required to:
    - Stop unlawful practices
    - Develop plan to remediate all harmed consumers
    - \$90 million penalty to CFPB
      - \$30 million for FCRA violations