

Chapter 8

Federal Privacy Protection and Consumer Identification Laws

Chapter Objectives

- Identify procedures to protect the privacy of consumers
- Recognize limitations on lenders'/MLOs' use of consumer credit information
- Describe control of credit reporting information
- Describe requirements for recording consumer credit information

Fair Credit Reporting Act

- **About the FCRA**
 - Implemented in 1970 by Regulation V
 - First legislation to address credit reporting; prior to current level of identity theft crisis
 - Provides **consumer with right** to:
 - An adverse action notice
 - A copy of the consumer credit report
 - Request own credit score
 - Dispute incomplete or inaccurate information
 - Limit prescreened offers

15 USC § 1681; 12 CFR § 1022

Fair Credit Reporting Act

- **Credit Report**

- A statement that has information about a person's credit activity and current credit situation such as loan paying history and the status of credit accounts

- **Credit Score**

- A scoring model that uses information from a person's credit report to create a credit score; predicts how likely person is to pay back a loan on time

[<https://www.consumerfinance.gov/ask-cfpb/>]

Fair Credit Reporting Act

- **Borrower's Rights**

- **Adverse Action Notice**

- Title X of Dodd-Frank Act, §1100F, amended the FCRA
 - Requires a creditor to provide a consumer with a written or electronic disclosure of the numeric credit score used in taking any adverse action, including a risk-based pricing notice

- **Sample Adverse Action Notice Review**

15 USC § 1681; 12 CFR § 1022

Fair Credit Reporting Act

- **Borrower's Rights**

- **Credit Report Disputes**

- Right to dispute incomplete or inaccurate information on credit report
 - Consumer reporting agency must correct or delete inaccurate, incomplete, or unverifiable information; dispute of a tradeline does not require its removal, only its investigation

- **Limitation on Prescreened Offers**

- May limit prescreened credit and insurance offers
 - Unsolicited prescreened offers must include a toll-free phone number

15 USC § 1681; 12 CFR § 1022



8.1 Knowledge Check

The Fair Credit Reporting Act provides consumers with the right to which of the following?

- A. an adverse action notice
- B. a copy of the consumer credit report
- C. dispute incomplete or inaccurate information
- D. limit prescreened offers
- E. request their credit score

Fair Credit Reporting Act

- **Consumer Reporting Agency Obligations**
 - Must not report outdated negative information
 - More than 7 years for negative credit information
 - More than 10 years for bankruptcy
 - Must not limit access to credit report
 - May provide information to people with legitimate business need such as application with a creditor, insurer, employer, landlord, or other business
 - Must not give out consumer's credit information to employer or potential employer without consumer's written consent

15 USC § 1681; 12 CFR § 1022

Fair Credit Reporting Act

- **Consumer Reporting Agency Obligations**
 - Must include initial fraud alert in a consumer's file for a minimum of 1 year
 - Must provide a national credit freeze free of charge to consumers
 - Must provide the following disclosures:
 - Summary of Consumer Rights
 - Summary of Identity Theft Rights
 - Notice of National Security Freeze Right
- **Review Sample Disclosures**

15 USC § 1681; 12 CFR § 1022



8.2 Knowledge Check

1. **According to the FCRA, which of the following have a legitimate business need to access a person's credit report?**
 - A. “buy here, pay here” automobile dealer
 - B. doctor's office
 - C. employer performing a background check on a potential employee
 - D. mortgage loan originator



8.2 Knowledge Check

- 2. The consumer reporting agency must correct or delete any data EXCEPT information that is**
- A. disputed.
 - B. inaccurate.
 - C. incomplete.
 - D. unverifiable.

Fair and Accurate Credit Transactions Act

- **About the Fact Act / FACTA**

- Amended FCRA in 2003
- Intended to help consumers fight identity theft
- 7 Major Titles
 1. Identity Theft Prevention and Credit History Restoration
 2. Improvements in Use of and Consumer Access to Credit Information
 3. Enhancing the Accuracy of Consumer Report Information
 4. Limiting the Use and Sharing of Medical Information in the Financial System
 5. Financial Literacy and Education Improvement
 6. Protecting Employee Misconduct Investigations
 7. Relation to State Laws

15 USC § 1681; 12 CFR § 1022

Fair and Accurate Credit Transactions Act

- **Borrower's Rights**
 - **Credit Score Request**
 - Ask for a credit score from any consumer CRA that creates or distributes scores

15 USC § 1681; 12 CFR § 1022

Fair and Accurate Credit Transactions Act

- **Borrower's Rights**

- **Free Credit Report Copy Request**

- Obtain from a consumer CRA under these circumstances:

- Information in report resulted in adverse action
 - Consumer was a victim of identity theft and a fraud alert was inserted in report
 - Report contains inaccurate information as a result of fraud
 - Consumer is on public assistance or is unemployed

- **Receive Home Loan Applicant Credit Score Information Disclosure Notice**

Fair and Accurate Credit Transactions Act

- **Borrower's Rights**

- **Place Credit Report Fraud Alert or Freeze**

- Fraud alert

- Warns credit issuers that your personal data has been or may have been illegally accessed

- Protects against unverified access for 1 year

- Credit freeze

- Prevents the credit bureaus from releasing your credit report and score to new lenders and other businesses

- Free to place, temporarily unfreeze, or remove

15 USC § 1681; 12 CFR § 1022

Fair and Accurate Credit Transactions Act

- **Business Requirements**
 - **Truncation of card number**
 - Prohibits businesses from printing more than 5 digits of customer's credit/debit card number or the expiration date on a receipt provided to the cardholder at the point of sale or transaction
 - **Secure disposal of information**
 - Must securely dispose of sensitive personal information found in consumer's credit report
 - Burning or shredding
 - Destroying or erasing electronic files
 - Place in secure location at end of day



8.3 Knowledge Check

1. **The primary purpose of the Fair and Accurate Credit Transaction Act (FACT Act) is to protect consumers from**
 - A. credit agency fraud.
 - B. identity theft.
 - C. mortgage fraud.
 - D. predatory lending.



8.3 Knowledge Check

- 2. To properly dispose of a consumer's loan file, the FACT Act identifies reasonable methods for security and disposal including which of the following?**
- A. burning or shredding papers that contain consumer report information so that information cannot be reconstructed
 - B. destroying or erasing electronic files or media so that information cannot be recovered or reconstructed
 - C. keeping borrower loan files at an offsite secure location
 - D. not maintaining loan documents via electronic storage methods
 - E. placing all pending loan documents in locked desks, cabinets, or storage rooms at the end of the workday

Fair and Accurate Credit Transactions Act

- **Red Flags Rule** (Section 114)
 - Financial institutions and creditors must implement a written identity theft prevention program
 - Card issuers must assess the validity of change of address requests
 - Users of consumer reports must reasonably verify the identity of the subject of a consumer report in the event of a notice of address discrepancy

15 USC § 1681; 12 CFR § 1022 Section 114



8.4 Knowledge Check

1. According to Regulation V, a creditor is defined as

- A. the agency that maintains, gathers, and scores information for credit reports.
- B. someone who grants credit.
- C. someone who is obtaining credit.
- D. the title insurance agency.



8.4 Knowledge Check

2. An MLO hired a third-party independent processing company to perform processing functions on his loan files. Loan files for applicants who were not approved were disposed of in dumpster at back of processing company's office. The processing company violated

- A. ECOA.
- B. FACTA.
- C. HMDA.
- D. RESPA.

Gramm-Leach-Bliley Act

- **About the GLB Act**
 - Implemented under Regulation P
 - Provisions in Title V; protect and regulate the disclosure of consumers' personal financial information
 - Privacy Requirements
 - Financial Privacy Rule
 - Safeguards Rule
 - Pretexting Provisions
 - Enforced by FTC and other federal and state agencies
 - Applies to financial institutions

12 CFR § 1016

Gramm-Leach-Bliley Act

- **Financial Privacy Rule**

- Governs collection and disclosure of nonpublic personal information, such as:
 - What a consumer puts on an application
 - Data about individual from another source
 - Transactions, such as balance and purchases
 - Whether an individual is a customer or consumer
- Restricts when information may be disclosed to affiliates and nonaffiliated third parties
- Requires Consumer Privacy Policy Notice
 - Disclose policy and provide opt-out opportunity

12 CFR § 1016

Gramm-Leach-Bliley Act

- **Financial Privacy Rule**

- Obligation Differs

- **Consumer:** Individual who obtains, or has obtained, a financial product or service from financial institution for personal, family, or household reasons, usually with one-time transaction; entitled to receive privacy notice only if company shares the consumer's information with companies not affiliated with it
 - **Customer:** Consumer with continuing relationship with financial institution; must receive financial institution's privacy notice **every year** for as long as customer relationship lasts

12 CFR § 1016

Gramm-Leach-Bliley Act

- **Safeguards Rule**

- Requires financial institutions to design, implement, and maintain safeguards to protect and control consumer data
- Written Safeguards Policy must ensure security and confidentiality, protect against anticipated threats or hazards, and protect against unauthorized access that could harm or inconvenience consumers

- **Pretexting Provision**

- Protects consumers from individuals/companies that obtain personal financial information under false, fictitious, or fraudulent pretenses

12 CFR § 1016



8.5 Apply Your Knowledge

Review the scenario in your textbook, then fill-in the blanks by choosing from among the following regulations.

- A. Fair and Accurate Credit Transactions Act (FACTA)
- B. Fair Credit Reporting Act (FCRA)
- C. Gramm-Leach-Bliley Act (GLB)



8.5 Apply Your Knowledge

Borrower Frank makes an application for a mortgage loan with ABC Mortgage Brokers. According to, **GLB** Frank is considered a consumer.

When MLO Kerry reviews the credit report, he notices an alert for an address mismatch. Kerry is required to assess the validity of the address discrepancy to comply with **FACTA**.

On the report, Kerry notices a Chapter 7 bankruptcy that was discharged 8 years ago. This credit entry remains on the report for 10 years, according to **FCRA**.



8.5 Apply Your Knowledge

Frank notices a delinquent auto loan payment that is an error. According to **FCRA**, Frank can dispute this item with the credit bureaus and if it is found to be inaccurate, it will be corrected.

Frank's credit score is 562, and he receives an adverse action notice that is required by **FCRA**. Frank also receives the credit reporting agency information that is provided according to **FCRA**.

Frank's paper loan file is then shredded by Kerry to comply with **FACTA**.

USA PATRIOT Act

- **About USA PATRIOT Act**

- Increases ability of law enforcement agencies to search telephone, e-mail, medical, financial, and other records
- Eases restrictions on foreign intelligence gathering within the USA
- Expands the Secretary of the Treasury's authority to regulate financial transactions, particularly those involving foreign individuals and entities
- Enhances the discretion of law enforcement and immigration authorities in detaining/deporting immigrants suspected of terrorism-related acts

USA PATRIOT Act

- **Patriot Account Information Disclosure**
- **New Account Minimum Data Requirements**
 - Name and date of birth
 - Residential or work address for individuals, or physical location address for legal entities
 - U.S. citizens or legal entities organized under state law: Tax ID number
 - Lawful permanent residents or non-immigrants: TIN, passport number and country of issuance, alien ID card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photo
 - Non-U.S. legal entities with no TIN: A government-issued certificate of existence or good standing



8.6 Knowledge Check

The USA PATRIOT Act requires lenders and banks to create and maintain programs that

- A. communicate known terrorist to employees.
- B. establish a do not call registry.
- C. track customer accounts for all overseas transactions.
- D. verify their customers' identity.

National Do Not Call Registry

- **Telemarketing Sales Rule**
 - National Do Not Call Registry is provision of Rule
 - Managed and enforced by FTC, the FCC, and states
 - Applies to any plan, program, or campaign to sell goods or services through interstate phone calls
 - Does not apply to charities, political groups, or surveys

National Do Not Call Registry

- **National DNC Requirements**
 - A company must maintain national and internal lists of customers and prospects and keep them updated regularly
 - The national DNC list and an internal DNC list must be updated every 31 days
 - Records of updates must be maintained for 24 months

National Do Not Call Registry

- **National DNC Requirements**
 - For Established Business Relationships
 - May call consumer with EBR for up to 18 months after the consumer's last purchase, delivery, or payment, even if the consumer's number is on the DNC Registry
 - Cannot call for new business if consumer with EBR asks to be put on internal DNC Registry
 - After Inquire or Application
 - May call consumer for up to 3 months after inquiry to or application with company



8.7 Knowledge Check

The National Do Not Call Registry regulations require companies to update their national customer lists every

- A. 15 days.
- B. 31 days.
- C. 6 months.
- D. year.

Chapter 8 Quiz

- 1. For how many months after a loan closes may an MLO call to solicit new business from a customer whose phone number is on the National Do Not Call Registry?**
 - A. 3 months
 - B. 6 months
 - C. 18 months
 - D. No calls can be made to a number on the Registry.

Chapter 8 Quiz

- 2. Which law includes Red Flags Rules that require financial institutions and creditors to implement procedures to protect customer identity?**
- A. Fair and Accurate Credit Transactions Act
 - B. Fair Credit Reporting Act
 - C. Gramm-Leach-Bliley Act (The Financial Privacy Act)
 - D. Homeowners Protection Act

Chapter 8 Quiz

- 3. The Fair Credit Reporting Act does NOT allow a consumer to request a**
- A. copy of an adverse action notice.
 - B. credit score disclosure statement from a creditor.
 - C. dispute of inaccurate or incomplete information of a report.
 - D. freeze on a credit report.

Chapter 8 Quiz

- 4. The FCRA mandates that a credit reporting bureau remove a consumer's Chapter 7 bankruptcy record after**
- A. credit has been re-established for over 5 years.
 - B. 7 years.
 - C. 10 years.
 - D. dismissal of the case by a federal bankruptcy court.

Chapter 8 Quiz

- 5. The Fair and Accurate Credit Transactions Act regulates all of the following EXCEPT**
- A. an adverse action notice to the borrower who is turned down for a loan.
 - B. a credit freeze registered with a credit bureau.
 - C. fraud alerts placed on a credit report.
 - D. truncation of credit card numbers on a credit card receipt.

Chapter 8 Quiz

- 6. The Red Flags Rules are also known as**
- A. Advertising triggering terms.
 - B. Chapter 8 of Regulation X.
 - C. Section 32.
 - D. Section 114.

Chapter 8 Quiz

- 7. According to the GLB Act, a person who completes a single transaction with a creditor is known as a(n)**
- A. applicant.
 - B. consumer.
 - C. creditor.
 - D. customer.

Chapter 8 Quiz

- 8. Under the GLB Act, regulated by Regulation P, customers must receive a financial institution's privacy notice _____ for as long as the customer relationship lasts.**
- A. one time
 - B. monthly
 - C. once every year
 - D. every two years