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Handbook: **Examination**

Subject: **Fair Credit Reporting Act, Controlling the Assault of  
Non-Solicited Pornography and Marketing Act, and  
the Telephone Consumer Protection Act**

**Section: 1300**

## **Fair Credit Reporting Act, Controlling the Assault of Non-Solicited Pornography and Marketing Act, and Telephone Consumer Protection Act**

**Summary:** This bulletin transmits new Examination Handbook Section 1300. This handbook section contains an update to the Fair Credit Reporting Act (FCRA) and incorporates the Fair and Accurate Credit Transactions Act (FACT Act), Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM), and the Telephone Consumer Protection Act (TCPA). Examination Handbook Section 1300 replaces Compliance Activities Handbook Section 300.

**For Further Information Contact:** Your Office of Thrift Supervision (OTS) Regional Office or the Operation Risk Division of the OTS, Washington, DC. You may access this bulletin at our web site: [www.ots.treas.gov](http://www.ots.treas.gov).

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### **SUMMARY OF CHANGES**

We made extensive changes to the FCRA guidance, and CAN-SPAM and TCPA are new so we did not include change bars. We provide a summary of all substantive changes below.

### **Fair Credit Reporting Act**

This handbook update incorporates the Fair and Accurate Credit Transactions Act (FACT Act) amendments to the Fair Credit Reporting Act (FCRA).

The updated FCRA handbook section consists of a comprehensive discussion of the following six modules and is organized as follows:

Module 1	Obtaining Consumer Reports
Module 2	Obtaining Information and Sharing Among Affiliates
Module 3	Disclosures to Consumers and Miscellaneous Requirements
Module 4	Financial Institutions as Furnishers of Information

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Module 5 Consumer Alerts and Identity Theft Protections

Module 6 Requirements for Consumer Reporting Agencies

The guidance addresses all of the provisions of the FACT Act that impact consumer compliance examinations. Some of these provisions, however, require the bank agencies to write implementing regulations before the requirements become applicable. The guidance contains placeholders within the modules for each of the following sections that we will amend upon completion of the implementing regulations:

- Protection of Medical Information §609(g)
- Affiliate Sharing §624
- Risk-Based Pricing Notice §615(h)

The bank agencies published an Interim Final rule to implement §604(g) on June 10, 2005. We expect publication of a final rule soon. We also expect to issue final rules to implement §624 soon. Upon completion of these final rules, we will incorporate these two additional components of the FCRA into the examination guidance and procedures.

In addition, Module 4 requires modifications and amendments pending the completion of guidance by the bank agencies regarding duties of furnishers of information, required by Section 312 of the FACT Act. An interagency team recently began work on this project; however, in the interim, savings associations are currently subject to many FCRA responsibilities, as furnishers of information to consumer reporting agencies. Module 4 contains procedures that address these issues.

Module 6 will contain guidance for savings associations that operate as consumer reporting agencies (to our knowledge, there are no savings associations currently operating as a consumer reporting agency). The existing FCRA procedures contain steps to cover these areas; however, the FACT Act also amended these sections of the FCRA. The interagency working group intends to revise the existing guidance accordingly.

Appendix A is the Statutory and Regulatory Matrix and includes statutory or regulatory cites for each provision of the FCRA applicable to financial institutions that are not consumer reporting agencies.

## **CAN-SPAM and TCPA**

An interagency working group developed CAN-SPAM and TCPA examination guidance to determine a financial institution's level of awareness of and compliance with these regulatory requirements.



—Scott M. Albinson  
Managing Director

*Examinations, Supervision, and Consumer Protection*

### Fair Credit Reporting Act

### Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003



### Telephone Consumer Protection Act

This Handbook Section contains background information, regulatory guidance, and examination programs for the following three laws:

- The Fair Credit Reporting Act
- Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003
- Telephone Consumer Protection Act

### FAIR CREDIT REPORTING ACT

#### Background and Summary

L I N K S	The Fair Credit Reporting Act (FCRA) <sup>1</sup> became effective on April 25, 1971. The FCRA is a part of a group of acts contained in the Federal Consumer Credit Protection Act <sup>2</sup> such as the Truth in Lending Act and the Fair Debt Collection Practices Act.
 <a href="#">Program</a>	
 <a href="#">Appendix A</a>	

Congress substantively amended FCRA upon the passage of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act)<sup>3</sup>. 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

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<sup>1</sup> (15 USC §§ 1681-1681u)

<sup>2</sup> (15 USC § 1601 *et seq.*),

<sup>3</sup> (Pub. L. No. 108-159, 117 Stat. 1952)

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 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 any of the following capacities:

- Procurers and users of information (for example, as credit grantors, purchasers of dealer paper, or when opening deposit accounts).
- Furnishers and transmitters of information (by reporting information to consumer reporting agencies, other third parties, or to affiliates).
- Marketers of credit or insurance products.
- Employers.

### Structure and Overview of Examination Modules

We structured the examination procedures as a series of modules, grouping similar requirements together. The modules contain general information about each of the requirements:

- Module 1 Obtaining Consumer Reports.
- Module 2 Obtaining Information and Sharing Among Affiliates.
- Module 3 Disclosures to Consumers and Miscellaneous Requirements.
- Module 4 Financial Institutions as Furnishers of Information.
- Module 5 Consumer Alerts and Identity Theft Protections

Financial institutions are subject to a number of different requirements under the FCRA. The statute contains some of the requirements, while others are in regulations issued jointly by the FFIEC agencies or in regulations issued by the Federal Reserve Board and/or the Federal Trade Commission. [Appendix A](#) contains a matrix of the different statutory and regulatory cites applicable to financial institutions that are not consumer reporting agencies.

### Important Definitions

The FCRA uses a number of definitions. Key definitions include the following:

#### *Consumer*

A consumer is defined as an individual.

#### *Consumer Report*

A 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 that 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 any of the following:

- Credit or insurance to be used primarily for personal, family, or household purposes.
- Employment purposes.
- Any other purpose authorized under § 604 (15 USC 1681b).

The term consumer report does not include any of the following:

- Any report containing information solely about transactions or experiences between the consumer and the institution making the report.
- Any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different institutions that are members of the same holding company, or subsidiary companies of an insured institution).
- Communication of other information among persons related by common ownership or affiliated by corporate control if:
  - It is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons; and
  - 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.
- Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

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- 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), Requirements On Users Of Consumer Reports.
- 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*

A person means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

### *Investigative Consumer Report*

An 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*

The term adverse action has the same meaning as used in § 701(d)(6) [15 USC 1691(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:

- 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.
- A denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

- 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)].
- An action taken or determination that is:
  - 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.
  - Adverse to the interests of the consumer.

### *Employment Purposes*

The term 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*

The term consumer reporting agency means any person that, 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 that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

## 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. The FCRA governs access to this information to ensure that a prospective user of the information obtains it for permissible purposes and does not exploit it 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.

### Permissible Purposes of Consumer Reports (Section 604) and Investigative Consumer Reports (Section 606)

Legally Permissible Purposes. The FCRA allows a consumer reporting agency to furnish a consumer report for the following circumstances and no other:

- In response to a court order or Federal Grand Jury subpoena.
- In accordance with the written instructions of the consumer.
- To a person, including a financial institution, that the agency has reason to believe intends to use the report as information for any of the following reasons:
  - In connection with a credit transaction involving the consumer (includes extending, reviewing, and collecting credit).
  - For employment purposes.<sup>4</sup>
  - In connection with the underwriting of insurance involving the consumer.
  - 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.
  - 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.
  - Otherwise has a legitimate business need for the information:
    - ♦ In connection with a business transaction that the consumer initiates; or
    - ♦ To review an account to determine whether the consumer continues to meet the terms of the account.
- 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.)

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<sup>4</sup> Use of consumer reports for employment purposes requires specific advanced authorization, disclosure, and adverse action notices. Module 3 of the examination procedures contains these issues.



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**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 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).** This section on Investigative Consumer Reports 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 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 the preparation of one, the institution must meet the following requirements:

- The institution clearly and accurately discloses to the consumer that it may obtain an investigative consumer report.
- 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.
- 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.
- 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 they obtain and use consumer reports only in situations for which there are permissible purposes. Management should deal with information access, storage, and destruction under an institution's Information Security Program; however, management must comply with FCRA in initially obtaining consumer reports.

## MODULE 2: OBTAINING INFORMATION AND SHARING AMONG AFFILIATES

### Overview

The FCRA contains many substantive compliance requirements for consumer reporting agencies 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 savings associations 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, you determine that the financial institution's information sharing practices fall outside of these exceptions, you should consider the financial institution a consumer reporting agency and complete Module 6 of the examination procedures.

### Consumer Report and Information Sharing (Section 603(d))

This section on Consumer Report and Information Sharing 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:

- 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. The Privacy of Consumer Financial Information regulations that implement the Gramm-Leach-Bliley Act (GLBA) may restrict this type of information sharing because it meets the definition of nonpublic personal information under the Privacy regulations. Therefore, sharing it with nonaffiliated 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 a consumer report under the FCRA and could potentially cause the sharing financial institution to become a consumer reporting agency.

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- Communication of such transaction or experience information among persons, including financial institutions related by common ownership or affiliated by corporate control.
- Communication of other information (for example, 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 both of the following circumstances:
  - The sharing of the “other” information is done with affiliates.
  - 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 a consumer provides on an application form concerning accounts with other financial institutions. It can also include information a financial institution obtains 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.

GLBA and its implementing regulations require that a financial institution’s Privacy Notice contain the Consumer Report (Section 603(d)) opt out right.

### 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** (for example, 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. An outside company provides the PMI. 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 nonaffiliated third parties. It is important to note that the GLBA will still apply to the sharing of nonpublic, personal information with nonaffiliated third parties; therefore, financial institutions should be aware the GLBA may still limit or prohibit sharing under the FCRA joint user rule.

### Protection of Medical Information (Section 604(g))

This section on Protection of Medical Information prohibits creditors from obtaining and using medical information in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit. The FFIEC agencies published interim-final rules on June 10, 2005 (70 (Federal Register 33958) that become effective on March 7, 2006. The agencies received comments on the interim-final rules. The agencies will publish the final rules later in 2005 and amend the examination procedures upon publication of these final rules.

### Affiliate Marketing Opt Out (Section 624)

The section on Affiliate Marketing Opt Out requires consumers to receive a notice and an opportunity to opt out of an entity’s use of certain information received from an affiliate to make solicitations to the consumer. The federal banking agencies, the National Credit Union Administration, the Federal Trade Commission, and the Securities and Exchange Commission are in the process of developing final regulations to implement this new opt out requirement. Financial institutions will not be subject to these requirements until the final rules are implemented and effective. The agencies will develop this section of the examination procedures upon publication of the final regulations.

## MODULE 3: DISCLOSURES TO CONSUMERS AND MISCELLANEOUS REQUIREMENTS

### Overview

The 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.

### Use of Consumer Reports for Employment Purposes (Section 604(b))

This section on the Use of Consumer Reports for Employment Purposes 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, the financial institution must provide to the consumer in writing a clear and conspicuous disclosure that it may obtain a consumer report for employment purposes 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:

- A copy of the report.
- A description in writing of the rights of the consumer under this title, as FTC prescribes under § (609)(c)(3).

At the time a financial institution takes adverse action in an employment situation, § 615 requires that it must provide the consumer with an adverse action notice described later in this module.

### Prescreened Consumer Reports and Opt out Notice (Sections 604(c) and 615(d)) [and Parts 642 and 698 of Federal Trade Commission Regulations]

The sections on Prescreened Consumer Reports and Opt Out Notice allows persons, including financial institutions, to obtain and use consumer reports on any consumer in connection with any credit or insurance transaction that the consumer does not initiate, 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:

- The name and address of a consumer.
- An identifier that is not unique to the consumer and that the person uses solely for the purpose of verifying the identity of the consumer.
- 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 § 603(l) to each person on the list. An institution is not required to grant credit or insurance if the

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consumer is not creditworthy or insurable, or cannot furnish required collateral, provided that the financial institution determines the underwriting criteria in advance, and applies it 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 second lien home equity loan product. The lender's other nonconsumer 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 percent or less. The consumer reporting agency can screen some of the criteria but must determine other criteria individually, such as the DTI, when consumers respond to the offer. If a consumer responds to the offer, but already has a DTI of 60 percent, 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 that shows 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 financial institution made the offer to the consumer.

Technical Notice and Opt Out Requirements (Section 615(d)). This section 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, it 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 (FTC) published an implementing regulation containing the technical requirements of the notice at 16 CFR Parts 642 and 698. This regulation is

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applicable to anyone, including banks, credit unions, and saving associations, that obtains and uses 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. FTC regulations 16 CFR 642 and 698 require that the financial institution give a “short” notice and a “long” notice of the prescreened opt out information 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:

- Content. The short notice must state that the consumer has the right to opt out of receiving prescreened solicitations. It must provide the toll-free number and direct consumers to the existence and location of the long notice. It should also state the title of the long notice. The short notice may not contain any other information.
- 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 financial institution provides the notice by electronic means, it must be larger than the type size of the principal text on the same page.
- Location. The short form must be on the front side of the first page of the principal promotional document in the solicitation. 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:

- Content. The long notice must state the information required by § 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.
- 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, 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

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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 below:

### 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].**

## Truncation of Credit and Debit Card Account Numbers (Section 605(g))

This section on Truncation of Credit and Debit Card Account Numbers 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 date, 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.



### Disclosure of Credit Scores by Certain Mortgage Lenders (Section 609(g))

This section on Disclosure of Credit scores by Certain Mortgage Lenders 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 either of the following:

- 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.
- 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 one- to four-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 § 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

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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 all relevant elements or reasons adversely affecting the credit score for the particular individual, listed in the order of their importance, and based on their effect on the credit score. The total number of factors the financial institution should disclose must not exceed four. However, if one of the key factors is the number of inquiries into a consumer’s credit information, then the total number of factors must not exceed five. These key factors come from information the consumer reporting agencies supplied 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 the lender takes on the application. The FCRA requires a financial institution to disclose all of the credit scores 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 the financial institution needs to disclose both. The statute specifically does not require more than one disclosure per loan. Therefore, if the financial institution uses multiple scores, it can include all of them in one disclosure containing the Notice to the Home Loan Applicant.

If a financial institution uses a credit score that it did not obtain directly from a consumer reporting agency, but may contain some information from a consumer reporting agency, the financial institution may satisfy this disclosure requirement by providing a score and associated key factor information that a consumer reporting agency supplied. 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, it may satisfy the disclosure requirement by providing the applicants with a score and key factors a consumer reporting agency supplied based on the data, including credit score(s) 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 the financial institution provide it as soon as is reasonably practicable after using a credit score.

### Adverse Action Disclosures (Section 615(a) and (b))

This section requires users of consumer reports to make certain disclosures when they take adverse actions 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), Duties of Users Taking Adverse Actions on the Basis of Information Contained in Consumer Reports, provides that when adverse action is taken with respect to any consumer based in whole or in part on any information contained in a consumer report, the financial institution must:

- Provide oral, written, or electronic notice of the adverse action to the consumer.
- Provide to the consumer orally, in writing, or electronically:
  - 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).
  - 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.
- 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), Adverse Action Based on Information Obtained from Third Parties Other than Consumer Reporting Agencies, provides that if a financial institution:

- Denies credit for personal, family, or household purposes involving a consumer, or;
- Increases the charge for such credit,

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:

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- At the time it communicates an adverse action to a consumer, must clearly and accurately disclose the consumer's right to file a written request for the reasons for the adverse action.
- 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 financial institution should sufficiently detail the information to enable the consumer to evaluate its accuracy. The financial institution may, but need not, disclose the source of the information. 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), Duties of Taking Certain Actions Based on Information Provided by Affiliate, 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, the financial institution must notify the consumer that the information:

- Was furnished by a person related to the financial institution by common ownership or affiliated by common corporate control.
- Bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.
- Does not pertain solely to transactions or experiences between the consumer and the person furnishing the information.
- Does not include 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.

### Debt Collector Communications Concerning Identity Theft (Section 615(g))

This section, Debt Collector Communications Concerning Identity Thefts, has specific requirements for financial institutions that act as debt collectors, whereby they collect 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.

### Risk-Based Pricing Notice (Section 615(h))

This section, Risk-Based Pricing Notice, requires users of consumer reports who grant credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers who get credit from or through that person to provide a notice to those consumers who did not receive the most favorable terms. Implementing regulations for this section are under development jointly by the Federal Reserve Board and the Federal Trade Commission. Financial institutions do not have to provide this notice until final regulations are implemented and effective. The agencies will provide this section of the examination procedures upon publication of final rules.

## MODULE 4: FINANCIAL INSTITUTIONS AS FURNISHERS OF INFORMATION

### Overview

The 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.

### Furnishers of Information – General (Section 623)

We will amend this subsection, Furnishers of Information, upon completion of inter-agency guidance for institutions regarding the accuracy and integrity of information furnished to consumer reporting agencies. The FACT Act requires this guidance. An interagency working group will develop and publish guidance for comment, and will finalize this guidance at a later date. The agencies will also write rules regarding when furnishers must handle direct disputes from consumers.

In the interim period, institutions that furnish information to consumer reporting agencies must comply with the existing requirements in the FCRA. These requirements generally require accurate reporting and prompt investigation and resolution of accuracy disputes. The examination procedures within this subsection are based largely on the procedures last approved by the FFIEC Task Force on Consumer Compliance in March 2000, but have been revised to include new requirements under the 2003 amendments to the FCRA that do not require implementing regulations. Upon completion of the interagency guidance for the accuracy and integrity of information furnished to consumer reporting agencies, we will significantly revise this subsection.

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Duties of furnishers to provide accurate information. **(Section 623(a))** This section 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 consumer notified the financial institution, at the specified address, that the information is inaccurate, and (b) the information is 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. The financial institution must provide corrections to that information or any additional information necessary to make the information complete and accurate to the consumer reporting agency. Further, the financial institution thereafter must not furnish any information that remains incomplete or inaccurate to the consumer reporting agency.

If a consumer disputes the completeness or accuracy of any information a financial institution furnishes to a consumer reporting agency, that financial institution may not furnish the information to any consumer reporting agency without notice that the consumer disputes the information.

Voluntary closures of accounts. **(623(a)(4))** This section requires a person, including a financial institution, who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding one of its consumer credit accountholders, to notify the consumer reporting agency of the consumer's voluntary account closure. This notice is to be furnished to the consumer reporting agency as part of the regularly furnished information for the period in which the account is closed.

Notice involving delinquent **accounts. (623(a)(5))** This section requires that a person, including a financial institution, that furnishes information to a consumer reporting agency about a delinquent account 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. **(623(b))** This section requires that whenever a financial institution receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information the financial institution provided to a consumer reporting agency pursuant to section 611 (Procedure in Case of Disputed Accuracy), that financial institution must, pursuant to § 623(b):

- Conduct an investigation regarding the disputed information.

- Review all relevant information the consumer reporting agency provided along with the notice.
- Report the results of the investigation to the consumer reporting agency.
- If the investigation finds the information is incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the financial institution previously provided the information.
- If the disputed information is incomplete, inaccurate, or not verifiable by the financial institution, it must promptly, for purposes of reporting to the consumer reporting agency do one of the following:
  - Modify the item of information.
  - Delete the item of information.
  - Permanently block the reporting of that item of information.

The financial institution must complete the required investigations, reviews, and reports within 30 days. The financial institution may extend the time period for 15 days if a consumer reporting agency receives additional relevant information from the consumer.

### Prevention of Re-Pollution of Consumer Reports (Section 623(a)(6))

This section, Prevention of Re-Pollution of Consumer Reports, has specific requirements for furnishers of information, including financial institutions, to a consumer reporting agency that received notice from a consumer reporting agency that furnished information may be fraudulent as a result of identity theft. Section 605B, Block of Information Resulting From Identity Theft, 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, § 623(a)(6) requires financial institutions to establish and follow reasonable procedures to ensure that it does not re-report this information to the consumer reporting agency, thus “re-polluting” the victim’s consumer report.

Section 615(f), Prohibition on Sale or Transfer of Debt Caused by Identity Theft, also prohibits a financial institution from selling or transferring debt caused by an alleged identity theft.

### Negative Information Notice (Section 623(a)(7))

This section, Negative Information Notice, requires a financial institution to provide consumers with a notice either before it provides negative information to a nationwide consumer reporting agency, or within 30 days after reporting the negative information.

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**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) of the FCRA defines a nationwide consumer reporting agency as a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis." It defines this type of consumer reporting agency as one that regularly assembles or evaluates, and maintains, each of the following regarding consumers residing nationwide for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing, or credit capacity:

- Public Record Information.
- 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, financial institutions may not include this notice in the initial disclosures provided under §127(a) of the Truth in Lending Act.

**Model text.** As required by the FCRA, the Federal Reserve Board developed the following model text that institutions can use to comply with these requirements. The first model contains text an institution can use when it provides a notice before furnishing negative information. The second model form contains text to use when an institution provides notice within 30 days after reporting negative information:

*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."

*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 a financial institution with a safe harbor from liability. A financial institution 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. A financial institution making extensive revisions will lose the safe harbor from liability that the model notices provide. Acceptable changes include:



- Rearranging the order of the references to “late payment(s),” or “missed payment(s).”
- Pluralizing the terms “credit bureau,” “credit report,” and “account.”
- Specifying the particular type of account on which it may furnish information, such as “credit card account.”
- 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.”

## MODULE 5: CONSUMER ALERTS AND IDENTITY THEFT PROTECTIONS

### Overview

The 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.

### Fraud and Active Duty Alerts (Section 605A(h))

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), Limitations on Use of Information for Credit Extensions, 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 it knows the identity of the person making the request, the financial institution may not:

- Establish a new credit plan or extension credit (other than under an open-end credit plan) in the name of the consumer.

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- Issue an additional card on an existing account.
- 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), Limitation on Users, requires a financial institution that obtains a consumer report that contains an extended alert to contact the consumer in person or by the method the consumer lists in the alert prior to performing any of the three actions listed above.

### Information Available to Victims (Section 609(e))

This section, Information Available to Victims, requires a financial institution 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). The financial institution should provide this information to any of the following:

- The victim.
- Any federal, state, or local government law enforcement agency or officer specified by the victim in the request.
- Any law enforcement agency investigating the identity theft that was authorized by the victim to take receipt of these records.

The victim must make the request for the records in writing and send it to the financial institution at 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 has a high degree of confidence that it knows the identity of the victim making the request for information, the financial institution must take prudent steps to positively identify the person before disclosing any information. Proof of identity can include any of the following:

- A government-issued identification card.

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- Personally identifying information of the same type that was provided to the financial institution by the unauthorized person.
- 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 any of the following:

- Section 609(e) does not require disclosure of the information.
- 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.
- The request for information is based on a misrepresentation of fact by the requestor.
- The information requested is Internet navigational data or similar information about a person’s visit to a web site or online service.

### CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003

#### Background

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM or Act)<sup>5</sup>, charged the Federal Trade Commission (FTC) with issuing implementing regulations.<sup>6</sup> The FTC issued regulations, effective March 28, 2005, that provide criteria to determine the *primary purpose* of electronic mail (e-mail) messages. The FTC also issued regulations that contain criteria pertaining to warning labels on sexually oriented materials, which became effective May 19, 2004.

The goals of the Act are to:

- Reduce spam and unsolicited pornography by prohibiting senders of unsolicited commercial e-mail messages from disguising the source and content of their messages.
- Give consumers the choice to cease receiving a sender's unsolicited commercial e-mail messages.

Section 8 of the Federal Deposit Insurance Act grants compliance authority to the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Office of Thrift Supervision. The Federal Credit Union Act 12 USC 1751 grants authority to the National Credit Union Association.

The FTC researched and determined that a "Do Not Spam" registry (similar to the highly effective "Do Not Call" registry) would not be effective or practicable at this time.

#### Key Definitions

Affirmative consent (usage: commercial e-mail messages):

- The recipient expressly consents to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

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<sup>5</sup> 15 USC 7701 - 7713

<sup>6</sup> Final rules relating to the established criteria for determining when the primary purpose of an e-mail message is commercial were published in the *Federal Register* on January 19, 2005 (70 FR 3110). Final rules relating to governing the labeling of commercial e-mail containing sexually oriented material were published in the *Federal Register* on April 19, 2004 (69 FR 21024). A notice of proposed rulemaking relating to definitions, implementation and reporting requirements under the CAN-SPAM Act was published in the *Federal Register* on May 12, 2005 (70 FR 25426).

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- If the message is from a party other than the party to which the recipient communicated such consent, at which time the recipient was given clear and conspicuous notice that the recipient's e-mail address could be transferred to such other party for the purpose of initiating commercial e-mail messages.

Commercial e-mail message: Any e-mail message the *primary purpose* of which is to advertise or promote for a commercial purpose, a commercial product or service (including content on the Internet). An e-mail message would not be considered to be a commercial e-mail message solely because such message includes a reference to a commercial entity that serves to identify the sender, or a reference or link to an Internet Web site operated for a commercial purpose.

Dictionary attacks: Obtaining e-mail addresses by using automated means to generate possible e-mail addresses by combining names, letters, or numbers into numerous permutations.

Harvesting: Obtaining e-mail addresses using automated means from an Internet Web site or proprietary online service operated by another person, where such service/person, at the time the address was obtained, provided a notice stating that the operator of such Web site or online service would not give, sell, or otherwise transfer electronic addresses.

Header information: The source, destination, and routing information attached to the beginning of an e-mail message, including the originating domain name and originating e-mail address.

Hijacking: The use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit, a commercial e-mail message that is unlawful.

Initiate: To originate, transmit, or to procure the origination or transmission of such message but shall not include actions that constitute routine conveyance. For purposes of the Act, more than one person may be considered to have initiated the same message.

Primary purpose: The FTC's regulations provide further clarification regarding determination of whether an e-mail message has "commercial" promotion as its *primary purpose*: [16 CFR 316.3]

- The primary purpose of an e-mail message is deemed commercial if it contains only the commercial advertisement or promotion of a commercial product or service (commercial content).
- The primary purpose of an e-mail message is deemed commercial if it contains both commercial content and "transactional or relationship" content (see below for definition) if either of the following occurs:
  - A recipient reasonably interpreting the subject line of the e-mail message would likely conclude that the message contains commercial content.

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- The e-mail message's "transactional or relationship" content does not appear in whole or substantial part at the beginning of the body of the message.
- The primary purpose of an e-mail message is deemed commercial if it contains both commercial content as well as content that is not transactional or relationship content if a recipient reasonably interpreting either:
  - The subject line of the e-mail message would likely conclude that the message contains commercial content.
  - The body of the message would likely conclude that the primary purpose of the message is commercial.
- The primary purpose of an e-mail message is deemed transactional or relationship (noncommercial) if it contains only "transactional or relationship" content.

**Recipient:** An authorized user of the electronic mail address to which the message was sent or delivered.

**Sender:** A person who initiates an e-mail message and whose product, service, or Internet website is advertised or promoted by the message.

**Sexually oriented material:** Any material that depicts sexually explicit conduct unless the depiction constitutes a small and insignificant part of the whole.

**Transactional or relationship e-mail message:** An e-mail message with the primary purpose of facilitating, completing, or confirming a commercial transaction that the recipient previously agreed to enter into; to provide warranty, product recall, or safety or security information; or subscription, membership, account, loan, or other information relating to an ongoing purchase or use.

### General Requirements of the CAN-SPAM Statute:

- Prohibits the use of false or misleading transmission information [Section 7704(a)(1)] such as:
  - False or misleading header information.
  - A "from" line that does not accurately identify any person who initiated the message.
  - Inaccurate or misleading identification of a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.
- Prohibits the use of deceptive subject headings [Section 7704(a)(2)].

- Requires a functioning e-mail return address or other Internet-based response mechanism [Section 7704(a)(3)].
- Requires the discontinuation of commercial e-mail messages within 10 business days after receipt of opt-out notification from recipient [Section 7704(a)(4)].
- Requires a clear and conspicuous identification that the message is an advertisement or solicitation; clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender; and a valid physical postal address of the sender [Section 7704(a)(5)].
- Prohibits address harvesting and dictionary attacks [Section 7704(b)(1)].
- Prohibits hijacking [Section 7704(b)(2)].
- Prohibits any person from knowingly relaying or retransmitting a commercial e-mail message that is unlawful [Section 7704(b)(3)].
- Requires warning labels (in the subject line and within the message body) on commercial e-mail messages containing sexually oriented material [Section 7704(d)].
- Prohibits a person from promoting, or allowing the promotion of, that person's trade or business, or goods, products, property, or services in an unlawful commercial e-mail message [Section 7705(a)].

### TELEPHONE CONSUMER PROTECTION ACT

#### Background

The Federal Communications Commission (FCC) issued regulations that establish a national “Do-Not-Call” registry and other modifications to the Telephone Consumer Protection Act of 1991 (TCPA)<sup>7</sup>. The FCC regulations impose financial penalties on all commercial telemarketers for calling phone numbers on the “Do-Not-Call” registry. For those numbers not on the registry, the regulations set a maximum rate on the number of abandoned calls and require telemarketers to transmit caller ID information. The regulations also modify the FCC’s unsolicited facsimile advertising requirements, which in turn were modified by the Junk Fax Prevention Act of 2005 and became effective on July 9, 2005. The FCC regulations were, generally, effective as of October 1, 2003.

The FCC regulation expanded coverage of the national “Do-Not-Call”<sup>8</sup> registry by including banks, insurance companies, credit unions, and savings associations. The Federal Trade Commission’s (FTC) telemarketing regulations parallel the FCC regulations<sup>9</sup> and apply to all other business entities, including third parties acting as agent or on behalf of a financial institution.

#### Key Definitions:

**Abandoned call:** A telephone call that is not transferred to a live sales agent within two seconds of the recipient’s completed greeting.

**Automatic Telephone Dialing System and Autodialer:** Equipment that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and the capability to dial such numbers.

**Established business relationship:** A prior or existing relationship between a person or entity and a residential subscriber based on the subscriber’s purchase or transaction with the entity within the 18 months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, and neither party has previously terminated the relationship. An individual may reasonably expect that an affiliate is included in an established business relationship based on products offered or the identity of the affiliate.

**Residential Subscriber:** An individual who has contracted with a common carrier to provide telephone exchange service at a personal residence.

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<sup>7</sup> 47 USC 227; The Federal Communications Commission final regulations were published in the *Federal Register* on July 25, 2003 (68 FR 44144).

<sup>8</sup> The Federal Trade Commission (FTC) maintains the registry adopted by the FCC.

<sup>9</sup> The Federal Trade Commission final regulations were published in the *Federal Register* on January 29, 2003 (68 FR 4580).



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**Seller:** The person or entity on whose behalf a telephone call or message, which is transmitted to any person, is initiated for the purpose of encouraging purchase or rental of, or investment in, property, goods, or services.

**Telemarketer:** The person or entity that initiates a telephone call or message, which is transmitted to any person, for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

**Telemarketing:** The initiation of a telephone call or message, which is transmitted to any person, for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

**Telephone solicitation:** The initiation of a telephone call or message, which is transmitted to any person, for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services. Telephone solicitation *does not* include a call or message to any person with that person's permission, to any person with whom the caller has an established business relationship, or on behalf of a tax-exempt nonprofit organization.

**Unsolicited advertisement:** Any material, which is transmitted to any person without that person's prior express invitation or permission, that advertises the commercial availability or quality of any property, goods, or services.

### General Requirements of TCPA

The FCC regulations that implement the Telephone Consumer Protection Act of 1991 provide consumers with options to avoid unwanted telephone solicitations. The regulations address the following:

- The FCC's adoption of a national "Do-Not-Call" registry that expands coverage to entities regulated by the FTC.<sup>10</sup>
- Under the FCC's rules, no seller or entity telemarketing on behalf of the seller can initiate a telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the national "Do-Not-Call" registry. A safe harbor exists for an inadvertent violation of this requirement if the telemarketer can demonstrate that the violation was an error and that its routine practices include:

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<sup>10</sup> By doing so, the FCC asserts its considerably broader jurisdiction over telemarketing than the FTC. Specifically, telemarketing by in-house employees of banks, savings associations, and credit unions, as well as other areas of commerce, are covered by the FCC's authority.

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- Written procedures.
- Training of personnel.
- Maintenance of a list of telephone numbers excluded from contact.
- Use of a version of the national “Do-Not Call” registry obtained no more than three months prior to the date any call is made (with records to document compliance).
- Process to ensure that it does not sell, rent, lease, purchase, or use the do-not-call database in any manner except in compliance with regulations [47 CFR 64.1200(c)(2)(i)].
- Companies must maintain company-specific, do-not-call lists reflecting the names of customers with established business relationships who have requested to be excluded from telemarketing. Companies must honor such requests for five years [47 CFR 64.1200(d)(6)].
- Telemarketing calls can only be made between the hours of 8 a.m. and 9 p.m. (local time at the called party’s location) [47 CFR 64.1200(c)(1)].
- All telemarketers must comply with limits on “abandoned calls” and employ other consumer-friendly practices when using automated telephone-dialing equipment. A telemarketer must abandon no more than three percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. Two or more telephone lines of a multi-line business are not to be called simultaneously. Telemarketers must disconnect an unanswered telemarketing call prior to at least 15 seconds or four rings. All businesses that use autodialers to sell services must maintain records documenting compliance with call abandonment rules [47 CFR 64.1200(a)(4, 5 and 6)].
- All prerecorded messages, whether delivered by automated dialing equipment or not, must identify the name of the entity responsible for initiating the call, along with the telephone number of that entity that can be used during normal business hours to ask not to be called again [47 CFR 64.1200(b)].
- All telemarketers must transmit caller ID information, when available, and must refrain from blocking any such transmission(s) to the consumer [47 CFR 64.1601(e)]<sup>11</sup>.
- Unsolicited fax transmissions must be preceded by the advertiser’s receipt of the express written permission and signature of the intended recipient, unless there is an “existing business relationship.” However, the express permission cannot be conveyed through the use of a “negative option.” Businesses that advertise by fax are required to maintain records

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<sup>11</sup> The rule sets forth the technical information that telemarketers must make available (subject to differing technologies). The FCC stated that Caller ID information should also increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA violators (68 FR 44166, July 25, 2003).

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demonstrating that recipients provided express permission to send fax advertisements or that there is an existing business relationship [47 CFR 64.1200(a)(3) and 47 USC 227 as amended by the Junk Fax Prevention Act of 2005].

- Tax-exempt nonprofit organizations are not required to comply with the do-not-call provisions of the TCPA [47 CFR 64.1200(d)(7)].

### REFERENCES

#### Law

15 USC 1681 et seq. Fair Credit Reporting Act

15 USC 7701 – 7713 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003

47 USC 227 Telephone Consumer Protection Act

#### Regulations

12 CFR Part 571 Fair Credit Reporting

16 CFR Part 310 Telemarketing Sales Rule

16 CFR Part 316 Rules Implementing the CAN –SPAM Act of 2003

47 CFR Parts 64 and 68 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

#### Examination Handbook

[Section 1100](#) [Compliance Oversight Examination Program](#)

# FCRA, CAN-SPAM, and TCPA Program

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## FAIR CREDIT REPORTING ACT

### EXAMINATION OBJECTIVES

To determine the financial institution's compliance with the Fair Credit Reporting Act (FCRA).

To assess the quality of the financial institution's compliance risk management system to ensure compliance with the FCRA, as amended by the Fair and Accurate Credit Transaction Act of 2003 (FACT Act).

To determine the reliance you can place on the financial institution's internal controls and procedures for monitoring the institution's compliance with the FCRA.

To direct corrective action when you identify violations of law, or when the institution's policies or internal controls are deficient.

### BACKGROUND

#### A NOTE ABOUT THE STRUCTURE AND APPLICABILITY OF THE FCRA EXAMINATION PROCEDURES:

The applicability of the various sections of the FCRA and implementing regulations depend on an institution's unique operations. We present the functional examination requirements for these responsibilities topically in Modules 1 through 6 of these procedures. (We will issue Module 6 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, individual compliance responsibilities are in the statute, joint interagency regulations, or agency-specific regulations.

In order to logically and systematically address FCRA compliance responsibilities and their applicability to particular operations of a financial institution, OTS organized the examination procedures by subject matter, versus strict regulatory or statutory construction. The Level I and II examination procedures are applicable to all areas of review, and you should use them when examining for compliance with any provision of the FCRA. We segregated and grouped the Level III examination procedures by function and they track the format of the modules contained in the handbook section. Only perform those groups of Level III procedures relevant to the functions you are reviewing. As you perform these examination procedures, please reference the handbook section for further examination guidance and insight.

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## EXAMINATION PROCEDURES

### LEVEL I

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Perform the following procedures for all applicable modules.

1. Review all written policies and procedures, management's self-assessments, and any compliance audit material including work papers and reports to determine whether:
    - The scope of the audit addresses all provisions as applicable.
    - Management has taken corrective actions to follow-up on previously identified deficiencies.
    - The testing includes samples covering all product types and decision centers.
    - The work performed is accurate.
    - Significant deficiencies and their causes are included in reports to management and/or to the Board of Directors.
    - The frequency of review is appropriate.
- 

2. Where you conclude from this examination that the institution effectively administers and conducts a comprehensive, reliable, and self-correcting program that adequately ensures compliance with the statutory and regulatory requirements of FCRA, you should record the basis for this conclusion in the work papers and proceed to Program Conclusions.

Alternatively, review Level II procedures and perform those necessary to test, support, and present conclusions from performance of Level I procedures.

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## LEVEL II

Perform the following procedures for all applicable modules.

1. Through discussions with management and review of available information, determine if the institution's internal controls are adequate to ensure compliance in the FCRA area under review. Consider the following:
  - Organization charts
  - Process flowcharts
  - Policies and procedures
  - Loan documentation
  - Checklists
  - 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.).

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2. Review the financial institution's training materials to determine whether:
  - The institution provides appropriate training to individuals responsible for FCRA compliance and operational procedures.
  - The training is comprehensive and covers the various aspects of the FCRA that apply to the individual financial institution's operations.

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3. Where you conclude that the financial institution effectively manages its compliance responsibilities associated with the FCRA modules examined, you should record the basis for this conclusion in the work papers and proceed to Program Conclusions.

Where you find procedural weaknesses or other risks requiring further investigation, perform applicable Level III examination procedures.

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## LEVEL III

Perform only those procedures within the modules relevant to your review.

### MODULE 1: OBTAINING CONSUMER REPORTS

#### §604 Permissible Purposes of Consumer Reports and §606 Investigative Consumer Reports

1. Determine if the financial institution obtains consumer reports.  

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2. Determine if the institution obtains prescreened consumer reports and/or reports for employment purposes. If so, complete the appropriate sections of Module 3.  

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3. Determine if the financial institution procures or causes an investigative consumer report to be prepared. If so, ensure that the appropriate disclosure is given to the consumer within the required time period. In addition, ensure that the financial institution certified compliance with the disclosure requirements to the consumer reporting agency.  

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4. Ensure that the institution obtains consumer reports 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.)  

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5. Review the consumer reports obtained from a consumer reporting agency for a period of time and determine if the financial institution had permissible purposes to obtain the reports.

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## MODULE 2: OBTAINING INFORMATION AND SHARING AMONG AFFILIATES

### §603(d) Consumer Report and Information Sharing

1. Determine whether the financial institution shares consumer information with third parties, including both affiliated and nonaffiliated 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 if the financial institution's information sharing practices fall within the exceptions to the definition of a consumer report. If they do not, complete Module 6 (Requirements for Consumer Reporting Agencies) of the examination procedures.
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 in the institution's GLBA Privacy Notice, as required by the Privacy of Consumer Financial Information regulations.

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4. 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.

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## §604(g) Protection of Medical Information

*Section 604(g) of the FCRA prohibits creditors from obtaining and using medical information in connection with any determination of the consumer’s eligibility, or continued eligibility, for credit. The federal banking agencies and the National Credit Union Administration are in the process of developing final regulations to implement this prohibition and to create certain exceptions. Financial institutions will not be subject to the prohibition until these final rules are effective. We will issue this section of the examination procedures upon publication of the final regulations.*

## §624 Affiliate Marketing Opt Out

*Section 624 of the FCRA requires consumers to be provided with a notice and an opportunity to opt out of an entity’s use of certain information received from an affiliate to make solicitations to the consumer. The federal banking agencies, the National Credit Union Administration, the Federal Trade Commission, and the Securities and Exchange Commission are in the process of developing final regulations to implement this new opt-out requirement. Financial institutions will not be subject to these requirements until the final rules are implemented and effective. We will issue this section of the examination procedures upon publication of the final regulations.*

## MODULE 3: DISCLOSURES TO CONSUMERS AND MISCELLANEOUS REQUIREMENTS

### §604(b)(2) Use of Consumer Reports for Employment Purposes

1. Determine if the financial institution obtains consumer reports on current or prospective employees.

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2. Ensure that the institution provides appropriate disclosures to current and prospective employees when a financial institution obtains consumer reports for employment purposes, including situations where the financial institution takes adverse actions based on consumer report information.

- 
3. Review a sample of the disclosures to determine if they are accurate and in compliance with the technical FCRA requirements.

---

§604(c) and §615(d) of FCRA - Prescreened Consumer Reports and Opt-Out Notice [and Parts 642 and 698 of Federal Trade Commission Regulations]

4. Determine if the financial institution obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.
- If so, 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.

- 
5. Determine if 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.

- 
6. Obtain and review a sample of approved and denied responses to the offers to ensure that criteria were appropriately followed.
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## §605(g) Truncation of Credit and Debit Card Account Numbers

7. 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.

- 
8. For ATMs and POS terminals or other machines put into operation before January 1, 2005, determine if the institution brought the terminals into compliance or started a plan to ensure that these terminals comply by the mandatory compliance date of December 4, 2006.

- 
9. Review samples of mock receipts to ensure compliance.
- 

## §609(g) Disclosure of Credit Scores by Certain Mortgage Lenders

10. Determine if the financial institution uses credit scores in connection with applications for closed-end or open-end loans secured by one- to four-family residential real property.

- If so, determine if the institutions provides accurate disclosures to applicants as soon as is reasonably practicable after using credit scores.

- 
11. Review a sample of disclosures given to home loan applicants to ensure technical compliance with the requirements.
- 

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## §615(a) and (b) Adverse Action Disclosures

12. Ensure that the financial institution provides the appropriate disclosures when it takes adverse action against consumers based on information received from consumer reporting agencies, other third parties, and/or affiliates.

- 
13. Review a sample of adverse action notices to determine if they are accurate and in technical compliance.

- 
14. Review responses to consumer requests for information about these adverse action notices.
- 

## §615(g) Debt Collector Communications Concerning Identity Theft

15. Determine if the financial institution collects debts for third parties.
- If so, 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.

- 
16. Determine if the institution provides information to consumers to whom the fraudulent debts relate.
- 

17. 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.
- 

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## §615(h) Risk-Based Pricing Notice

*Section 615(h) of the FCRA requires users of consumer reports who grant credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers who get credit from or through that person to provide a notice to those consumers who did not receive the most favorable terms. Implementing regulations for this section are under development jointly by the Federal Reserve Board and the Federal Trade Commission. Financial institutions do not have to provide this notice until final regulations are implemented and effective. We will issue this section of the examination procedures upon publication of the final regulations.*

## MODULE 4: FINANCIAL INSTITUTIONS AS FURNISHERS OF INFORMATION

### §623 Furnishers of Information – General

1. Determine if the institution provides information to consumer reporting agencies.
    - If so, ensure compliance with the FCRA requirements for furnishing information to consumer reporting agencies.
- 
2. If you note procedural weaknesses or other risks requiring further investigation, such as a high number of consumer complaints regarding the accuracy of their consumer report information, select a sample of reported items and the corresponding loan or collection file to determine that the financial institution:
    - 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)].
    - 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) [15 USC § 1681s-2(a)(1)(B)].

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- 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 USC § 1681s-2(a)(2)].
  - 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)].
  - 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 USC§1681s-2(a)(4)].
  - Notified the consumer reporting agency of the month and year of commencement of a delinquency that immediately preceded the action. The financial institution must make notification to the consumer reporting agency 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 USC § 1681s-2(a)(5)].
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3. Review a sample of notices of disputes received from a consumer reporting agency and determine whether the institution:
  - Conducted an investigation with respect to the disputed information. Section 623(b)(1)(A) [15 USC § 1681s-2(b)(1)(A)].
  - Reviewed all relevant information provided by the consumer reporting agency. Section 623(b)(1)(B) [15 USC § 1681s-2(b)(1)(B)].
  - Reported the results of the investigation to the consumer reporting agency. Section 623(b)(1)(C) [15 USC § 1681s-2(b)(1)(C)].
  - 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 USC § 1681s-2(b)(1)(D)].
  - Modified, deleted, or blocked the reporting of information that could not be verified.

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## §623(a)(6) Prevention of Re-Pollution of Consumer Reports

4. If the financial institution provides information to a consumer reporting agency, ensure that items of information blocked due to an alleged identity theft are not re-reported to the consumer reporting agency.
- 
5. 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.
- 

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6. Verify that the financial institution has not sold or transferred a debt that was caused by an alleged identity theft.

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## §623(a)(7) Negative Information Notice

7. If the financial institution provides negative information to a nationwide consumer reporting agency, ensure that it provides the appropriate notices to customers.

- 
8. Review a sample of notices provided to consumers to determine compliance with the technical content and timing requirements.

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## MODULE 5: CONSUMER ALERTS AND IDENTITY THEFT PROTECTIONS

### 605A(h) Fraud and Active Duty Alerts

1. Determine if the financial institution verifies the identity of consumers in situations where consumer reports include fraud and/or active duty military alerts.
2. Determine if the financial institution contacts consumers in situations where consumer reports include extended alerts.
3. 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.

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## §609(e) Information Available to Victims

4. Ensure that the institution verifies identities and claims of fraudulent transactions and that it properly discloses the information to victims of identity theft and/ or appropriately authorized law enforcement agents.

- 
5. Review a sample of these types of requests to ensure that the institution properly verified the requestor's identity prior to disclosing the information.
- 

## PROGRAM CONCLUSIONS

1. Summarize the findings, supervisory concerns, and regulatory violations.

- 
2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are repetitive or systemic.

- 
3. Identify action needed to correct violations and weaknesses in the institution's compliance system.

- 
4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.
- 

## EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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## CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003

### EXAMINATION OBJECTIVES

Assess the quality of a financial institution's compliance program for implementing CAN-SPAM by reviewing the appropriate policies and procedures and other internal controls.

Determine the reliance that can be placed on a financial institution's audit or compliance review in monitoring the institution's compliance with CAN-SPAM.

Determine a financial institution's compliance with CAN-SPAM.

Initiate effective corrective actions when violations of law are identified, or when policies or internal controls are deficient.

### EXAMINATION PROCEDURES

#### LEVEL I

WKP. REF.

1. Through discussions with appropriate management officials, determine whether or not management has considered the applicability of CAN-SPAM and what, if any, steps they have taken to ensure current and future compliance.  

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2. Through discussions with appropriate management officials, ascertain whether the financial institution is subject to CAN-SPAM by determining whether the financial institution initiates e-mail messages whose primary purpose is "commercial."  

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3. If you conclude from your examination that the financial institution does not initiate "commercial" electronic mail, the financial institution is is not subject to CAN-SPAM. You may conclude this work program and record the basis for this conclusion in the work papers.  

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If the financial institution does initiate “commercial” electronic mail:

4. Review management’s self-assessment, applicable audit and compliance review material, including work papers, checklists, and reports, to determine whether:
    - Procedures address CAN-SPAM provisions applicable to the institution.
    - Effective corrective action occurred in response to previously identified deficiencies.
    - Audits and reviews performed were reasonable and accurate.
    - Deficiencies, their causes, and the effective corrective actions are consistently reported to management or the members of the board of directors.
    - Frequency of the compliance review is satisfactory.
- 

5. Determine, through a review of available information, whether the financial institution’s internal controls are adequate to ensure compliance with CAN-SPAM. Consider the following:
    - Organization chart to determine who is responsible for the financial institution’s compliance with CAN-SPAM.
    - Process flow charts to determine how the financial institution’s CAN-SPAM compliance is planned for, evaluated, and achieved.
    - Policies and procedures.
    - Marketing plans that reflect electronic communication strategies.
    - Internal checklists, worksheets, and other relevant documents.
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6. Where you conclude from your examination that the institution effectively administers and conducts a comprehensive, reliable, and self-correcting program that adequately ensures compliance with the regulatory requirements of CAN-SPAM, you should record the basis for this conclusion in the work papers and proceed to Program Conclusions.
- 

## LEVEL II

1. Review a sample of complaints to determine whether or not any potential violations of CAN-SPAM exist.
- 
2. Obtain a list of products or services that the financial institution promoted with e-mail.
- 
3. Obtain a sample of the e-mail messages to determine whether “commercial” promotion is their primary purpose.
- 
4. Through review of e-mail messages whose primary purpose is “commercial,” verify that the messages comply with the CAN-SPAM provisions:
- Do not use false or misleading transmission information [Section 7704(a)(1)] such as:
    - False or misleading header information.
    - A “from” line that does not accurately identify any person who initiated the message.
    - Inaccurate or misleading identification of a protected computer used to initiate the message.

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- Do not use deceptive subject headings [Section 7704(a)(2)].
- Provide a functioning e-mail return address or other Internet-based response mechanism [Section 7704(a)(3)].
- Provide a clear and conspicuous identification that the message is an advertisement or solicitation; clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender; and a valid physical postal address of the sender [Section 7704(a)(5)]. Note: this provision does not apply to a commercial e-mail message if the recipient has given prior affirmative consent to receipt of the message.
- Do not reflect address harvesting, hijacking, or dictionary attacks [Section 7704(b)(1, 2)].
- Provide a warning label (in the subject and within the message body) on commercial e-mail messages containing sexually oriented material [Section 7704(d)].

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5. Review any customer requests to opt out of receiving any additional e-mail messages from the institution [Section 7704(a)(4)]. Confirm that there are controls in place to discontinue commercial e-mail messages within 10 days of receipt of opt-out notification.

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6. Where you conclude that the institution effectively manages its compliance responsibilities associated with CAN-SPAM, you should record the basis for this conclusion in the work papers and proceed to Program Conclusions.

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## LEVEL III

If the Level II review reveals weaknesses in CAN-SPAM compliance, and you require additional in-depth testing of the institution's procedures, policies, and practices, expand the size and scope of the samples utilized in the above examination procedures. The sample size is at your discretion.

## PROGRAM CONCLUSIONS

1. Summarize all findings, supervisory concerns, and regulatory violations.

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2. For the violation(s), determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are isolated, repetitive, or systemic.

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3. Identify action needed to correct violations and weaknesses in the institution's compliance program.

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4. Discuss findings with the institution's management and obtain a commitment for corrective action.

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5. Record violations according to agency policy in the EDS/ROE system to facilitate analysis and reporting.

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## EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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## TELEPHONE CONSUMER PROTECTION ACT

### EXAMINATION OBJECTIVES

- Assess the quality of a financial institution's compliance program for implementing the Telephone Consumer Protection Act (TCPA) by reviewing the appropriate policies, procedures, and other internal controls.
- Determine the reliability of a financial institution's audit or compliance review in monitoring the institution's compliance with TCPA.
- Determine a financial institution's compliance with TCPA.
- Initiate effective corrective actions when you identify violations of law or deficiencies in policies or internal controls.

### EXAMINATION PROCEDURES

#### LEVEL I

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1. Through discussions with appropriate management officials, determine whether management has considered the applicability of TCPA and has taken steps to ensure current and future compliance.  

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2. Through discussions with appropriate management officials, ascertain whether the financial institution is subject to TCPA by determining whether it or a third-party telemarketing firm engages in any form of telephone or fax solicitation.  

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3. If you conclude from your examination that the financial institution does not engage in any form of telephone or fax solicitation either directly or through a third-party, the financial institution is not subject to TCPA. You may conclude this work program and record the basis for this conclusion in the work papers.
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If the financial institution does engage in telephone or fax solicitations:

4. Review management's self-assessment, applicable audit and compliance review material, including work papers, checklists, and reports, to determine whether:
- The procedures address the TCPA provisions applicable to the institution.
  - Effective corrective action occurred in response to previously identified deficiencies.
  - The audits and compliance reviews performed were reasonable and accurate.
  - Deficiencies, their causes, and the effective corrective actions are consistently reported to management or the members of the board of directors.
  - The frequency of the compliance review is satisfactory.
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5. Determine, through a review of available information, whether the financial institution's internal controls are adequate to ensure compliance with TCPA. Consider the following:
- Organization chart to determine who is responsible for the financial institution's compliance with TCPA.
  - Process flow charts to determine how the financial institution's TCPA compliance is planned for, evaluated, and achieved.
  - Policies and procedures that address:

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- Recording a telephone subscriber's request not to receive calls from a particular financial institution and the maintenance of those recordings for five years.
- Placement of the telephone subscriber's name, if given, and telephone number on the financial institution's do-not-call list.
- Maintenance of the list of telephone numbers that the financial institution may not contact.
- Compliance with the national do-not-call rules.
- Use of a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.
- Training of the financial institution's personnel engaged in telemarketing as to the existence and use of the financial institution's do-not-call list and the national do-not-call rules [47 CFR 64.1200(d)(2)].
- Process for recording a telephone subscriber's request not to receive calls and to place the subscriber's name, if provided, and telephone number on a do-not-call list [47 CFR 64.1200(d)(3)].
- Process used to access the national do-not-call database [47 CFR 64.1200(c)(2)(i)(D)].
- Process to ensure that the financial institution (and any third-party engaged in making telemarketing calls on behalf of the financial institution) does not sell, rent, lease, purchase, or use the national do-not-call database for any purpose except for compliance with the TCPA [47 CFR 64.1200(c)(2)(i)(E)].
- Process to ensure that telemarketers making telemarketing calls are providing the called party with the name of the individual caller, the name of the financial institution on whose behalf the call is being made, and a telephone number (that is not a 900 number or a long distance number) or address at which the financial institution may be contacted [47 CFR 64.1200(d)(4)].
- Internal checklists, worksheets, and other relevant documents.

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6. Where you conclude from your examination that the institution effectively administers and conducts a comprehensive, reliable, and self-correcting program that adequately ensures compliance with the regulatory requirements of TCPA, you should record the basis for this conclusion in the work papers and proceed to Program Conclusions.
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## LEVEL II

1. Review a sample of complaints to determine whether or not any potential violations of TCPA exist.

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2. Obtain a list of marketing or promotional programs for products and services that the financial institution promoted with telemarketing either directly or through a third-party vendor.

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3. Obtain a sample of data, or through testing or management's demonstration, for at least one program, determine whether:

### Do-Not-Call List

- The institution or its third-party vendor verified whether the subscriber's telephone number was listed on the national "Do-Not Call" registry [47 CFR 64.1200(c)(2)].
- If the telephone subscriber is on the national "Do-Not Call" registry and a telemarketing call is made, the existence of an established business relationship between the subscriber and the financial institution can be confirmed [47 CFR 64.1200(f)(3)] or the safe harbor conditions have been met [47 CFR 64.1200(d)].
- The financial institution has a process to determine whether it has an established business relationship with a telephone subscriber [47 CFR 64.1200(f)(3)].

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- A telephone subscriber's desire to be placed on a company-specific do-not-call list was honored for five years [47 CFR 64.1200(d)(6)].
- The institution or its third-party vendor employs a version of the national "Do-Not Call" registry or portions of the database for areas called that was obtained no more than three months prior to the call date (three-month process) [47 CFR 64.1200(c)(2)(i)(D)].
- The institution or its third-party vendor maintains records to support the three-month process [47 CFR 64.1200(c)(2)(i)(D)].
- The telephone call was made between the hours of 8 a.m. and 9 p.m. local time for the called party's location [47 CFR 64.1200(c)(1)].

## Automated Dialing and Abandoned Calls

- Any calls that were made using artificial or prerecorded voice messages to a residential telephone number met the requirements in 47 CFR 64.1200(a)(6)(i).
- The name, telephone number, and purpose of the call were provided to the subscriber if the call was abandoned [47 CFR 64.1200(a)(6)].
- The institution or its third-party vendor maintains appropriate documentation of abandoned calls, sufficient to determine whether they exceed the three percent limit in the 30-day period reviewed [47 CFR 64.1200(a)(6)].
- The institution or its third-party vendor transmits caller identification information [47 CFR 64.1601(e)].

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4. Ensure that the financial institution does not participate in any purchase-sharing arrangement for access to the national "Do-Not Call" registry [47 CFR 64.1200(c)(2)(i)(E)].
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5. Observe call center operations, if appropriate, to verify abandoned call practices regarding ring duration and two-second transfer rule [47 CFR 64.1200(a)(6)].
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6. Where you conclude that the institution effectively manages its compliance responsibilities associated with TCPA, you should record the basis for this conclusion in the work papers and proceed to Program Conclusions.
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## LEVEL III

If the Level II review reveals weaknesses in TCPA compliance, and you require additional in-depth testing of the institution's procedures, policies, and practices, expand the size and scope of the samples utilized in the above examination procedures. The sample size is at your discretion.

## PROGRAM CONCLUSIONS

1. Summarize all findings, supervisory concerns, and regulatory violations.  

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2. For the violation(s), determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are isolated, repetitive, or systemic.  

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3. Identify action needed to correct violations and weaknesses in the institution's compliance program.  

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4. Discuss findings with the institution's management, and obtain a commitment for corrective action.  

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5. Record violations according to agency policy in the EDS/ROE system to facilitate analysis and reporting.

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## EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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### **FCRA Statutory and Regulatory Matrix**

The table below contains the statutory or regulatory cites for each provision of the FCRA applicable to financial institutions that are not consumer reporting agencies<sup>1</sup>. Some of the requirements are self-executing by the statute, while others are contained in interagency regulations, while others still are contained in regulations published by only one or two of the regulatory agencies. Some requirements are subject to regulations that are not yet finalized and thus are listed as to-be-determined (TBD) in the table below. The regulatory agencies are listed in the first horizontal line and the various compliance responsibilities are presented in the order that they appear in the various examination modules in the first column. Financial institutions are subject to the list of cites in the column containing their primary federal regulator.

<b>Compliance Responsibility</b>	<b>Federal Reserve Board</b>	<b>FDIC</b>	<b>OCC</b>	<b>OTS</b>	<b>NCUA</b>
<b>Module 1</b>					
<b>Obtaining Consumer Reports</b>	§604 and §606 of the FCRA	§604 and §606 of the FCRA	§604 and §606 of the FCRA	§604 and §606 of the FCRA	§604 and §606 of the FCRA
<b>Module 2</b>					
<b>Information Sharing &amp; Affiliate Sharing Opt Out</b>	§603(d) of the FCRA	§603(d) of the FCRA	§603(d) of the FCRA	§603(d) of the FCRA	§603(d) of the FCRA
<b>Protection of Medical Information</b>	Part222 of FRB Regulation V	Part334 of FDIC Regulations	Part41 of OCC Regulations	Part571 of OTS Regulations	Part717 of NCUA Regulations
<b>Affiliate Marketing Opt Out</b>	TBD	TBD	TBD	TBD	TBD
<b>Module 3</b>					
<b>Employment Disclosures</b>	§604(b)(2) of the FCRA	§604(b)(2) of the FCRA	§604(b)(2) of the FCRA	§604(b)(2) of the FCRA	§604(b)(2) of the FCRA
<b>Prescreened Consumer Reports</b>	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698	§604(c) & §615(d) of the FCRA and FTC Regulations Parts 642 and 698
<b>Truncation of Credit and Debit Card Account Numbers</b>	§605(g) of the FCRA	§605(g) of the FCRA	§605(g) of the FCRA	§605(g) of the FCRA	§605(g) of the FCRA
<b>Credit Score Disclosures</b>	§609(g) of the FCRA	§609(g) of the FCRA	§609(g) of the FCRA	§609(g) of the FCRA	§609(g) of the FCRA
<b>Adverse Action Disclosures</b>	§615 of the FCRA	§615 of the FCRA	§615 of the FCRA	§615 of the FCRA	§615 of the FCRA
<b>Debt Collector Communications</b>	§615(g) of the FCRA	§615(g) of the FCRA	§615(g) of the FCRA	§615(g) of the FCRA	§615(g) of the FCRA
<b>Risk-Based Pricing Notice</b>	TBD	TBD	TBD	TBD	TBD
<b>Module 4</b>					
<b>Furnishers of Information – General</b>	§623 of the FCRA	§623 of the FCRA	§623 of the FCRA	§623 of the FCRA	§623 of the FCRA
<b>Prevention of Re-Pollution of Reports</b>	§623(a)(6) of the FCRA	§623(a)(6) of the FCRA	§623(a)(6) of the FCRA	§623(a)(6) of the FCRA	§623(a)(6) of the FCRA
<b>Negative Information Notice</b>	§623(a)(7) of the FCRA and Appendix B of Part222 of FRB Regulation V	§623(a)(7) of the FCRA and Appendix B of Part222 of FRB Regulation V	§623(a)(7) of the FCRA and Appendix B of Part222 of FRB Regulation V	§623(a)(7) of the FCRA and Appendix B of Part222 of FRB Regulation V	§623(a)(7) of the FCRA and Appendix B of Part222 of FRB Regulation V
<b>Module 5</b>					
<b>Fraud &amp; Active Duty Alerts</b>	§605A(h)(2)(B) of the FCRA	§605A(h)(2)(B) of the FCRA	§605A(h)(2)(B) of the FCRA	§605A(h)(2)(B) of the FCRA	§605A(h)(2)(B) of the FCRA
<b>Information Available to Victims</b>	§609(e) of the FCRA	§609(e) of the FCRA	§609(e) of the FCRA	§609(e) of the FCRA	§609(e) of the FCRA

<sup>1</sup> Other FCRA provisions applicable to non-consumer reporting agency banks, thrifts, and credit unions are covered in other examinations, such as risk management, information technology, etc. and are thus not part of this guidance. These provisions include Sections 605 (Reconciling Addresses); 615 (Red Flag Guidelines); and 628 (Disposal Rules).