

FACT Act Notice of Derogatory Information

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: The Federal Reserve Board recently issued a final regulation regarding section 217 of the FACT Act. It provides models that servicers can use to notify borrowers that negative or derogatory information has been provided to a nationwide credit bureau. The final regulation indicates an effective date of July 16, 2004. Everything else we have read has a notification compliance date of December 4, 2004. Which date is correct?

Answer: The mandatory compliance date is December 1, 2004. It is optional before that.

Compliance professionals should also keep in mind that while a lot of discussions mention FACT Act rules, the Fair and Accurate Credit Transactions Act simply (or un-simply as the case may be) modified the Fair Credit Reporting Act. It is the FCRA which will be implemented with Reg. V, 12 CFR 217. You can find the revised FCRA links in the [BOL LaunchPad](#).

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Authorization to Access a Credit Report

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Which section of the Fair Credit Reporting Act regulates the issue that a customer's credit report should be obtained only after consumer authorization?

Answer: Section 604 of the FCRA, [accessible here](#), defines the permissible purposes. "Consumer authorization" may not be a requirement. But generally cited are 604(a)(3)(A) and (F), in response to a credit request and for an otherwise legitimate purpose.

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Discussing Credit Report Information

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: How much information can a bank representative discuss with a loan applicant regarding their credit report without any lending regulations? I've heard everything from "nothing" to all but providing a copy to the applicant.

Answer: 607(c) of the FCRA: Disclosure of consumer reports by users allowed. A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

Personally, I don't like the idea of discussing this unless it is a simple matter. Otherwise you are doing the job best left to the credit bureau as there may be errors to resolve and explanations requested to be added to the report. You can't really explain why another creditor reported what they did. You invite ID theft and the possibility of giving out your bank's info in the headers/footers of the report.

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Denied Debit Card Rules

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: When a customer is denied a debit card, what kind of disclosure must they receive?

At previous banks we used a form similar to an adverse action for loans, but it didn't have as much info on it. Where can I find this info in the regs?

Answer: If you deny them a product or service, based on third party information, a Fair Credit Reporting Act notice is required under §615. Nothing else is, under federal laws. Your state laws or policy may differ.

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When Is This An Application

by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: If a lender takes only basic inquiry information so it can review a credit bureau report, and later takes an application for a mortgage loan, is the date of application the date we pulled the credit report, or the date we got the complete application?

Answer: For the purposes of Regulation B, the application is complete when you have the information you require to make a decision on the application. This is defined under 202.2(f).

Under FCRA, you accessed the credit report earlier for an allowable purpose.

The date you actually have your completed application, traditionally a Form 1003 for mortgages, is the date of application, again for purposes of Regulation B. Your loan policy and procedures manual should define which documentation and other material you need to complete the application. The list might include, in addition to the application, copies of pay stubs, a credit report, verification of deposit, etc.

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Adverse Action Notices and Co-Applicants

Answer by Lucy Griffin, BOL Guru

[Guru BIOS](#)

Question: [There is an article by Lucy Griffin on FCRA, ECOA, and Adverse Action Notices.](#) In talking to the FDIC, who referred me to the FRB issuance dated March 2003, Reg B now states that we do not need to send a separate adverse action notice to the co-applicant if his/her consumer credit report was used to deny a joint credit application. The FRB states that when a person agrees to be a co-applicant, there is a general understanding that information will be shared between the applicants. Therefore, we do not need to inform the primary applicant that there is an "ineligible co-applicant" and send a separate notice. The FDIC is asking me to find out what information you are referring to in the above article by Lucy Griffin.

Answer: This is a tough issue because adverse action notices are required both by the Equal Credit Opportunity Act and its Regulation B and by the Fair Credit Reporting Act. The FRB has taken the reasonable and realistic position that you can expect co-applicants to share information, including adverse action notices. The FRB looks at its rules closely to find ways to reduce regulatory burden or to keep it from mushrooming. When they issued this, it was a huge form of relief.

On the other side of the issue, we have the Federal Trade Commission which has lead interpretive authority for FCRA. FTC staff has taken the position that the adverse action notification rights apply to the consumer whose report was used. When two consumers co-apply, the FTC still says that each consumer must get a notice. This is a pretty stiff interpretation in terms of burden on creditors.

While the FRB cannot change the FTC's position, their construction of the issue -- that co-applicants can be expected to share information -- is reasonable. If your examiner follows the FRB's guidance with respect to FCRA as well as ECOA, then you are probably okay giving one notice. I would recommend to anyone that, before deciding to issue only one FCRA notice, you run the idea past your examiner. That should prevent your being surprised with a violation of FCRA for following the FRB's rule on ECOA.

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FCRA & Telephone Applications

by Andy Zavoina, BOL Guru
[Guru BIOS](#)

Question: Do we have sufficient authorization to pull a credit report when we take a telephone application?

Answer: The FCRA allows you to access a credit report on a loan applicant when there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i) does not require a written authorization, though that doesn't hurt for an audit trail. In this case you would have an application taken and identified as being taken over the telephone.

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Notice for Withdrawn Applications

by [Andy Zavoina](#), BOL Guru

Question: If a loan application is withdrawn by the applicant, is it necessary that we send out an adverse action notice? Currently we have been sending out this notice stating "customer withdrew application" and marking the FCRA notice disclosure inapplicable.

Answer: You need not send a written notice, but that is a preferred method since it may allow you to close a good loan that you have already invested your time and money in.

§202.9(e) When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

The OSC allows an oral notification under §202.9.

Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

I wouldn't send an Adverse Action Notice as that looks derogatory to someone you approved. I recommend creating a template letter telling them what they were approved for and when that offer expires.

I would write across the face of that loan package "WD" for withdrawn and date it. I would then retain it as though it was a denied loan so you have an audit trail and evidence of why you accessed the credit report.

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Customer Credit Report Disputes

by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: What is the best way to handle a customer dispute regarding information we have reported to the credit bureaus? Should we handle the dispute or refer the customer to the bureaus and work with them? Why?

Answer: If the customer has notified you that you have a reporting error you have an obligation to correct it. Section 623 of the FCRA requires that you provide only accurate information. If you have been notified it is in error, you have an obligation to verify and correct it if necessary. Borrowing from 611(a)(2) (which truly applies to CRAs) you have 30 to 45 days to do this. When a CRA contacts you, you may be given only 5 business days to do this. In light of 623, I would always strive for the shorter period and try to resolve errors in 5 business days.

You cannot ignore it nor direct them elsewhere to resolve your error. Once you are notified, 623 should apply.

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FCRA and Deposit Accounts

Answer by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: I am confused by something. In the recent article "CIP and Compliance With Other Laws" it was stated that the FCRA does apply to deposit accounts. Yet, section 615.10 of the FCRA states "The Act does not require that a report user provide any notice to consumers when taking adverse action not relating to credit, insurance or employment. For example, a landlord who refuses to rent an apartment to a consumer based on credit or other information in a consumer report need not provide the notice." Could you clarify this for me?

Answer: The FCRA applies to the ability to access a credit report and notice when a product or service is denied. If you have a legitimate business reason, such as a customer wanting to open a deposit account, you can access a consumer report.

I don't know where your cite is from, but 615(a) says that adverse action resulting from a consumer report requires notice.

So, denying an account because of a consumer report when you attempted to verify an ID would, in my opinion, qualify as a disclosable fact. This puts the consumer on notice so that if information is incorrect, they may investigate and have it corrected.

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Bad Credit Report & Employee Dismissal

by Gerard Panaro, BOL Guru

[Guru BIOS](#)

Question: The bank I am presently employed at pulled a credit report on me before they hired me. Unfortunately, since my date of hire, I have had financial difficulties, and my credit is ruined. My supervisor just informed me they are going to start to do annual credit reports on employees. Is it possible for them to terminate me? I started here February 26, 2003 and received "Employee of the Month" in August. I know they are very happy with my performance here, so the only thing I'm worried about is my ruined credit. Any information you can give me regarding this matter would be greatly appreciated.

Answer: Under the federal Fair Credit Reporting Act, an employer may obtain a consumer credit report on an applicant, but only with the consent of the applicant. The question does not state whether you gave consent. If you did, the bank was allowed to obtain the report; if you did not, it was not. The whole issue may be moot, however, because the bank did hire you.

The bank can use the credit report in making its decision whether or not to hire an applicant. However, if the bank relies on the credit report to decide not to offer a position to the applicant, then it must so inform him or her. (The credit reporting agency may also have the same obligation.) The credit reporting agency has a duty to take care that its reports are accurate. You have a right to a copy of the report and to correct any misinformation.

Under federal law, I do not believe that an employer is allowed to obtain annual credit reports on employees, except in two situations: one, if the employee is being considered for another position (e.g., a promotion) or two, for purposes of making a loan to the employee. I would have to have more information and do some research, but I do not believe an employer may simply obtain credit reports on employees, except for a reason permitted by the statute.

The questioner asks whether it is possible for the bank to terminate him on the basis of his credit report. Again, a definitive answer would require more facts and perhaps some research, but I do not believe the bank could terminate the employee on the basis of his credit report. I say so for three reasons: one, having already hired him, despite knowledge of the credit history, I think the bank would be hard-pressed to fire him now; two, dismissing the employee on the basis of a credit report may well be "wrongful discharge in violation of public policy." Third, before taking an adverse action against an employee (and dismissal is certainly an adverse action) under the Fair Credit Reporting Act, the employer must notify the employee and give him an opportunity to correct any mistakes, etc.

Finally, this answer does not take into account state fair credit reporting statutes. Under the law of the state in which the employee lives, he may have additional protections.

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Car Dealership Pulling Credit Report

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Does a car dealership need a signed credit application prior to pulling a consumer credit report? If the dealership does pull a bureau and/or submit an application to lenders without a signed credit ap, what specifically has the dealership been in violation of and what are the potential consequences?

Answer: 604(F) of the FCRA allows the Credit Reporting Agency to provide a report when it believes the requestor "otherwise has a legitimate business need for the information (i) in connection with a business transaction that is initiated by the consumer"

There is no requirement that there be a written application. That said, it is desirable to have evidence of why the report was accessed.

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Credit Scoring for New Accounts

Answer by Lucy Griffin, BOL Guru

[Guru BIOS](#)

Question: I would like to know your thoughts and/or concerns on credit scoring at the new accounts desk. Meaning, a customer opens a checking or savings account, the bank pulls a credit report to see if the customer would meet pre-determined criteria for cross-selling purposes, for example, overdraft protection. In a nut shell, this is prescreening. My initial concern is that the bank does not have a permissible purpose to obtain a credit report, unless the customer is informed and provides written permission. My second thought is if the customer does not meet the pre-determined criteria and is not offered a credit product based on information contained in the report, the bank would be required to provide an adverse action notice. Do you see any additional concerns/prohibitions, or know if this type of practice is acceptable?

Answer: You have a legitimate business purpose for pulling the credit report when the customer opens the account. It is entirely within the scope of the bank's interests to verify the credit performance of the potential customer. While you have the report, you may also review it to cross-sell. This activity is not prescreening as contemplated by the FCRA. Under Regulation B, this could possibly be construed as a screening activity. But the critical test under Regulation B is whether the screening method is the exclusive way to obtain the product or whether the customer could obtain it another way -- such as by filing an application.

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Sharing Credit Report with Participating Bank

Answer by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: Under the Fair Credit Reporting Act, can we furnish a copy of a credit report to a financial institution with whom we have a participation agreement. Example: We denied a loan that would have been a participation loan. That other financial institution wants a copy of the credit bureau report. Can we give it?

Answer: First, this is a privacy issue. You will need to provide an opt-out in your privacy disclosure (and the customer does not opt out) before this is possible. Second, this is a contractual issue. Will the credit report agency allow you to do this?

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Credit Report for Suspicious Activity

by Ken Gollhofer, BOL Guru
[BIO AND CONTACT INFO](#)

Question: If an individual only has a checking account, and you want to run a credit report to check something for suspicious activity, are you allowed to do so and by what reg?

Answer: Follow this [link](#) to section 604 of the Fair Credit Reporting Act which describes the "permissible purposes" which allow you to obtain a consumer a report. Paragraph (a)(3)(F)(ii) says one "legitimate business need" is to review an account to determine whether the consumer continues to meet the terms of the account.

That is as close as I can get you to having the ability to pull a consumer report for the purpose of investigating suspicious activity. Frankly, I don't think it's close enough; I would advise against it.

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Adverse Action Letters to Multiple Parties

Answer by Andy Zavoina, BOL Guru
[BIO AND CONTACT INFO](#)

Question: When we send an adverse action letter on a consumer loan, do we need to send the letters to all parties separately or, if they have the same address, can they be included in one envelope?

Answer: [§202.9 Notifications](#).(f) Multiple applicants. When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

That said, if your AAN contains the FCRA notice and that notice applies to the other applicant, it must be made.

There was once concerns of confidentiality between telling one applicant that the other had derogatory credit, as an example. The new version of Reg. B says that concern is dismissed when people co-apply.

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Bankruptcy: Can we hot card a debit card?

by Jim Bedsole, BOL Guru
[BIO AND CONTACT INFO](#)

Question: Can we hot-card a debit card if the customer has recently declared bankruptcy?

Answer: Assuming your contractual agreement with the customer regarding the debit card allows you to cancel the card at your discretion, I don't know of any reason you couldn't. Check state law for any restrictions. Also, if you learned about the bankruptcy through a credit report, you may have FCRA adverse action notification requirements with regard to the cancellation of the debit card.

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Can you give the customer a copy of credit score/credit report?

by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Can a Loan Officer disclose a customers credit score with them? Can the Loan Officer give the customer a copy of the credit report?

Answer: In some states you may be required to provide a credit score. Check your state laws.

As to providing a copy, [607\(c\) of the FCRA](#) provides that you may not be prohibited from disclosing this. I am aware of no interpretation that defines this to be oral or written. So my opinion is that you may, if there is adverse action. But read on.

Because you can doesn't mean you should, necessarily. First, ensure there is no ID theft going on here. Disclosing this data to the wrong person would give them tons of useful information. Second, if you provide them a copy, what bank specific information may be in the headers or footers of the report. Third, do you really want your lender trying to explain to an applicant why a certain report shows as past due, how to read the report's specific codes, etc. That is often better done by the bureau and with the user friendly reports they can produce specifically for this purpose. They are also in touch with the bureau who would easily initiate any corrective actions on erroneous data.

I believe there is limited usability in this allowance, but it does exist.

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Adverse Action & Disclosing Credit Bureau Information

by [Scott Maddox](#)



Question: If an application is denied for reasons other than credit, but a credit report was pulled, are we required to disclose the Credit Bureau's Address?

Answer: Refer to Section 615 of the Fair Credit Reporting Act. Section 615 requires that if an adverse action is based whole or in part on any information contained in a consumer report, the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person must be disclose to the consumer in addition to other prescribed information.

To determine their specific obligations, the person asking the question should consult with their legal counsel.

Scott Maddox is vice president of national sales for TransUnion Settlement Solutions Inc., a wholly-owned subsidiary of Chicago-based TransUnion, which provides real estate information, settlement services and process management solutions to the residential lending industry. He has more than 15 years experience in the credit industry with leading companies such as Ford Credit and TransUnion. You can contact Scott by telephone (302) 433-8076 or via e-mail at smaddox@transunion.com.

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Adverse action for denial of ATM or debit cards?

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Our internal auditor states that we should be sending a Notice of Adverse Action for denied ATM and debit cards. Is this a requirement of the Fair Credit Reporting Act?

Answer: Not being a credit product, a Reg. B adverse action is not needed. IF a credit line were to be attached, you'd issue the notice related to that credit, not the card.

If you deny the card because of information from a credit reporting agency (incl. ChexSystems), then an FCRA notice is required. This is likely what they are driving at.

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Guarantor Access to Borrower's Credit Scores

by Lucy Griffin, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Does a potential guarantor have a right to see the credit report or be told of negative items or credit scores for a potential borrower? Specifically, an existing customer of our bank sent in someone for a car loan. The existing customer offered to guaranty the loan. We ran a credit report on the potential borrower, and the credit scores were low and the report contained various collection items.

Answer: Under the revisions to Regulation B, you do not violate the primary borrower's privacy if you tell the guarantor about the borrower's credit deficiencies. However, FCRA does not contain a similar protection. I would recommend that you discuss the credit concerns with the guarantor but not the specifics.

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Sample Wording Regarding FCRA for Privacy Notice

Answer by Andy Zavoina, BOL Gurus

[BIO AND CONTACT INFO](#)

Question: We want to include the opt out notice required under FCRA in our Privacy Notice because we share information with our affiliate bank. I am looking for sample wording for the FCRA portion of the notice. This is the only portion of our Privacy notice that will require an opt out provision.

Answer: The FCRA doesn't include sample language. Off the top of my head: "We may share your information within our family of affiliates. This will be done to better offer you the variety of products each has to offer. If you do not want your information shared, please detach the form below, complete it and mail it to... or deliver it to the bank".

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Correct Address of a Credit Bureau for Adverse Action

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: When we pull credit reports, the actual office it comes from varies from place to place for some reason for the same credit bureau. On the adverse action notices, should we use a single address for the credit bureau (such as the national headquarters) or should we use the address for the particular office from where the credit report originated?

Answer: FCRA - Section 615--Requirements on Users of Consumer Reports

(If you take adverse action based on a credit report, you will provide...)

(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person;

This may not be the opinion of my employer and should not be relied upon as legal advice.

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Signature Required For Guarantor's Credit Report?

by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: When making a business loan, we often require an individual to guarantee the obligation. Under the Fair Credit Reporting Act there seems to be no question this is a "permissible" purpose to allow us to obtain a credit report on the guarantor. Does the FCRA require we obtain the guarantor's signature acknowledging that a credit report will be obtained? If so, can you direct me to the specific language?

Answer: No. A signature is not required for this. But you do need to be able to prove that you have a permissible reason to do so.

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Can we provide a copy of their credit report to a customer?

by Lucy Griffin, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Can we provide a copy of their credit report to a customer?

Answer: The Fair Credit Reporting Act allows you to do so. But first check your agreement with the credit bureau. This may limit the circumstances and content of what you give to or tell the customer.

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Prescreening Customers & FCRA Violations

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Our retail department wants to send debit cards out to customers that (1) currently just use an ATM card and (2) meet certain criteria. The department wants to "prescreen" by using the credit score of the customers with ATM cards only. No new product is technically being solicited, as the customer is merely receiving more access to their account. Would this violate the provisions of FCRA?

Answer: Prescreening is allowed under 604(c) of the FCRA and is associated with the granting of credit or insurance. You do not indicate that any line of credit is associated with the debit card. While it could be, there is no guarantee of credit as would be required.

Section 604 of the FCRA was designed to protect the privacy of consumers. A commonly used reason to access a credit report is a "legitimate business purpose". But what the Act actually allows is as follows:

604(F) otherwise has a legitimate business need for the information

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

It is a personal opinion that access to the reports is not permissible in that this transaction does not include a firm offer of credit, was not initiated by the consumer, nor is it for the review of a current relationship to determine continued eligibility as an ATM card doesn't justify access.

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Is there a retention requirement for notice of account denial?

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Is there a retention requirement for the notification to a depositor that they are denied an account relationship. We provide the proper notice, but do not retain a copy of the notice except for a notation that an inquiry was done and a denial resulted.

Answer: Your question seems specific to deposit products, so Reg. B retention requirements do not apply.

FCRA requires disclosures under § 615, but retention is not addressed. So you should have a sound policy and procedure to make these disclosures and you should train and verify that they are followed. This should be evidence enough that you are meeting the regulatory requirements.

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