

Federal Law Update

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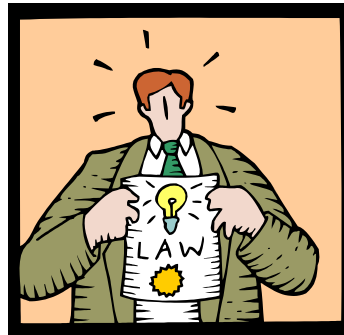


Presentation for Today:

- ✓ Equal Credit Opportunity Act
- ✓ Fair Credit Reporting Act (including FACT Act provisions)
- ✓ Federal Privacy Laws

Equal Credit Opportunity Act

Federal Statute (15 USC 1691 *et seq.*)



FRB Regulation B (12 CFR Part 202)

Equal Credit Opportunity Act

- The ECOA was enacted in 1974 to ensure that all persons are given an equal chance to obtain credit.
- It applies to businesses as well as individuals, and business credit as well as consumer credit.

Equal Credit Opportunity Act: General Rule

- A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.



Equal Credit Opportunity Act: General Rule

- “Prohibited basis” means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Equal Credit Opportunity Act

- ECOA generally applies to *creditors*
- However, mortgage brokers can be subject to ECOA when they *make decisions* about whether to extend credit

Equal Credit Opportunity Act: General Rule

Whether a creditor receives an **application** for credit is what triggers most obligations under the ECOA



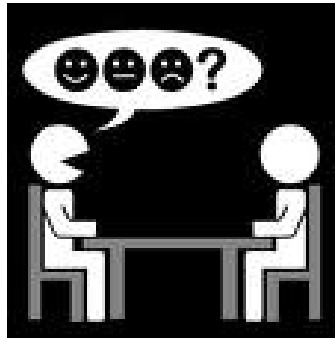
Equal Credit Opportunity Act: General Rule

Application means a request for credit that is made in accordance with procedures used by the creditor for the type of credit requested.



Equal Credit Opportunity Act: What is an application?

- Regardless of established procedures, an application occurs for ECOA purposes if someone:
 - Evaluates information about the applicant,
 - Declines the request, *and*
 - *Communicates decision to applicant.*



Equal Credit Opportunity Act: Inquiry v. Application

- Whether an inquiry becomes an application depends on *how* person responds to applicant, not on what applicant says or asks



Equal Credit Opportunity Act: Monitoring Information

- For applications for purchase or refinance of applicant's principal residence, must collect information about applicant's ethnicity, race, gender, marital status, and age
- If applicant refuses to provide information, creditor must note ethnicity, race, and gender information based on physical observation or surname where possible

Equal Credit Opportunity Act: Written Application

- ECOA requires use of a written application in connection with loans for which monitoring information must be collected (purchase money and refinancings of principal dwellings)

LOAN INFORMATION
This application for approval is for a loan
purpose as indicated, your loan document

III. TERMS OF LOAN	
Term (years)	No. Months
30	360

If your down payment is less than 20%, this section must be completed.

APPLICANT INCOME

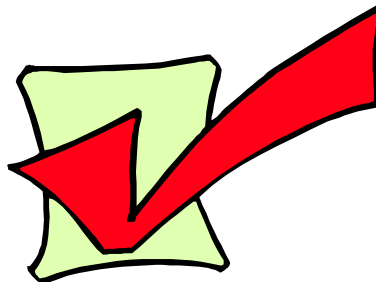
Equal Credit Opportunity Act: Written Application

- There is a new Fannie Mae/Freddie Mac 1003 form (dated June 2009)
- It may be used now, but use is required beginning July 1, 2010



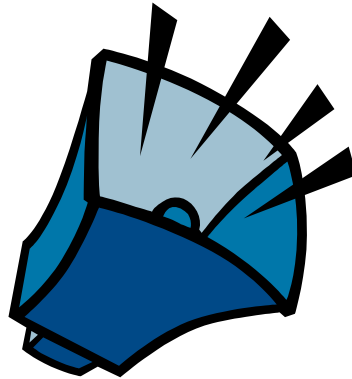
Equal Credit Opportunity Act: Notices of Approval or Denial

- Within 30 days of receiving a “**completed application**,” must notify applicant of action taken (either positive or adverse) on application
- “Completed application” exists when creditor has received all information that creditor regularly obtains and considers in evaluating applications



Equal Credit Opportunity Act: Notice of Approval

- If credit is approved, notice of the approval (oral or in writing) may be made in any manner creditor deems appropriate



Equal Credit Opportunity Act Notice of Denial

- If credit is denied, written **notice of the adverse action** must be provided to applicant

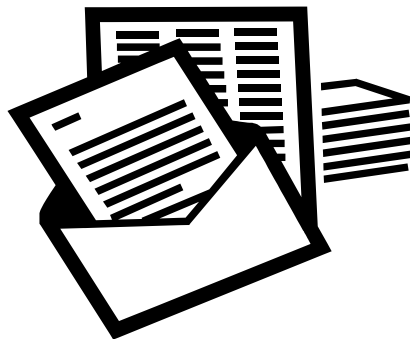


Equal Credit Opportunity Act: Notice of Incomplete Application

- If, 30 days after receipt of application, application is incomplete regarding matters applicant can complete and there is insufficient information to make credit decision, creditor must either provide **adverse action notice** or notify applicant of incompleteness

Equal Credit Opportunity Act: Notice of Counteroffer

- If the applicant does not qualify under the terms of loan program applied for, but does qualify under the terms of another loan program, creditor may send applicant a notice of counteroffer rather than an adverse action notice



Equal Credit Opportunity Act:

- If the applicant *expressly* withdraws the credit application, creditor is not required to send any notifications to the applicant

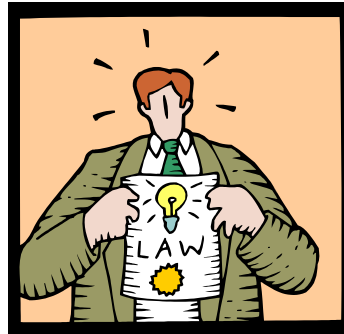


Presentation for Today:

- ✓ Equal Credit Opportunity Act
- ✓ Fair Credit Reporting Act (including FACT Act provisions)
- ✓ Federal Privacy Laws

Fair Credit Reporting Act

Federal Statute (15 USC 1681 *et seq.*)



FTC Regulations (16 CFR Part 600)

Fair Credit Reporting Act

- Enacted in 1970
- Primarily focuses on consumer reporting agencies, users of consumer reports, and persons who furnish information to consumer reporting agencies (aka credit bureaus)
- Strikes a balance between needs of commerce and needs of consumers with regard to the confidentiality, accuracy, relevancy, and proper utilization of information in consumer reports

Fair Credit Reporting Act

- There were notable amendments to the FCRA effective in 1996 (with a focus on privacy of information).
- However, the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) significantly amended the FCRA.
- FACT Act became law on December 4, 2003.
- Final set of regulations implementing FACT Act were issued in January 2010.

Fair Credit Reporting Act

Liability for Violations of the FCRA

- Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits.



- In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution.

Fair Credit Reporting Act

How does the FCRA impact your business?

- Mortgage lenders and brokers are **users** of consumer reports.
- Some mortgage lenders and brokers are **furnishers** of information to consumer reporting agencies.
- Nearly all mortgage lenders and brokers DO NOT want to be **consumer reporting agencies**.

Fair Credit Reporting Act

Furnishers of information to CRAs

- Accuracy Policies and Procedures
- General Prohibition on Reporting Inaccurate Information
- Duty to Correct and Update Information
- Duties After Notice of Dispute from Consumer
- Duties After Notice of Dispute from Consumer Reporting Agency
- Duty to Report Voluntary Closing of Credit Accounts
- Duty to Report Dates of Delinquencies
- Duties of Financial Institutions When Reporting Negative Information
- Duties When Furnishing Medical Information
- Duties When ID Theft Occurs

Fair Credit Reporting Act

Users of consumer reports

- I. Obligations Of All Users Of Consumer Reports
- II. Additional Obligations of Creditors
- III. Obligations Of Users When Consumer Reports Are Obtained For Employment Purposes
- IV. Obligations When Investigative Consumer Reports Are Used
- V. Special Procedures For Employee Investigations
- VI. Obligations Of Users Of Medical Information
- VII. Obligations Of Users Of "Prescreened" Lists
- VIII. Obligations Of Resellers

Fair Credit Reporting Act

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- VIII. Obligations Of Resellers

Fair Credit Reporting Act: Basic Rule

User Must have a Permissible Purposes
Pertinent to Lending

A consumer reporting agency may furnish a consumer report **only** under the following circumstances (“permissible purposes”):



Fair Credit Reporting Act: Basic Rule

Permissible Purposes Pertinent to Lending

- In accordance with written instructions of the consumer to whom it relates; or



Fair Credit Reporting Act: Basic Rule

Permissible Purposes Pertinent to Lending

- To a person the consumer reporting agency has reason to believe:
 - intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

Fair Credit Reporting Act: Basic Rule

Permissible Purposes Pertinent to Lending

- To a person the consumer reporting agency has reason to believe:
 - Otherwise has a legitimate business need for the information in connection with a business transaction that is initiated by the consumer or to review an account to determine whether the consumer continues to meet the terms of the account.

Fair Credit Reporting Act: Basic Rule

Permissible Purposes Pertinent to Lending

If there is no permissible purpose, the consumer reporting agency may NOT provide the consumer report.



Fair Credit Reporting Act: Basic Rule

Permissible Purposes Pertinent to Lending

Users must certify to the CRA that they have a permissible purpose when requesting a consumer report.

I
PROMISE

Reconcile Addresses

- CRAs must inform user when request for consumer report includes address that differs from address in consumer's file.
- User then must take reasonable steps to confirm identity of consumer and determine that request does not involve identity theft.



Users and Fraud Alerts

A user who receives a consumer report that includes a *fraud alert* or an *active duty alert* must follow reasonable **policies and procedures** and form a reasonable belief that the user knows the identity of the person.



Users and Fraud Alerts

- Initial or Active Duty Alerts: If consumer included **telephone number** in alert, user must call or take other reasonable steps to verify identity and confirm credit application is not a result of ID theft.



Users and Fraud Alerts

- Extended Alerts: User must contact consumer in person or using method described in fraud alert to confirm application is not a result of ID theft.



Disposal of Information

- Consumer Report Information must be disposed of properly.
- FTC regulations provide guidance on proper disposal of Consumer Report Information.



Fair Credit Reporting Act: Adverse Action Notice

- Refusing to grant credit in substantially the amount or on substantially the terms request in an application can lead to “adverse action”
- It’s the same definition of “adverse action” as in the Equal Credit Opportunity Act
- FCRA also requires notice of “adverse action”

Fair Credit Reporting Act: Adverse Action Notice

FCRA adverse action may be based on

- Information obtained in a consumer report
- Information obtained from third parties who are not consumer reporting agencies
- Information from affiliates

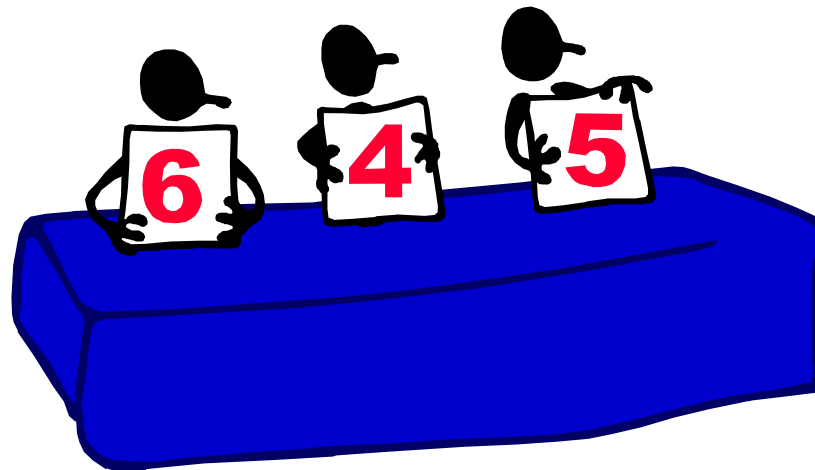
Fair Credit Reporting Act: Adverse Action Notice

For creditors, FCRA adverse action notice normally is contained in forms that are used to provide the ECOA notice of adverse action.



Creditor: Special Credit Score Notice

A person who uses a credit score to make or arrange residential real property loans must provide consumer with credit score information obtained from the CRA along with a special notice that explains the use of credit scores and how the consumer may obtain credit score information.



Creditor: Risk-Based Pricing Notice

- Lenders that use consumer report information for risk-based credit underwriting must give consumers a notice if the lender grants credit “on material terms that are materially less favorable than the most favorable terms available to a substantial portion” of its customers.



Risk-Based Pricing Notice

FRB and FTC jointly issue regulations
January 15, 2010. These regulations
become effective January 1, 2011.

Stay Tuned

Fair Credit Reporting Act: Prescreening

- Using a consumer report in connection with a credit transaction *not initiated by the consumer*
- Numerous requirements apply, including:
 - Must make firm offer of credit
 - Certain specific disclosures must be made “clear and conspicuous”

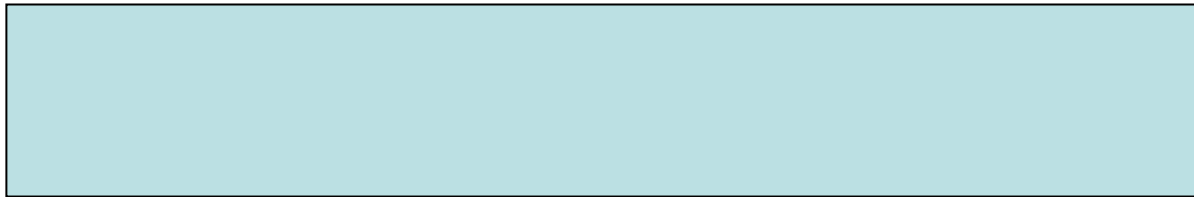
CAUTION

Fair Credit Reporting Act: Prescreening Disclosures

- An FTC rule, effective August 1, 2005, implemented a FACT Act requirement for established format, type size, and manner of providing “prescreened offer” disclosures

Fair Credit Reporting Act: Prescreening Disclosures

- It requires a new “short notice” with type size no smaller than 12-point and with certain language contained in a box



- It requires a new “long notice” with type size no smaller than 8-point

Red Flag Policies: Program

Each mortgage lender and broker must develop and implement a written Identity Theft Prevention Program (“Program”) designed to detect, prevent, and mitigate identity theft in connection with opening a covered account and in connection with all existing covered accounts.



Red Flag Policies: Definitions

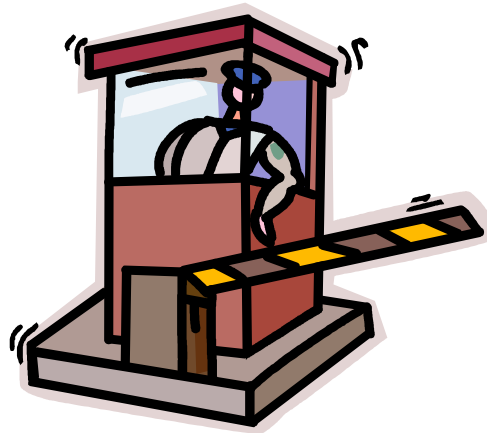
Red Flag: A pattern, practice, or specific activity that indicates the possible existence of identity theft.



Red Flag Program

Purpose for the Rule:

Requires creditors to guard against the use of “identifying information” of a third person to commit identity theft



Red Flag Program

How do creditors achieve this purpose?

Watch for red flags



Red Flag Program

What to do when red flags arise?

Respond appropriately



Red Flag Program

- Each creditor must consider the Interagency Guidelines on “Identity Theft Detection, Prevention, and Mitigation”
- Include those guidelines in Program as appropriate

Appendix

Red Flag Program

Compliance with the Red Flag Rule
is now set for June 1, 2010.

Check:

<http://www.ftc.gov/redflagsrule>



Presentation for Today:

- ✓ Equal Credit Opportunity Act
- ✓ Fair Credit Reporting Act (including FACT Act provisions)
- ✓ Federal Privacy Laws

Federal Privacy Laws

- Primarily found in Title V of the Gramm-Leach-Bliley Act of 1999
- This law establishes minimum federal privacy requirements
- It also requires notices about privacy policies and practices

Privacy of Customer Records

- Notices describing your company's policy about privacy of customer information must be given to customers at the beginning of the customer relationship
- New regulations regarding privacy notices were published December 1, 2009 (so forms are likely to change)

FACTS		WHAT DOES E FEDERAL CREDIT UNION DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> • Social Security number and income • Account balances and payment history • Credit history and credit scores When you close your account, we continue to share information about you according to our policies.	
How?	All financial companies need to share customers' personal information to run their everyday business - to process transactions, maintain customer accounts, and to report to credit bureaus. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons E Federal Credit Union chooses to share, and whether you can limit this sharing.	
Reasons we can share your personal information	Does E Federal Credit Union share?	Can you limit this sharing?
For our everyday business purposes - To process your transactions, maintain your account, and report to credit bureaus	Yes	No
For our marketing purposes - To offer our products and services to you	Yes	No
For joint marketing with our financial companies	Yes	Yes
For our affiliates' everyday business purposes - Information about your transactions and experiences	No	n/a
For our affiliates' everyday business purposes - Information about your creditworthiness	No	n/a
For our affiliates to market to you	No	n/a
For non-affiliates to market to you	Yes	Yes
Contact Us	Call toll-free at (800) 963-3328 or go to www.efedcu.org	
Sharing Practices		
How often does E Federal Credit Union notify me about their practices?	We must notify you about our sharing practices when you open an account and each year while you are a member.	
How does E Federal Credit Union protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.	

Privacy of Customer Records

- Customers must be given an opportunity to “opt out” if you plan to shared the customer’s nonpublic personal information with third parties under certain circumstances
- The “boiler plate” privacy notice from a generic software package *may not be right* for your company

Privacy of Customer Records

Safeguarding Customer Information

Your company must have a written information security program in place that describes how nonpublic personal customer information is protected.



Information Security Program: *How to Know What to Do?*

- Regulations published by Federal Trade Commission on May 23, 2002 (effective May 23, 2003)
- Regulations published by Federal Trade Commission on November 24, 2004 (for disposal rules)
- Information on FTC Website:
<http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt115.shtm>

Information Security Program: Do it now!

- Federal Trade Commission has taken actions against mortgage companies for failing to have a written plan
- Some State regulators ask to see written information security programs
- If your company does not have a written information security program and identity theft occurs, it's a problem



Privacy and USA Patriot Act: Customer Identification Program

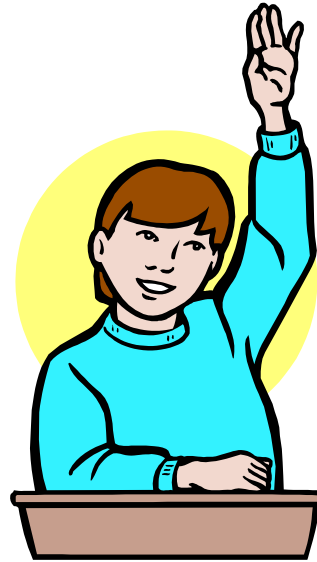
- Some entities are required by law to verify the identity of each customer
- These entities must keep record of information obtained to verify identities
- These entities must provide customers with notice that information is being obtained to verify identities

Privacy and USA Patriot Act: Customer Identification Program

- For stand-alone mortgage companies:
At this time, there are no applicable regulations so information is being collected at the request of the lender or investor



QUESTIONS?



Thank you!

For more information:

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