



Introduction to the Fair Credit Reporting Act

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SUNY Buffalo Law School
The State University of New York

Agenda

1. FCRA and Legal Services Practice
2. FCRA Overview
3. How can a Consumer Correct an Inaccurate Credit Report?
4. FCRA and Identity Theft

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**FCRA and Legal Services Practice:
Introduction**

What is the Fair Credit Reporting Act (FCRA)?

Why should legal services attorneys be familiar with FCRA?

The Fair Credit Reporting Act (FCRA)

Defines the responsibilities and liabilities of those who **provide information to and access data from** a Consumer Reporting Agency (CRA).

Fair Credit Reporting Act

FCRA was designed to promote accuracy, fairness, and privacy of information in the files of every Consumer Reporting Agency by:

- Regulating the consumer reporting industry.
- Placing disclosure obligations on users of consumer reports.
- Ensuring fair, timely, and accurate reporting of credit information.
- Restricting the use of reports on consumers.
- Requiring the deletion of obsolete information.

Fair Credit Reporting Act

- When you apply for and use credit, the information goes into a file at one or more credit bureaus.
- A credit file includes personal, employment, and financial **information**.
- Passed because of concerns about the accuracy of credit file information.

*source: FTC

FCRA: Right to Know

- The Fair Credit Reporting Act gives you the right to know what's in your credit file.
- If incorrect information is found, it must be removed from your file after the situation is examined.

*source: FTC

FCRA: Right to be Notified

The Fair Credit Reporting Act states that you must be notified when an investigation is being conducted on your credit record.

*source: FTC

FCRA: Right to Privacy

Only authorized persons can see a copy of your credit report.

*source: FTC

Why FCRA Matters to Our Clients

FCRA applies to creditors, employers, landlords, and other businesses that exchange consumer information with CRAs, including institutions that offer checking or share draft accounts.

Why FCRA Matters to Legal Services Clients

One motivation for this hearing is the recent study by the Federal Trade Commission finding that one in five American consumers identified material errors on their credit reports that were substantiated by the credit reporting agencies.

While not all of these errors would affect consumer borrowing, the FTC's research suggests that as many as 10 million Americans (five percent of consumers with credit reports) have errors in their credit reports so serious that they would likely pay more for auto loans or other credit -- or would be shut out of credit opportunities entirely.

That's a troubling statistic for borrowers, especially given the tremendous difficulty consumers face in getting errors in credit reports resolved. But the problem with credit reporting errors may be much greater than the numbers suggest because credit reports are also widely used to screen job applicants for employment.

Excerpt from testimony of Amy Traub, Senior Policy Analyst, Démos to the New York State Assembly Committee on Consumer Affairs and Protection and Committee on Banks on the accuracy and use of consumer credit reports April 19, 2013

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Part 2: FCRA Overview

Part of CONSUMER CREDIT PROTECTION ACT:

15 USC §§1601-1693r

FCRA

15 USC 1681 et seq.

(Fair Credit Reporting Act 'FCRA,' amended by Fair and Accurate Credit Transactions Act 'FACTA')

FCRA/FACTA

Initially passed 1970, effective 1971 + 2003 FACTA Amendment

Other less comprehensive amendments to FCRA include:

Consumer Credit Reporting Reform Act of 1996 (Public Law 104-208, the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1),

Section 311 of the Intelligence Authorization for Fiscal Year 1998 (Public Law 105-107), the Consumer Reporting Employment Clarification Act of 1998 (Public Law 105-347),

Section 506 of the Gramm-Leach-Bliley Act (Public Law 106-102), and

Sections 358(g) and 505(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107-56).

FCRA

**Regulation V: Fair Credit Reporting 12 CFR 1022
(Transferred from FTC to CFPB--December 2011)**

CFPB rulemaking/enforcement authority over Big Three CRAs Experian, Equifax and TransUnion and financial instn furnishers with over \$10 billion in assets

- FTC still has rulemaking authority for Reg Flag Rules (ID Theft/Fraud/Active Duty Alerts) and Disposal of Consumer Information
- FTC + Banking Regulators still have enforcement authority over smaller participants/fin. instns

FCRA

The Fair Credit Reporting Act (FCRA) defines the responsibilities and liabilities of those who **publish, provide information for, and access** "Consumer Reports."

DEFINITIONS

Consumer Reporting Agency (CRA): any person which, 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 which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Consumer Reporting Agency

- Credit Bureaus (big three – Experian, TransUnion and Equifax)
- Bank Check approval companies
- Tenant screening outfits
- Background check companies

DEFINITIONS
15 U.S.C. §1681a

- **Person**
Any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

DEFINITIONS
15 U.S.C. §1681a

Consumer
 An individual (in contrast to a business).

DEFINITIONS
15 U.S.C. §1681a

Consumer report – NOT JUST CREDIT REPORTS!!

In general, the term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which 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

- credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- any other purpose authorized under section 604 [§ 1681b].

DEFINITIONS
Section 603; 15 U.S.C. §1681a

Adverse Action
 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. Also includes:

1. 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;
2. A denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
3. 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)]; and
4. An action taken or determination that is (a) 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, and (b) adverse to the interests of the consumer.

Other Definitions

Furnishers:

Creditors, debt collectors and other third parties who provide information about consumers to the CRAs

Users:

Those who purchase consumer reports from CRAs

Reseller:

Smaller CRAs that buy consumer reports from other CRAs (such as one of the Big Three)

FCRA

FCRA was designed to promote **accuracy, privacy, and currency** of information in Consumer Reports.

Accuracy

- Right to be notified when adverse action is taken in reliance on a Consumer Report
- Right to be notified before negative information is reported
- Right to obtain a free credit report annually, or more often e.g. if adverse action is taken
- **Obligation on:**
 - CRAs to maintain reasonable procedures to ensure maximum possible accuracy
 - Furnishers to (a) not report information known or which reasonably should be known to be false, and (b) correct information learned to be false
- Right to dispute inaccurate information in a report
- Right to have that dispute reinvestigated by the CRA, including forwarding the dispute to the furnisher for investigation
- Right to have inaccurate disputed information removed

Privacy

- Only people with a proper purpose can see a copy of your report.
- You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.
- You may seek damages from violators

Authorized Uses

- Court order or federal grand jury subpoena
- Consumer's written authorization
- Contemplated credit transaction
- Employment purposes
- Insurance underwriting
- Eligibility for license or government benefits
- Existing credit obligation (account review or collections)
- Legitimate business need

Currency

- Most negative information will fall off a report within 7 years, other than bankruptcy filings which remain for 10 years.

How Long can Negative Information Stay on a Credit Report?

Information that doesn't adversely affect your score

- Indefinitely

Criminal convictions

- Indefinitely

Accounts placed for Collection or Charged Off

- 7 1/2 yrs from date of first delinquency

Credit transaction exceeding \$150,000

- Indefinitely

Bankruptcies

- 10 years after date of Entry of Relief

Lawsuits and Judgments

- 7 years after longer of Date of Entry or expiration of SOL

Records relating to Arrest

- Same as Lawsuits and Judgments

Paid tax liens

- 7 years after paid

Student loans

- Varies

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

Notice Requirements: Samples in Reg V

- Summary of Rights
- Reinsertion Notices
- Adverse Action
 - Dodd-Frank added requirement that users include actual credit score used in making adverse decision.
- Intent to obtain *investigative report*

Negative Credit Notice

If any financial institution that extends credit and regularly and in the normal course of business furnishes negative information to a CRA regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information to the consumer in writing.

- Can be provided prior to or no later than 30 days after furnishing the negative information to the CRA
- After providing this notice to the consumer, no new notices must be given for subsequent negative reporting
- Notice can be given with any billing statement as long as clear and conspicuous

**Risk Based Pricing
Adverse Action Notice**

In general, if any creditor uses a consumer report in connection with an application for or extension of credit on material terms **less favorable than the most favorable terms** available to a **substantial proportion** of the consumers from or through that furnisher of credit, **that company shall provide written, oral or electronic notice to the consumer.**

FCRA litigation

Statute of Limitations:

Plaintiff must file within 2 years of the date s/he discovers the violation, but no more than 5 years after the date of the violation, generally.

(NB: Violations can continue each time that CRA fails to reasonably investigate dispute.)

FCRA Litigation

Private Right of Action: Section 1681n and o

Willful Noncompliance:
Statutory Damages, Actual Damages, Punitive Damages & Litigation Expenses

Negligent Noncompliance:
Actual Damages & Litigation Expenses

Unauthorized Use:
Accessing a consumer report outside the scope of the Act is a violation with a private right of action subject to
Statutory Damages, Actual Damages & Litigation Expenses

Source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

FCRA Litigation

- Note that a number of the provisions have no private right of action.

Recent FCRA Litigation

**FTC \$3.5 million TeleCheck Settlement
January 2014**

- Failure to provide Notice
- Failure to Reinvestigate
- Burden on consumer in Fraud cases

(See FTC Press Release in the materials at pp. 24-25.)

Recent FCRA Litigation

Julie Miller v. Equifax

\$18.6 million jury verdict July 2013
Plaintiff's counsel = Baxter & Baxter LLP

(See article and Complaint in the materials at pp. 26-35.)

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FTC Instructions to get FREE Annual Credit Report

FACTA requires each of the nationwide credit reporting companies — Equifax, Experian, and TransUnion — to provide you with a free copy of your credit report, at your request, once every 12 months.

How to order your free credit report:

- Annualcreditreport.com
- 1-877-322-8228
- Complete the Annual Credit Report Request Form and mail it to:
Annual Credit Report Request Service
P.O. Box 105281
Atlanta, GA 30348-5281

Consumer needs to provide name, address, Social Security number and date of birth, and may have to provide previous address(es).

Also entitled to a free report if:

- A company takes adverse action against you, such as denying your application for credit, insurance, or employment, based on information in your report
 - Must ask for report within 60 days of receiving notice of the action.
 - Notice will give you the name, address, and phone number of the credit reporting company.
- You're unemployed and plan to look for a job within 60 days
- You're currently on welfare
- If your report is inaccurate because of fraud, including identity theft

Otherwise, a credit reporting company may charge you a reasonable amount for another copy of your report within a 12-month period.

To buy a copy of your report, contact the three credit report companies:

Experian: 1-888-397-3742 www.experian.com
 TransUnion: 1-800-916-8800 www.transunion.com
 Equifax: 1-800-685-1111 www.equifax.com

How Can a Consumer Correct an Inaccurate Credit Report?

1. If possible, put request(s):
 - in writing,
 - send certified mail, return receipt requested
2. FTC web site instructions/forms—consumer friendly
3. Note important time frames

FTC Website Instructions/Forms

See excerpt from FTC website in materials at pp. 16-19.

**Disputing the CRA:
1. Contact the Furnisher**

This letter can be from an attorney – may get more attention.

The most important thing is to have record of dispute from consumer.

(See sample letter suggested content.)

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

**Disputing the CRA
2. Request for Reinvestigation to CRAs**

- Consumer must send a dispute
 - Include identifying information, telling the story of how error harmed him/her
- Send a copy to each Big Three CRA and cc the Furnisher
- Send via Certified Mail, Return Receipt Requested
- Keep copies of letters and enclosures

Upon receipt of the Request for Investigation, the CRA must either delete the disputed information or conduct a reinvestigation.

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

Sample Dispute Letter
(Augmented FTC Sample)

Consumer Name
Address
City, State, Zip Code

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Date

Complaint Department
Name of Furnisher/Big Three CRAs
Address
City, State, Zip Code

Dear Sir or Madam:

I am writing to dispute the following information in my file. I have circled the items I dispute on the attached copy of the report I received.

This item (Identify item(s) disputed by name of source, such as creditors or tax court, and identify type of item, such as credit account, judgment, etc.) is (inaccurate or incomplete) because (describe what is inaccurate or incomplete and why). I am requesting that the item be removed (or request another specific change) to correct the information.

Enclosed are copies of (use this sentence if applicable and describe any enclosed documentation, such as payment records and court documents) supporting my position. Please reinvestigate this (these) matter(s) and (delete or correct) the disputed item(s) as soon as possible.

Sincerely,

Consumer Signature and Printed Name

Enclosures: (List what consumer is enclosing)

Other Things to Consider Including in Dispute Letter

- Your full name (including Jr. or Sr., etc.)
- Current address, and other addresses you have had in the past two years
- Date of birth
- Telephone number
- Social Security number

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

Other Things to Consider Including in Dispute Letter

- Your spouse's name, if applicable
- Current employment information
- A clear description of the item in your credit report that you are disputing, along with a complete copy of the credit report that contains the disputed item – circle the disputed item
- An explanation of why you are disputing the item on your credit report (e.g. "this account does not belong to me." Or "this account was paid in full, see attached documents of proof.")

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

Other Things to Consider Including in Dispute Letter

- If you believe you are or may be the victim of fraud or identity theft, you must indicate this in your letter.
- (ID Theft Victims) A copy of any police report(s) and identity theft affidavit.
- A request that the credit reporting agency delete or correct the information.
- A description of the problems the inaccurate information is causing, including copies of any documents illustrating this (e.g., "I have been denied credit, see attached documents showing this.")
- Your signature and printed name, noting that the recipient should compare for a possible forgery, if applicable

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

Other Things to Consider Including in Dispute Letter

- A copy of your driver license, and a recent utility bill to your current address
- It is also helpful to include copies of any documentary evidence supporting your dispute, and to note the documents you are including in your letter
- You should also send a copy of the letter to the creditor(s) or other furnisher(s) of the disputed information at the same time
- You should send the letters by certified mail, return receipt requested. Keep copies of everything that you send and the certification of receipt.

*source: Amy Wells, Esq. PLI Pro Bono Consumer Law Training July 2013

CRA Reinvestigation

“Good faith attempt to determine accuracy of the report”

- CRA must check with both the furnisher and other reliable sources of information
- Within 5 business day of receipt of RFI, CRA must notify furnisher
- CRA must check with both the furnisher and other reliable sources of information
- Furnisher must conduct its own reinvestigation and send results to CRA within the 30-day window permitted to complete the reinvestigation

CRA Reinvestigation: Outcomes

- Notify consumer in writing within 5 days of completion of reinvestigation
- If verification/update is not received, disputed information must be deleted
- If consumer does not receive timely response, WRITE again and request deletion
 - Do this certified mail, return receipt and keep all copies of correspondence

CRA Reinvestigation: Outcomes

If an investigation doesn't resolve the dispute with the credit reporting company, the consumer can ask that a statement of the dispute be included in consumer's file and in future reports.

The consumer also can ask the credit reporting company to provide a statement to anyone who received a copy of his/her report in the recent past, but there may be a fee associated with this.

*source: FTC

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FCRA and Identity Theft



Summary of Rights

You have the right to:

- Create an identity theft report.
- Place a 90-day initial fraud alert on your credit report.
- Place a seven-year extended fraud alert on your credit report.
- Get free copies of your credit report.
- Have fraudulent information blocked from your credit report.
- Dispute fraudulent or inaccurate information on your credit report.
- Stop creditors and debt collectors from reporting fraudulent accounts.
- Get copies of documents related to the theft of your identity.
- Stop a debt collector from contacting you.

Three ID Theft Prevention Initiatives

- ID Theft Report
 - Triggers obligations on the part of furnishers and CRAs more robust than ordinary dispute obligations
- Fraud Alerts
- Red Flag Rules

ID Theft Report

Trade Line Blocking

- CRA must "Block" (immediately remove) trade line when consumer provides an identity theft report that has been filed with law enforcement

Business records disclosure

- With police report, ID theft victim can get copies of records from businesses where a thief opened an account

Prohibition on Sale or Collection

- After receipt of ID Theft Report, furnisher prohibited from selling or placing account for collection

Prevention of repollution

- Creditor must have policies to prevent refurnishing information arising from ID theft
- Information can be resubmitted only if furnisher "knows" it is not really ID Theft.

Fraud or Active Duty Alerts

One Call Fraud Alerts

(credit bureau called has to alert the other bureaus)

- Any consumer can request a fraud alert for 90 days or an extended alert for 7 years
- Alert must be included with a credit report and with the delivery of the credit score
- Users of reports and scores cannot issue new credit line or extension of credit or higher credit limit unless call the consumer to verify.

Red Flag Rules

Anti-fraud regulation requiring creditors and financial institutions to identify, detect and respond to warning signs that could indicate ID theft.

Process to detect

- Discrepancies in address history
- Fraud alerts on credit reports
- Suspicious use of SSNs
- Inactive accounts that suddenly become active
- Credit-freeze notifications
- Credit reports with suspicious activity patterns
- Notices from ID theft victims or law enforcement

Other FACTA Amendments re Privacy

- Social security number truncation (on request)
- Credit card number truncation on consumer reports
- Notification of address discrepancy
- Disposal of consumer information and records containing consumer information



Thank you.

Questions?



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