



STATEMENT OF
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CONSUMER DATA INDUSTRY ASSOCIATION
WASHINGTON DC
BEFORE THE
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
House of Representatives
ON
“Use of Credit Information Beyond Lending: Issues and Reform Proposals”
May 12, 2010

Chairman Gutierrez, Ranking Member Hensarling and members of the committee, thank you for this opportunity to testify. For the record, my name is Stuart K. Pratt and I am president and CEO of the Consumer Data Industry Association.¹ In your letter of invitation, you have asked me to address particular issues and questions regarding the use of “credit scores and reports.” Below you will find both some background on the Fair Credit Reporting Act and our responses to the Committee’s letter.

Background – Fair Credit Reporting Act (§ 15 U.S.C. 1681 *et seq.*)

When Congress enacted the original Fair Credit Reporting Act it created a law with a broad range of rights for consumer and which also limits the uses for which consumer reports may be used.² The law also regulates the actions of consumer reporting agencies which produce consumer reports, users of consumer reports and suppliers of data to consumer reporting agencies.³ In both 1996 and again in 2003 the FCRA has been materially amended. It is an up-to-date and effective consumer protection statute enforced by the Federal Trade Commission, state attorneys general, consumers and federal bank agencies.

In drafting the FCRA, Congress recognized that there are many legitimate uses for

¹ CDIA is an international trade association representing more than 220 of the nation’s leading consumer data companies providing credit and mortgage reporting services, fraud prevention and risk-management technologies, identity management and verification tools, tenant and employment screening services, check fraud prevention and verification systems and collections services. CDIA’s members’ products are used more than 9 billion times a year.

² See Appendix I for the FTC’s Consumer Rights Notice.

³ See Appendix II for the FTC’s description of the duties of users of consumer reports. Also, note that the FTC and federal bank agencies have issued new rules regarding the accuracy and integrity of the data supplied to consumer reporting agencies. These rules become effective in July of 2010.

consumer reports. Consumer reports of all types are designed to help end users to both identify risks and to manage these risks. Through the multiplicity of recent Congressional hearings regarding the leading causes of our economic crisis, it is clear that where risks are not identified and are not managed, the consequences are severe and unrelenting. Congress, when enacting the FCRA, was prescient in recognizing both that there are many types of data which can help assess risks and in recognizing that these data should be available for uses all across the U.S. economy. These decisions have stood the test of time and no country enjoys such a robust system of data used for risk management and ensuring fairness in the marketplace.

The permitted uses of consumer reports, called permissible purposes, are found in Section 604 of the Act. Below is the statutory language for Section 604(a) which enumerates purposes for which a consumer report may be provided by a consumer reporting agency:

§ 604. Permissible purposes of consumer reports [15 U.S.C. § 1681b]

(a) In general. Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe

(A) 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

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, 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; or

(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.

(4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that

(A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;

(B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);

(C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and

(D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.

(5) To an agency administering a State plan under Section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.

With this background in mind I will now respond to questions and requests outlined in the Committee's letter of invitation.

Committee Question 1 - Discuss ways that non-lenders may use credit information contained in an individual's consumer report under the FCRA to determine whether to do business with someone and how much to charge them.

Users of consumer reports are in the best position to respond to this request. As described above in the general background on the FCRA, there are multiple appropriate uses for consumer reports by non-lenders.

One type of non-lender business which uses consumer reports to manage risk is the insurance industry. This same hearing includes a panel which will cover the topic of credit scores developed for insurance underwriting and the use of credit histories, thus there is no need for me to duplicate the information provided by this panel.

There are many other U.S. businesses which must manage and price for risk. For example, landlords, utilities and telecommunications companies use data from various types of consumer reporting agencies in order to determine a consumer's ability and willingness to pay for services. In some cases the consumer report is used to price for risk and in some cases the data also contributes to a user's decision about whether or not an upfront deposit is necessary.

Detailed descriptions of precisely how the data is used, including the use of credit scores, would be best obtained from the users themselves.

Committee Question 2 - Discuss the use of consumer reports for employment purposes under FCRA and what impact, if any, this use may have on the ability of the unemployed to re-enter the workforce. Please review any legislative proposals on this matter, including H.R. 3149, the "Equal Employment for All Act."

Since the original enactment of the FCRA, Section 604(a)(3)(B) has permitted the use of a consumer report for an employment purpose. In 1996, Section 604(b) was added and this section established new duties for users of consumer reports issued for an employment purpose. The FTC described these new duties as follows:

“If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.

Obtain prior written authorization from the consumer.

Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.

Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.) “

With the above context in mind, and before I turn to the practice of using credit histories for employment purposes, let me first clarify that credit scores are not sold by our members for employment purposes. Below you will find a more fulsome discussion of our views regarding the use of credit histories by employers.

Checking credit is done responsibly, and is not in and of itself a barrier to employment

Employers may check credit history as part of a background check to help them determine whether a prospective employee is a possible risk to the financial health of a business or to their customers. Employers use credit checks as part of a background check very responsibly, and prohibiting their use in assessing employees makes employers, other employees and customers more vulnerable to fraud and identity theft.

Credit checks are only used in about 15% of all background checks, and when they are used they are used primarily for positions that have fiduciary and financial responsibility or for executive positions, or for positions that have access to confidential or proprietary information. Further, employers look for lawsuits, judgments and accounts in collection, NOT late payments (which, according to a study by the Society for Human Resource Management, did not even make the list of things employers consider).⁴

Finally, the vast majority of employers do not use credit as a “yes or no” proposition, but to provide prospective employees with the opportunity to explain their circumstances.

When employers check credit, they review several years of history, not a “snap-shot” of the current situation

When looking at credit as part of a background check, employers do not limit their examination to a recent “snap-shot” look at a person’s credit, but in fact most tend to look at a 6-year window or longer.⁵ This is significant, because it enables employers to see beyond possible short-term problems caused by this current climate of economic uncertainty, and it gives potential employees

⁴ <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>

⁵ <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>

the ability to demonstrate a long-term, stable payment history, and any difficulties caused by current conditions can be saved by many years of prior positive credit history.

Personal financial health can be an indicator of potential employee fraud

The Association of Certified Fraud Examiners (ACFE) reviewed occupational fraud between early-2006 and early-2008, and found that the top two red flag warnings exhibited by perpetrators leading up to the fraud were instances where the fraudster was living beyond his or her financial means (present in 39% of all cases, with a median loss of \$250,000) or experiencing financial difficulties (present in 34% of all cases with a median loss of \$111,000).⁶

That is not to say that all financial difficulties will or could lead to fraud; however, it is simply wrong for Congress to undercut fraud prevention by outlawing use of information that shows a correlation between past behavior and future fraud.

Checking credit of potential employees protects companies, particularly small businesses, from fraud.

Employee theft accounts for more than \$15 billion annually, and companies lose a median of 5% of their annual revenue to employee fraud, which is expected to rise further.⁷

⁶<http://www.acfe.com/documents/2008-rttn.pdf>

⁷<http://www.acfe.com/occupational-fraud/occupational-fraud.asp>

Small businesses, in particular, are vulnerable to financial fraud. For example, according to the Association of Certified Fraud Examiners, the median loss suffered by organizations with fewer than 100 employees was \$190,000 per incident. This was higher than the median loss in even the largest organizations. Small businesses have fewer internal controls on the back end once they have hired someone to control fraud if it occurs internally.

Committee Question 3 - Discuss what impact information on medical debt collections in an individual's consumer report can have on their creditworthiness. Please review any legislative proposals on this matter, including H.R. 3149, the "Equal Employment for All Act."

How medical debts are reported to nationwide consumer credit reporting agencies:

Medical services providers (e.g., hospitals, ambulance services, doctors) generally do not report data directly to consumer credit reporting agencies. Where a medical services provider's account with a patient is delinquent, it may choose to use a third-party collection agency to help with the recovery of the outstanding debt. Third-party debt collection agencies do typically report the accounts for which they are attempting to collect to a consumer credit reporting agency. By way of background, FCRA Sections 604(g), 605(a) and 623(a)(9) all ensure that the particulars of medical treatment information is not conveyed to a user of consumer reports.

Credit scores and medical debts:

The committee question regarding the impact of information regarding medical debt in an individual's consumer report is very difficult to answer and ultimately the impact is going to depend on the consumer's particular credit report. Further, as testimony from this committee's March 24, 2010 hearing indicated, lenders who use are ultimately the ones who determine what weights they want assigned to various factors, and some lenders may choose to count and weight different types of debts in different ways.

The difficulty in responding to the committee's question is compounded by the fact that there is no one credit score in the marketplace and users often design their own scores and always ultimately control their own underwriting outcomes. By way of background different scores may put different weights on different factors, including paid medical debt. For example, scores may be designed to predict risk relative to different types of products or to predict different credit behaviors. As a result of this, various scores, even ones designed by the same developer, may weight data in a consumer's credit file differently. While each score weights various data differently, each may be highly predictive of the future risk that they are seeking to predict.

Building on the previous points, one score developer may develop a score that does not consider any third-party collection agency accounts at all, but another credit score may consider third-party collection agency accounts to be highly predictive. Another credit score may not consider third-party collection agency accounts that are medically-related, but does consider all other third-party collection agency accounts as important and

predictive.⁸ In any of the scenarios just discussed, score developers may also conclude that the predictive strength of a given data element, such as a third-party medical collection account, may become less predictive of future risk as a factor of time, but the rate of decline in the predictive strength of the data element may vary between scores. As stated above, even a single score developer may reach any of the previous conclusions depending on what type of risk behavior the score is designed to predict or the product for which the score is designed, etc.

As the above discussion suggests, credit score developers and ultimately lenders which underwrite the loan are not monolithic in their use of data and data that was not important in the past may be found to be important going forward. Lenders, for example, update their credit scorecards over time and may, after running additional tests, determine that previously unused data may now be highly predictive. Thus a lender scorecard may change incrementally over time, and consider different data as a result of testing, in order to ensure that it remains predictive.

In other words, in some types of lending decisions, lenders may disregard paid medical debt, but in others lenders may find that it is highly predictive, and eliminating access to that data across the board could have a serious detrimental effect on lending decisions. The impact of making decisions less predictive through the removal of accurate data is significant – it will reduce credit availability and increase cost for consumers.

⁸ For example, as the testimony from the hearing demonstrated, “VantageScore does not factor medical debt into the calculation of a consumer’s VantageScore credit score.”
http://www.house.gov/apps/list/hearing/financialsvcs_dem/burns_testimony.pdf

It is because of the discussion above that CDIA continues to urge extreme caution in changing the current standard for the deletion of accurate but adverse information contained in a consumer's credit report file.

Conclusion

In conclusion it is our view that:

- The FCRA has been the focus of extensive oversight by the Congress. It has been materially amended. This is a law that is both current and effective.
- The uses of consumer reports have been regularly included in Congress' review of the FCRA. These uses are fair and consumers are protected by the FCRA.
- Users of consumer reports are regulated by other laws and regulations that protect consumers such as the Equal Credit Opportunity Act or the Equal Employment Opportunity Commission guidelines and application of the Civil Rights Act. How a consumer report is used to manage risk is always dictated by the laws that govern the users themselves. Laws such as the ones discussed above, ensure outcomes are fair, just as the FCRA ensures that the uses of data are fair.
- Requiring the removal of any accurate and predictive data is the wrong policy outcome. Our members' systems are used to help businesses manage risk and we can ill afford to take away data which can inform a user's decisions. There is no doubt that we all want a fair marketplace in which to do business, and part of ensuring this fairness is to ensure that risks are being identified and managed.

- Ultimately without a full inquiry into the user's views regarding removal of accurate data, it would be premature to change current law and further restrict the flow of data for risk management. Consumer reporting agency databases are designed for a wide range of permitted uses, and while one particular industry sector may not use a particular data type, another may consider the presence of such data to be essential to their risk management process. It is best to preserve the data in the system and to allow users to determine which data is most important to them, product by product, industry by industry.

I hope the above information has been responsive and I thank you again for this opportunity to testify.

Appendix I

FTC Summary of Consumer Rights – Fair Credit Reporting Act

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade**

Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

C You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

C You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”).

You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

C a person has taken adverse action against you because of information in your credit report;

C you are the victim of identify theft and place a fraud alert in your file;

C your file contains inaccurate information as a result of fraud;

C you are on public assistance;

C you are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12

months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

C You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score

from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

C You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.

C Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

C Consumer reporting agencies may not report outdated negative information. In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

C Access to your file is limited. A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

C You must give your consent for reports to be provided to employers. A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.

C You may limit “prescreened” offers of credit and insurance you get based on information in your credit report. Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).

C You may seek damages from violators. If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

C Identity theft victims and active duty military personnel have additional rights. For more

information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In

some cases, you may have more rights under state law. For more information, contact your

state or local consumer protection agency or your state Attorney General. Federal enforcers

are:

TYPE OF BUSINESS: CONTACT:

Consumer reporting agencies, creditors and others not listed below Federal Trade Commission: Consumer Response Center - FCRA

Washington, DC 20580 1-877-382-4357

National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)

Office of the Comptroller of the Currency

Compliance Management, Mail Stop 6-6

Washington, DC 20219 800-613-6743

Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)

Federal Reserve Consumer Help (FRCH)

P O Box 1200

Minneapolis, MN 55480

Telephone: 888-851-1920

Website Address: www.federalreserveconsumerhelp.gov

Email Address: ConsumerHelp@FederalReserve.gov

Savings associations and federally chartered savings banks (word

"Federal" or initials "F.S.B." appear in federal institution's name)

Office of Thrift Supervision

Consumer Complaints

Washington, DC 20552 800-842-6929

Federal credit unions (words "Federal Credit Union" appear in institution's name)

National Credit Union Administration

1775 Duke Street

Alexandria, VA 22314 703-519-4600

State-chartered banks that are not members of the Federal Reserve System

Federal Deposit Insurance Corporation

Consumer Response Center, 2345 Grand Avenue, Suite 100

Kansas City, Missouri 64108-2638 1-877-275-3342

Air, surface, or rail common carriers regulated by former Civil

Aeronautics Board or Interstate Commerce Commission

Department of Transportation, Office of Financial Management

Washington, DC 20590 202-366-1306

Activities subject to the Packers and Stockyards Act, 1921 Department of Agriculture

Office of Deputy Administrator - GIPSA

Washington, DC 20250 202-720-7051

**NOTICE TO USERS OF CONSUMER REPORTS:
OBLIGATIONS OF USERS UNDER THE FCRA**

The federal Fair Credit Reporting Act (FCRA) requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. This first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. The FCRA, 15 U.S.C. 1681-1681u, is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 of the FCRA contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. *Section 604(a)(1)*
- As instructed by the consumer in writing. *Section 604(a)(2)*
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. *Section 604(a)(3)(A)*
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. *Sections 604(a)(3)(B) and 604(b)*
- For the underwriting of insurance as a result of an application from a consumer. *Section 604(a)(3)(C)*
- 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)*
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. *Section 604(a)(3)(F)(ii)*
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. *Section 604(a)(3)(D)*

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. *Section 604(a)(3)(E)*
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. *Sections 604(a)(4) and 604(a)(5)*

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.

B. Users Must Provide Certifications

Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA (by a general or specific certification, as appropriate) the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact -- such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, offering credit on less favorable terms than requested, or denying employment or promotion.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by Section 615(a) of the FCRA to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.

A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.

A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer requests the report within 60 days.

A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. (Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and information from a consumer report obtained from an affiliate are not covered by Section 615(b)(2).)

II. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.

Obtain prior written authorization from the consumer.

Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.

Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

III. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:

The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)

The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation that was requested. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

IV. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION

Section 604(g) of the FCRA prohibits consumer reporting agencies from providing consumer reports that contain medical information for employment purposes, or in connection with credit or insurance transactions, without the specific prior consent of the consumer who is the subject of the report. In the case of medical information being sought for employment purposes, the consumer must explicitly consent to the release of the medical information in addition to authorizing the obtaining of a consumer report generally.

V. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. *Sections 603(l), 604(c), 604(e), and 615(d)* This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

Information contained in a consumer's CRA file was used in connection with the transaction.

The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.

Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.

The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. This statement must include the address and toll-free telephone number of the appropriate notification system.

VI. OBLIGATIONS OF RESELLERS

Section 607(e) of the FCRA requires any person who obtains a consumer report for resale to take the following steps:

Disclose the identity of the end-user to the source CRA.

Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.

Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:

(1) the identity of all end-users;

(2) certifications from all users of each purpose for which reports will be used; and

(3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

VII. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. *Sections 616, 617, and 621*. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. *Section 619*