

# RESCINDED

98-33

OCC 98-33

Subject: Fair Credit Reporting Act

Description: Consumer Information Sharing: Information from Consumer Reports and from

Affiliated Companies

Date: August 3, 1998

TO: Chief Executive Officers and Compliance Officers of National Banks, Department and Division Heads and all Examining Personnel

[OCC 1998-33 has been replaced by OCC OCC 2001-20.]

The bulletin also describes OCC policies for FCRA examinations in light of limitations the FCRA imposes on the ability of the federal financial institutions supervisory agencies, including the OCC, to conduct FCRA examinations of the institutions they supervise.

## Key Provisions of the Fair Credit Reporting Act

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 substantially amended the Fair Credit Reporting Act effective September 30, 1997. The amendments impose a number of new obligations on banks while providing new opportunities for banks to use and share customer information with affiliated companies. [Note: Although this bulletin speaks in terms of banks, many of the provisions of the FCRA discussed herein also apply to other types of creditors and to insurers.] For example, for the first time, banks are responsible for the accuracy of the customer data they submit to credit bureaus. In addition, when denying a consumer credit on the basis of information contained in a credit report, the bank must notify the consumer of the action and inform the consumer of his or her right to obtain information that was the basis for the action. Banks also have new duties when using credit reports in the employment process.

On the other hand, the amended FCRA expands the type of customer information that banks and their affiliates can freely share. Under the FCRA, a bank may convey information to an affiliate about its transactions and experiences with a particular customer. It may also share information about the customer that it obtained from a credit report or any other information about the customer provided that three conditions are met:

- the bank or its affiliate has clearly and conspicuously disclosed to the customer that it would share the information with affiliates;
- the customer has been given the opportunity, in advance of the information sharing, to direct that such information not be shared; and

the customer has not elected to "opt out" of such information sharing.

The revised FCRA also increases a banks' ability to preselect consumers for offers of credit and insurance based on their credit reports, as well as to withdraw such offers if the consumer ultimately fails to meet the selection criteria. In taking advantage of these new opportunities, banks must notify consumers being solicited how they were selected and provide consumers with a toll-free telephone number to direct that they no longer receive such solicitations.

The FCRA law provides for civil, criminal, and federal and state agency enforcement against violations of certain provisions of the law. For example, civil money penalties may be imposed against any bank that willfully or negligently fails to comply with certain FCRA requirements, including following the appropriate procedures for sharing information with affiliates.

#### OCC FCRA Examination Policies

Despite the new array of obligations and opportunities for banks under the FCRA, the amended statute significantly limits the authority of federal financial institution supervisory agencies to examine the institutions that they supervise for compliance with the FCRA.

According to the new law, "no agency may conduct an examination of a bank, savings association, or credit union regarding compliance with the provisions of this title, except in response to a complaint (or if the agency otherwise has knowledge) that the bank, savings association, or credit union has violated a provision of this title, in which case, the agency may conduct an examination as necessary to investigate the complaint." The new law further states, "If an agency determines during an investigation in response to a complaint that a violation of this title has occurred, the agency may, during its next two regularly scheduled examinations of the bank, savings association, or credit union, examine for compliance with this title."

Examinations in Response to a Complaint. The FCRA authorizes the OCC to conduct an examination to investigate a complaint alleging that a national bank has violated a provision of the law. The law, however, does not specifically enumerate what communications constitute a complaint, the circumstances under which a complaint may trigger a FCRA examination, or the permissible scope of the examination. As a matter of supervisory policy, the OCC will treat as a complaint any communication (oral, written, or electronic) that is sent to the OCC or otherwise comes to the attention of the OCC that alleges a practice that, if true,

would violate the FCRA.

All such complaints will be reviewed and investigated to determine if a violation of the law has in fact occurred. These investigations may be undertaken separately from a regularly scheduled compliance exam and may be conducted on-site or off-site. Alternatively, the investigation may be completed as part of a regularly scheduled compliance examination.

During the course of the investigation in response to a complaint, examination staff may consider any information that they deem necessary or pertinent for determining the true nature and extent of the alleged problem. The investigation need not be limited to the specific transaction or transactions explicitly identified in the complaint, but must be related to allegations contained in the complaint. Examination staff may sample additional customer files or conduct a full examination for compliance with the FCRA if necessary to determine whether a violation has occurred.

If, as a result of its investigation, the OCC determines that a violation of the FCRA has occurred, the law authorizes the agency to conduct full FCRA examinations at its next two examinations. Consequently, if an investigation in response to a complaint determines that a violation has occurred, the OCC may conduct full FCRA examinations during its next two routine compliance examinations. On the other hand, if no violation of law is identified during the investigation of the complaint or if the two subsequent examinations following the agencies' determination that a violation has occurred yield no new violations, future routine compliance examinations of the institution will not include a review for compliance with the FCRA.

Examinations when the OCC "otherwise has knowledge" of a violation. The OCC is also permitted to conduct an examination of a national bank for compliance with the FCRA if the agency "otherwise has knowledge" that the institution has violated the FCRA. The statute

provides no specific guidance on what "otherwise has knowledge" entails. The OCC believes that any specific information about possible violations of the FCRA may trigger an investigation. If that investigation identifies a violation or if the agency obtains in any way credible information that demonstrates or establishes a violation, the agency will "otherwise have knowledge" of a violation.

Such knowledge could stem from violations discovered during the last FCRA examination of the bank conducted prior to implementation of the new law, any examination of the bank for compliance with the FCRA that is authorized by the new law, or from violations

discovered in the normal course of an examination of the bank for compliance with other laws and regulations. For example, an examiner might discover a FCRA violation during a review of board minutes or an examination of the activities of the bank's subsidiaries. Similarly, during a review of advertising notices to evaluate compliance with Federal Reserve Board Regulation B (Equal Credit Opportunity), an examiner may observe that an institution has been using consumer reports to evaluate applicants for credit without providing the notices required by the FCRA. Such information would constitute knowledge of a violation and would, therefore, trigger an examination.

Knowledge of a violation, however, is not limited to information developed during an examination of the bank. Other supervisory activities, such as a review of the activities of the bank's affiliates, also may reveal violations of the FCRA. Similarly, any specific and credible information that indicates that a violation has occurred that comes to the attention of the agency's staff from any source, including communications from another government agency, statements from bank employees, or communications from the bank, may trigger a FCRA examination. For example, an examination could be triggered if an examiner or other agency employee receives a credit solicitation from a national bank that does not include disclosures required by the FCRA.

Whenever an examiner "otherwise has knowledge" of a violation, that information will trigger an examination at the time the violation is noted and, if confirmed during the examination, at the two subsequent routine compliance examinations of the institution.

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If you have further questions about the information in this bulletin, please contact the Community and Consumer Policy division at (202) 874-4428.

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