

An hourglass-shaped graphic with a globe in the top bulb and a smaller globe in the bottom bulb. The hourglass is light blue and has a dark blue top cap. The globe in the top bulb is dark blue with light blue continents. The globe in the bottom bulb is light blue with dark blue continents. The hourglass is centered on the page.

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*Fair Credit Reporting Act: Rights and Responsibilities*

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May 4, 2007

**Abstract.** The Fair Credit Reporting Act (FCRA) establishes a consumer's rights in relation to his or her credit report. It also imposes certain responsibilities on those who collect, furnish and use the information contained in a consumer's credit report. This report discusses a consumer's rights under the FCRA, as well as the type of information included in a consumer's credit report, permissible uses for credit reports, disclosure requirements, and requirements for users of consumer credit reports and furnishers of information. Also addressed are amendments made by the Fair and Accurate Credit Transactions Act of 2003 to the FCRA aimed at preventing identity theft and assisting victims. Congress is currently considering legislation that would amend the FCRA to include provisions related to data security and information brokers.

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# Fair Credit Reporting Act: Rights and Responsibilities

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May 4, 2007

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## Summary

The Fair Credit Reporting Act (FCRA) establishes a consumer's rights in relation to his or her credit report. It also imposes certain responsibilities on those who collect, furnish and use the information contained in a consumer's credit report. This report discusses a consumer's rights under the FCRA, as well as the type of information included in a consumer's credit report, permissible uses for credit reports, disclosure requirements, and requirements for users of consumer credit reports and furnishers of information. Also addressed are amendments made by the Fair and Accurate Credit Transactions Act of 2003 to the FCRA aimed at preventing identity theft and assisting victims.

Congress is currently considering legislation that would amend the FCRA to include provisions related to data security and information brokers. For information on data security and the legislative efforts regarding such, see CRS Report RL33273, *Data Security: Federal Legislative Approaches*, by Gina Marie Stevens.

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## Introduction

The Fair Credit Reporting Act (FCRA) was enacted on October 26, 1970.<sup>1</sup> The purpose of the FCRA is “to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.”<sup>2</sup> The FCRA establishes consumer’s rights in relation to his or her credit report, as well as permissible uses for credit reports, disclosure requirements, and requirements for users of consumer credit reports and furnishers of information.

The Fair Credit Reporting Act applies to the files maintained by “consumer reporting agencies,” a term broadly defined to include anyone in the business of furnishing reports on the credit worthiness of consumers to third parties.<sup>3</sup> Consumer reporting agencies are also commonly known as credit bureaus or credit reporting agencies. A consumer reporting agency “is essentially a clearinghouse for information supplied by credit grantors and collection agencies, and culled by the bureau itself from public records.”<sup>4</sup> In addition to several thousand small bureaus that often serve limited geographic areas, there are three major consumer reporting agencies that operate on a nationwide basis—Experian, Equifax, and Trans Union. These three agencies often compete among themselves and with smaller regional credit bureaus. Information on a particular consumer may be maintained by any one or all of the consumer reporting agencies serving a particular geographic area.

In addition to the specific provisions regarding the credit reporting industry, the FCRA was amended by the Fair and Accurate Credit Transactions Act of 2003 (FACTA)<sup>5</sup> to include a number of provisions aimed at preventing identity theft and assisting victims. These provisions will be discussed in detail *infra*.<sup>6</sup>

During the 110<sup>th</sup> Congress, Congress is considering legislation that would amend the FCRA to include provisions related to data security and information brokers. For information on data security and the legislative efforts regarding such, see CRS Report RL33273, *Data Security: Federal Legislative Approaches*, by Gina Marie Stevens.

## Information Included in a Consumer Credit Report

Consumer credit reports generally include information about a consumer’s “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of

<sup>1</sup> P.L. 91-508, tit. 6, § 601, 84 Stat. 1128, 15 U.S.C. 1681 *et. seq.*

<sup>2</sup> 15 U.S.C. 1681(b).

<sup>3</sup> 15 U.S.C. 1681a(f). The FCRA defines a consumer reporting agency as “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.”

<sup>4</sup> Frederick H. Miller, et al., *Consumer Law: Cases, Problems, and Materials*, p. 296.

<sup>5</sup> P.L. 108-159, 117 Stat. 1952.

<sup>6</sup> More information on these provisions and other issues related to identity theft can be found in CRS Report RL31919, *Remedies Available to Victims of Identity Theft*, by Gina Marie Stevens.

living.”<sup>7</sup> The FCRA explicitly excludes certain types of financial reports from the definition of a consumer report. For example, “any report containing information solely as to transactions or experiences between the consumer and the person making the report” is excluded from the definition of consumer report, as are communications of that information among persons related by common ownership.<sup>8</sup> Authorizations or approvals of specific extensions of credit by the issuer of a credit card are also excluded from the definition of consumer report.<sup>9</sup>

With relatively few exceptions, there appears to be a consensus among the consumer reporting agencies as to exactly what types of information should be reported.<sup>10</sup> Information reported by a credit bureau commonly includes “identifying information, usually the individual’s full name, Social Security number, address, telephone number, and spouse’s name; financial status and employment information, including income, spouse’s income, place, position, and tenure of employment, other sources of income, duration, and income in former employment; credit history, including types of credit previously obtained, names of previous credit grantors, extent of previous credit, and complete payment history; existing lines of credit, including payment habits and all outstanding obligations; public record information, including pertinent newspaper clippings, arrest and conviction records,<sup>11</sup> bankruptcies, tax liens, and lawsuits; and finally a listing of bureau subscribers that have previously asked for a credit report on the individual.”<sup>12</sup>

The Fair Credit Reporting Act limits the amount of time that adverse or negative information can be included in a consumer’s credit report. Generally, a credit reporting agency is prohibited from reporting adverse information that is more than seven years old, or in the case of bankruptcies, more than ten years old.<sup>13</sup> If a bankruptcy filed under title 11 of the United States Code is included on a consumer’s report, the report shall also identify the chapter under which the case arose, if such information is provided by the source of the information.<sup>14</sup> If a bankruptcy case or filing under title 11 of the United States Code is withdrawn by the consumer before a final judgment, the report must include the fact that the case or filing was withdrawn.<sup>15</sup>

In addition to adverse credit information, consumer reporting agencies are also allowed to include information on a consumer’s failure to pay overdue child support, if such information has been provided to the agency by a state or local child support enforcement agency or verified by any state or federal government agency. This information remains on the consumer report for up to seven years.<sup>16</sup>

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<sup>7</sup> 15 U.S.C. 1681a(d)(1).

<sup>8</sup> 15 U.S.C. 1681a(d)(2)(A).

<sup>9</sup> 15 U.S.C. 1681a(d)(2)(B).

<sup>10</sup> Miller, *supra* footnote 4.

<sup>11</sup> Experian does not maintain information concerning arrests, indictments, or convictions; see [http://www.experian.com/credit\\_report\\_basics/your\\_credit\\_report.html](http://www.experian.com/credit_report_basics/your_credit_report.html).

<sup>12</sup> Miller, *supra* footnote 4.

<sup>13</sup> 15 U.S.C. 1681c(a). The seven and ten year reporting limitations do not apply to transactions involving, or which may be expected to involve, an amount greater than \$150,000; the underwriting of life insurance involving, or which may involve, an amount of \$150,000 or more; or to the employment of any individual at an annual salary which equals, or may be expected to equal, more than \$75,000. 15 U.S.C. 1681c(b). Information regarding certain types of student loans may be reported until the loan is paid in full. 20 U.S.C. 1087cc(c)(3).

<sup>14</sup> 15 U.S.C. 1681c(d).

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 1681s-1.

Medical information may be included in consumer reports under certain special circumstances and if procedures are followed to protect the confidentiality of such information.<sup>17</sup>

## Permissible Uses of Consumer Credit Reports

The Fair Credit Reporting Act outlines the purposes for which a consumer credit report may be furnished to a requester.<sup>18</sup> In general, a consumer reporting agency may furnish a copy of a consumer's report to a person the agency has reason to believe intends to use the information for the purpose of extending credit to the consumer, or for review or collection of the consumer's account.<sup>19</sup> Consumer credit reports may also be issued where there is a "legitimate business need" for the information contained in the report in connection with a business transaction initiated by the consumer, or for purposes of reviewing an existing account to determine whether the consumer continues to meet the terms of the account.<sup>20</sup>

In addition to the use of consumer reports for credit related purposes, an insurer may obtain a copy of a consumer's report in connection with the underwriting of an insurance policy involving the consumer for which the consumer has applied.<sup>21</sup>

Reports may be issued in connection with transactions not initiated by the consumer only if the consumer authorizes the reporting agency to provide such reports, or if the transaction consists of a firm offer for credit or insurance, and the consumer has not elected to have his name removed from lists provided by the agency for this purpose.<sup>22</sup> A consumer may elect to have his name removed from such lists by notifying the reporting agency that he does not consent to the release of reports for this purpose.<sup>23</sup> If the consumer has not authorized the release of such reports, but has not elected to have his name removed from the lists, the agency may release only certain information about the consumer. Information released for transactions not initiated by the consumer is limited to the name and address of the consumer, an identifier that is not unique to the consumer and that is used solely for the purpose of verifying the consumer's identity, and other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.<sup>24</sup>

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<sup>17</sup> P.L. 108-159, Section 411 and 412.

<sup>18</sup> 15 U.S.C. 1681b.

<sup>19</sup> 15 U.S.C. 1681b(a)(3)(A).

<sup>20</sup> 15 U.S.C. 1681b(a)(3)(F).

<sup>21</sup> 15 U.S.C. 1681b(a)(3)(C). For more information on the use of consumer credit information by the insurance industry, see CRS Report RS21341, *Credit Scores: Credit-Based Insurance Scores*, by Baird Webel.

<sup>22</sup> 15 U.S.C. 1681b(c)(1). This provision allows "prescreening" by a consumer reporting agency. "Prescreening" is the process "whereby a consumer reporting agency compiles or edits a list of consumers who meet specific criteria and provides this list to the client or third party on behalf of the client for use in soliciting these consumers for the client's products or services." This is permissible under the Fair Credit Reporting Act if the client agrees in advance that each consumer on the list will receive an offer of credit. See CCH Consumer Credit Guide, ¶ 25,050.

<sup>23</sup> 15 U.S.C. 1681b(e). Pursuant to a 2003 amendment to the FCRA, persons who use consumer reports for prescreening purposes must provide the consumer with a statement including the address and telephone number they may request to be excluded from prescreened lists. The consumer's election to be excluded from such lists is effective for five years. P.L. 108-159, Section 213.

<sup>24</sup> 15 U.S.C. 1681b(c)(2).

In addition to reports issued for the commercial purposes discussed above, a consumer reporting agency may also issue a report to a person it has reason to believe “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 entity required by law to consider an applicant’s financial responsibility or status.”<sup>25</sup>

The Fair Credit Reporting Act also authorizes the release of consumer credit reports for certain legal purposes. Specifically, the act authorizes the release of consumer credit reports “in response to the order of a court having jurisdiction to issue such an order,” or in response to “a subpoena issued in connection with proceedings before a Federal grand jury.”<sup>26</sup> Reports may also be issued to the heads of state or local child support enforcement agencies, if needed to establish the consumer’s capacity to make child support payments or for determining the appropriate level of such payments.<sup>27</sup>

If certain requirements are met, reports may also be issued for employment purposes.<sup>28</sup> In order to obtain a report for employment purposes, the requester must certify that the report will not be used in violation of any state or federal law.<sup>29</sup> The consumer must be told by the prospective employer that a report may be obtained and must consent to the procurement of a report by the employer.<sup>30</sup> If the employer intends to take adverse action based in whole or in part on the report, the consumer must be provided with a copy of the report and a description of the rights afforded to consumers under the Fair Credit Reporting Act.<sup>31</sup>

## Consumer Rights

The Fair Credit Reporting Act outlines a consumer’s rights in relation to his or her credit report. Under the FCRA, a consumer has the right to access all information in his or her credit report, including the sources of the information and his or her credit score.<sup>32</sup> Pursuant to a 2003 amendment to the FCRA, a consumer may request one free credit report each year from each of the nationwide consumer reporting agencies.<sup>33</sup> Free reports may also be obtained under certain

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<sup>25</sup> 15 U.S.C. 1681b(a)(3)(D).

<sup>26</sup> 15 U.S.C. 1681b(a)(1).

<sup>27</sup> 15 U.S.C. 1681b(a)(4). In order for reports to be released for this purpose, the paternity of the consumer for the child to which the obligation relates must have been established or acknowledged by the consumer; the consumer must be given notice of the request; and the report must be kept confidential and used only for the indicated purpose. Id.

<sup>28</sup> 15 U.S.C. 1681b(a)(3)(B). The FCRA defines the term “employment purposes” to mean “a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.” 15 U.S.C. 1681a(h).

<sup>29</sup> 15 U.S.C. 1681b(b)(1).

<sup>30</sup> 15 U.S.C. 1681b(b)(2).

<sup>31</sup> 15 U.S.C. 1681b(b)(3).

<sup>32</sup> 15 U.S.C. 1681g(a). Credit scores must be made available to consumers pursuant to a 2003 amendment included in P.L. 108-159. Prior to this amendment consumer reporting agencies were under no obligation to release credit scores. For a discussion of how credit scores are used, see CRS Report RS21298, *Credit Scores: Development, Use, and Policy Issues*, by Pauline Smale.

<sup>33</sup> P.L. 108-159, Section 211(a). For more information on free credit reports, see CRS Report RL32008, *A Consumer’s Access to a Free Credit Report: A Legal and Economic Analysis*, by Loretta Nott and Angie A. Welborn. The free credit report is not required to include the consumer’s credit score. The credit score must be disclosed upon request, but a reasonable fee may be imposed for the disclosure. P.L. 108-159, Section 212.

special circumstances.<sup>34</sup> Absent one of these special circumstances, a consumer may be charged up to \$9 for additional copies of his or her credit report.<sup>35</sup>

In addition to the disclosure of information contained in the consumer's credit report, a consumer is also entitled to receive information identifying each person that obtained a consumer report for employment purposes during the previous two years, or for any other purpose during the previous year.<sup>36</sup> Additional information that must be disclosed to the consumer upon request includes "the dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure;" and "a record of all inquiries received by the agency during the one-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer."<sup>37</sup>

A consumer has the right to dispute the completeness or accuracy of any item of information contained in his or her file.<sup>38</sup> Once the consumer notifies the consumer reporting agency of the dispute, the agency must reinvestigate and record the current status of the disputed information, or delete the item from the consumer's file within 30 days.<sup>39</sup> The consumer reporting agency must also notify the furnisher of the disputed information of the consumer's dispute and provide the furnisher with all relevant information regarding the dispute that the agency has received from the consumer.<sup>40</sup>

In conducting the reinvestigation, the consumer reporting agency must review and consider all relevant information submitted by the consumer.<sup>41</sup> The agency may terminate the reinvestigation if it reasonably determines that the dispute is frivolous or irrelevant, or if the consumer fails to provide sufficient information to investigate the disputed information.<sup>42</sup> Should the agency determine that the dispute is frivolous or irrelevant it must notify the consumer of the determination not later than five business days after making such determination.<sup>43</sup> If the reinvestigation leads to a determination that the disputed information is in fact inaccurate, incomplete or unverifiable, the consumer reporting agency must delete that item of information from the consumer's credit file.<sup>44</sup>

Following the reinvestigation, the consumer reporting agency must provide written notice of the results of the reinvestigation to the consumer within five days of the completion of the reinvestigation.<sup>45</sup> The notice must include a statement that the reinvestigation is completed; a copy of the consumer report reflecting the information in the consumer's file revised during the

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<sup>34</sup> See 15 U.S.C. 1681j.

<sup>35</sup> *Id.*

<sup>36</sup> 15 U.S.C. 1681g(a)(3).

<sup>37</sup> 15 U.S.C. 1681g(a)(4), (5).

<sup>38</sup> 15 U.S.C. 1681i.

<sup>39</sup> 15 U.S.C. 1681i(a)(1)(A).

<sup>40</sup> 15 U.S.C. 1681i(a)(2)(A).

<sup>41</sup> 15 U.S.C. 1681i(a)(4).

<sup>42</sup> 15 U.S.C. 1681i(a)(3)(A).

<sup>43</sup> 15 U.S.C. 1681i(a)(3)(B).

<sup>44</sup> 15 U.S.C. 1681(a)(5).

<sup>45</sup> 15 U.S.C. 1681(a)(6)(A).

reinvestigation; a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information can be provided; a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information contained therein; and a notice that the consumer has the right to request that the consumer reporting agency send notices regarding deleted information to specified parties.<sup>46</sup>

## Responsibilities of Consumer Reporting Agencies

Certain provisions of the Fair Credit Reporting Act are aimed at ensuring that the information in a consumer's credit file is accurate and complete. As discussed above, under the Fair Credit Reporting Act, consumer reporting agencies are required to conduct a reasonable reinvestigation of the disputed accuracy of any information in a consumer's file.<sup>47</sup> The agencies are also required to notify requesters of consumer reports of any substantial discrepancies in the address the agency has on file and the address the request was given.<sup>48</sup>

In addition to their responsibilities related to the accuracy of information in a consumer's file, credit reporting agencies must also ensure that consumer credit reports are being released only for the permissible purposes discussed above.<sup>49</sup> In order to ensure that the reports are being used for permissible purposes, the credit reporting agencies must require that the prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.<sup>50</sup>

Consumer reporting agencies also have a duty to notify furnishers of information and users of consumer reports of their responsibilities under the FCRA.<sup>51</sup>

In addition to the general responsibilities discussed above, a consumer reporting agency has special responsibilities with regard to investigative consumer reports and reports provided for employment purposes. Prior to the collection of information for or the preparation of an investigative consumer report, it must be disclosed to the consumer that such a report may be made and the nature and scope of the investigation requested.<sup>52</sup> A consumer reporting agency may not prepare or furnish an investigative consumer report unless it has received certification from the requesting party that the required disclosures have been made to the consumer.<sup>53</sup> With regard to reports prepared for employment purposes, a consumer reporting agency must take special precautions to insure the accuracy of public record information that may be included in the report.<sup>54</sup> The consumer must be notified that such information is being reported and be given the name and address of the person to whom the information is being reported; or the agency must "maintain strict procedures designed to insure that whenever public information which is likely to

<sup>46</sup> 15 U.S.C. 1681(a)(6)(B).

<sup>47</sup> P.L. 108-159, Section 317.

<sup>48</sup> P.L. 108-159, Section 315.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> 15 U.S.C. 1681e(d). See relevant sections *infra*.

<sup>52</sup> 15 U.S.C. 1681d(a), (b).

<sup>53</sup> 15 U.S.C. 1681d(d).

<sup>54</sup> 15 U.S.C. 1681k.

have an adverse effect on the consumer's ability to obtain employment is reported it is complete and up to date."<sup>55</sup>

## Responsibilities of Furnishers of Information

Many types of businesses and organizations contribute information to a consumer's credit file. The major credit reporting agencies classify contributors of information into the following categories: "automobile dealers; banks, clothing, department, and variety stores; finance agencies; grocery and home furnishing dealers; insurers; jewelry and camera stores; contractors; lumber, building materials, and hardware suppliers; medical-care providers; national credit card companies and airlines; oil companies (credit card divisions); personal services other than medical; mail-order houses; real estate agents; hotel keepers; sporting goods and farm and garden supply dealers; utilities; fuel distributors; government agencies (e.g. the Federal Housing Administration and the Veterans Administration); wholesalers; advertisers; and collection agencies."<sup>56</sup>

Generally, any person who has information related to a consumer's financial activities can report information about that person's transactions and experiences with the consumer to a consumer reporting agency. However, a person or business with information about a consumer is not required to report that information to a consumer reporting agency. If negative information is being reported, the furnisher must notify the consumer in writing.<sup>57</sup>

Generally, persons who furnish information to consumer reporting agencies have a duty to provide accurate information. Under the FCRA, a furnisher may not provide any information relating to a consumer to a consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.<sup>58</sup> Furnishers of information are also prohibited from furnishing information if they have been notified by the consumer that the information they are reporting is inaccurate.<sup>59</sup> Pursuant to a 2003 amendment to the FCRA, furnishers are also prohibited from furnishing information identified by the consumer as resulting from identity theft, unless the furnisher subsequently knows or is informed by the consumer that the information is correct.<sup>60</sup> Another 2003 amendment to the FCRA requires furnishers of information to have in place reasonable procedures to respond to any notification from a consumer reporting agency regarding the blocking of information resulting from identity theft to prevent such information from being refurnished.<sup>61</sup>

In addition to the reinvestigation requirements imposed on consumer reporting agencies, furnishers of information are also required to investigate disputed information. After a furnisher of information receives notice from a consumer reporting agency regarding the disputed completeness or accuracy of information contained in a consumer report, the person furnishing the information must initiate an investigation and report the results of the investigation to the

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<sup>55</sup> 15 U.S.C. 1681k(a)(1), (2).

<sup>56</sup> Miller, *supra* footnote 4, p. 298.

<sup>57</sup> P.L. 108-159, Section 217.

<sup>58</sup> 15 U.S.C. 1681s-2(a)(1), as amended by P.L. 108-159, Section 312.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> P.L. 108-159, Section 154.

consumer reporting agency.<sup>62</sup> If the investigation conducted by the furnisher of information finds that the information is incomplete or inaccurate, the furnisher must report those results to all other consumer reporting agencies to which the incomplete or inaccurate information was furnished.<sup>63</sup> Furnishers of information must also notify consumer reporting agencies when an account is closed by the consumer, and must provide notice of delinquent accounts that are being placed for collection, charged to profit or loss, or subjected to any other similar action.<sup>64</sup>

The FCRA allows consumers to dispute the accuracy of information directly with the furnisher. Furnishers must investigate the disputed information and report the results to the consumer within a specified period of time.<sup>65</sup> If the information is found to be inaccurate, the furnisher must notify each consumer reporting agency to which the information was originally furnished and provide the correct information.<sup>66</sup>

## Requirements on Users of Consumer Reports

As noted above, consumer credit reports can only be used for the purposes specified in the Fair Credit Reporting Act. Despite these limitations, users of consumer credit reports vary widely. The most common users of consumer reports are credit grantors, such as credit card companies. Other common users include insurers, employers, collection agencies, and government agencies.<sup>67</sup> The Fair Credit Reporting Act imposes specific requirements on persons who use the information contained in consumer reports.

Users of consumer reports must following the requirements set forth in the Fair Credit Reporting Act if they take any adverse action with respect to any consumer that is based in whole or in part on any information contained in the consumer's report.<sup>68</sup> If such action is taken, the user must provide the consumer with oral, written or electronic notice of the adverse action.<sup>69</sup> The notice must include the name, address, and telephone number of the consumer reporting agency that furnished the report to the user; and a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken.<sup>70</sup> The consumer must also be notified of his or her right to obtain a free copy of the consumer report from the consumer reporting agency that furnished the report and of the consumer's right to dispute the accuracy or completeness of that report.<sup>71</sup>

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<sup>62</sup> 15 U.S.C. 1681s-2(b)(1).

<sup>63</sup> Id.

<sup>64</sup> 15 U.S.C. 1681s-2(a)(4), (5).

<sup>65</sup> P.L. 108-159, Section 312.

<sup>66</sup> Id.

<sup>67</sup> For descriptions of how each of these uses the information contained in consumer reports, see Miller, *supra* footnote 4, p. 300 - 301.

<sup>68</sup> In general, an adverse action is any negative action, such as a denial or cancellation, taken with respect to the consumer's continued coverage or application for credit, insurance or employment. The Fair Credit Reporting Act provides a detailed definition of adverse action at 15 U.S.C. 1681a(k).

<sup>69</sup> 15 U.S.C. 1681m(a)(1).

<sup>70</sup> 15 U.S.C. 1681m(a)(2). Special requirements relate to adverse actions based on information received from third parties other than consumer reporting agencies. These requirements generally impose a duty on the user to disclose the reasons for the adverse action and the nature of the information received from the third party. See 15 U.S.C. 1681m(b).

<sup>71</sup> 15 U.S.C. 1681m(a)(3).

A notice must also be provided by users who grant, extend, or otherwise provide credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that user.<sup>72</sup> The notice provided must include a statement informing the consumer that the terms offered to the consumer were set based on information from a consumer report; identification of the consumer reporting agency that furnished the report; a statement informing the consumer that he or she may obtain a free copy of the consumer report from that agency; and the contact information specified by the agency for obtaining such reports.<sup>73</sup>

The FCRA also imposes duties on users of consumer reports when reports are used in connection with a credit or insurance transaction not initiated by the consumer. Written solicitations made to consumers regarding credit or insurance transactions not initiated by the consumer must include a “clear and conspicuous statement” that information from the consumer’s credit report was used in connection with the transaction; the consumer received the offer for credit or insurance because he or she satisfied specified criteria; and the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet additional criteria used to determine creditworthiness or insurability.<sup>74</sup> The statement must also include information about a consumer’s right to prohibit information contained in the consumer’s file from being used in connection with any transaction not initiated by the consumer and information on how the consumer may exercise this right.<sup>75</sup>

## Identity Theft Provisions

The FCRA was amended in 2003 to include a number of provisions aimed at preventing identity theft and assisting victims. These provisions mirror laws passed by state legislatures and create a national standard for addressing consumer concerns with regard to identity theft and other types of fraud.<sup>76</sup> They impose responsibilities on consumer reporting agencies, furnishers of information, and users of consumer credit reports, as well as providing consumers with rights with respect to protecting the information in their files and insuring that the information contained therein is accurate.

Credit card issuers, who operate as users of consumer credit reports, are required to follow certain procedures when the issuer receives a request for an additional or replacement card within a short period of time following notification of a change of address for the same account.<sup>77</sup> In a further effort to prevent identity theft, the truncation of credit card account numbers is required on electronically printed receipts,<sup>78</sup> and, upon request, the truncation of social security numbers on credit reports provided to a consumer.<sup>79</sup>

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<sup>72</sup> P.L. 108-159, Section 311.

<sup>73</sup> Id.

<sup>74</sup> 15 U.S.C. 1681m(d)(1).

<sup>75</sup> Id. See also 15 U.S.C. 1681b(e).

<sup>76</sup> Generally, many of these federal provisions preempt similar state laws. For more information on the preemptive effects of the Fair Credit Reporting Act, see CRS Report RS21449, *Fair Credit Reporting Act: Preemption of State Law*, by Margaret Mikyung Lee.

<sup>77</sup> 15 U.S.C. 1681m.

<sup>78</sup> 15 U.S.C. 1681c(g).

<sup>79</sup> 15 U.S.C. 1681g(a)(1)(A).

Consumers who have been victims of identity theft, or expect that they may become victims, are able to have fraud alerts placed in their files.<sup>80</sup> A consumer may request a fraud alert from one consumer reporting agency and that agency is required to notify the other nationwide consumer reporting agencies of the existence of the alert. In general, fraud alerts are to be maintained in the file for 90 days, but a consumer may request an extended alert which is maintained for up to seven years. The fraud alert becomes a part of the consumer's credit file and is thus passed along to all users of the report. The alert must also be included with any credit score generated using the consumer's file, and must be referred to other consumer reporting agencies.<sup>81</sup>

In addition to the fraud alert, victims of identity theft may also have information resulting from the crime blocked from their credit reports.<sup>82</sup> After the receipt of appropriate proof of the identity of the consumer, a copy of an identity theft report, the identification of the alleged fraudulent information, and statement by the consumer that the information is not information relating to any transaction conducted by the consumer, a consumer reporting agency must block all such information from being reported and must notify the furnisher of the information in question that it may be the result of identity theft. Requests for the blocking of information must also be referred to other consumer reporting agencies.<sup>83</sup>

Victims of identity theft are also allowed to request information about the alleged crime. A business entity is required, upon request and subject to verification of the victim's identity, to provide copies of application and business transaction records evidencing any transaction alleged to be a result of identity theft to the victim or to any law enforcement agency investigating the theft and authorized by the victim to take receipt of the records in question.<sup>84</sup>

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<sup>80</sup> 15 U.S.C. 1681c-1.

<sup>81</sup> 15 U.S.C. 1681s(f)(1).

<sup>82</sup> 15 U.S.C. 1681c-2.

<sup>83</sup> 15 U.S.C. 1681s(f)(1).

<sup>84</sup> 15 U.S.C. 1681g(e).