

FCRA REQUIREMENTS

FEDERAL FAIR CREDIT REPORTING ACT

– REVIEW OF SECTIONS THAT PERTAIN TO END USERS

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THE FCRA REGULATES THE OPERATIONS OF CONSUMER CREDIT REPORTING AGENCIES AND THE END USER OF THE INFORMATION. THE FOLLOWING ARE THE SECTIONS OF THE REGULATION SPECIFIC TO YOU THE END USER.

- § 604. Permissible Purposes of Reports
- § 607. Compliance Procedures
- § 615. Requirement on users of consumer reports
- § 616. Civil liability for willful noncompliance
- § 617. Civil liability for negligent noncompliance
- § 619. Obtaining information under false pretenses
- § 621. Administrative Enforcement
- § 623. Responsibilities of Furnishers of Information to Consumer Reporting Agencies
- § 628. Disposal of Records

3 § 604. PERMISSIBLE PURPOSES OF REPORTS

- 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.
- To a person which it has reason to believe with written authorization from the consumer who;
 - 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
 - Intends to use the information for employment purposes; or
- Otherwise has a legitimate business need for the information with authorization from the consumer;
 - In connection with a business transaction that is initiated by the consumer; or
 - To review an account to determine whether the consumer continues to meet the terms of the account.

4 § 607. COMPLIANCE PROCEDURES

- These procedures shall require that 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.
 - Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report.
 - No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604.
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5 § 615. REQUIREMENT ON USERS OF CONSUMER REPORTS

- Obtain Authorization from consumer to pull credit for a permissible purpose state in section 604
- Duties of users taking adverse actions on basis of information contained in consumer reports.— If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall—
 - (1) provide oral, written, or electronic notice of the adverse action to the consumer;
 - (2) provide to the consumer written or electronic disclosure—
 - (A) of a numerical credit score as defined in section 609(f)(2)(A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and
 - (3) provide to the consumer orally, in writing, or electronically—
 - (A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - (B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
 - (4) provide to the consumer an oral, written, or electronic notice of the consumer's right—
 - (A) to obtain, under section 612, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and
 - (B) to dispute, under section 611, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency

6 § 616. CIVIL LIABILITY FOR WILLFUL NONCOMPLIANCE

- This section concerns the greater degree of noncompliance—willful noncompliance. Section 616 states that any person, including a consumer reporting agency or user of its information, who willfully fails to comply with the FCRA can be liable to any consumer affected by the noncompliance. A key distinction between this provision and section 617 is the availability of statutory damages; consumers are not limited to actual damages. Courts may award statutory damages ranging from \$100 to \$1,000 per violation, as well as punitive damages and reasonable attorney's fees.
- **In general** — Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of--
 - (1)
 - (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$ 100 and not more than \$ 1,000; or
 - (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$ 1,000, whichever is greater;
 - (2) such amount of punitive damages as the court may allow; and
 - (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.
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7 § 617.CIVIL LIABILITY FOR NEGLIGENT NONCOMPLIANCE

The lesser degree of noncompliance—negligent noncompliance.

- **Section 617** states that any person, including a consumer reporting agency or user of its information, which is negligent in failing to comply with any requirement imposed by the FCRA is liable to the consumer for actual damages sustained by the consumer, court costs, and attorney's fees.

8 § 619.OBTAINING INFORMATION UNDER FALSE PRETENSES

- Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.
- Also, employers need to ensure that company employees do not access their own credit reports or those reports of any family member(s) or friend(s) unless it is in connection with a credit transaction or for another permissible purpose noted in Section 604.

9 § 621. ADMINISTRATIVE ENFORCEMENT

This section provides for “administrative” enforcement of the FCRA, meaning enforcement by federal and state agencies.

- For example, if you are a national bank, the agency that enforces the FCRA against you is the Comptroller of the Currency; if you are a federally chartered credit union, it is the National Credit Union Administration. For non-banks and most other financial institutions without a federal functional regulator, the enforcement agency is the Federal Trade Commission. In addition, the Consumer Financial Protection Bureau may enforce this statute against companies within its enforcement jurisdiction, such as non-bank lenders, debt collectors, and banks with assets of more than \$10 billion.
- Most agencies enforce the FCRA under their organic statutes, with all of the authority to obtain injunctions, penalties, or other relief that they otherwise would have. For example, the Consumer Financial Protection Bureau is able to obtain civil penalties of up to one million dollars per day for companies within its jurisdiction.
- Unlike the banking agencies and the Consumer Financial Protection Bureau, the Federal Trade Commission and state attorneys general are given special authority under the FCRA to obtain civil penalties for violations of the statute. The statute allows the Federal Trade Commission to obtain **\$3,993 in civil penalties** for each “knowing” violation of the FCRA that is part of a pattern or practice of violations, based on a January 2018 inflation adjustment to the maximum penalty figure. Recent settlement orders of the Federal Trade Commission, including orders against companies accused of data furnishing violations, have assessed civil penalties in excess of one million dollars.
- The Consumer Financial Protection Bureau can assess penalties in three tiers – **beginning at up to \$5,781 per violation, per day for the least serious law violations, and can escalate up to \$28,906 per violation, per day for reckless violations, and even up to \$1,156,242 per violation, per day for the most egregious violations, based on a January 2018 inflation adjustment to the maximum penalty figures.**
- State attorneys general also can enforce the FCRA, and can obtain statutory damages of up to \$1,000 for each negligent or willful violation, in addition to costs and attorney’s fees. A state attorney general must notify the appropriate federal agency before bringing an action under the FCRA, and must stand down while any federal action is pending against the same company.
- Both the Federal Trade Commission and a state attorney general can bring an action for a violation of the FCRA furnishing provisions, but they are both limited in their ability to obtain money damages or civil penalties:


10 § 623. RESPONSIBILITIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES

The Responsibilities of Furnishers of Information to Provide Accurate Information


- Prohibition of reporting inaccurate information.
- Duty to correct and update information. A person who
- Duty to provide notice of dispute.
- Duty to provide notice of closed accounts.
- Duty to Provide Notice of Delinquency of Accounts
- Duties of Furnishers Upon Notice of Identity Theft-Related Information
- Negative Information... Notice to Consumer Required
- Ability of Consumer to Dispute Information Directly with Furnisher
- Duty to provide notice of status as medical information furnisher.

II § 628. DISPOSAL OF RECORDS

Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

- Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.
 - Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.
 - After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of material, specifically identified as consumer information, in a manner consistent with this rule. In this context, due diligence could include reviewing an independent audit of the disposal company's operations and/or its compliance with this rule, obtaining information about the disposal company from several references or other reliable sources, requiring that the disposal company be certified by a recognized trade association or similar third party, reviewing and evaluating the disposal company's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the potential disposal company.
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12 SUMMARY OF SALIENT FACTS

- Consumer Credit Reports may be issued only if they are to be used for extending credit, review or collection of an account, employment purposes, underwriting insurance or in connection with some other legitimate business transaction such as in investment, partnership, etc.
 - To say it differently only pull consumer credit reports when it applies to an extension of credit or review of existing account AND you have the consumer's permission
 - DO NOT pull consumer reports on yourself, family members, friend, neighbors or any one unless it in regards to an extension of credit or review of existing account and you have the consumer's permission
 - If there is a signed application granting permission for the consumer report to be pulled, the inquiry on the file is valid. Thus the inquiry will not be removed.
 - An individual can receive a copy of their credit report at [AnnualCreditReport.com](https://www.annualcreditreport.com)
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I3 ADDITIONAL HANDOUTS

- FCRA Complete Regulation
- Command Credit's FCRA Requirement Acknowledgement
- When in doubt contact Command Credit Corp at
 - Toll Free 800.676.9705
 - email CS@commandcredit.net