

Dallas Area  
Compliance  
Association, Inc.

January 24, 2001

Privacy  
and  
FCRA



## Privacy & the Fair Credit Reporting Act

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## GLBA Privacy–Title V (Nov. 1999)

- Privacy Regulations Final - May 2000
- Implement by July 1, 2001
- Privacy Notices Must Be Given:
  - When Customer Relationship Begins & Annually
  - GLBA Privacy Notices Must Include Any FCRA disclosures
  - Privacy, Data Security & FCRA Regs must be considered together

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## Fair Credit Reporting Act (“FCRA”)

### Where can I find it?

- 15 U.S.C. Section 1681-1681u

### When was it passed?

- First effective: April 25, 1971, substantially modified 1996 & 1999

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### FCRA-What's it all about?

- Regulates Consumer Reporting Industry
- Defines What's a Consumer Report and who's a CRA?
- Restricts Use of Consumer Reports
- Sets Procedures in Case of Disputed Accuracy
- Prescribes Civil Liability for Noncompliance - \$1,000 Actual Plus Punitive Damages
- Enforced by FTC, Federal Banking Agencies, and States

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### FCRA Provisions in GLBA

1. GLBA restored regular FCRA exams
2. GLBA authorized joint FCRA rulemaking
3. Aim is consistent notice & opt-out
4. GLBA privacy disclosure must include the FCRA disclosures

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### FCRA Provisions in GLBA

- GLBA preempts State law on affiliate info sharing
- GLBA allows affiliate info sharing if disclosed
- Treasury reports to Congress by 2002 on affiliate info sharing
- GLBA has an FCRA preemption until 2004
- States can adopt stricter privacy protections

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**FCRA Proposed Regulations:**

**Joint Press Release**

(FRB, FDIC, OCC, OTS)  
October 20, 2000  
(Comments closed Dec. 4, 2000)

*“Consumer Protection Rules for  
Affiliate Sharing Practices”*

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**FCRA Information Coverage:**

**Restricts Disclosure of “Consumer Report”  
Information bearing on a Consumer’s:**

- Creditworthiness
  - Credit Standing
  - Credit Capacity
  - Character
  - General Reputation
  - Personal Characteristics
  - Mode of Living
- (if used for personal, family, or household  
credit, insurance or employment purposes)

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**FCRA Consumer Report**

**Doesn’t include:**

- Report of consumer transactions  
& experiences  
- with reporting institution
- Communication of transaction or  
experience info among affiliates
- Communication of other  
info among affiliates IF  
- disclosure & opt-out provided

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## Definition of Credit Reporting Agency:

- For monetary fees or on cooperative basis,
- Regularly engages in:
  - assembling or evaluating consumer credit info
  - for the purpose of furnishing consumer reports to 3<sup>rd</sup> parties
- Uses interstate commerce

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## Why I Don't Want to Be a Credit Reporting Agency:

- Heightened Duties and Restrictions
- Greater Penalties

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## Information Coverage

### FCRA Info Coverage Summary:

“Consumer Reports”

### GLBA Info Coverage Summary:

- All nonpublic personal financial information
- Includes transaction information & fact of relationship

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## Disclosure Coverage

### FCRA Disclosure Coverage:

Restricts disclosures to both affiliates & nonaffiliated third parties

### GLBA Disclosure Coverage:

Restricts disclosures to nonaffiliated third parties

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## FCRA Disclosure Restrictions:

### Bank becomes CRA

- IF it provides consumer report information
- to **affiliates** without providing consumer notice & opt out

### Bank becomes CRA

- IF it provides consumer report information
- to **nonaffiliates**

**NO NOTICE & OPT OUT EXCEPTION FOR NON-AFFILIATES**

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## GLBA Disclosure Restriction

### Bank prohibited from disclosing nonpublic personal information

- To **non-affiliates** (with exceptions)
- UNLESS Consumers given a privacy notice and opt out
- No GLBA privacy restrictions on affiliate info sharing

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## Opt Out Rights

### FCRA Opt Out Right:

- Consumers can limit sharing “consumer report” info
- with affiliates

### GLBA Opt Out Right:

- Consumers can limit sharing nonpublic personal info
- with non-affiliated third parties

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## Exceptions

### FCRA Exceptions:

- Allows banks to share freely transaction/affiliate info

### GLBA Exceptions:

- Affiliates
- Non-affiliated third party service providers/joint marketers
  - with disclosure & contractual restrictions on info reuse
- Processing & servicing
- Law enforcement, customer direction, etc.

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## What Goes in the FCRA Opt-Out Notice?

- Categories of consumer info that bank communicates to affiliates (bearing on creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living - and not solely transaction/experience info)
- Categories of affiliates that receive consumer info
- Consumer has ability to opt out

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## FCRA Opt-Out Notice

- Reasonable means for opt out
- Bank may allow partial opt out
- Bank may reserve right to disclose additional specified information in future or to add specified affiliates in future

**Opt Out Notice Must Be in Form  
to Be Retained by Consumer**

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## FCRA Regulation Provides Examples:

### Categories of opt out information

- From application
- From consumer credit report
- From verifying consumer representations
- Provided by another entity regarding employment, credit or other relationship

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## FCRA Regulation Provides Examples:

### Info within category:

- Income
- Credit score or history
- Open credit lines
- Employment history
- Marital status
- Medical history

**Sample Notice in Appendix A**

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## Clear & Conspicuous

A. "Reasonably understandable"

**AND**

B. "Designed to call attention to the nature & significance of the information"

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## Reasonably Understandable

- Clear & concise sentences
- Bullet lists
- Everyday words, active voice
- No multiple negatives
- No jargon
- Not ambiguous

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## Designed to Call Attention

- Plain-language headings
- Easy-to-read type face & size
- Wide margins & line spacing
- Key words in bold or italics
- If used with other notices, must be distinguished
- Requirements for notice on web page

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### Reasonable Opportunity to Opt Out

**Reasonable time following delivery of opt out notice**

**Examples:**

- In Person – 30 days after delivery
- By Mail – 30 days after mailing
- Electronically – 30 days after acknowledgment of receipt

**May Opt Out at Any Time**

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### Reasonably Convenient Methods

- Check Off Box
- Reply Form
- Electronic means
- Toll free telephone number

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### Unreasonable Methods

- Write Your Own Letter
- Only Posting in Lobby
- Only Oral Description

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## Joint Notices

- **Joint Notice** with Affiliates is Okay
- **Joint Relationships:** Single Notice /Any Consumer can Opt-Out
- **Bank's Option:** Apply Opt-Out to all or one consumer for joint account

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## Timing Issues

- **Time By Which Opt Out Must Be Honored:** As Soon As Reasonably Practicable
- **Opt Out Effective until revoked**
- **New Relationship requires new notice & opt-out opportunity**
- **No Discrimination for Opt Out**

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## FCRA Resources

- **OCC AL-99-3 (March 29, 1999)**
  - This analysis does not reflect GLBA changes, but it does give very helpful background.
- **Fair Credit Reporting Act Examination Procedures**
  - OCC Bulletin 2000-1 (Jan. 12, 2000)
- **OCC Bulletin 2000-25 (Sept. 8, 2000)**
  - Good Summary of GLBA Privacy Provisions & Other Laws
  - (FCRA, EFTA, RFP, Children's Online Privacy Act)
  - Comparison of GLBA & FCRA Disclosure Provisions

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## FCRA Resources

### Other FCRA Actions Expected:

- Final Rule
- Advance Notice of Proposed Rulemaking for FCRA issues other than affiliate info sharing
- Review of Joint Q&A on FCRA (issued 1971)
- FTC Interpretations under FCRA (currently proposed)

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## Appendices

- Joint Press Release on FCRA Proposed Regulation (Oct. 20, 2000)
- Article: "Fair Credit Reporting Act - Privacy Issues Give It New Focus"
- OCC Bulletin 2000-25 (Sept. 8, 2000) - "Privacy Laws & Regulations"
- GLBA Financial Privacy Outline - Ann Graham

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