

Business & Law Newsletter

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When an insurance company or creditor relies, in whole or in part, on a credit report to offer less than the most favorable terms available, notice must be provided to the consumer.

ARE YOU PREPARED FOR THE FACTA?

Recently, national credit reporting agencies, such as Trans Union, Experian, and Equifax, have begun the geographically staggered process of offering a free credit report to every consumer in the United States. Credit reporting agencies were given this task by Congress after passage of legislation that affects not only credit reporting agencies, but also the creditors who furnish information about consumers. The passage of the Fair and Accurate Credit Transactions Act (FACTA) is only the second time that the Fair Credit Reporting Act (FCRA) has been amended in its 35 year history. The following are some of the changes implemented by the FACTA. Most of them became effective on January 1, 2005.

DUTY TO PROVIDE ACCURATE INFORMATION

The FCRA prohibited creditors from providing information about consumers that the furnisher “knew or consciously avoided knowing is inaccurate.” That obtuse language has been replaced with concise language that clearly identifies a furnisher’s responsibility. The FACTA provides that a furnisher cannot report information that it “knows or has reasonable cause to believe is inaccurate.” Reasonable cause to believe is defined by the FACTA to include those instances where the furnisher has specific knowledge, separate from the representations made by the consumer, which would cause a reasonable person to doubt the accuracy of the information.

DUTY TO INVESTIGATE CONSUMER DISPUTES

Under the FCRA, a consumer can dispute inaccurate information with a credit reporting agency. Generally, the credit reporting agency is required to conduct a reinvestigation of the disputed information by contacting the creditor to determine the accuracy of the information and report the results of the reinvestigation to the consumer. The FACTA has expanded that procedure. The FACTA allows a consumer to directly dispute the accuracy of their accounts with the creditor. Therefore, upon receipt of a dispute from a consumer, a creditor will be required to conduct a reinvestigation of the disputed information and report the results of that reinvestigation to the consumer. Further, if the creditor discovers inaccuracies, it must report the corrected information to credit reporting agencies to which the information was previously furnished.

GUIDELINES FOR IDENTIFYING IDENTITY THEFT

One of the new identity theft provisions in the FACTA calls for federal agencies to issue regulations requiring financial institutions and creditors to

establish reasonable policies and procedures for implementing guidelines regarding identity theft. The FACTA imposes special verification procedures when a credit card issuer receives a notification of a change of address from a cardholder and subsequently receives a request for an additional or replacement card. When such a request is received the issuer must verify the validity of the request within 30 days.

RISK BASED PRICING NOTICE

Under the FCRA when a creditor offers a consumer insurance or credit at a higher rate than it provided to a majority of its other customers, it was unclear whether the creditor had to provide notice to the consumer or explain the higher rate. The FACTA has changed that. Now, when an insurance company or creditor relies, in whole or in part, on a credit report to offer less than the most favorable terms available, notice must be provided to the consumer. The consumer must be provided with the identity of the credit reporting agency and an explanation of how the information affected the terms the consumer was offered. This notice can be given orally, electronically, or in writing.

FACTA increases consumer protections against identity theft and moves to enhance the accuracy of consumer credit information.

DISCLOSURE OF ADVERSE INFORMATION

When a creditor provides adverse credit information to one of the three national credit reporting agencies, it must notify the consumer. The notice must be given within thirty days after reporting the adverse information. Notice need only be given once in relation to a particular account. This provision is intended to lessen the time and money spent by consumers to monitor negative information being reported on their credit file.

PROCEDURES TO PREVENT REFURNISHING INFORMATION RESULTING FROM IDENTITY THEFT

Under the FACTA, a creditor must have reasonable procedures in place to prevent refurnishing information that it has been notified is the result of identity theft. The consumer can trigger this responsibility by notifying the furnisher directly regarding the fraudulent information.

OPT-OUT PROVISIONS

The FCRA's opt-out provisions are expanded by the FACTA. The FACTA, beyond providing identity theft protection, also requires that consumers be allowed to opt-out of having their personal information used for marketing purposes. Once in place, the opt-out election is effective for five years.

**FOR MORE INFORMATION
ON THIS TOPIC,
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STATUTE OF LIMITATIONS

Another important change relates to the statute of limitations. The FACTA has extended the statute of limitations on claims from two years to as long as five years from the date of the violation in some cases. This change will require creditors and credit reporting agencies to maintain records for six years. As a result, those entities should revise their record retention policies accordingly.

PREEMPTION OF STATE LAW

Importantly, the FACTA extends the FCRA's preemption of state credit reporting laws that are inconsistent with the FACTA.

TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS ON RECEIPTS

Beginning in 2006 for new cash registers and 2008 for older cash registers, the FACTA will prohibit businesses that accept credit cards from printing the entire account number on the receipt. Businesses will be prohibited from printing any more than the last five digits of the card number or the expiration date of the card on electronically printed receipts at the point of sale.

CONCLUSION

Generally, FACTA increases consumer protections against identity theft and moves to enhance the accuracy of consumer credit information. Everyone involved in the credit reporting system, not just credit reporting agencies, is affected. If you have a business, chances are it is impacted in some way by the FACTA. Becoming familiar with the requirements of the FACTA will help protect your business and ensure its compliance with the new legislation. ■

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