

FTC FACTS for Business



As an insurer, you may use consumer reports to underwrite insurance policies and to screen high-risk applicants — as long as you comply with the Fair Credit Reporting Act (FCRA).

The Act

The FCRA is designed to protect the privacy of consumer report information and to guarantee that the information supplied by credit reporting agencies (CRAs) is as accurate as possible. Consumer reports may include information on an applicant's credit history, medical conditions, driving record, criminal activity, and hazardous sports. Amendments to the FCRA, which went into effect September 30, 1997, increase the legal obligations of insurers who use consumer reports.

The Adverse Action Notice

The following disclosure requirement applies to new applicants as well as current policy holders. When an adverse action is taken—such as a decision to deny insurance, increase rates, or terminate a policy—and it is based solely or partly on information in a consumer report, Section 615(a) of the FCRA requires you to provide a notice of the adverse action to the consumer. The notice must include:

- ✓ the name, address, and telephone number of the CRA that supplied the consumer report, including the toll-free telephone number for credit bureaus that maintain files nationwide;
- ✓ a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and
- ✓ a notice of the individual's right to dispute the accuracy or completeness of any information the CRA furnished, and the consumer's right to a free report from the CRA upon request within 60 days.

Disclosure of this information is important because some consumer reports may contain errors. The adverse action notice is required even if information in the consumer report was not the main reason for the denial or rate increase. Even if the information in the report played only a small part in the overall decision, the applicant still must be notified.

While written adverse action notices are not required, many insurers provide them and keep copies for two years to show compliance with the FCRA.

Examples

The following examples illustrate situations where the adverse action notice must be given to insurance applicants.

A life insurance company orders a consumer report from a CRA, such as the Medical Information Bureau (MIB). Information contained in the MIB report leads to further investigation of the applicant. The application for insurance is rated or declined in whole or in part because of information obtained from the investigation.

Section 604(g) of the FCRA requires an insurance company, or any other user of medical information, to get the consumer's consent — orally, electronically, or in writing — before obtaining medical information. That means the life insurance company in this situation would have to get the consumer's consent before obtaining the consumer report from the MIB. In addition, since the MIB report formed part of the basis for the adverse decision in this case, the full Section 615(a) adverse action notice described above must be sent to the consumer.

A person with an unfavorable credit history, such as a bankruptcy, is denied automobile insurance at standard rates. Although the credit history was considered in the decision, the applicant's limited driving experience was even more important.

The applicant is entitled to the Section 615(a) adverse action notice because the credit report played a part, however minor, in the insurer's decision to charge a higher premium.

Non-compliance with the FCRA

There are legal consequences for insurers who fail to get an applicant's permission before requesting a consumer report or who fail to provide required disclosure notices. The FCRA allows individuals to sue insurers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the states may sue insurers for non-compliance and obtain civil penalties.

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

Your Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

FEDERAL TRADE COMMISSION	FOR THE CONSUMER
1-877-FTC-HELP	www.ftc.gov

Federal Trade Commission
Bureau of Consumer Protection
Office of Consumer and Business Education

October 1998