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Translating the Fair Credit Reporting Act

TRANSLATING THE FAIR CREDIT REPORTING ACT

BY RICHARD M. KOON*

In this extremely timely article Richard M. Koon examines the newest federal consumer protection legislation to emerge on the legal scene. The use of consumer credit information has assumed gigantic proportions in recent years creating a situation in which the individual consumer is virtually powerless to protect his credit status. Since our society is so largely dependent on credit transactions, an individual's credit rating may actually be more valuable to him than other "property" more carefully protected by the law. Within the framework of the obvious importance of credit transactions, Mr. Koon shows the workings of the Fair Credit Reporting Act and its effect on consumers, lenders and "credit reporting agencies."

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I. SCOPE AND APPLICATION

THE Fair Credit Reporting Act¹ became effective nationwide on April 25, 1971. This Act, which is Title VI of The Consumer Credit Protection Act (containing, among other things, the Truth In Lending Act, as Title I), was signed by the President on October 26, 1970, culminating almost 5 years of congressional inquiry and testimony concerning America's credit reporting industry and the use of its reports by businesses.

The avowed purpose of the Act is to insure that information concerning consumer credit, personnel, insurance and re-

¹ Act of October 26, 1970, Pub. L. No. 91-508, § 601, 84 Stat. 1127, 15 U.S.C.A. § 1681 (1971).

[The Act, as it appears in U.S.C.A. differs, though insignificantly, from the Act as published in *Statutes at Large*. On the assumption that U.S.C.A. is more accessible, all citations conform to that source. See appendix B for the text of the Act. *Statutes at Large* should be consulted where the official text is desired. See appendix A for a table of parallel citations. — Ed.]

lated matter is disseminated by credit reporting agencies in a manner "which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information"²

In an effort to accomplish this purpose, the Act imposes restrictions on the contents and dissemination of credit reports and requires that consumers be given notice of and access to the information on file against them at credit reporting agencies. Further, the Act provides that a consumer may prepare a statement rebutting any information in his credit file at any credit reporting agency as to which there is a legitimate dispute.

The Act covers only credit reports on "individuals" — as opposed to reports dealing with such entities as partnerships, corporations, trusts and estates.³ Some authorities feel that a credit report compiled solely for use in a strictly commercial transaction would not be covered by the Act even though covering an "individual."⁴ Examples would be credit reports compiled in connection with an individual seeking credit to purchase a business, or to purchase inventory and other goods for use in his business, or to purchase a large apartment house. However, it is submitted that the language of the Act leaves the matter sufficiently in doubt⁵ so that all reports bearing on the credit of an individual must be considered as being within the scope of the Act without regard to the purpose for which the report is sought. It is to be hoped that this matter

² 15 U.S.C.A. § 1681 (b) (1971).

³ The Act is concerned broadly with credit and general reputation information on "consumers." The term "consumer" is defined through a process of elimination by reference to 15 U.S.C.A. §§ 1681a (a), (b), to exclude corporations, partnerships, trusts, estates and the like.

⁴ See COMMITTEE ON BANKING AND CURRENCY, FAIR CREDIT REPORTING, S. REP. NO. 517, 91st Cong., 1st Sess. 1 (1969), wherein Senator Proxmire states that "the bill does not cover business credit reports or business insurance reports."

⁵ The Act's restrictions primarily deal with the furnishing, contents and use of "consumer reports." 15 U.S.C.A. § 1681a (d) (1971) provides generally that a consumer report is any communication bearing on a consumer's credit worthiness, character, or general reputation used or expected to be used in whole or in part as a factor in establishing the consumer's eligibility for "(3) other purposes authorized under section 1681b" Among the purposes authorized under § 1681b is that found under (3) (E) thereof stating "a legitimate business need for the information in connection with a business transaction involving the consumer." The reference from § 1681a to § 1681b is likely a creature of inattentive draftsmanship rather than design, but now, having become a part of the law of the land, it must be reckoned with. It is at least arguable that a "consumer report" includes a report issued "in connection with a business transaction involving the consumer."

will be clarified through regulations or interpretations issued under the Act in the future."

For the purpose of determining what must be done to insure compliance with the Act, businesses may be broken down into two categories: (1) users of credit reports, and (2) consumers reporting agencies (issuers of consumer reports). It is much to the advantage of any persons or entities extending credit, dealing in insurance or considering a person for employment to avoid consumer reporting agency classification for the reason that the Act places many more restrictions and duties upon these agencies than upon mere users of credit information.⁷ In general, a "consumer reporting agency" is defined by the Act as an entity which regularly furnishes "consumer reports" to third parties.⁸ A "user" of credit reports may be defined as any entity making a determination as to an individual's eligibility for credit, insurance, employment, or other business consideration based upon the applicant's credit worthiness or general character and reputation.⁹

II. AVOIDING "CONSUMER REPORTING AGENCY" STATUS

Since it is to the user's advantage to avoid consumer reporting agency status, it is important to examine just how this may be accomplished.

A "consumer reporting agency" is defined by section 1681a(f) of the Act as including any entity which "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"¹⁰ whether for fee or in a cooperative venture where interstate commerce is used.

⁶ Unfortunately, the Act does not direct or even authorize formulation of regulations to assist in its implementation as did § 105 of the Truth In Lending Act, 15 U.S.C. § 1604 (1970). Griffith L. Garwood, an attorney with the Federal Reserve Board's Division of Supervision and Regulation of the Truth In Lending Act, stated, in an address to the American Bankers Association's 30th National Installment Credit Conference in Miami Beach, Florida, that the Fair Credit Reporting Act's application to banking activities was so uncertain that information was being prepared for the Board's examining staff and other banking agencies to aid in the Act's interpretation. Garwood said it was *his belief* that this information, when completed, would be distributed to banks as a guide for developing procedures and an insight as to how the agencies view the Act.

⁷ Compare the discussion in Part III with that in Part IV.

⁸ 15 U.S.C.A. § 1681a (f) (1971).

⁹ *Id.* § 1681a (d).

¹⁰ *Id.* § 1681a.

A. Information for Internal Use and Not for Dissemination

Thus, one of the keys to avoiding agency status is whether or not the information is being handled for the "purpose of furnishing consumer reports to third parties." If the information is being assembled or evaluated for the business' own use and not for transmittal to third parties, the business does not fall within the definition of a "consumer reporting agency." A business may request, for its own use, information from other businesses or banks concerning their dealings with a particular customer. As long as the business limits the use of the information garnered from others to its own application and does not disseminate it to third parties, it will not become a "consumer reporting agency." Such dissemination on a very infrequent basis might be permissible as long as it avoids the "regularly engages in" requirement. The act of seeking credit information from other businesses and banks might seem to constitute "assembling or evaluating" consumer credit information; however, as long as the information is strictly for the business' own use, such assembling or evaluating cannot be said to be for the purpose of furnishing consumer reports "to third parties."

B. Information Not Classified as a "Consumer Report"

Similarly, if the material being assembled and or furnished by the business does not come within the Act's definition of a "consumer report" the business would not be considered a "consumer reporting agency." According to the Act, a "consumer report" is a communication, written, oral, or otherwise by a "consumer reporting agency"¹¹ bearing on a consumer's "credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living" which is "used or expected to be used or collected in whole or in part for the purpose of serving as a factor for":¹²

- (1) establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes;¹³

¹¹ Herein lies the Act's resurrection of the age-old question involving the chicken and the egg. A "consumer reporting agency" may be loosely defined as an entity which furnishes "consumer reports" to third parties. Simple enough; but a "consumer report" is something supplied by a "consumer reporting agency". And so we go back to the beginning. It seems necessary to quietly ignore the phrase "consumer reporting agency" in the definition of a "consumer report" and to simply conclude that if a communication otherwise meets the Act's definition of a consumer report, it is unimportant who has furnished it.

¹² 15 U.S.C.A. § 1681a (d) (1971).

¹³ *Id.* §1681a (d) (1).

- (2) employment purposes;¹⁴
- (3) determining the consumer's eligibility for certain licenses granted by a governmental instrumentality;¹⁵ or
- (4) meeting any other "legitimate business needs" in connection with a "business transaction" involving the consumer.¹⁶

The term "consumer report" *does not include*:

- (1) any report containing information solely as to transactions or experiences between the consumer and the reporter;
- (2) any authorization, approval, or denial of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or
- (3) any report in which a person conveys to a third party his decision with respect to a specific extension of credit directly or indirectly to a consumer if such third party requested such credit extension and he advises the consumer of the name and address of the person to whom the request was made and the person reporting makes the disclosures to the consumer required under section 1681m of the Act.¹⁷

In this particular instance it is more important to analyze the exclusions than the inclusions.

1. Information Solely as to Transactions Between Reporter and Consumer

Perhaps the most important of the exclusions is the first one listed dealing with information solely as to transactions between the reporter and the consumer. For example, a report by business A to a credit reporting agency or to another business covering only A's experience with the consumer would not be a "consumer report," and the dissemination of this information to a third party, even on a regular basis, would not make A a "consumer reporting agency." This should be contrasted with the situation where business A has received information from another bank or business regarding the credit worthiness of consumer X and A then passes this information

¹⁴ *Id.* § 1681a (d) (2).

¹⁵ *Id.* § 1681b (3) (D).

¹⁶ *Id.* § 1681b (3) (E).

¹⁷ *Id.* § 1681a (d). A further example of a report which would not be a "consumer report" is a real estate appraisal. This presumably does not bear on the "credit worthiness" of the consumer, even though as a practical matter the greater the appraised value over the amount of the loan sought, the greater the chances of its approval.

on to a third party separately or along with information regarding its own experiences. This "passing on" of information dealing with experiences of other companies with consumer X would cause business A to be held to the requirements of a "consumer reporting agency," unless the passing of information was done very infrequently. Similarly, were a business to whom A gave a report on its dealings with consumer X to pass that information along to yet a third party, this transfer would result in the information being characterized as a consumer report, and the institution so passing along A's credit information might, depending upon the frequency of such actions, fall within the classification of a "consumer reporting agency."

2. Specific Extension of Credit by Issuer of Credit Card

One example of the "specific credit extension" exclusion would be the communications between a retail merchant and a bank concerning authorization or approval for an extension of credit to a consumer on a particular Master Charge or Bank Americard purchase. The bank's reply to such an inquiry would not be construed as a "consumer report."

3. Specific Extensions of Credit When Requested by a "Third Party"

A somewhat related exclusion is provided for a communication between a retail merchant and a bank or other lender concerning authorization or approval for an extension of credit to a consumer on a particular purchase where a credit card is not involved.¹⁸ This occurs, where the merchant wants the bank to simply buy the financing from the merchant or extend financing in the first instance on a closed-end transaction. There are, however, two important conditions of notification attached with regard to this third exclusion. An example might be if an automobile dealer contacted a bank to see if the bank would be willing to finance the purchase of an automobile by consumer X. The bank's reply to the automobile dealer would not be construed to be a "consumer report" and the bank would not be considered a "consumer reporting

¹⁸ But for this specific exclusion in the Act, such a communication (whether oral or written) whereby the lender conveys to the third party its acceptance or rejection of the specific credit extension sought by the third party on behalf of a potential borrower, would subject the lender to a "consumer reporting agency" status (unless the report was based solely on the application or the Bank's own experience with the potential borrower as discussed in Part II., B., 1).

agency" as long as (1) the automobile dealer advised consumer X of the name and address of the bank; and (2) the bank, if it declined to extend the credit (or otherwise increased the cost therefor), gave consumer X the information required by section 1681m of the Act.¹⁹

The difficulty lenders will experience in trying to police "third parties" to insure compliance with requirement (1) is evident. The closer the relationship between the lender and third party, the greater will be the effort required in this regard by the lender. If the adverse action notification is furnished, a failure to meet requirement (1) would seem of little consequence. It will in any event be necessary for lenders to make certain they have obtained the consumer's exact name and address from the "third party" so that the requisite notification may be given. A nonviable alternative suggested by some people is to have the "third party" give the notification to the consumer as the lender's agent, with a copy to the lender.²⁰

¹⁹ See the discussion of the § 1681m requirements in Part III, B. A recent trade publication put out for use by bankers states emphatically that third party, or in our example, the automobile dealer, has the responsibility for giving the consumer the § 1681m notification. The publication goes on to report that many banks have decided to send a rejection notice to the dealer carrying the required information with a carbon copy to the consumer, retaining another copy for their files. The publication says that yet other banks are hesitant to follow this policy as they feel they will become consumer reporting agencies by virtue of having sent the duplicate notice to the consumer. It is submitted that this entire approach is contrary to the terms of the Act, if not good sense. Section 1681a (d) (C) dealing with exclusions from the definition of "consumer reports" sets up as one of the conditions to the specific credit transaction exclusion the requirement that "the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under § 1681m . . ." It seems clear that the reference to "such person" is back to "the person" rather than to "the third party". Since "the person" refers to the financial institution contracted by the dealer, it is obvious that the requirement to make the § 1681m disclosure falls upon that same institution.

²⁰ However, at least one Denver area bank is refusing to tell its dealers, in the third party situation, the reason for the bank's decision to reject the credit application made by the dealer on behalf of his customer. This same bank is however, conveying its reasons to the customer, as required by §§ 1681a(d) (C) and 1681m. Apparently, the reason for the bank's refusal to so advise the inquiring dealer is that it somehow believes it will become subject to consumer reporting agency status by so doing. Not only does this create a rather sticky situation between the bank and the inquiring dealer, but it also seems to lose sight of the purpose of § 1681a(d) (C) which is of course to allow such communication between a lending institution and a third party without the lending institution being considered a consumer reporting agency.

III. EFFECT OF THE ACT ON USERS OF CREDIT INFORMATION

The Act will affect the personnel and procedures employed by users of credit information in four main areas:²¹

- (1) the procedures followed in sharing credit information with representatives of "outside" organizations;²²
- (2) the form used in notifying customers of the rejection of their credit, insurance, or employment application, or of an increase in the charge for obtaining the same, and the necessity for giving such notification;²³
- (3) the necessity for disclosing to customers the nature of the credit information in the user's credit files in limited instances;²⁴
- (4) pre-notification of investigative consumer reports.²⁵

A. *Prohibition Against Dissemination of "Outside" Credit Information*

In order to avoid classification as a consumer reporting agency, the personnel of business entities attempting to effect such an avoidance must be given strict instructions to prevent any "passing on" of credit information from one "outside" source to another. This problem was discussed in more detail in Part II., B.1; however, in summary, business A may pass on to user B information concerning A's experience with consumer X. A may not pass on to B information concerning consumer X which A obtained from business C. Nor may A pass on to any other entity information contained in a credit report obtained on consumer X. Except for the "specific transaction" exclusions discussed earlier, the only credit information which business A may pass on to another entity concerning consumer X is that based upon A's own experiences with the consumer.

Unfortunately, many institutions are taking the restrictions against dissemination of credit information to mean that they may no longer rate consumers when requested for information.

²¹ Of course, credit report users will feel the effects of the Act in certain other areas, such as with the contents of the credit reports they receive from credit reporting agencies, with regard to the reluctance of other users to share credit information (both founded and unfounded) and with regard to requests from consumer reporting agencies that the user certify the purpose for which information is being sought in connection with a request of the agency for a credit report.

²² 15 U.S.C.A. §§ 1681a (d), (f) (1971).

²³ *Id.* § 1681m.

²⁴ *Id.* § 1681m (b).

²⁵ *Id.* § 1681d.

One of the theories advanced in support of this refusal argues that by saying a consumer is "good," "slow," or "unsatisfactory," a business is giving an opinion as to the consumer's worthiness and is therefore acting as a consumer reporting agency. Such an argument is ultra-conservative and cannot be backed up by reference to the Act, as long as the rating deals only with the consumer's payment history with the reporting business. Obviously, a business must avoid making an overall opinion as to a consumer's credit worthiness based on everything in its files, which might well include credit reports, ratings from other businesses, and the like. However, as long as the reporting business' response is specifically limited to a rating of the consumer's performance with that business only, consumer reporting agency status will not attach.

There are certain customer relations reasons which might justify refusal to rate consumers; however, they should be weighed against the effect such a refusal by all businesses will have upon the practices of the credit industry as a whole. One such reason is simply that rating consumers has gradually become a very time-consuming headache, and many businesses are all too happy to have found an excuse for eliminating the procedure. Still another reason offered, and one which has at least some relationship to the Fair Credit Reporting Act, is that since consumers now have much better access to their credit files, businesses no longer wish to express opinions which might get back to their customers and ultimately result in some customer dissatisfaction.

B. Notification of Adverse Action with Regard to Credit, Insurance or Employment Application

The Act requires that rather specific information be furnished in each instance where a credit or insurance application is rejected, or the cost of the same increased,²⁶ on the basis of "credit information" obtained from an "outside" source providing the applicant was an "individual" and the "primary purpose" for the credit or insurance was "personal, family or

²⁶ It likely will be quite difficult in any given situation to prove that adverse credit information resulted in the cost of the credit being increased, *e.g.*, through a stepup in the normal discount rate or an increase in the normal interest rate. This is particularly true in today's money market where both the discount rate and the interest rate fluctuate rapidly. A rather novel suggestion has been made that the charge for credit has been increased any time a lender determines that a customer is eligible for a loan only if the amortization period is lengthened to reduce the monthly payments. It is argued that the charge has been increased for obtaining the credit because the total interest paid for borrowing the particular amount of money will be greater when the money is paid back over a longer period of time.

household.”²⁷ This same requirement is imposed for certain employment rejections. It is important to note, however, that such adverse action based on other than “credit information” or based solely on the lender’s past experiences with the borrower, and in no way dependent upon credit information from outsiders, is not covered by this requirement. Further, if the loan or insurance was for use in a strictly commercial transaction, special notice of adverse action would not be required even though the applicant might be an “individual.”²⁸

The precise language which should be used in the notification varies depending upon whether the credit information upon which the decision was wholly or partially based came from (1) a consumer reporting agency²⁹ or (2) information obtained directly by the lender’s personnel from outside sources other than a consumer reporting agency,³⁰ such as information requests sent out to area banks and merchants.

1. Adverse Action Based on a Report From a Consumer Reporting Agency

In the event of a turn-down, increase in charges on a loan or insurance application, or rejection of an employment application based on a consumer report by a consumer reporting agency, it is suggested that the language below should be used following the introductory paragraph (in which the applicant is regrettably advised of the action taken):

This action was influenced by information in a consumer report, made at our request, by XYZ Credit Co.
[address] a [national] [local] company specializing in the compilation of credit information.

It is then incumbent upon the applicant to examine his files at the named credit agency if he wishes any additional information. The user in this instance is not required by the Act to give the applicant any further information concerning the contents of the credit report it has secured.

While the Act does not cover this point, apparently the user acts at his peril in determining whether a particular source of credit information is a consumer reporting agency, thus, requiring the user to divulge the name and address of the institution, or merely a non-agency outside source — as discussed in Part III., B., 2. below — in which case such information need not be given. Certainly many consumer report-

²⁷ 15 U.S.C.A. § 1681m (a) (1971).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* § 1681m (b).

ing agencies will be readily identifiable, and an accurate determination may be made as to others by simply examining the type of information they have furnished. For example, if a particular source has furnished information concerning credit transactions of the consumer with entities other than those strictly with the reporting institution, that institution is a consumer reporting agency, and the rejecting user must give the consumer the name and address of such source. The problem is further compounded by the fact that some entities may be consumer reporting agencies without knowing it.

A users may receive some measure of protection by adopting the following procedures:

- (1) writing a letter to all of its primary credit correspondents requesting written notification as to whether or not they are operating as consumer reporting agencies and
- (2) requesting written notification of a credit correspondent's status as a part of the form letter sent with each request for information on any consumer.

Aid could also be brought to this rather difficult area in the form of improvement in the current legislation which would (1) require anyone answering a request for credit information to disclose whether or not they are consumer reporting agencies and (2) provide that a user of credit information is not subject to penalty for failure to comply with section 1681m(a) of the Act when the credit informant indicated it was not a consumer reporting agency and the credit user had no reason to believe otherwise.

2. Adverse Action Based on Credit Information from Outside Source Other Than Consumer Reporting Agency

If adverse action on a credit application is based upon credit information which the business obtained on its own from outside sources other than a consumer reporting agency, the business has a responsibility in addition to merely notifying the applicant of this fact. At the time it notifies the customer of the adverse action taken, it must advise him of his right to make a written request, within 60 days for a disclosure of the nature of the information upon which the action was based.³¹

³¹ *Id.*

It is important to note that no such notification need be made to insurance or employment applicants when the rejection or increase in cost is based upon credit information from sources other than a consumer reporting agency.³² Thus, as nonsensical as it may seem, the notification requirements discussed in relation to reports by a credit reporting agency apply whenever the subject of the application is credit, insurance, or employment, whereas the notification requirements discussed here apply only when the application is for credit.

The following language is proposed for use when the adverse action is based upon credit information obtained from outside sources other than consumer reporting agencies:

This action was influenced by information contained in credit reports made available to us at our request. Upon written request, received within 60 days from the date of this letter, additional information will be provided to you as to the nature of the reports we received and upon which our decision was based.

3. Exceptions to Notice Requirement

There are three general situations where it will not be necessary to give the "rejection notification" described above.³³

a. *Commercial Transactions.*

No notification is required in connection with a loan or insurance application where the primary purpose is "commercial" rather than "personal, family or household."³⁴ Examples might be a loan for the purchase of an apartment house, office building or other commercial establishment, or a loan for improvement of the same. Further examples would include purchase of merchandise for resale or for use in a business. While no rules, regulations, or interpretations have yet been promulgated under the Fair Credit Reporting Act, the Truth in Lending Act keys certain of its provisions to a similar requirement that the credit transaction be for "personal, family or household" uses,³⁵ and it may be assumed that regulations and rulings interpreting the provision in that Act will be useful guidelines to possible interpretation under the Fair Credit Reporting Act.

³² *Id.*

³³ *Id.* § 1681m.

³⁴ *Id.* § 1681m (a).

³⁵ See § 103 (h) of the Truth In Lending Act, 15 U.S.C. § 1602 (h) (1970); § 226.2 (k) of Regulation Z, 12 C.F.R. § 226.2 (k); and § 226.3 (a) of Regulation Z, 12 C.F.R. § 226.3 (a).

b. Adverse Action Based Solely on the Business' Past Experiences.

Adverse action strictly on the basis of the business' past experiences with the customer or information contained in the application, even though some of that information obviously deals with the applicant's credit standing, does not require use of the special notification.³⁶ To take advantage of this exception it will be necessary that businesses first examine the application and their own files for past dealings with the applicant before ordering a consumer report from an agency or otherwise seeking outside credit information. If a credit report is obtained, as has often been done in the past, purely as a routine matter, it will be difficult if not impossible to convincingly assert that the information in such a report did not play a part in the adverse decision.

c. Adverse Action Not Based on "Credit Information."

Adverse action strictly on the basis of facts which would not be classified as "credit information" does not require a special rejection notification.³⁷ Examples might be a loan application turned down as a result of such things as the inadequacy of the lot size, failure of the rooms to meet FHA or VA specifications, undesirable location of the property, inadequacy of the collateral (regardless of the person's credit picture), or related reasons.

4. Special Problems

A number of special problems are created and then left unresolved by the Act with regard to which of several parties involved in a particular transaction should assume responsibility for giving notification.

For example, when a prospective homeowner makes application with a lender for an FHA loan, the lending institution frequently acts as little more than a compiler of credit information which is used to complete the necessary government forms which are then sent on to the FHA authorities. Included with these materials will typically be a credit report secured from a consumer reporting agency. It is then left up to the FHA to grant or deny the application. In the event the application is rejected, the question arises as to who should give the rejection notice, the lending institution or the FHA, and what

³⁶ 15 U.S.C.A. §§ 1681m (a), (b) (1971).

³⁷ *Id.* § 1681m (b).

form the notice should take. The lending institution did not make the decision to reject the loan, so why should they furnish notice to the consumer? On the other hand, the consumer did not apply for a loan from the FHA (which of course does not furnish the funds even had the loan been accepted, but rather only guarantees repayment), and the credit would actually have been extended by the lending institution. Another concern is the possibility that the lender might be nothing more than the "third party" as discussed in Part II., B., 3. dealing with the specific transaction exclusion. In that case the lender would not be required to advise the consumer of rejection of his application, but rather must advise the consumer that application has been made with the FHA.

The potential for a similar, although distinguishable, situation arises each time a prospective home purchaser makes an application for a loan through a mortgage broker. In such instances, the broker typically has the consumer fill out an application form, secures a credit report on the consumer and an appraisal on the real property involved. These materials are then sent to one or more money sources, such as insurance companies, in an effort to place the loan. It is not clear whether a rejection notification, in the event one is forthcoming, should be sent by the broker or by the money source to whom the consumer's application was forwarded. There is reason to feel that the responsibility for the rejection notification should fall upon the mortgage broker since it has the more direct contact with the consumer. On the other hand, perhaps this is another situation where the broker is merely acting as a third party in which case the insurance company must give notice of the rejection, and the mortgage broker must simply advise the consumer that his application was forwarded to the particular insurance company involved. This problem is compounded by the fact that it is not unusual for a particular application to be rejected by one or more money sources before the loan is finally placed by the broker. In such cases, the question comes up as to whether or not the consumer is entitled to any notice of rejection since his loan was ultimately placed.

Yet another problem may arise in either of the situations discussed above. In both instances credit information obtained from outside sources, usually credit bureaus, is being "passed on" to third parties. It is this passing on, as discussed above in Part II., A., which, at least if done on a regular basis, will

result in the "passer" being classified as a consumer reporting agency. Again the specific transaction exclusion discussed in Part II., B., 3. may allow the lender or the broker to avoid such classification; however, it is effective only when the two conditions specified are met: the third party advised the applicant of the name of the institution to whom the application was sent, and the latter institution gave the consumer notice of the rejection. The most rational way to avoid this problem would seem to be to characterize the broker or lending institution as the agent for the entity to whom the information is passed.³⁸

Similarly, what happens when a real estate agent calls the mortgage lender and gives certain background information on a prospective purchaser and asks whether or not the lender would be able to make the necessary loan? If the lender declines on the basis of credit information in its files or on the basis of a very hasty and preliminary credit check, is this a case for application of the specific transaction exclusion so that the real estate company, in the posture of a third party, is required to advise the potential purchaser of the inquiry, and the lending institution is required to give the consumer notice of rejection?

5. Observations

It is not at all clear why the Act requires notification to a consumer when he is rejected for insurance, employment, or the charge for obtaining the insurance is increased when such action was based upon information in a consumer report from a consumer reporting agency but does not require such notification when the action was based upon credit information obtained from sources other than a consumer reporting agency. The absence of a rational basis for making this distinction again suggests the possibility of inattentive legislative draftsmanship. Another puzzlement is the fact that when a consumer reporting agency is involved the customer is not given notice of his right to receive a clear and accurate disclosure, upon request, of the nature, substance, sources, and recipients of information in his credit file. It is true that this right is given by the Act³⁹ without regard to whether or not any adverse action has been taken; however, it is very naive to

³⁸ A request has already been made of the federal agencies having enforcement responsibilities under the Act with respect to banking institutions for a clarification of the guidelines on this point.

³⁹ 15 U.S.C.A. §§1681g, 1681h (1971).

assume that consumers will be aware of this. Certainly it would seem that this should be brought to their attention whenever adverse action, as discussed above, has been taken.

C. Scope of Consumer's Right to Access of Files of Credit Report Users.

Although there seems to be some misunderstanding among merchants and bankers on this point, the Fair Credit Reporting Act does not give consumers an unlimited right of access to their credit files wherever they may be found. In fact, the consumer's right in this area is quite limited.

First of all, the Act does not give consumers a right to view the physical material in their credit files in any circumstance. The Act does, as discussed in Part IV., C., require credit reporting agencies, upon request by a consumer, to "clearly and accurately" disclose the "nature and substance" of the information in their files on the consumer including the source of the information and certain other facts.⁴⁰ Businesses which are able to avoid the consumer reporting agency classification may maintain the secrecy of their credit files except under the limited circumstances discussed in Part III., B., 2. dealing with adverse action on a consumer's credit application. Even in that limited instance the burden is upon the consumer to make written request for the information no later than 60 days after notification of the adverse action. In compliance with such a timely request a credit report user need only disclose to the consumer the "nature of the information" upon which the adverse action was based.⁴¹ Direct access to credit files is not required. While the language of the Act is somewhat vague, at least one favorable advisory opinion has been noted in which the staff attorneys of the Federal Trade Commission approved rather generalized responses along the lines of the following:⁴²

Information received from a local bank shows that you have overdrawn your checking account numerous times within the past few months.

Information received from certain area (department stores, banks, etc.) has shown that your payments are consistently late.

Inquiry made of a local (department store, finance company, etc.) indicated that your account with them had been

⁴⁰ *Id.*

⁴¹ *Id.* § 1681m (b).

⁴² This was a "hearsay" situation and should only serve as a guide — not as counsel.

placed with a collection agency as a result of your failure to make payment as required.

D. *Investigative Consumer Reports — Pre-Notification*

An "investigative consumer report" is defined by section 1681a(e) of the Act as a consumer report or portion thereof containing information on a consumer's "character, general reputation, personal characteristics, or mode of living [when] obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information." Specifically *excluded* from this category is factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency which in turn obtained the information directly from a creditor of the consumer or the consumer himself. The features that distinguish an *investigative* consumer report are the type of information compiled and the fact that this information is derived through personal interviews with friends, neighbors, or associates of the consumer, rather than garnered from other creditors or the consumer himself.

Anytime a business wishes to procure an investigative consumer report for any purpose (except employment as discussed below), it must, within 3 days after the date on which the report is first requested, disclose to the consumer that such a report may be made and will or may include information as to his character, general reputation, personal characteristics, and mode of living.⁴³ This disclosure must also advise the consumer of his right to request, within a reasonable period of time, a complete and accurate disclosure of the nature and scope of the requested investigation. This notice must be in writing and must be mailed or otherwise delivered to the consumer. In the event the consumer makes such a written request, the information must be furnished to him within 5 days after receipt of his request.⁴⁴

An exception to this pre-notification requirement is provided when the report is to be used for employment for which the consumer has *not* specifically applied.⁴⁵ A common example of this would be when a consumer was considered for advancement within the organization for which he was then

⁴³ 15 U.S.C.A. § 1681d (a) (1) (1971).

⁴⁴ *Id.* § 1681d (b).

⁴⁵ *Id.* § 1681d (a) (2).

employed. Keep in mind that this pre-notification is not required in all "consumer reports" but only in the event the lender will or may seek an "investigative" report.

If the business requests investigative consumer reports with any frequency, it should give consideration to satisfying the pre-notification requirement through the use of language inserted in one of the loan application forms or in a similar form routinely completed and signed by applicants. The following language is suggested for inclusion in such application forms:

A routine inquiry may be made during the next few days in connection with this loan application. This inquiry typically concerns information on an applicant's character, general reputation, personal characteristics and mode of living and may entail personal interviews with your neighbors, friends, or associates. Upon written request, additional information as to the nature and scope of such a report, if one is made, will be provided.

In the event an application is received by mail and no personal contact with the consumer is anticipated pre-notification can be handled in the first series of acknowledgment correspondence from the lender to the applicant. A sample introductory paragraph sufficient for this purpose follows:

We appreciate your recent application for (issuance of a Master Charge Credit Card, a home improvement loan, a motor vehicle installment loan, employment, etc.) and are expediting it as you read this. As a part of our normal procedure for processing applications, a routine inquiry may be made during the next few days. This inquiry typically concerns information on an applicant's character, general reputation, personal characteristics, and mode of living and may entail personal interviews with your neighbors, friends, or associates. Upon written request, additional information as to the nature and scope of such a report, if one is made, will be provided.

IV. EFFECT OF THE ACT ON CONSUMER REPORTING AGENCIES

As mentioned earlier, the Fair Credit Reporting Act imposes many more restrictions upon consumer reporting agencies than upon mere users of credit information. A detailed discussion of the restrictions and requirement imposed upon these agencies is not included since most businesses will insure that their activities are sufficiently limited to avoid that classification. On the other hand, since credit users will deal with consumer reporting agencies in requesting credit information, a general understanding of the application of the new Act to these institutions is provided.

A. Permissible Purposes for Which Reports May Be Furnished

The Act specifies the purposes for which a consumer reporting agency may furnish a consumer report.⁴⁶ Except for these listed purposes a credit reporting agency may not issue a credit report unless in response to a court order or in accordance with the written instructions of the consumer.⁴⁷ The Act also requires the agency to maintain "reasonable procedures" designed to insure compliance with this restriction.⁴⁸ In general, the agency's compliance procedures will include requirements that prospective users of the information identify themselves, that they certify the purposes for which the information is sought, and that it will be used for no other purpose. The agency must make a reasonable effort to verify the identity and certified uses of any new prospective user prior to furnishing a report. If the agency has reasonable grounds for believing the consumer report will not be used for one of the prescribed purposes, it must refuse to furnish the report.

B. Information in Credit File

1. Obsolete Information

A consumer reporting agency may not issue a report containing any information relating to accounts placed for collection or charged to profit and loss, paid tax liens, suits, judgments, or any other adverse items which antedate the report by more than 7 years.⁴⁹ Further, records of arrest, indictment, or conviction of crime which, from date of disposition, release or parole, antedate the report by more than 7 years

⁴⁶ 15 U.S.C.A. § 1681b (1971). The permissible purposes are:

- (A) in connection with an extension of credit to, or review or collection of an account of the consumer on whom the information is to be furnished; or
- (B) for employment purposes; or
- (C) in connection with the underwriting of insurance involving the consumer; or
- (D) in connection with a determination of the consumer's eligibility for certain government licenses or other benefits; or
- (E) to a person who otherwise has a "legitimate business need for the information in connection with a business transaction involving the consumer.

Pending the issuance of regulations or judicial determination, the exact limits of the fifth category as listed above and as discussed in Part I, are uncertain.

It is interesting to note that § 1681f states that:

Notwithstanding the provisions of § 1681b, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

⁴⁷ 15 U.S.C.A. §§ 1681b (1), (2) (1971).

⁴⁸ *Id.* § 1681e.

⁴⁹ *Id.* § 1681c (a).

may not be included.⁵⁰ Neither will bankruptcies be included where the date of adjudication was more than 14 years prior to issuance of the report. These restrictions against including such outdated information in a credit report are not applicable when the report is issued in connection with a credit transaction which may reasonably involve a principal amount of \$50,000 or more, the underwriting of insurance where the face amount may reasonably be \$50,000 or more, or employment of an individual at an annual salary of \$20,000 or more.⁵¹

2. Public Record Information

In addition to satisfying the obsolescence requirements, a consumer reporting agency which furnishes a consumer report for employment purposes (as opposed to credit or other purposes) containing information on the consumer which is a matter of public record (such as arrests, indictments, convictions, suits, tax liens, and outstanding judgments) likely to have an adverse effect upon the person's ability to obtain employment must maintain strict procedures to insure that such public record information is complete and up to date as of the time of issuance of the report.⁵² If the credit reporting agency does not maintain such procedures it must, at the time the information is reported, notify the consumer of the name and address of the user to whom the report is being transmitted and further notify him of the fact that such public record information is contained therein.⁵³

There seems to be no rational basis for limiting the need for updating public record information to instances of employment applications.

⁵⁰ This 7-year limitation placed upon reports of criminal arrests, indictment and conviction, will work a particular hardship with regard to the employment practices of banks. 12 U.S.C. § 1829 (1964) provides that without written consent of the FIC, no person who has been convicted of any criminal offense involving dishonesty or breach of trust shall serve as a director, officer, or employee of a bank whose deposits are FDIC insured. It will now be much more difficult for banks to learn whether any of their prospective employees have a record of any such convictions more than 7 years in the past, unless the job for which they are being considered carries with it an annual salary of \$20,000 or more. Even in that latter instance, it is quite possible that credit reporting agencies will simply refuse to keep records of such information to avoid its accidental dissemination in the wrong situation.

⁵¹ 15 U.S.C.A. § 1681c (b) (1971).

⁵² *Id.* § 1681k (2).

⁵³ *Id.* § 1681k (1).

3. Verification of Information in Investigative Consumer Report

On those occasions when a consumer reporting agency is preparing an investigative consumer report for inclusion in a consumer report it must verify all adverse information (other than information which is matter of public record) received more than 3 months prior to the date of the report.⁵⁴

C. Consumer's Right of Access to and Correction of His Credit File

Upon the request of any consumer a consumer reporting agency must "clearly and accurately" disclose to the consumer the nature and substance of all information in its files on the consumer, the source of the information (except as to sources of information used solely in preparing an investigative consumer report), and the name of the recipient of any consumer report which the agency has furnished either for employment purposes within the last 2 years or for any purpose within the 6-month period immediately preceding the request.⁵⁵ The requirement regarding disclosure of sources of information and recipients does not apply to information received or consumer reports furnished prior to April 25, 1971, except to the extent the matter involved may have been retained in the agency's files on the date of the request.⁵⁶

A consumer wishing to so examine his credit file may do so in person⁵⁷ or by telephone (if he has made a prior written request with proper identification)⁵⁸ during normal business hours and upon reasonable notice.⁵⁹ The agency is required

⁵⁴ *Id.* § 1681l. It is not clear whether the verification requirement can be satisfied by simply contacting the sources through which the information was acquired originally or whether the reporting agency must take some action to confirm the earlier reports on a firsthand basis. Considerations of practicality suggest the latter.

⁵⁵ *Id.* § 1681g (a). The necessity for consumer reporting agencies to keep complete, clear, and accurate records is very evident. For example, a record must be kept of every telephone inquiry in response to which information is furnished on a consumer so that, when required, the agency will be able to disclose to the consumer a complete list of all recipients of reports on him.

⁵⁶ *Id.* § 1681g (b). This provision will permit consumer reporting agencies to remove certain information from their files prior to April 25 to allow the agencies to honor previous commitments that information was given on a confidential basis. If the information is expunged from the file before the effective date of the Act, the agency need not disclose the sources or recipients thereof.

⁵⁷ *Id.* § 1681h (b) (1).

⁵⁸ *Id.* § 1681h (b) (2).

⁵⁹ *Id.* § 1681h (a). If the consumer merely wants to review his credit file and is not responding to a section 1681m notice, "the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer" *Id.* § 1681j.

to provide a trained person to explain to the consumer the information which must be furnished to him.⁶⁰ A consumer may be accompanied by one other person of his choosing.⁶¹

If the consumer directly advises the agency of any question he has as to the completeness and accuracy of any item contained in his file, the agency must within a reasonable period of time investigate the matter unless it has reasonable grounds to believe the dispute is frivolous or irrelevant.⁶² If upon reinvestigation the material is found to be inaccurate or can no longer be verified, the agency must promptly delete it.⁶³ If upon reinvestigation the dispute is still not resolved, a consumer may file a brief statement setting forth the nature of the dispute.⁶⁴ Unless the agency has reasonable grounds to believe that the statement is frivolous or irrelevant, it must, in any subsequent consumer report containing the disputed information, clearly note the dispute and provide either the consumer's statement or a "clear and accurate codification or summary thereof."⁶⁵ In addition, at the request of the consumer, the agency must give a similar notice to any "users" specifically designated by the consumer, who have received a consumer report for employment purposes within the past 2 years or for any other purpose within the last 6 months.⁶⁶ The agency must "clearly and conspicuously" disclose to the consumer his right to make such a request.

V. PENALTIES AND ENFORCEMENT

Section 1681h(e) of the Act⁶⁷ provides that no consumer may bring suit against a consumer reporting agency, user, or

⁶⁰ 15 U.S.C.A. § 1681h (c).

⁶¹ *Id.* § 1681h (b). The agency may, however, require the consumer to furnish a written statement granting permission to the agency to discuss the consumer's file in the presence of such other person.

⁶² *Id.* § 1681i (a). It is provided that the presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

⁶³ *Id.*

⁶⁴ *Id.* § 1681i (b).

⁶⁵ *Id.* § 1681i (c).

⁶⁶ *Id.* § 1681i (d).

⁶⁷ It is interesting to speculate what change this provision of the Act will have on state libel laws. With certain exceptions, the publication either negligently or wilfully and with malice, to a third person of any defamatory material concerning an individual would generally be actionable if it proved damaging to the libelee. It would appear that § 1681h (e) changes the law so that regardless of whether or not the libelee has been damaged, he will have no action against the publisher of the defamatory statement, unless he can show malice or wilful intent to injure, if the publication upon which he relies was made by or to a consumer reporting agency or the user of credit reports, and if the fact of the libel came to the libelee's attention as a result of disclosures being made to him pursuant to the requirements of the Fair Credit Reporting Act.

any person who furnishes information to an agency, based on information disclosed pursuant to the creditor's access provisions discussed above except as to "false information furnished with malice or willful attempt to injure" the consumer.

This provision does not, however, prevent an action by a consumer against an agency or user which "negligently"⁶⁸ or "willfully"⁶⁹ fails to comply with any requirement imposed by the Act. In an action based on "willful noncompliance," the consumer may recover actual damages and attorneys' fees as well as punitive damages,⁷⁰ whereas in an action based upon negligent noncompliance, no punitive damages are recoverable.⁷¹ A 2-year statute of limitations is provided for bringing such actions although the date upon which the 2 years begins to run will vary with the circumstances.⁷²

Criminal penalties are provided for any person who "knowingly and willfully obtains information from a consumer reporting agency under false pretenses."⁷³ The same penalties are provided for "[a]ny officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information. . . ."⁷⁴

While the Federal Trade Commission has primary enforcement responsibility,⁷⁵ other agencies are charged with enforcement of the Act with respect to certain institutions such as banks, savings and loan associations, common carriers, and others.⁷⁶

⁶⁸ *Id.* § 1681o.

⁶⁹ *Id.* § 1681n.

⁷⁰ *Id.* § 1681m.

⁷¹ *Id.* § 1681o.

⁷² *Id.* § 1681p. Section 1681p provides that the action may be brought within two years from the date on which the liability arises, except that where a defendant has materially and wilfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

Any discussion of the liability of a credit report user for failure to make the notification required by § 1681m of the Act, must take into consideration subpart (c) thereof which provides that there shall be no liability for violation if the user shows by a "preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure the compliance. . . ."

⁷³ *Id.* § 1681q (emphasis added).

⁷⁴ *Id.* § 1681r (emphasis added).

⁷⁵ *Id.* § 1681s (a).

⁷⁶ *Id.* § 1681s (b).

VI. SUMMARY

It remains to be seen whether or not the Act will successfully serve its purpose.⁷⁷ With the current clamor to do away with the negative option sales gimmicks⁷⁸ in frequent use in today's marketplace, it is difficult to understand why that same technique was employed in the Act. If the purpose of the Act is really to apprise the consumer of the nature of any derogatory information on file against him, why not require the business rejecting his application to provide a narrative summary, or complete a checklist, giving the consumer specifics as to the reason for the lender's decision. Apparently, this approach is too straightforward. Instead, the consumer is told that if he wants to go to the bother of making a written request, and if he does so within 60 days of receipt of the rejection notification, he may learn the "nature" of the information on file against him. The likelihood of such a written request being made is remote at best.

The situation is worse when the credit rejection is based upon information obtained from a credit reporting agency. In such a case the consumer is given no indication whatsoever that he has the right to review the materials in the agency's files. The law provides the consumer with such a right without regard to whether or not he has made a recent credit application or has recently been denied an extension of credit, but the law does not require anyone to advise the consumer of that right. Even saying that the consumer will be the last to know optimistically presupposes that he will ever know.

APPENDIX A

FAIR CREDIT REPORTING ACT

TABLE OF PARALLEL CITATIONS

15 U.S.C.A. §§	Act of October 26, 1970, Pub. L. No.
	91-508, §§
	601, 84 Stat. 1127
1681	602, 84 Stat. 1128
1681a	603, 84 Stat. 1128

⁷⁷ See text accompanying note 2 *supra*.

⁷⁸ The negative option sales gimmick is a *nom d'art* referring to the tactic employed by some record clubs, book clubs, etc. whereby a seller sends its unsolicited product to the consumer who then has the burden of refusing (and often returning) the item to preclude becoming a purchaser.

1681b	604, 84 Stat.	1129
1681c	605, 84 Stat.	1129
1681d	606, 84 Stat.	1130
1681e	607, 84 Stat.	1130
1681f	608, 84 Stat.	1131
1681g	609, 84 Stat.	1131
1681h	610, 84 Stat.	1131
1681i	611, 84 Stat.	1132
1681j	612, 84 Stat.	1132
1681k	613, 84 Stat.	1133
1681l	614, 84 Stat.	1133
1681m	615, 84 Stat.	1133
1681n	616, 84 Stat.	1134
1681o	617, 84 Stat.	1134
1681p	618, 84 Stat.	1134
1681q	619, 84 Stat.	1134
1681r	620, 84 Stat.	1134
1681s	621, 84 Stat.	1134
1681t	622, 84 Stat.	1136

APPENDIX B

FAIR CREDIT REPORTING ACT 15 U.S.C.A.

§ 1681. Congressional findings and statement of purpose

(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of this subchapter 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 in accordance with the requirements of this subchapter.

Pub.L. 90-321, Title VI, § 602, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.

§ 1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 1681m of this title.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means 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.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

§ 1681b. Permissible purposes of consumer reports

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) 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

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) 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 instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

Pub.L. 90-321, Title VI, § 604, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1129.

§ 1681c. Reporting of obsolete information prohibited

(a) Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) of this section, are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve a principal amount of \$50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$20,000, or more.

Pub.L. 90-321, Title VI, § 605, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1129.

§ 1681d. Disclosure of investigative consumer reports

(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a) (1) of this section, shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

Pub.L. 90-321, Title VI, § 606, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.

§ 1681e. Compliance procedures

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. 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 1681b of this title.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

Pub.L. 90-321, Title VI, § 607, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.

§ 1681f. Disclosures to governmental agencies

Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency. Pub.L. 90-321, Title VI, § 608, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.

§ 1681g. Disclosures to consumers

(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished—

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

Pub.L. 90-321, Title VI, § 609, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.

§ 1681h. Conditions of disclosure to consumers — Times and notice

(a) A consumer reporting agency shall make the disclosures required under section 1681g of this title during normal business hours and on reasonable notice.

Identification of consumer

(b) The disclosures required under section 1681g of this title shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

Trained personnel

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 1681g of this title.

Persons accompanying consumer

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

Limitation of liability

(e) Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, except as to false information furnished with malice or willful intent to injure such consumer. Pub.L. 90-321, Title VI, § 610, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.

§ 1681i. Procedure in case of disputed accuracy — Dispute; re-investigation

(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

Statement of dispute

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

Notification of consumer dispute in subsequent consumer reports

(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

Notification of deletion of disputed information

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a

consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

Pub.L. 90-321, Title VI, § 611, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1132.

§ 1681j. Charge for disclosures

A consumer reporting agency shall make all disclosures pursuant to section 1681g of this title and furnish all consumer reports pursuant to section 1681i(d) of this title without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 1681m of this title or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g or 1681i(d) of this title. Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 1681g of this title, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 1681i(d) of this title, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

Pub.L. 90-321, Title VI, § 612, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1132.

§ 1681k. Public record information for employment purposes

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designated to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

Pub.L. 90-321, Title VI, § 613, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.

§ 1681l. Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

Pub.L. 90-321, Title VI § 614, as added, Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.

§ 1681m. Requirements on users of consumer reports — Adverse action based on reports of consumer reporting agencies

(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

Adverse action based on reports of persons other than consumer reporting agencies

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

Reasonable procedures to assure compliance

(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b) of this section.

Pub.L. 90-321, Title VI, § 615, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.

§ 1681n. Civil liability for willful noncompliance

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of failure;

(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.

Pub.L. 90-321, Title VI, § 616, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.

§ 1681o. Civil liability for negligent noncompliance

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) 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.

Pub.L. 90-321, Title VI, § 617, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

Pub.L. 90-321, Title VI, § 618, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.

§ 1681q. 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 not more than \$5,000 or imprisoned not more than one year, or both.

Pub.L. 90-321, Title VI, § 619, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.

§ 1681r. Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

Pub.L. 90-321, Title VI, § 620, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.

§ 1681s. Administrative enforcement—Federal Trade Commission: powers

(a) Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter

is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement by the Federal Trade Commission under section 45(b) of this title with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

Other administrative bodies

(b) Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) section 1818 of Title 12, in the case of:

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 1464(d) of Title 12, section 1730 of Title 12, and sections 1426(i) and 1437 of Title 12, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 226 of Title 7), by the Secretary of Agriculture with respect to any activities subject to that Act.

Enforcement under other authority

(c) For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law.

Pub.L. 90-321, Title VI, § 621, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.

§ 1681t. Relation to State laws

This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

Pub.L. 90-321, Title VI, § 622, as added Pub.L. 91-508, Title VI, § 601, Oct. 26, 1970, 84 Stat. 1136.