

# Contents

## Volume 1

About the Companion Website, Other Search Options . . . . . ix

### Chapter 1

#### Introduction

1.1 About This Treatise . . . . .	1
1.1.1 Introduction . . . . .	1
1.1.2 Structure of the Treatise . . . . .	2
1.1.3 Clearinghouse and Other Citations . . . . .	3
1.1.4 Updates . . . . .	4
1.2 About Credit Reporting. . . . .	4
1.2.1 Terminology and Convention. . . . .	4
1.2.2 About the Industry. . . . .	4
1.3 About the FCRA . . . . .	6
1.3.1 Overview . . . . .	6
1.3.2 FCRA Litigation . . . . .	7
1.3.3 Federal Agency Interpretations of the FCRA . . . . .	7
1.3.3.1 FCRA Regulations . . . . .	7
1.3.3.1.1 The FCRA's rulemaking scheme and history . . . . .	7
1.3.3.1.2 Summary of current FCRA regulations . . . . .	8
1.3.3.1.3 Courts' failure to give deference to FTC regulations . . . . .	9
1.3.3.2 FTC Interpretations . . . . .	10
1.3.3.2.1 FTC Staff Summary/Official Staff Commentary . . . . .	10
1.3.3.2.2 FTC Informal Opinion Letters . . . . .	11
1.3.3.2.3 FTC Studies . . . . .	11
1.4 FCRA Legislative History . . . . .	11
1.4.1 Introduction . . . . .	11
1.4.2 Early Legislative History. . . . .	12
1.4.3 Senate Bill 823 . . . . .	13
1.4.4 Passage of the Fair Credit Reporting Act. . . . .	16
1.4.5 FCRA Amendments Before the Consumer Credit Reporting Act of 1996 . . . . .	16
1.4.6 The Consumer Credit Reporting Reform Act of 1996 . . . . .	17
1.4.7 1997 and 1999 Amendments . . . . .	21
1.4.8 The USA PATRIOT Act . . . . .	21
1.4.9 The Fair and Accurate Credit Transactions Act of 2003 . . . . .	21
1.4.9.1 Legislative History . . . . .	21
1.4.9.2 Key Provisions. . . . .	23
1.4.10 Amendments Between FACTA and the Dodd-Frank Act. . . . .	24
1.4.10.1 Post-FACTA National Security Amendments . . . . .	24
1.4.10.2 Credit and Debit Card Truncation Clarification Act . . . . .	24
1.4.10.3 The Credit CARD Act Amendments to the FCRA . . . . .	24
1.4.11 The Dodd-Frank Act. . . . .	25
1.4.12 The Red Flag Program Clarification Act of 2010. . . . .	25

## Chapter 2

## Scope: Consumer Reports and Consumer Reporting Agencies

2.1	Introduction . . . . .	27
2.1.1	Definitions Analyzed in This Chapter . . . . .	27
2.1.2	Concepts Analyzed in Other Chapters . . . . .	27
2.2	FCRA Applies to “Consumers” . . . . .	28
2.3	Is a “Consumer Report” Involved? . . . . .	28
2.3.1	Overview . . . . .	28
2.3.1.1	General . . . . .	28
2.3.1.2	A Consumer Report Compared to a Consumer’s File; Credit Scores . . . . .	29
2.3.2	Information Must Be Communicated by a “Consumer Reporting Agency” . . . . .	29
2.3.3	Report Must Bear On and Identify a Consumer . . . . .	29
2.3.3.1	General . . . . .	29
2.3.3.2	Coded Lists . . . . .	29
2.3.3.3	Reports on Businesses Are Generally Not Consumer Reports . . . . .	30
2.3.4	Information Must Bear On a Consumer’s Creditworthiness, Credit Standing or Capacity, Character, Reputation, Personal Characteristics, or Mode of Living . . . . .	30
2.3.4.1	General . . . . .	30
2.3.4.2	Identifying Information and Credit Header Information . . . . .	32
2.3.4.2.1	General . . . . .	32
2.3.4.2.2	Gramm-Leach-Bliley Act restrictions on disclosure of “credit header” information . . . . .	33
2.3.4.2.3	Prescreening lists . . . . .	34
2.3.4.2.4	Inquiry reports and trigger lists . . . . .	34
2.3.5	Information Must Be Used, Expected to Be Used, or Collected for Certain Purposes . . . . .	35
2.3.5.1	General . . . . .	35
2.3.5.2	Partial Use of a Prior Consumer Report Makes New Report a Consumer Report . . . . .	36
2.3.5.3	Expected Use of Information . . . . .	36
2.3.5.4	Purpose for Collecting Information . . . . .	38
2.3.6	Purposes That Make Information a Consumer Report . . . . .	39
2.3.6.1	General . . . . .	39
2.3.6.2	Reports on Individuals When Used for Business Purposes . . . . .	39
2.3.6.3	Credit Purposes . . . . .	41
2.3.6.3.1	General . . . . .	41
2.3.6.3.2	Check writing, check approval, and similar lists . . . . .	43
2.3.6.3.3	Tenant screening reports . . . . .	44
2.3.6.4	Employment Reports . . . . .	45
2.3.6.4.1	General . . . . .	45
2.3.6.4.2	Employment agency and employee misconduct investigation report exceptions . . . . .	46
2.3.6.5	Insurance Reports . . . . .	46
2.3.6.5.1	Insurance underwriting purposes . . . . .	46
2.3.6.5.2	Insurance claims reports . . . . .	47
2.3.6.6	Governmental Licenses and Benefits . . . . .	48
2.3.6.7	Risk Assessment of Current Obligations . . . . .	49
2.3.6.8	Legitimate Business Need for Information . . . . .	49
2.3.6.9	Government Determination of Child Support Payment Levels . . . . .	50
2.3.6.10	Use by FDIC or NCUA in Resolving Failed Institution . . . . .	50
2.4	Statutory Exemptions to Definition of Consumer Report . . . . .	51
2.4.1	Overview . . . . .	51
2.4.2	When Report Based on First-Hand Experience . . . . .	51
2.4.3	Information Shared by Affiliates . . . . .	52

Contents

2.4.3.1	Types of Affiliate Sharing Excluded from Definition of Consumer Report. . . . .	52
2.4.3.2	Right to Opt Out from Affiliate Sharing . . . . .	53
2.4.3.2.1	Two opt-out rights for affiliate sharing . . . . .	53
2.4.3.2.2	Opt-out right for affiliate sharing of third-party information . . .	53
2.4.3.2.3	Opt-out right for affiliate sharing for marketing purposes . . . .	54
2.4.3.2.4	Preemption of state regulation of affiliate sharing . . . . .	54
2.4.4	Certain Employment Reports . . . . .	54
2.4.4.1	Employee Misconduct Investigation Reports . . . . .	54
2.4.4.2	Employment Agency Communications . . . . .	55
2.4.4.2.1	Overview . . . . .	55
2.4.4.2.2	Investigative report . . . . .	56
2.4.4.2.3	Made for purposes of employment procurement . . . . .	56
2.4.4.2.4	Regularly performs employment procurement services . . . . .	56
2.4.4.2.5	Consumer consent and required disclosures . . . . .	56
2.4.5	Credit Card Issuer’s Authorization to Extend Credit. . . . .	56
2.4.6	Conveying Decision to Party Who Requested That Creditor Extend Credit to Consumer. . . . .	57
2.5	The Consumer Reporting Agency . . . . .	58
2.5.1	General . . . . .	58
2.5.2	“Any Person Which, For Monetary Fees, Dues, or on a Cooperative Nonprofit Basis” . . . . .	58
2.5.3	“Regularly Engages . . . in . . . Assembling or Evaluating . . . Information on Consumers For the Purpose of Furnishing” Consumer Reports . . . . .	59
2.5.3.1	Regularly Engages . . . . .	59
2.5.3.2	Assemble or Evaluate . . . . .	59
2.5.4	“For the Purpose Of” . . . . .	61
2.5.4.1	General . . . . .	61
2.5.4.2	Purposes That Do Not Make an Entity a Consumer Reporting Agency . . . . .	61
2.5.4.3	Evasion of Purpose Requirement . . . . .	62
2.5.5	Furnishing Consumer Reports to Third Party . . . . .	63
2.5.6	Exception for Joint Lenders and Users . . . . .	64
2.5.7	Exception for Federal Government Agencies . . . . .	64
2.5.8	State and Local Government Agencies . . . . .	64
2.6	The FCRA Distinguishes Special Types of Consumer Reporting Agencies . . . . .	65
2.6.1	“Nationwide” Consumer Reporting Agencies . . . . .	65
2.6.1.1	General . . . . .	65
2.6.1.2	Responsibilities of Nationwide Consumer Reporting Agencies . . . . .	66
2.6.1.3	The Circumvention Rule . . . . .	66
2.6.2	Nationwide Specialty Consumer Reporting Agencies . . . . .	67
2.6.2.1	General . . . . .	67
2.6.2.2	Types of Nationwide Specialty Consumer Reporting Agencies: Medical Information, Tenant Screening, and Check Writing Agencies . . .	67
2.6.3	Resellers of Consumer Reports . . . . .	68
2.6.3.1	Overview. . . . .	68
2.6.3.2	FCRA Coverage of Resellers . . . . .	68
2.6.3.3	Duties of Resellers . . . . .	69
2.6.4	Trucker Database Services. . . . .	70
2.7	Examples of Consumer Reporting Agencies . . . . .	70
2.7.1	Credit Bureaus, Inspection Bureaus, and Consumer Reporting Agencies Collecting Public Record Data . . . . .	70
2.7.2	Creditors As Consumer Reporting Agencies . . . . .	70
2.7.3	Specialty CRAs. . . . .	71
2.7.4	Collection Agencies and Credit Bureau Collection Departments. . . . .	71

2.7.5 Data Brokers. . . . . 71  
2.7.6 Detective and Employment Agencies, Employers . . . . . 72  
2.7.7 College Placement Offices. . . . . 73  
2.7.8 Attorneys . . . . . 73  
2.7.9 Accident Reporting Bureaus and Compilers of Insurance Claim Lists . . . . . 73  
2.7.10 Telephone Companies. . . . . 74  
2.7.11 Alternative Credit Bureaus. . . . . 74  
2.7.12 Retailer Database Services. . . . . 74  
2.7.13 Internet, Mobile, and Reward Program Data Mining and Marketing  
Companies . . . . . 75

Chapter 3

Obtaining and Examining a Report of the Consumer’s File

3.1 Introduction. . . . . 77  
3.1.1 Overview . . . . . 77  
3.1.2 Reasons to Obtain Disclosure of a Consumer’s File. . . . . 77  
3.2 What Is Contained in a Consumer Reporting File . . . . . 78  
3.2.1 Investigative Reports Distinguished from Consumer Reports . . . . . 78  
3.2.2 Few Limits on Information That May Be Gathered and Filed on Consumers . . . . . 78  
3.2.3 Information Found in Files with the “Big Three” Nationwide Consumer  
Reporting Agencies . . . . . 79  
3.2.3.1 Introduction . . . . . 79  
3.2.3.2 Information Found in the File . . . . . 79  
3.2.3.2.1 Overview . . . . . 79  
3.2.3.2.2 Identification or “header” information . . . . . 79  
3.2.3.2.3 Credit Account or “tradeline” information. . . . . 79  
3.2.3.2.4 Public record information . . . . . 80  
3.2.3.2.5 Inquiries . . . . . 80  
3.2.3.2.6 Other information . . . . . 80  
3.2.3.3 Sources of Information in the File . . . . . 80  
3.2.4 Information Found in Files at More Specialized Reporting Agencies . . . . . 81  
3.3 Consumer’s Right to Access the Consumer’s File . . . . . 82  
3.3.1 Access from a User . . . . . 82  
3.3.1.1 Advantages . . . . . 82  
3.3.1.2 Can a CRA Prevent Users from Providing Reports to Consumers? . . . . . 82  
3.3.1.3 Required User Disclosure After an Adverse Action . . . . . 82  
3.3.1.3.1 Introduction . . . . . 82  
3.3.1.3.2 User disclosure where report will lead to adverse  
employment action . . . . . 83  
3.3.1.3.3 User disclosure where information obtained from a person  
other than a consumer reporting agency leads to credit  
denial or an increase in credit charges. . . . . 83  
3.3.1.3.4 User disclosure of adverse information obtained from an  
affiliate . . . . . 83  
3.3.1.3.5 Credit scores disclosure in adverse action and risk-based  
pricing notices . . . . . 84  
3.3.1.4 Credit Scores Disclosure by Mortgage Lenders . . . . . 84  
3.3.2 Right to a Free Annual Disclosure from a CRA . . . . . 84  
3.3.2.1 Consumer Reporting Agencies That Are Required to Provide Free  
Annual Reports . . . . . 84  
3.3.2.2 Timing, Volume, and Identification Requirements . . . . . 85  
3.3.2.3 Free Annual Disclosures from the Centralized Source . . . . . 85  
3.3.2.4 Free Annual Disclosures from Specialty Consumer Reporting  
Agencies . . . . . 86  
3.3.3 Disclosures Required for “Free” Credit Report Promotions . . . . . 86

Contents

3.3.3.1	Credit Monitoring: “Free” Reports That Are Not Free . . . . .	86
3.3.3.2	Required Disclosures . . . . .	87
3.3.3.2.1	Content of disclosures . . . . .	87
3.3.3.2.2	Scope of requirement . . . . .	88
3.3.3.2.3	Formatting requirements . . . . .	88
3.3.4	Right to Purchase a Credit Score from a CRA . . . . .	88
3.3.4.1	General . . . . .	88
3.3.4.2	Scope of Obligation . . . . .	89
3.3.4.3	Nature of Scores Sold . . . . .	89
3.3.4.4	Disclosure of Key Factors . . . . .	90
3.3.4.5	Fee for a Credit Score . . . . .	90
3.3.4.6	Arbitration; Preemption . . . . .	90
3.3.5	Right to Free Reports Following a Fraud Alert or Other Fraud . . . . .	90
3.3.6	Free Report Following Adverse Action . . . . .	91
3.3.7	Free Report Following Certain Communications from Affiliated Debt Collection Agencies . . . . .	92
3.3.8	Free Report for the Unemployed and for Public Assistance Recipients . . . . .	92
3.3.9	State Law Right to Additional Free Reports . . . . .	92
3.3.10	Right to Obtain a Report for a Fee at Any Time from Any Type of Reporting Agency . . . . .	93
3.3.10.1	General . . . . .	93
3.3.10.2	Legal Limits on the Price of a Report . . . . .	93
3.3.10.3	Time Within Which Report Must Be Provided . . . . .	93
3.3.11	Consumer’s Right to Access Information under the Dodd-Frank Act . . . . .	94
3.3.12	Enforceability of the Right to Obtain a Consumer Report . . . . .	94
3.4	Mechanics of Obtaining a Consumer Report . . . . .	94
3.4.1	Deciding from Which CRA to Seek a Report . . . . .	94
3.4.2	How to Request a Consumer Report . . . . .	95
3.4.2.1	Free Annual Reports from the “Big Three” Nationwide Consumer Reporting Agencies . . . . .	95
3.4.2.2	Other Reports from the “Big Three” Nationwide Consumer Reporting Agencies . . . . .	95
3.4.2.3	Obtaining Reports from Specialty CRAs, Smaller CRAs . . . . .	95
3.4.2.4	Form of the Request . . . . .	97
3.4.2.5	Processing of Consumer Requests for Free Annual Reports . . . . .	97
3.4.3	Requirement of Proper Consumer Identification . . . . .	98
3.4.3.1	General . . . . .	98
3.4.3.2	Regulation V Requirements . . . . .	98
3.4.3.3	Impermissible Requests for Information . . . . .	99
3.4.3.4	Necessity of a Social Security Number . . . . .	99
3.4.4	Ability of a Consumer’s Representative to Receive a Report . . . . .	99
3.4.5	Unreasonable Preconditions to Disclosure . . . . .	100
3.5	File Information That Must Be Disclosed . . . . .	100
3.5.1	Disclosure of All Information in the “File” Required . . . . .	100
3.5.1.1	Statutory Standard . . . . .	100
3.5.1.2	Disclosure of Previously Reported Information . . . . .	102
3.5.1.3	Disclosure of Other Persons in Consumer’s File . . . . .	102
3.5.2	Disclosure Must be “Clear and Accurate” . . . . .	103
3.5.3	Disclosure Does Not Depend on Location of Information . . . . .	103
3.5.4	Information Required With the File Disclosure . . . . .	103
3.5.4.1	Summary of Consumer Rights and Contact Information . . . . .	103
3.5.4.2	Disclosure of Sources of Reporting Information . . . . .	103
3.5.4.3	Identification of Users Receiving Reports . . . . .	104
3.5.4.3.1	General . . . . .	104

- 3.5.4.3.2 Exception for FBI counter-intelligence and government security clearance usage . . . . . 105
- 3.5.4.4 Identification of Checks upon Which Adverse Characterizations of the Consumer Are Based. . . . . 105
- 3.5.5 Exceptions to Disclosure . . . . . 105
  - 3.5.5.1 Credit Scores . . . . . 105
  - 3.5.5.2 Audit Trail and Other Ancillary Information . . . . . 105
  - 3.5.5.3 Truncation of Consumer’s Social Security Number . . . . . 105
- 3.6 The Form of the Disclosure . . . . . 105
  - 3.6.1 Electronic and Mail Disclosures . . . . . 105
  - 3.6.2 In-Person and Telephone Disclosures. . . . . 106
  - 3.6.3 CRAs Must Provide Assistance to Help Consumers Understand the Report . . . . . 107
  - 3.6.4 Nationwide CRAs Must Provide Toll-Free Number with Accessible Personnel . . . . . 107
- 3.7 Examining the Consumer Report. . . . . 108
  - 3.7.1 The Consumer’s Identity . . . . . 108
  - 3.7.2 Substance of the Report . . . . . 108
    - 3.7.2.1 A Report Is Just One Snapshot in Time . . . . . 108
    - 3.7.2.2 Differences in Reports Provided to the Consumer and to Users . . . . . 108
    - 3.7.2.3 Reading the Report . . . . . 109
    - 3.7.2.4 Errors to Look For . . . . . 109
  - 3.7.3 Information on Those Requesting Reports on the Consumer . . . . . 110

Chapter 4

Accuracy and Reinvestigation Obligations of Consumer Reporting Agencies

- 4.1 First Considerations . . . . . 111
  - 4.1.1 FCRA Places Two Separate Accuracy Obligations on Consumer Reporting Agencies. . . . . 111
  - 4.1.2 Congressional Intent to Combat Inaccurate Consumer Reports . . . . . 111
  - 4.1.3 Prevalence of Inaccurate Consumer Reports . . . . . 112
    - 4.1.3.1 Studies and Reports Show Consumer Reports Prone to Errors. . . . . 112
    - 4.1.3.2 Studies By Consumer Groups . . . . . 113
    - 4.1.3.3 FTC Studies Pursuant to FACTA . . . . . 113
      - 4.1.3.3.1 FACTA’s mandate . . . . . 113
      - 4.1.3.3.2 The FTC’s initial report . . . . . 114
      - 4.1.3.3.3 The FTC’s pilot studies. . . . . 114
      - 4.1.3.3.4 The FTC’s final study. . . . . 115
    - 4.1.3.4 Other Government Studies and Consumer Complaints to Regulators . . . . . 115
    - 4.1.3.5 Studies by Industry and Others . . . . . 116
    - 4.1.3.6 Internal Accuracy Analyses from Consumer Reporting Agencies. . . . . 117
- 4.2 What Is Accuracy? . . . . . 118
  - 4.2.1 Definition of Accuracy . . . . . 118
    - 4.2.1.1 General . . . . . 118
    - 4.2.1.2 Accuracy is Defined Objectively . . . . . 118
    - 4.2.1.3 Consumer Reporting Agency Must Do More Than Just Pass Along Information Provided by the Furnisher . . . . . 118
    - 4.2.1.4 Definition of Accuracy for Furnishers . . . . . 119
  - 4.2.2 Accuracy Standard Applies to Report Actually Supplied to User . . . . . 119
  - 4.2.3 Technically Accurate Reports Can Be Misleading and Inaccurate . . . . . 120
    - 4.2.3.1 FCRA Requires More Than Technical Accuracy. . . . . 120
    - 4.2.3.2 Minority of Courts Accept a Technical Accuracy Defense . . . . . 122
    - 4.2.3.3 Technical Accuracy Defense is Contrary to the Intent and Legislative History of the FCRA . . . . . 123
    - 4.2.3.4 Technical Accuracy Defense is Contrary to FTC Interpretations of the FCRA . . . . . 123

## Contents

4.2.4	Information Must Relate to the Consumer . . . . .	124
4.2.5	Consumer Reporting Agency May Not Report Unverifiable Information . . . . .	124
4.3	Types of Inaccurate Information . . . . .	124
4.3.1	Introduction . . . . .	124
4.3.2	Inaccuracies Caused by Furnishers . . . . .	125
4.3.2.1	Furnisher Provision of Inaccurate Data . . . . .	125
4.3.2.2	Some Creditors Do Not Furnish Data to Consumer Reporting Agencies . . . . .	125
4.3.2.3	Furnishers That Withhold Data . . . . .	126
4.3.2.4	Furnisher Failure to Update Debts Discharged in Bankruptcy . . . . .	126
4.3.2.4.1	Introduction . . . . .	126
4.3.2.4.2	Harm caused by improper reporting of discharged debt . . . . .	126
4.3.2.4.3	Furnishers and consumer reporting agencies both at fault for incorrectly reporting discharged debt . . . . .	127
4.3.2.4.4	Failure to update a discharged debt could violate bankruptcy laws . . . . .	127
4.3.2.4.5	Reporting discharged debt subsequently sold to debt buyers . . . . .	128
4.3.2.4.6	Inaccurate or incomplete coding by furnisher of bankruptcy related status. . . . .	128
4.3.2.5	Errors in Collection of Public Record Information . . . . .	129
4.3.2.5.1	How public record information is collected . . . . .	129
4.3.2.5.2	How errors occur in public record information . . . . .	129
4.3.3	Consumer Reporting Agency Errors in Matching Data to Consumer Files . . . . .	131
4.3.3.1	Mixed or Merged Files. . . . .	131
4.3.3.2	Consumer Reporting Agencies Matching Procedures . . . . .	132
4.3.3.2.1	How nationwide CRAs “build” their files . . . . .	132
4.3.3.2.2	Why mixed files occur . . . . .	132
4.3.3.3	Studies on Mixed Files. . . . .	133
4.3.3.4	Mixed Public Records Information. . . . .	135
4.3.3.5	Mixed Files Resulting from Subscriber Inquiries. . . . .	135
4.3.3.6	Consumer Source of Information Used for Matching. . . . .	136
4.3.3.7	Mixed Files and Identity Theft . . . . .	136
4.3.3.8	Fixing a Mixed File. . . . .	136
4.3.4	Consumer Reporting Agency Errors in Retrieving Consumer Files . . . . .	137
4.3.5	Identity Theft . . . . .	138
4.3.6	Consumer Reporting Agency’s Refusal to Provide Reports on Targeted Consumers . . . . .	138
4.4	CRA Liability for Reporting Inaccurate Information . . . . .	139
4.4.1	Introduction . . . . .	139
4.4.2	The Consumer Report Must Be Inaccurate . . . . .	140
4.4.3	The CRA Must Furnish a Consumer Report . . . . .	140
4.4.4	Resellers Must Follow Reasonable Procedures . . . . .	141
4.4.5	The Consumer Reporting Agency Must Follow Reasonable Procedures . . . . .	141
4.4.5.1	Determining Reasonableness . . . . .	141
4.4.5.1.1	No strict liability . . . . .	141
4.4.5.1.2	Standard of reasonableness and the balancing test . . . . .	142
4.4.5.1.3	Factors bearing on reasonableness. . . . .	143
4.4.5.1.4	Consumer reporting agency must actually follow procedures that it establishes. . . . .	144
4.4.5.1.5	Establishing the availability and minimal burden of corrective measures . . . . .	144
4.4.5.2	Proof Issues . . . . .	145
4.4.5.2.1	Burden of proof. . . . .	145
4.4.5.2.2	Sources of proof . . . . .	148
4.4.5.3	Damages As an Element of a Reasonable Procedures Claim. . . . .	149



- 4.4.6 Reasonableness of Specific Consumer Reporting Agency Procedures . . . . . 150
  - 4.4.6.1 Management Policies Encouraging Unfavorable or Inaccurate Information . . . . . 150
  - 4.4.6.2 Reasonable Procedures for Reinvestigation . . . . . 150
  - 4.4.6.3 Illogical Files and Internal Inconsistencies . . . . . 151
  - 4.4.6.4 Reliance on Furnishers and Other Sources of Information . . . . . 152
  - 4.4.6.5 Public Record Information . . . . . 155
  - 4.4.6.6 Mismerged Information and Wrong Consumer Identification. . . . . 157
  - 4.4.6.7 Identity Theft . . . . . 159
  - 4.4.6.8 Transcription, Data Communication, and Interpretation . . . . . 160
  - 4.4.6.9 Incomplete and Outdated Items in the File. . . . . 160
    - 4.4.6.9.1 General . . . . . 160
    - 4.4.6.9.2 Missing accounts and other items not covered in a consumer's file . . . . . 160
    - 4.4.6.9.3 Incomplete reporting of existing accounts . . . . . 161
    - 4.4.6.9.4 Reasonable methods to acquire updated information . . . . . 163
    - 4.4.6.9.5 Reporting of significant updated information that is furnished to a consumer reporting agency . . . . . 164
  - 4.4.6.10 Bankruptcy Reporting. . . . . 164
    - 4.4.6.10.1 General . . . . . 164
    - 4.4.6.10.2 Reporting of debts in bankruptcy . . . . . 164
      - 4.4.6.10.2.1 Proper reporting of debt discharged in bankruptcy . . 164
      - 4.4.6.10.2.2 Failure to follow reasonable procedures in reporting discharged debt . . . . . 165
      - 4.4.6.10.2.3 Furnisher liability for reporting of debts discharged in bankruptcy . . . . . 165
      - 4.4.6.10.2.4 Class actions settlement reforming CRA procedures for reporting discharged debts. . . . . 166
    - 4.4.6.10.3 Included in bankruptcy . . . . . 167
    - 4.4.6.10.4 Other bankruptcy issues . . . . . 167
- 4.4.7 Procedures for Reports of Adverse Public Record Information for Employment Purposes . . . . . 168
  - 4.4.7.1 General . . . . . 168
  - 4.4.7.2 Election to Notify Consumer of Release of Public Record Information . . . . . 169
  - 4.4.7.3 Election to Establish Strict Procedures for Complete and Up-to-Date Public Record Information . . . . . 169
  - 4.4.7.4 Exemption for National Security Investigations . . . . . 170
- 4.5 Consumer Reporting Agency Reinvestigation and Correction of Disputed Information . . . . . 171
  - 4.5.1 Introduction . . . . . 171
    - 4.5.1.1 General . . . . . 171
    - 4.5.1.2 Overview of the Reinvestigation Process. . . . . 172
    - 4.5.1.3 How Consumers Learn of Their Right to Dispute . . . . . 172
  - 4.5.2 The Consumer's Request for a Reinvestigation . . . . . 172
    - 4.5.2.1 When a CRA Must Reinvestigate. . . . . 172
    - 4.5.2.2 Specificity Required of a Dispute. . . . . 172
    - 4.5.2.3 CRA May Not Impose Unreasonable Preconditions for a Dispute . . . . . 173
    - 4.5.2.4 Practical Tips in Making a Dispute . . . . . 175
      - 4.5.2.4.1 Contents of the dispute . . . . . 175
      - 4.5.2.4.2 Form of the dispute . . . . . 175
      - 4.5.2.4.3 Keeping a file . . . . . 176
      - 4.5.2.4.4 Send a copy to the furnisher . . . . . 176
      - 4.5.2.4.5 Submit a dispute to all of the nationwide CRAs . . . . . 177



Contents

4.5.2.4.6	The dispute notice should be clear, complete, and unambiguous as possible . . . . .	177
4.5.2.4.7	Include all documentary evidence . . . . .	177
4.5.2.4.8	Suggest steps for investigation . . . . .	178
4.5.2.4.9	Include information questioning the furnisher’s accuracy in other contexts . . . . .	178
4.5.2.5	Can a Third Party Send the Dispute? . . . . .	178
4.5.2.6	Resellers and Affiliates . . . . .	180
4.5.2.7	Frivolous or Irrelevant Disputes . . . . .	181
4.5.2.7.1	General . . . . .	181
4.5.2.7.2	Disputes from credit repair organizations . . . . .	182
4.5.2.7.3	Repeat request for investigation . . . . .	182
4.5.2.7.4	Notice that dispute has deemed frivolous or irrelevant . . . . .	183
4.5.3	Nature of the Reinvestigation . . . . .	183
4.5.3.1	Introduction . . . . .	183
4.5.3.2	Whether an Inaccuracy is Required for Liability . . . . .	183
4.5.3.3	Investigation Required If Information Is Incomplete or Not Updated . . . . .	186
4.5.3.4	Standards for a Reinvestigation . . . . .	186
4.5.3.4.1	Investigation must be reasonable . . . . .	186
4.5.3.4.2	What is required in a reinvestigation . . . . .	187
4.5.3.4.3	Balancing test and heightened standard . . . . .	189
4.5.3.4.4	Challenging the nationwide CRAs automated reinvestigation systems . . . . .	189
4.5.3.4.5	When exclusive reliance upon the furnisher’s response is not reasonable . . . . .	190
4.5.3.4.6	When the consumer has an underlying legal dispute with the furnisher . . . . .	192
4.5.4	Agency’s Reinvestigation Must Involve the Furnisher . . . . .	194
4.5.4.1	General . . . . .	194
4.5.4.2	Consumer Reporting Agency Must Notify the Furnisher of the Disputed Information . . . . .	194
4.5.5	Deadline for Reporting Agency to Respond . . . . .	197
4.5.5.1	Generally Applicable Deadlines . . . . .	197
4.5.5.2	Expedited Resolution of Disputes . . . . .	198
4.5.6	The Reinvestigation Procedures of the Three Major Nationwide Consumer Reporting Agencies . . . . .	198
4.5.6.1	The e-Oscar and ACDV Systems . . . . .	198
4.5.6.2	Translation of Disputes into Limited Number of Codes . . . . .	199
4.5.6.3	Disputes Processed Outside of e-Oscar . . . . .	200
4.5.6.4	The Processing of Consumer Disputes . . . . .	200
4.5.6.5	Deposing the “Big Three” as to Reinvestigation Procedures . . . . .	202
4.5.7	Statute of Limitations for Consumer Disputes . . . . .	202
4.6	Corrections as a Result of Reinvestigations of Disputed Information . . . . .	202
4.6.1	Notice to Consumer of Results of Reinvestigation . . . . .	202
4.6.1.1	Two Notice Provisions . . . . .	202
4.6.1.2	Copy of the Corrected Report . . . . .	203
4.6.1.3	Description of Procedure Used . . . . .	203
4.6.2	Correction or Deletion of Disputed Information . . . . .	203
4.6.3	CRAs Must Notify Furnishers of Reinvestigation Results . . . . .	204
4.6.4	Consumer Follow-Up Steps Where Corrections Made . . . . .	204
4.7	Reinsertion of Information Previously Deleted from Consumer’s File . . . . .	205
4.7.1	The Problem of Reinsertion . . . . .	205
4.7.1.1	Introduction . . . . .	205
4.7.1.2	Soft-deletion . . . . .	205
4.7.2	The FCRA’s Provision Governing Reinsertion . . . . .	206

4.7.2.1 Introduction . . . . . 206

4.7.2.2 Consumer Reporting Agency Must Maintain Procedures to Prevent Reinsertion. . . . . 206

4.7.2.3 Furnisher Certification of Reinserted Information . . . . . 207

4.7.2.4 Notice of Reinsertion. . . . . 207

4.7.3 Bringing Reinsertion Cases . . . . . 207

4.7.3.1 What Constitutes Reinsertion. . . . . 207

4.7.3.2 Strategies for Litigating Reinsertion Cases. . . . . 207

4.8 Inclusion of Additional Information in Consumer’s File . . . . . 208

4.8.1 Consumer’s Right to File Statement of Dispute . . . . . 208

4.8.1.1 Overview. . . . . 208

4.8.1.2 Consumer Reporting Agency Must Include Statement of Dispute in Subsequent Reports . . . . . 209

4.8.2 Other Notations of Dispute; Fraud and Military Alerts . . . . . 210

4.8.3 Consumer Explanations for Adverse Information. . . . . 210

4.8.4 Consumer Offers of New Information . . . . . 210

4.9 Notification to Previous Users Who Received Disputed Information . . . . . 211

4.9.1 Consumer Request for Notification . . . . . 211

4.9.2 Agency Disclosure to Consumer of Right to Request Notification. . . . . 211

4.9.3 Payment for Notification . . . . . 212

Chapter 5

Restrictions on Information in Consumer Reports

5.1 Introduction. . . . . 213

5.2 Restrictions on Obsolete Information . . . . . 213

5.2.1 Overview . . . . . 213

5.2.1.1 Introduction; Summary of Restrictions . . . . . 213

5.2.1.2 Constitutional Challenges to FCRA Restrictions on Obsolete Information . . . . . 213

5.2.2 General Principles . . . . . 214

5.2.2.1 No Restriction on Use of Favorable Information . . . . . 214

5.2.2.2 Deletion of Information Before It Is Obsolete . . . . . 214

5.2.2.3 Consumer Reporting Agency Cannot Report Even Existence of Obsolete Information . . . . . 215

5.2.2.4 Furnisher’s Liability for Obsolete Information . . . . . 215

5.2.3 Maximum Time Periods to Retain Adverse Information . . . . . 216

5.2.3.1 Structure of the FCRA . . . . . 216

5.2.3.2 Metro 2 and the Date of Delinquency. . . . . 216

5.2.3.3 The Catchall: “Any Other” Adverse Item . . . . . 217

5.2.3.4 Accounts Placed for Collection or Charged Off . . . . . 217

5.2.3.4.1 The 180-day rule . . . . . 217

5.2.3.4.2 Nature of charge-offs . . . . . 218

5.2.3.4.3 Furnisher’s duty to provide the date of delinquency, charge-off, collection, or other event . . . . . 218

5.2.3.4.4 Effect of subsequent events . . . . . 219

5.2.3.4.5 Debt collectors and “re-aging” . . . . . 220

5.2.3.4.6 Debt collectors must use creditor’s date of account delinquency . . . . . 221

5.2.3.4.7 Debt collectors threat to report obsolete information . . . . . 221

5.2.3.5 Suits and Judgments . . . . . 222

5.2.3.6 Tax Liens. . . . . 222

5.2.3.7 Criminal Records . . . . . 223

5.2.3.8 Bankruptcy Reports Considered Obsolete After Ten Years . . . . . 224

5.2.3.9 Prescreening Inquiries . . . . . 224

5.2.3.10 Government-Backed Student Loans . . . . . 224

Contents

5.2.4 Transactions Exceeding Monetary Thresholds . . . . . 225

5.2.5 Reasonable Procedures Concerning Obsolete Information . . . . . 226

    5.2.5.1 General . . . . . 226

    5.2.5.2 What Are “Reasonable” Procedures? . . . . . 226

    5.2.5.3 Specific Procedural Requirements Regarding Obsolete Information . . . . . 226

    5.2.5.4 Procedures Determining Whether an Exemption Applies . . . . . 227

5.2.6 Preemption of State Obsolescence Laws. . . . . 227

5.3 Restrictions for Disputed Information. . . . . 227

    5.3.1 General . . . . . 227

    5.3.2 FCRA Restrictions on Disputed Information. . . . . 228

        5.3.2.1 Restrictions on Consumer Reporting Agencies . . . . . 228

        5.3.2.2 Restrictions on the Furnishing of Disputed Information . . . . . 228

    5.3.3 Fair Debt Collection Practices Act Restrictions . . . . . 228

    5.3.4 Limits on Furnishing Information on Disputed Credit Card and Open-End  
    Accounts . . . . . 229

    5.3.5 Real Estate Settlement Procedures Act Restrictions . . . . . 229

5.4 Medical Information Restrictions. . . . . 231

    5.4.1 Medical Information Definition. . . . . 231

    5.4.2 Consumer Reporting Agencies Required to Obtain Consent to Report Medical  
    Information. . . . . 231

    5.4.3 Restrictions on Reporting the Identifying Information of Medical Information  
    Furnishers. . . . . 232

    5.4.4 Affiliate Sharing Exception Not Applicable to Medical Information . . . . . 232

    5.4.5 Restrictions on Creditor Use of Medical Information . . . . . 232

        5.4.5.1 Creditors May Not Discriminate Against Applicants on the Basis of  
        Medical Information . . . . . 232

        5.4.5.2 Scope of Prohibition . . . . . 233

        5.4.5.3 Medical Financial Information Exception . . . . . 233

        5.4.5.4 Special Purpose Credit Assistance and Medical Financing Programs . . . . . 234

        5.4.5.5 Other Exceptions. . . . . 234

5.5 FCRA Restrictions on Information from Personal Interviews . . . . . 234

5.6 Information About Another . . . . . 235

    5.6.1 Spouse or Former Spouse . . . . . 235

    5.6.2 Cosigners and Authorized Users. . . . . 236

    5.6.3 State Law Restrictions Regarding Cosigners . . . . . 236

5.7 Other Federal Laws Restricting Information in Credit Records . . . . . 237

    5.7.1 Protection for Servicemembers. . . . . 237

    5.7.2 Discrimination and Retaliation for Exercising Rights Is Prohibited . . . . . 237

    5.7.3 Federal Agencies Are Restricted in Information They May Furnish . . . . . 237

5.8 State Law Provisions . . . . . 237

    5.8.1 State Law Restrictions in General. . . . . 237

    5.8.2 Provisions on Child Support Debts . . . . . 238

Chapter 6

Activities and Duties of Furnishers of Information to Consumer Reporting Agencies

6.1 Introduction . . . . . 239

    6.1.1 Overview . . . . . 239

    6.1.2 Lack of Private Enforcement for Most Obligations of Furnishers . . . . . 240

6.2 Creditors and Others Who Furnish Information to Consumer Reporting Agencies . . . . . 243

    6.2.1 Furnishers Provide Information to Consumer Reporting Agencies. . . . . 243

    6.2.2 Limitations on Who Is a Furnisher . . . . . 244

        6.2.2.1 Special Rules for Affiliate Sharing . . . . . 244

        6.2.2.2 Direct Selling of Information Not Covered . . . . . 244

        6.2.2.3 Certain State Laws Regarding Furnishers Are Preempted . . . . . 244

- 6.3 Methods of Furnishing Information to Consumer Reporting Agencies . . . . . 244
  - 6.3.1 Information Is Usually Furnished Electronically . . . . . 244
  - 6.3.2 Metro 2: The Standard Automated Format for Furnishing Information to Consumer Reporting Agencies . . . . . 245
    - 6.3.2.1 General . . . . . 245
    - 6.3.2.2 Acceptance of Metro 2 as an Industry Standard . . . . . 245
    - 6.3.2.3 Obtaining the Metro 2 Manual in Litigation. . . . . 246
    - 6.3.2.4 The Mechanics of Metro 2 . . . . . 246
    - 6.3.2.5 Other Standardized Methods of Communication . . . . . 246
  - 6.3.3 Detailed Description of the Metro 2 Format . . . . . 247
    - 6.3.3.1 Overview . . . . . 247
    - 6.3.3.2 Objective Standard . . . . . 247
    - 6.3.3.3 Base Segment Contains Information About the Consumer and the Debt . . . . . 248
    - 6.3.3.4 Associated Consumers Segment Has Information on Joint Debtors and Other Authorized Users of Credit. . . . . 249
    - 6.3.3.5 Transfers of Accounts Segment Tracks Holders of Debt. . . . . 249
    - 6.3.3.6 Other Metro 2 Segments Serve Specialized Purposes. . . . . 250
    - 6.3.3.7 Common Errors . . . . . 250
      - 6.3.3.7.1 FCRA Compliance Date/Date of First Delinquency or Last Activity . . . . . 250
      - 6.3.3.7.2 Account Opening Date . . . . . 250
      - 6.3.3.7.3 Incorrect status codes . . . . . 251
    - 6.3.3.8 Metro 2 and Debt Collectors . . . . . 251
    - 6.3.3.9 Metro 2 and Student Loans . . . . . 252
    - 6.3.3.10 Metro 2 and Utility Bills. . . . . 252
    - 6.3.3.11 Metro 2 and Dishonored Checks . . . . . 253
    - 6.3.3.12 Metro 2 and Bankruptcy . . . . . 253
      - 6.3.3.12.1 Bankruptcy reporting . . . . . 253
      - 6.3.3.12.2 Bankruptcy associated with nonfiling joint obligor. . . . . 253
- 6.4 Standards of Accuracy for Furnishers . . . . . 254
  - 6.4.1 Introduction . . . . . 254
  - 6.4.2 General Duty to Report Accurately . . . . . 254
    - 6.4.2.1 Duty Stated in the Negative . . . . . 254
    - 6.4.2.2 Furnisher Must Not Furnish Information It Knows or Has Reasonable Cause to Believe Is Inaccurate. . . . . 255
    - 6.4.2.3 Information That Is in Fact Inaccurate, and a Consumer Has So Notified the Furnisher . . . . . 255
    - 6.4.2.4 Interaction with the Furnisher’s Duty to Correct and Update Inaccurate or Incomplete Information . . . . . 256
    - 6.4.2.5 Furnisher Accuracy Duty and Metro 2 . . . . . 256
    - 6.4.2.6 FTC Staff Opinions on Furnisher Accuracy . . . . . 257
    - 6.4.2.7 Ability of Furnishers to Delete Information . . . . . 257
  - 6.4.3 Furnisher Accuracy and Integrity Guidelines . . . . . 257
    - 6.4.3.1 General . . . . . 257
    - 6.4.3.2 Furnishers Required to Have Policies and Procedures for Accuracy and Integrity. . . . . 258
    - 6.4.3.3 Definitions . . . . . 258
    - 6.4.3.4 The Guidelines . . . . . 260
      - 6.4.3.4.1 Overview . . . . . 260
      - 6.4.3.4.2 Part I: Nature, Score, and Objectives. . . . . 260
      - 6.4.3.4.3 Part II: Establishing and Implementing Policies and Procedures . . . . . 260
      - 6.4.3.4.4 Part III: Specific Components of Policies and Procedures . . . . . 260

*Contents*

6.4.4 Accuracy When Creditor Clearly and Conspicuously Maintains a Special Address for the Consumer to Give Notification of Inaccurate Information . . . . .	261
6.4.5 Duty of Accuracy When Creditor Furnishes Information to an Affiliate . . . . .	262
6.5 Furnishers Have Duty to Correct and Update Furnished Information . . . . .	262
6.5.1 Furnishers Must Promptly Correct and Update Information . . . . .	262
6.5.2 Direct Disputes With the Furnisher . . . . .	263
6.5.2.1 General . . . . .	263
6.5.2.2 When the Furnisher Direct Dispute Right Applies. . . . .	263
6.5.2.3 Notice of Dispute . . . . .	264
6.5.2.4 Exceptions . . . . .	264
6.5.2.5 Frivolous or Irrelevant Disputes. . . . .	265
6.5.2.6 Furnisher’s Duties . . . . .	265
6.5.2.7 Reasons for Disputing Directly with the Furnisher . . . . .	266
6.5.3 Sometimes Adverse Information May Not Be Furnished During a Dispute. . . . .	266
6.5.4 Universal Data Form May Be Used to Make Corrections . . . . .	267
6.6 Furnisher Must Note Disputes. . . . .	267
6.7 Furnisher Must Furnish Dates of Delinquency. . . . .	268
6.8 Furnisher Must Provide Notice of Closed Account. . . . .	269
6.9 “Financial Institution” As Defined by Gramm-Leach-Bliley Must Notify Customers of Negative Information Furnished to Reporting Agencies. . . . .	269
6.10 Furnisher Duties in Consumer Reporting Agency Reinvestigations . . . . .	270
6.10.1 Overview . . . . .	270
6.10.1.1 Formal Consumer Reporting Agency Dispute Process Subjects the Furnisher to Obligations That Are Enforceable by the Consumer . . . . .	270
6.10.1.2 Deficiencies in the CRA Reinvestigation Process . . . . .	271
6.10.1.3 FCRA Litigation Against Furnishers . . . . .	271
6.10.2 Furnishers’ Liability to Consumers for Breach of Responsibilities in Consumer Reporting Disputes . . . . .	272
6.10.2.1 Numerous Cases Uphold a Consumer’s Right to Seek Relief. . . . .	272
6.10.2.2 Furnisher Must Receive Notice of the Consumer’s Dispute with the CRA . . . . .	274
6.10.2.3 Requirement of a Consumer’s Dispute with the CRA is a Congressionally-Imposed “Filtering Mechanism” . . . . .	278
6.10.2.4 Whether an Inaccuracy Is Required for Furnisher Liability . . . . .	279
6.10.3 The Furnisher’s Role in Consumer Reporting Agency Investigations . . . . .	283
6.10.3.1 Consumer Reporting Agency Investigation Must Involve the Furnisher . . . . .	283
6.10.3.2 How Disputes are Communicated in Practice . . . . .	283
6.10.3.3 The e-OSCAR System Contributed to Inadequate Investigations by Furnishers and “Data Conformity” Reviews . . . . .	284
6.10.4 Furnisher’s Duty in Consumer Reporting Agency Disputes to Conduct a Reasonable Investigation . . . . .	285
6.10.4.1 The “Reasonable Investigation” Standard . . . . .	285
6.10.4.2 What Constitutes a Reasonable Investigation . . . . .	286
6.10.4.3 Burden of Proof . . . . .	289
6.10.5 Furnishers Must Permanently Delete, Modify, or Block Inaccurate, Incomplete, or Unverifiable Information . . . . .	293
6.10.6 Furnisher Must Report Investigation Results . . . . .	295
6.10.6.1 Importance of Reporting Investigation Results . . . . .	295
6.10.6.2 Furnisher Must Report the Results of Its Investigation to the Reporting Agency That Provided Notice of the Dispute . . . . .	295
6.10.6.3 Corrected Information Must Be Reported to Other Agencies As Well. . . . .	297
6.10.6.4 Time for Investigation and Reporting Results Is Limited . . . . .	298
6.10.6.5 Report of Investigation Results May Be Electronic . . . . .	298

6.10.7 Applicability of the Statute of Limitations to Private Enforcement of  
Furnisher Violations . . . . . 299

6.11 Furnisher Liability for Related Torts. . . . . 300

6.12 Furnishers Subject to Identity Theft Duties and Responsibilities . . . . . 300

6.13 Debt Collectors As Furnishers. . . . . 300

Chapter 7

Permissible Releases and Uses of Consumer Reports

7.1 General. . . . . 303

7.1.1 Background. . . . . 303

7.1.2 Reports May Be Released Only for Permissible Purposes . . . . . 303

7.1.2.1 General . . . . . 303

7.1.2.2 The “Reason to Believe” Standard . . . . . 304

7.1.3 Can a Consumer Deny Permission for a Release of a Consumer Report?. . . . . 304

7.1.4 Reports May Be Used Only for Permissible Purposes. . . . . 305

7.1.4.1 General . . . . . 305

7.1.4.2 Definition of a “User”. . . . . 306

7.1.5 Users Must Be Informed of FCRA Requirements . . . . . 306

7.1.6 Agents of the User . . . . . 306

7.1.7 Release by One Reporting Agency to Another . . . . . 307

7.1.8 Is Information a Consumer Report If Released for Impermissible Purposes?. . . . . 307

7.1.9 Discovering an Impermissible Use . . . . . 307

7.2 Permissible Uses . . . . . 308

7.2.1 In Response to a Court Order. . . . . 308

7.2.2 Consumer’s Written Instructions . . . . . 309

7.2.3 Permissible Use in Connection with Credit . . . . . 310

7.2.3.1 General . . . . . 310

7.2.3.1.1 Overview . . . . . 310

7.2.3.1.2 Definition of “credit transaction” . . . . . 310

7.2.3.1.3 Must credit be for personal, family, or household purposes? . . . . . 311

7.2.3.2 Extension of Credit . . . . . 311

7.2.3.3 Account Review . . . . . 312

7.2.3.4 Collection of Credit Accounts . . . . . 313

7.2.3.4.1 In general. . . . . 313

7.2.3.4.2 Collection of non-credit judgments . . . . . 316

7.2.3.5 Investors, Servicers, or Insurers of Credit Obligations . . . . . 317

7.2.3.6 Government-Sponsored Charge Cards . . . . . 317

7.2.4 Permissible Use in Connection with Employment . . . . . 317

7.2.4.1 General . . . . . 317

7.2.4.1.1 Overview . . . . . 317

7.2.4.1.2 Widespread use of credit reports in employment . . . . . 318

7.2.4.2 Employment Purposes . . . . . 318

7.2.4.3 Requirements for Employer Use of Consumer Reports . . . . . 319

7.2.4.3.1 Employer must provide prior certification . . . . . 319

7.2.4.3.2 Consent and notices required . . . . . 320

7.2.4.3.3 Employer must make disclosures in case of adverse action . . . . . 320

7.2.4.4 Exception for Employee Misconduct Reports . . . . . 320

7.2.5 Permissible Use in Connection with Insurance . . . . . 320

7.2.6 Permissible Use in Connection with Government Licenses or Other Benefits . . . . . 321

7.2.7 Risk Assessment of Existing Credit Obligations . . . . . 322

7.2.8 Legitimate Business Need . . . . . 322

7.2.8.1 Overview. . . . . 322

7.2.8.2 Business Transaction Initiated by the Consumer . . . . . 322

7.2.8.2.1 General . . . . . 322

7.2.8.2.2 Business transaction . . . . . 322



Contents

7.2.8.2.2.1	Business transaction for personal, family, or household purposes . . . . .	322
7.2.8.2.2.2	Examples of Business Transactions . . . . .	323
7.2.8.2.2.3	Business transaction must relate to eligibility . . . . .	324
7.2.8.2.3	Initiated by the consumer . . . . .	325
7.2.8.2.4	Legitimate business need. . . . .	325
7.2.8.3	Business Need to Review a Consumer’s Account . . . . .	326
7.2.9	Use by Officials to Determine Child Support Payment Levels . . . . .	326
7.2.10	Other Permissible Uses by Government Agencies . . . . .	327
7.2.10.1	Introduction . . . . .	327
7.2.10.2	Identifying Information Furnished to the Government . . . . .	327
7.2.10.3	Investigation of FCRA Violations. . . . .	328
7.2.10.4	Permissible Use by FBI for Counterintelligence Purposes. . . . .	328
7.2.10.5	Disclosures to Governmental Agencies for Counterterrorism Purposes . . . . .	328
7.2.10.6	FDIC and NCUA As Conservators, Receivers, or Liquidating Agents. . . . .	329
7.3	Permissible Uses of Consumer Lists . . . . .	329
7.3.1	General . . . . .	329
7.3.2	When a List Is a Consumer Report Requiring a Permissible Purpose . . . . .	329
7.3.2.1	General . . . . .	329
7.3.2.2	Target Marketing Lists . . . . .	329
7.3.3	Lists for Prescreening “Firm Offers” of Credit or Insurance . . . . .	330
7.3.3.1	General . . . . .	330
7.3.3.1.1	Overview . . . . .	330
7.3.3.1.2	Restrictions for younger consumers. . . . .	331
7.3.3.2	Prescreened Lists Are a Type of Consumer Report . . . . .	331
7.3.3.2.1	How prescreening reports are compiled . . . . .	331
7.3.3.2.2	Only limited information may be supplied . . . . .	331
7.3.3.3	A “Firm Offer” Is Required . . . . .	331
7.3.3.3.1	Background . . . . .	331
7.3.3.3.2	User may place three types of conditions on firm offer. . . . .	332
7.3.3.3.3	What must an offer include to be “firm”? . . . . .	332
7.3.3.3.4	Other issues in “firm offer” cases . . . . .	335
7.3.3.4	Consumers Can Elect to Be Excluded from Prescreening Lists . . . . .	336
7.4	Potentially Impermissible Purposes . . . . .	336
7.4.1	General . . . . .	336
7.4.2	Use in Divorce, Child Support, or Paternity Proceedings. . . . .	336
7.4.3	Use in Tax Collection Proceedings . . . . .	337
7.4.4	Use in Civil or Criminal Litigation . . . . .	337
7.4.5	Use by Investigators . . . . .	339
7.4.6	Use of Reports on the Consumer’s Spouse, Relatives, or Other Third Parties . . . . .	340
7.4.6.1	General Rule . . . . .	340
7.4.6.2	Exceptions for Credit Transactions . . . . .	340
7.4.6.3	Other Types of Transactions . . . . .	341
7.4.6.4	Joint Information. . . . .	342
7.4.7	Use in Connection with Insurance Claims . . . . .	342
7.4.8	Marketing. . . . .	343
7.4.9	Impermissible Use of Medical Information. . . . .	344
7.4.10	Use by Social Network Sites . . . . .	344
7.4.11	Other Impermissible Uses . . . . .	344
7.5	Agency Procedures Ensuring That Only Users with Permissible Purposes Obtain Reports . . . . .	344
7.5.1	General . . . . .	344
7.5.1.1	Two Separate Obligations Imposed on CRAs. . . . .	344



7.5.1.2	Overview of Required Procedures . . . . .	345
7.5.2	User Identification and Certifications . . . . .	345
7.5.2.1	Nature of Certification . . . . .	345
7.5.2.2	Blanket Certifications . . . . .	346
7.5.2.3	Follow-Up and Continuing Reports . . . . .	347
7.5.3	Agency Verification Procedures . . . . .	347
7.5.4	Electronic Communication of Reports . . . . .	348
7.5.5	Retention of Request Records . . . . .	349
7.5.6	Procedures by Non-Consumer Reporting Agencies for Ensuring That Information Is <i>Not</i> Used for FCRA Purposes . . . . .	349
7.6	Liability of Reporting Agency Employees for Impermissible Uses . . . . .	349
7.7	User Liability for Impermissible Purposes . . . . .	350
7.7.1	General . . . . .	350
7.7.2	Uncertified Uses of a Consumer Report . . . . .	351
7.7.3	Willful Noncompliance of User . . . . .	352
7.7.4	User's Liability for Criminal False Pretenses . . . . .	353
7.7.5	Vicarious Liability of User for Acts of Employees . . . . .	353

Chapter 8

Notices Concerning Consumer Reports

8.1	Introduction . . . . .	355
8.1.1	Overview and Structure of Chapter . . . . .	355
8.1.2	The Importance of Notices to Consumers in the FCRA's Scheme . . . . .	356
8.2	Summary of Consumer Rights Notice . . . . .	356
8.2.1	Content of Notice . . . . .	356
8.2.2	Time and Manner of Notice; Enforcement . . . . .	357
8.3	Summary of Consumer Identity Theft Rights Notice . . . . .	357
8.3.1	Content of Notice . . . . .	357
8.3.2	Time and Manner of Notice; Enforcement . . . . .	357
8.4	Notices Concerning Credit Scores . . . . .	357
8.4.1	Overview . . . . .	357
8.4.2	General Credit Score Notice . . . . .	358
8.4.2.1	Nature and Content of Notice . . . . .	358
8.4.2.2	Time and Manner of Notice; Enforcement of Right . . . . .	358
8.4.3	Mortgage Score Notice . . . . .	358
8.4.3.1	Content of Notice . . . . .	358
8.4.3.1.1	Overview . . . . .	358
8.4.3.1.2	Credit score information from consumer reporting agencies . . . . .	359
8.4.3.1.3	Home loan notice . . . . .	360
8.4.3.2	Time and Manner of Notice . . . . .	360
8.4.3.3	Enforcement of Right . . . . .	360
8.5	Adverse Action Notices . . . . .	360
8.5.1	Introduction . . . . .	360
8.5.1.1	Importance and Role of Adverse Action Notice . . . . .	360
8.5.1.2	Overview of Section . . . . .	360
8.5.2	Content of Notice . . . . .	361
8.5.2.1	Overview . . . . .	361
8.5.2.2	Identification of Adverse Action and Actor . . . . .	361
8.5.2.3	Identity of the Consumer Reporting Agency . . . . .	361
8.5.2.4	Credit Scoring Information . . . . .	362
8.5.3	Manner of Giving Notice . . . . .	362
8.5.3.1	Who Must Provide Notice . . . . .	362
8.5.3.2	Oral, Electronic, or Written . . . . .	363
8.5.4	When Notice Required . . . . .	364
8.5.4.1	General Requirements . . . . .	364

Contents

8.5.4.1.1	Adverse action based on consumer report . . . . .	364
8.5.4.1.2	If adverse action is based on lack of a file or insufficient information. . . . .	364
8.5.4.2	Overview and Summary of Specific Actions That Constitute an “Adverse Action” . . . . .	365
8.5.4.3	Adverse Actions in Connection with Credit . . . . .	365
8.5.4.3.1	General requirements . . . . .	365
8.5.4.3.2	Definition of “credit” . . . . .	366
8.5.4.3.3	“Denial” of credit defined. . . . .	367
8.5.4.3.4	Special situation: risk-based pricing . . . . .	368
8.5.4.3.5	Special situation: accepted counteroffers . . . . .	368
8.5.4.3.6	Special situation: price quotes . . . . .	369
8.5.4.3.7	Special situation: cosigners . . . . .	369
8.5.4.3.8	Special situation: prescreening offers. . . . .	369
8.5.4.3.9	Special situation: account reviews. . . . .	369
8.5.4.3.10	Other situations constituting credit . . . . .	370
8.5.4.4	Adverse Actions in Connection with Insurance. . . . .	370
8.5.4.5	Adverse Actions in Connection with Government Benefits . . . . .	371
8.5.4.6	Other Situations . . . . .	371
8.5.4.6.1	Transactions initiated by the consumer: the catchall provision . . . . .	371
8.5.4.6.2	Check writing or approval services . . . . .	372
8.5.4.6.3	Leases . . . . .	372
8.5.4.6.4	Sale of property. . . . .	372
8.5.5	Enforcement of Right . . . . .	373
8.5.6	Comparison to ECOA Notice. . . . .	374
8.6	Adverse Action Notices Not Based on a Consumer Report . . . . .	376
8.6.1	Notice of Adverse Use of Information Other Than Consumer Report . . . . .	376
8.6.1.1	Nature and Content of Notice . . . . .	376
8.6.1.2	Residential Lease As Credit . . . . .	376
8.6.1.3	Time and Manner of Notice . . . . .	376
8.6.1.4	Application to Particular Transactions . . . . .	377
8.6.1.4.1	Example: car financing transactions. . . . .	377
8.6.1.4.2	Example: verification of loan information . . . . .	377
8.6.1.4.3	Example: accommodation parties . . . . .	377
8.6.1.4.4	Example: investigation of information in a consumer report . . . . .	377
8.6.1.5	Enforcement of Right. . . . .	377
8.6.2	Special Rules for Information Shared by Affiliates . . . . .	377
8.6.2.1	Content and Nature of Notice . . . . .	377
8.6.2.2	Enforcement of Right. . . . .	378
8.7	Risk-Based Pricing Notices . . . . .	378
8.7.1	Introduction . . . . .	378
8.7.2	Scope and Definitions . . . . .	378
8.7.2.1	General . . . . .	378
8.7.2.2	“Material Terms” Limited to Annual Percentage Rate. . . . .	379
8.7.2.3	“Materially Less Favorable” . . . . .	379
8.7.2.4	Exceptions . . . . .	380
8.7.3	Nature and Content of Notice . . . . .	381
8.7.3.1	General . . . . .	381
8.7.3.2	Credit Scoring Information . . . . .	381
8.7.4	Time and Manner of Notice . . . . .	381
8.7.4.1	Notice Must Be Provided <i>After</i> the Decision To Grant Credit Or Increase Price. . . . .	381
8.7.4.2	Form of Notice. . . . .	382
8.7.5	Enforcement of Notice Rights . . . . .	382

8.8	Prescreening Notices . . . . .	382
8.8.1	Introduction and Overview . . . . .	382
8.8.2	Prescreening Use Notice . . . . .	383
8.8.2.1	Purpose of Notice . . . . .	383
8.8.2.2	Content of Notice . . . . .	383
8.8.2.3	Time and Manner of Notice . . . . .	383
8.8.2.3.1	Clear and conspicuous; simple and easy to understand . . . . .	383
8.8.2.3.2	Format and location requirements . . . . .	384
8.8.2.4	Enforcement of Right. . . . .	385
8.8.3	Prescreening Notice from Consumer Reporting Agencies . . . . .	385
8.8.3.1	Content of Notice . . . . .	385
8.8.3.2	Time and Manner of Notice . . . . .	385
8.8.3.3	Enforcement of Right. . . . .	385
8.9	Negative Information Notices . . . . .	385
8.10	Notices Related to Disputes under the FCRA. . . . .	385
8.10.1	Reinvestigation Results Notice . . . . .	385
8.10.1.1	General . . . . .	385
8.10.1.2	Nature and Content of Notice . . . . .	386
8.10.1.3	Time and Manner of Notice . . . . .	386
8.10.1.4	Enforcement . . . . .	386
8.10.2	The Reinsertion Notice . . . . .	386
8.10.2.1	General . . . . .	386
8.10.2.2	Nature and Content of Notice . . . . .	387
8.10.2.3	Time and Manner of Notice . . . . .	387
8.10.2.4	Enforcement of Notice Rights . . . . .	387
8.10.3	Notice of Frivolous Dispute . . . . .	387
8.10.3.1	Nature and Content of Notice . . . . .	387
8.10.3.2	Time and Manner of Notice . . . . .	387
8.10.3.3	Enforcement of Notice Rights . . . . .	387
8.10.4	Notice to Consumer If Agency Refuses to Block Alleged Identity Theft Information . . . . .	388
8.11	Notices Related to Employment Use of a Consumer Report . . . . .	388
8.11.1	General . . . . .	388
8.11.1.1	Notices Required for Employment Use of Consumer Report . . . . .	388
8.11.1.1.1	Summary of Notices. . . . .	388
8.11.1.1.2	“Adverse Action” for Employment Purposes . . . . .	388
8.11.1.2	Exceptions . . . . .	388
8.11.1.2.1	Investigation of employee misconduct . . . . .	388
8.11.1.2.2	Truckers . . . . .	389
8.11.1.2.3	Federal agencies involved in national security . . . . .	389
8.11.1.2.4	Employment agencies . . . . .	389
8.11.2	Authorization for Employment Use . . . . .	389
8.11.2.1	Nature and Content of Notice . . . . .	389
8.11.2.2	Time of Notice; Enforcement of Right. . . . .	390
8.11.3	Pre-adverse Action Notices . . . . .	390
8.11.3.1	Nature and Content of Notice . . . . .	390
8.11.3.2	Time of Notice . . . . .	391
8.11.3.3	Enforcement of Right. . . . .	392
8.11.4	Post-Adverse Action Notices . . . . .	392
8.11.4.1	Content and Nature of Notice . . . . .	392
8.11.4.2	Enforcement of Right. . . . .	392
8.11.5	Public Record Information for Employment Purposes . . . . .	392
8.11.5.1	Content and Nature of Notice . . . . .	392
8.11.5.2	Time and Manner of Notice. . . . .	392
8.11.5.3	Enforcement of Right. . . . .	393

Contents

8.12 Notice When Information May Be Shared by Affiliates . . . . .	393
8.12.1 General . . . . .	393
8.12.1.1 Types of Affiliate Sharing . . . . .	393
8.12.1.2 Relation to the Gramm-Leach-Bliley Act . . . . .	394
8.12.2 Affiliate Sharing Exclusion Notice . . . . .	394
8.12.3 Affiliate Sharing Marketing Notice . . . . .	394
8.12.3.1 Introduction . . . . .	394
8.12.3.2 Definitions . . . . .	394
8.12.3.2.1 General . . . . .	394
8.12.3.2.2 “Eligibility information” . . . . .	394
8.12.3.2.3 “Preexisting business relationship” . . . . .	395
8.12.3.2.4 Covered solicitations . . . . .	395
8.12.3.3 Notice of Right to Opt Out . . . . .	396
8.12.3.3.1 Introduction . . . . .	396
8.12.3.3.2 Content of notice . . . . .	396
8.12.3.3.3 Delivery of notice . . . . .	396
8.12.3.4 Reasonable Opportunity and Reasonable and Simple Method to Opt Out . . . . .	396
8.12.3.5 Scope and Duration of Opt-Out . . . . .	397
8.12.3.6 Exceptions . . . . .	398
8.12.4 Enforcement of Right . . . . .	398
8.13 Notices Required of Government Agencies . . . . .	398
8.13.1 Notice Required Before Federal Agency May Disclose Debtor Information . . . . .	398
8.13.1.1 Introduction . . . . .	398
8.13.1.2 Content of Notice . . . . .	399
8.13.1.3 Time and Manner of Notice . . . . .	399
8.13.2 Notice Related to Use of a Consumer Report for Child Support Purposes . . . . .	399
8.13.2.1 Content and Nature of Notice . . . . .	399
8.13.2.2 Time and Manner of Notice . . . . .	399
8.13.2.3 Enforcement of Right . . . . .	399
8.14 Other Notices . . . . .	399
8.14.1 Other FCRA Notices . . . . .	399
8.14.2 State Law Requirements . . . . .	399
8.15 Notices to Consumer Reporting Agencies . . . . .	400
8.16 Notices to Furnishers of Information . . . . .	400
8.16.1 Notices of Furnisher’s Duties Under the Act . . . . .	400
8.16.2 Other Notices . . . . .	400
8.17 Notices to Users of Consumer Reports . . . . .	400
8.17.1 Overview . . . . .	400
8.17.2 Notices of User’s Duties Under the Act . . . . .	401
8.17.3 Notices of Address Discrepancy . . . . .	401
8.17.3.1 Nature and Content of Notice . . . . .	401
8.17.3.2 Time and Manner of Notice . . . . .	401
8.17.3.3 Enforcement of Notice Rights . . . . .	401
8.17.4 Notices of Deletion or Dispute . . . . .	401
8.17.4.1 Nature and Content of Notice . . . . .	401
8.17.4.2 Time and Manner of Notice . . . . .	402
8.17.4.3 Enforcement of Notice Rights . . . . .	402

Chapter 9

Identity Theft—FCRA and Other Protections

9.1 Introduction . . . . .	403
9.1.1 Background . . . . .	403
9.1.2 Impact on Victims . . . . .	403
9.1.3 Resources for Victims . . . . .	404

- 9.2 The FCRA's Identity Theft Prevention and Credit History Restoration Provisions . . . . 404
  - 9.2.1 General . . . . . 404
    - 9.2.1.1 Overview . . . . . 404
    - 9.2.1.2 Definition of "Identity Theft" . . . . . 405
    - 9.2.1.3 CRA Annual Reports to the CFPB . . . . . 405
  - 9.2.2 Fraud Alerts and Active Military Duty Alerts . . . . . 405
    - 9.2.2.1 General . . . . . 405
      - 9.2.2.1.1 Overview . . . . . 405
      - 9.2.2.1.2 Appropriate proof of identity . . . . . 406
    - 9.2.2.2 Initial Fraud Alerts . . . . . 406
    - 9.2.2.3 Extended Fraud Alerts . . . . . 407
      - 9.2.2.3.1 Overview . . . . . 407
      - 9.2.2.3.2 Identity theft report . . . . . 407
      - 9.2.2.3.3 Effects of the extended fraud alert . . . . . 407
    - 9.2.2.4 Active Military Duty Alerts . . . . . 408
    - 9.2.2.5 Effects of Alerts . . . . . 408
  - 9.2.3 Identity Theft Victim's Access to Information About the Theft . . . . . 408
    - 9.2.3.1 Access to Thief's Transaction Information . . . . . 408
    - 9.2.3.2 Debt Collectors Must Provide Information to Victims and Notify Creditors . . . . . 409
  - 9.2.4 Blocking of Fraudulent Information. . . . . 410
    - 9.2.4.1 Consumer Reporting Agency Responsibilities . . . . . 410
      - 9.2.4.1.1 Requirements for requesting a block . . . . . 410
      - 9.2.4.1.2 Effect of a block . . . . . 410
      - 9.2.4.1.3 Declining or rescinding a block . . . . . 410
      - 9.2.4.1.4 Resellers' check verification companies . . . . . 410
      - 9.2.4.1.5 Enforcement and preemption . . . . . 411
    - 9.2.4.2 Furnisher Responsibilities . . . . . 411
      - 9.2.4.2.1 Furnisher must implement procedures to prevent re-furnishing blocked information . . . . . 411
      - 9.2.4.2.2 Furnisher must not sell or transfer debt that has been blocked . . . . . 411
  - 9.2.5 Preventing Theft of Consumers' Identification Information . . . . . 412
    - 9.2.5.1 Card Number and Social Security Number Truncation . . . . . 412
      - 9.2.5.1.1 General . . . . . 412
      - 9.2.5.1.2 2008 Clarification Act . . . . . 413
      - 9.2.5.1.3 Electronic transactions . . . . . 413
      - 9.2.5.1.4 Constitutional challenges. . . . . 413
      - 9.2.5.1.5 Damages in a truncation case. . . . . 414
      - 9.2.5.1.6 Other issues in a truncation case. . . . . 415
    - 9.2.5.2 Truncation of Social Security Numbers in Consumer Reports . . . . . 415
    - 9.2.5.3 Disposal of Consumer Information . . . . . 415
  - 9.2.6 Provisions Regarding Warning Signs of Identity Theft . . . . . 416
    - 9.2.6.1 Introduction . . . . . 416
    - 9.2.6.2 Creditor Implementation of Red Flag Guidelines . . . . . 416
      - 9.2.6.2.1 General . . . . . 416
      - 9.2.6.2.2 Scope: application to "creditors" . . . . . 416
      - 9.2.6.2.3 Requirements . . . . . 417
    - 9.2.6.3 Address Discrepancies . . . . . 417
    - 9.2.6.4 Change of Address Provisions . . . . . 418
- 9.3 Identity Theft and Assumption Deterrence Act . . . . . 419
- 9.4 State Laws Addressing Identity Theft . . . . . 419
  - 9.4.1 Criminal Identity Theft Statutes . . . . . 419
  - 9.4.2 Model State Laws . . . . . 421
  - 9.4.3 State Security Freeze Laws . . . . . 421

Contents

9.4.3.1 General . . . . . 421  
9.4.3.2 Scope . . . . . 421  
9.4.3.3 Cost of a Security Freeze . . . . . 422  
9.4.3.4 Exemptions; Thaws . . . . . 422  
9.4.3.5 Constitutional challenges to security freezes. . . . . 422  
9.4.4 Child and Foster Youth Identity Theft . . . . . 423  
9.5 Filing Suit Under the FCRA and Other Laws to Rectify Identity Theft . . . . . 424  
9.5.1 Overview of FCRA and State Law Claims . . . . . 424  
9.5.2 Claims Against the Creditor for Violation of a Duty of Care . . . . . 424  
9.6 Claims to Address When a Data Security Breach Has Put the Consumer at Risk of  
Identity Theft. . . . . 426

Chapter 10

Claims for Consumer Reporting Disputes: Availability, Private Enforcement, State Claims, and Preemption

10.1 Introduction . . . . . 429  
10.2 FCRA Claims . . . . . 429  
10.2.1 Availability of Private Remedies . . . . . 429  
10.2.1.1 In General . . . . . 429  
10.2.1.2 No Private Remedy Under FCRA for Most Furnisher Violations . . . . . 429  
10.2.1.3 FCRA Private Remedy for Furnisher Reinvestigation Obligations in  
Response to a CRA Request . . . . . 430  
10.2.1.4 Private Remedies Against Users for Failure to Provide Required  
Notices Eliminated by Scrivener’s Error . . . . . 431  
10.2.1.5 Private Remedies Are Available Against Users for Failing to  
Comply with Requirements for Investigative Reports. . . . . 432  
10.2.1.6 No Private Remedy to Enforce Right to Obtain Underlying  
Documentation in Identity Theft Cases . . . . . 432  
10.2.2 Standard for Negligence . . . . . 432  
10.2.3 When are “Reasonable Procedures” Relevant to FCRA Claims? . . . . . 433  
10.2.3.1 In General . . . . . 433  
10.2.3.2 Bright Line Requirements . . . . . 433  
10.2.3.3 Requirements to Maintain Reasonable Procedures . . . . . 433  
10.2.3.4 Reasonable Procedures as a Defense. . . . . 434  
10.2.3.5 “Strict Procedures” for CRAs Reporting Adverse Public Record  
Information. . . . . 434  
10.3 Other Federal Statutory Claims . . . . . 434  
10.4 The FCRA’s Qualified Immunity for Tort Claims . . . . . 435  
10.4.1 Background . . . . . 435  
10.4.1.1 General . . . . . 435  
10.4.1.2 Legislative History of Provision. . . . . 436  
10.4.1.3 Intersection with FCRA Preemption Provision . . . . . 437  
10.4.2 Immunity Only Applies to the “Reporting” of Information . . . . . 437  
10.4.3 Immunity Applies Only to Information Discovered Exclusively Through an  
Identified Disclosure . . . . . 437  
10.4.4 Immunity Applies Only to Enumerated Tort Claims . . . . . 440  
10.4.5 A Furnisher of Information to an Entity Other Than a Consumer Reporting  
Agency Is Not Immunized. . . . . 441  
10.4.6 No Immunity Where False Information is Reported with Malice or Willful  
Intent . . . . . 441  
10.4.6.1 Standard for Malice or Willful Intent . . . . . 441  
10.4.6.2 Sufficiency of Allegations of Malice or Willful Intent . . . . . 443  
10.4.6.3 Proof of Malice or Willful Intent . . . . . 444  
10.4.6.4 Information Must be False . . . . . 445  
10.5 Common Law Tort Claims Where Immunity Does Not Apply . . . . . 446

10.5.1	Advantages of a Tort Claim . . . . .	446
10.5.2	Elements of a Defamation Claim. . . . .	446
10.5.3	Elements of Invasion of Privacy Claim . . . . .	448
10.5.4	Negligence Claims . . . . .	448
10.6	State Statutory Claims . . . . .	448
10.6.1	State Credit Reporting Statutes . . . . .	448
10.6.2	State Deceptive Practices Statutes . . . . .	449
10.6.3	State Identity Theft Laws. . . . .	449
10.7	FCRA’s Preemption of State Law Claims . . . . .	450
10.7.1	No “Field” Preemption. . . . .	450
10.7.1.1	Overall General Preemption Rule Is a Floor, Rather Than a Ceiling . . .	450
10.7.1.2	When Is State Law Inconsistent with the FCRA? . . . . .	450
10.7.2	Overview Concerning Express FCRA Preemption Language . . . . .	452
10.7.2.1	A Roadmap . . . . .	452
10.7.2.2	General Principles of Interpretation. . . . .	453
10.7.2.3	Applicability of Pre-FACTA Case Law to Current FCRA Preemption Provisions . . . . .	454
10.7.3	Applying § 1681t(b)(1) Preemption to Eleven FCRA Provisions. . . . .	454
10.7.3.1	Introduction . . . . .	454
10.7.3.2	Provisions Regarding Furnishers. . . . .	454
10.7.3.2.1	Overview . . . . .	454
10.7.3.2.2	State statutes exempt from preemption. . . . .	455
10.7.3.2.3	State law prohibitions not involving the specific duties enumerated in § 1681s-2 are not preempted . . . . .	456
10.7.3.3	Provisions Regarding Consumer Reporting Agencies . . . . .	457
10.7.3.4	Provisions Regarding Users. . . . .	458
10.7.3.5	Provision Regarding Businesses and Identity Theft . . . . .	458
10.7.3.6	Obligations Arising in Contracts Are Not “Imposed” Under State Law and Can Be Enforced . . . . .	458
10.7.4	Reconciling § 1681t(b)(1) and the Qualified Immunity Provision . . . . .	459
10.7.4.1	Overview . . . . .	459
10.7.4.2	Cases Holding All Statutory and Common Law Claims Generally Preempted . . . . .	461
10.7.4.2.1	Cases adopting “total preemption” approach . . . . .	461
10.7.4.2.2	Cases erroneously limiting section 1681h(e) to CRAs and users . . . . .	462
10.7.4.3	Cases Holding that Only Statutory, Not Common Law Claims are Preempted . . . . .	463
10.7.4.4	The Temporal Approach: Only Claims Preempted That Are Based on Conduct Occurring <i>After</i> FCRA Liability Is Triggered. . . . .	465
10.7.4.5	Cases Preempting Only Claims Closely Resembling an FCRA Provision . . . . .	467
10.7.5	Affiliate Information Sharing Preemption—§ 1681t(b)(2). . . . .	469
10.7.6	Disclosure Preemption—§ 1681t(b)(3) . . . . .	469
10.7.7	Preemption Related to Frequency of Free Consumer Report Disclosures— § 1681t(b)(4) . . . . .	470
10.7.8	Preemption Related to “Conduct Required by” Twelve FCRA Provisions— § 1681t(b)(5) . . . . .	470
10.7.8.1	Narrow Construction . . . . .	470
10.7.8.2	Consumer Reporting Agency Provisions That Preempt State Law . . . .	470
10.7.8.3	User Provisions That Preempt State Law . . . . .	471
10.7.8.4	Furnisher Provisions That Preempt State Law. . . . .	472
10.7.8.5	Debt Collector Provisions That Preempt State Law . . . . .	473
10.7.8.6	Preemption by Provision Relating to Those Accepting Credit or Debit Cards . . . . .	473



Chapter 11

Private Remedies and Public Enforcement

11.1	Introduction . . . . .	475
11.2	Selecting the Parties . . . . .	475
11.2.1	Plaintiffs . . . . .	475
11.2.2	Defendants . . . . .	476
11.2.2.1	General . . . . .	476
11.2.2.2	Government Defendants and Sovereign Immunity . . . . .	477
11.2.3	Class Actions . . . . .	479
11.2.3.1	Introduction . . . . .	479
11.2.3.2	Examples of FCRA Class Actions . . . . .	479
11.2.3.3	Challenges to FCRA Class Actions . . . . .	481
11.2.3.3.1	Damages issues . . . . .	481
11.2.3.3.2	Possibility of annihilating damages . . . . .	482
11.2.3.3.3	Alternative of individual suits . . . . .	484
11.2.3.3.4	Declaratory or injunctive relief . . . . .	484
11.2.3.3.5	Standing of the class representative . . . . .	484
11.2.3.3.6	Challenges to class representative or members . . . . .	484
11.2.3.3.7	Offers of judgment or settlement to the class representative . . . . .	485
11.3	Case Selection . . . . .	486
11.4	Selecting the Court . . . . .	486
11.4.1	FCRA Claims May Be Brought in Federal or State Court . . . . .	486
11.4.2	Supplemental Jurisdiction: Pursuing Related State Law Claims in Federal Court . . . . .	487
11.4.3	Personal Jurisdiction . . . . .	487
11.4.4	Selecting the Appropriate Court . . . . .	490
11.4.5	Removal . . . . .	491
11.5	Drafting the Complaint . . . . .	493
11.6	Statute of Limitations . . . . .	496
11.6.1	FCRA Limitations Period . . . . .	496
11.6.1.1	General . . . . .	496
11.6.1.2	New or Continuing Violations . . . . .	496
11.6.1.3	Discovery Rule . . . . .	497
11.6.1.4	Equitable Tolling . . . . .	499
11.6.2	Limitations Period for Other Legal Claims . . . . .	499
11.7	Discovery and Litigation Strategies . . . . .	499
11.7.1	General . . . . .	499
11.7.2	Informal Discovery . . . . .	499
11.7.3	Formal Discovery . . . . .	500
11.7.3.1	General . . . . .	500
11.7.3.2	Discovery From Consumer Reporting Agencies . . . . .	501
11.7.3.2.1	General . . . . .	501
11.7.3.2.2	Discovery concerning Equifax . . . . .	501
11.7.3.2.3	Discovery concerning Transunion . . . . .	502
11.7.3.2.4	Discovery concerning Experian . . . . .	502
11.7.3.2.5	Scope of discovery . . . . .	502
11.7.3.2.6	Pitfalls to avoid . . . . .	502
11.7.3.2.7	Discovery relating to CRA handling of consumer dispute . . . . .	503
11.7.3.2.8	Discovery relating to CRA relationship with third parties handling consumer disputes . . . . .	504
11.7.3.2.9	Discovery relating to CRA blocking procedures . . . . .	505
11.7.3.2.10	Discovery relating to credit scoring . . . . .	505
11.7.3.2.11	Discovery of public record CRAs . . . . .	505
11.7.3.3	Discovery from Furnishers . . . . .	506
11.7.3.3.1	General . . . . .	506
11.7.3.3.2	Discovery concerning consumer disputes . . . . .	506

11.7.3.3	Discovery of furnisher relationship to CRA . . . . .	507
11.7.3.4	Discovery Regarding Willfulness . . . . .	507
11.7.3.5	Document and Electronic Data Preservation . . . . .	508
11.7.3.6	Background and Financial Information About Defendants. . . . .	508
11.7.3.7	Confidentiality Agreements and Protective Orders . . . . .	509
11.7.3.8	Discovery and Consumer Reports . . . . .	510
11.7.3.9	Subpoenas . . . . .	510
11.7.3.10	Insurance Coverage for FCRA Liability . . . . .	510
11.7.4	Discovery Directed at Plaintiffs . . . . .	511
11.7.4.1	Discovery of Plaintiff in Individual Litigation . . . . .	511
11.7.4.2	Discovery Directed at Class Members . . . . .	511
11.7.5	Record Retention . . . . .	511
11.7.6	Expert Testimony . . . . .	511
11.7.7	Evidentiary Issues. . . . .	512
11.7.7.1	Introduction . . . . .	512
11.7.7.2	Admissibility of Consumer Report . . . . .	512
11.7.7.3	Reasons for Credit Denial . . . . .	513
11.7.7.4	Motions in Limine . . . . .	513
11.8	Right to Jury Trial; Jury Instructions . . . . .	514
11.9	Defenses, Counterclaims, and Third Party Claims. . . . .	515
11.9.1	Defenses . . . . .	515
11.9.1.1	Pleadings Standards for Defenses . . . . .	515
11.9.1.2	Statutory Affirmative Defenses. . . . .	515
11.9.1.3	Standing; Equitable Defenses. . . . .	515
11.9.1.4	Constitutional Challenges . . . . .	516
11.9.1.5	Exhaustion . . . . .	517
11.9.1.6	Litigation Privilege . . . . .	518
11.9.1.7	<i>Rooker-Feldman</i> Doctrine, Res Judicata, Claim Preclusion, and Abstention . . . . .	518
11.9.1.8	Exclusive Bankruptcy Remedy Defense. . . . .	519
11.9.1.9	Contractual Waiver of Rights. . . . .	519
11.9.1.10	Preemption of State Law Claims. . . . .	520
11.9.2	Counterclaims . . . . .	520
11.9.3	Indemnity, Insurance, and Third Party Claims . . . . .	520
11.10	Arbitration Requirements . . . . .	522
11.10.1	Introduction . . . . .	522
11.10.2	Is There an Arbitration Agreement? . . . . .	522
11.10.2.1	Introduction . . . . .	522
11.10.2.2	CRA's Have Limited Opportunities to Require Arbitration. . . . .	522
11.10.2.3	Consumer Report Users May Have Limited Opportunities to Require Arbitration. . . . .	522
11.10.2.4	Debt Collection Agencies . . . . .	522
11.10.2.5	The Company May Be Unable to Produce the Agreement. . . . .	522
11.10.2.6	Settlement Binds Banks Not to Require Arbitration . . . . .	522
11.10.2.7	No Arbitration Requirement in Home Mortgage or Manufactured Home Loans . . . . .	523
11.10.2.8	State Insurance Law Can Prohibit Arbitration . . . . .	523
11.10.2.9	Limits on Arbitration Involving Military Personnel . . . . .	523
11.10.2.10	Potential CFPB Limits on Arbitration . . . . .	523
11.10.2.11	CROA Does <i>Not</i> Prohibit Arbitration. . . . .	523
11.10.3	Situations Where an Arbitration Agreement Is Not Enforceable . . . . .	523
11.10.3.1	CRA Cannot Rely on Furnisher or User's Arbitration Agreement. . . . .	523
11.10.3.2	Debt Collector's Reliance on Creditor's Arbitration Agreement . . . . .	524
11.10.3.3	Does the Arbitration Agreement Apply to the Dispute? . . . . .	524
11.10.3.4	Was the Agreement Properly Formed?. . . . .	524

## Contents

11.10.3.5	Where NAF Is the Sole Designated Arbitration Forum . . . . .	524
11.10.3.6	Has the Company Waived the Arbitration Requirement? . . . . .	524
11.10.3.7	Is the Arbitration Agreement Unconscionable? . . . . .	525
11.10.3.8	Arbitration When Consumer Files Bankruptcy . . . . .	525
11.10.4	Does the Court or Arbitrator Determine Arbitrability? . . . . .	525
11.10.5	When Arbitration May Be a Good Consumer Option . . . . .	526
11.10.5.1	Class Arbitration . . . . .	526
11.10.5.2	Punitive Damages . . . . .	526
11.11	Damages . . . . .	526
11.11.1	Damages Generally . . . . .	526
11.11.2	Actual Damages . . . . .	527
11.11.2.1	General . . . . .	527
11.11.2.2	Damages for Pecuniary Loss . . . . .	528
11.11.2.2.1	General . . . . .	528
11.11.2.2.2	Causal relationship . . . . .	528
11.11.2.2.3	Loss of credit opportunity . . . . .	530
11.11.2.2.4	Out-of-pocket losses . . . . .	531
11.11.2.2.5	Damages for business loss . . . . .	532
11.11.2.2.6	Mitigation of damages . . . . .	532
11.11.2.3	Intangible Damages . . . . .	532
11.11.2.3.1	Are intangible damages available? . . . . .	532
11.11.2.3.2	Is publication required? . . . . .	533
11.11.2.3.3	Examples of intangible damages in FCRA cases . . . . .	533
11.11.2.3.4	Proving intangible damages . . . . .	534
11.11.2.4	Nominal Damages . . . . .	537
11.11.3	Statutory and Punitive Damages . . . . .	539
11.11.3.1	General . . . . .	539
11.11.3.2	Willfulness . . . . .	539
11.11.3.2.1	Willfulness includes reckless disregard: the Supreme Court's <i>Safeco</i> decision . . . . .	539
11.11.3.2.2	Post- <i>Safeco</i> decisions . . . . .	541
11.11.3.2.3	Pre- <i>Safeco</i> decisions may still be relevant . . . . .	547
11.11.3.3	Statutory Damages . . . . .	550
11.11.4	Punitive Damages . . . . .	551
11.11.4.1	Prerequisites for Punitive Damages . . . . .	551
11.11.4.1.1	Relation to common law standards . . . . .	551
11.11.4.1.2	No need to prove actual damages . . . . .	552
11.11.4.2	Determining the Amount of Punitive Damages . . . . .	552
11.11.4.2.1	Plaintiff has a right to have punitive damages decided by a jury . . . . .	552
11.11.4.2.2	No fixed upper limit on size of award . . . . .	553
11.11.4.2.3	Factors affecting the size of the award . . . . .	553
11.12	Injunctive and Declaratory Relief . . . . .	556
11.13	Attorney Fees and Costs . . . . .	559
11.13.1	When Are Fees and Costs Awarded? . . . . .	559
11.13.1.1	General . . . . .	559
11.13.1.2	Fees Permitted Against Both Plaintiff and Defendant for Bad Faith . . . . .	559
11.13.1.3	Are Attorney Fees Mandatory? . . . . .	560
11.13.1.4	What Constitutes a Successful Action . . . . .	560
11.13.1.5	Costs . . . . .	561
11.13.2	Calculating the Size of the Attorney Fee Award . . . . .	561
11.13.2.1	FCRA Awards Will Be Based on Standards Enunciated in Other Federal Fee-Shifting Statutes Too . . . . .	561
11.13.2.2	Current Federal Fee-Shifting Standards . . . . .	562
11.13.3	Maximizing the Chances of an Adequate Fee Award . . . . .	563

11.13.4 Preserving Fee Entitlement When Case Is Settled . . . . .	564
11.13.4.1 The <i>Buckhannon</i> Decision . . . . .	564
11.13.4.2 Implications of <i>Buckhannon</i> for Settlements . . . . .	565
11.13.4.3 State Courts May Not Follow <i>Buckhannon</i> . . . . .	566
11.13.5 Rule 68 and Attorney Fee Awards . . . . .	566
11.13.6 Interest on Judgments . . . . .	567
11.14 Quick Reference to Published Damage Awards. . . . .	567
11.15 Public Enforcement . . . . .	569
11.15.1 Allocation of Enforcement Authority Among Federal Agencies . . . . .	569
11.15.1.1 In General . . . . .	569
11.15.1.2 Depository Institutions and Credit Unions With More Than \$10 Billion in Assets . . . . .	569
11.15.1.3 Depository Institutions and Credit Unions With \$10 Billion or Less in Assets . . . . .	569
11.15.1.4 Certain “Nondepository Covered Persons” . . . . .	570
11.15.1.4.1 In general . . . . .	570
11.15.1.4.2 Mortgage lenders, servicers, and foreclosure relief providers. . . . .	570
11.15.1.4.3 Private student lenders. . . . .	570
11.15.1.4.4 Payday lenders. . . . .	570
11.15.1.4.5 “Larger participants” in consumer financial markets, including CRAs . . . . .	570
11.15.1.4.6 Entities engaging in conduct posing risks to consumers. . . . .	571
11.15.1.5 Furnishers and Users Excluded from CFPB Enforcement . . . . .	571
11.15.1.6 FTC Authority Before and After the Dodd-Frank Act. . . . .	572
11.15.1.7 Authority to Issue Regulations and Interpretations . . . . .	572
11.15.1.8 Supervisory Authority. . . . .	572
11.15.2 Agency Enforcement Powers . . . . .	573
11.15.2.1 In General . . . . .	573
11.15.2.2 CFPB Enforcement Powers . . . . .	573
11.15.2.3 FTC Enforcement Powers . . . . .	573
11.15.2.4 FTC Ability to Seek Civil Penalties From Information Furnishers Is Limited. . . . .	574
11.15.2.5 Consumer Complaint Referral Process. . . . .	575
11.15.3 Examples of Government Enforcement Actions . . . . .	576
11.15.4 Criminal Enforcement . . . . .	578
11.15.5 State Enforcement. . . . .	578
11.15.5.1 General State Enforcement Powers . . . . .	578
11.15.5.2 State Authority Over National Banks and Thrifts. . . . .	579
11.15.5.3 State Enforcement Powers Against Information Furnishers Are Limited . . . . .	579
11.15.5.4 Coordination With Federal Agencies Required . . . . .	580
11.15.5.5 State Investigatory Powers. . . . .	580

Chapter 12

What Consumers Should Know About Consumer Reporting

12.1 Introduction . . . . .	581
12.2 Impermissible Uses of Consumer Reports . . . . .	581
12.2.1 Introduction. . . . .	581
12.2.2 User’s Curiosity; General Publication in the Community . . . . .	581
12.2.3 Publication of Bad Debt Lists. . . . .	581
12.2.4 Divorce and Custody Proceedings, Tort Suits, Criminal Actions, Immigration Matters, and Other Litigation . . . . .	582
12.2.5 Using a Consumer’s Credit History to Evaluate Other Family Members and Associates. . . . .	582

Contents

12.2.6	Dissemination of the Consumer’s Medical and Personal Information . . . . .	583
12.3	Consumers Should Not Fear Threats to Report a Debt to a Consumer Reporting Agency . . . . .	583
12.4	Does Withholding Payment as Part of a Dispute Ruin a Consumer’s Credit Record? . . . . .	584
12.4.1	Introduction . . . . .	584
12.4.2	Disputes Relating to Credit Card Charges . . . . .	584
12.4.3	Telephone and Other Utility Charges . . . . .	584
12.4.4	Home Mortgages and Home Equity Lines of Credit . . . . .	585
12.4.5	Student Loans and Other Government Debts . . . . .	585
12.4.6	Debt Being Collected by a Debt Collector or Debt Buyer . . . . .	585
12.4.7	FCRA Protections Where Consumer Disputes a Debt . . . . .	585
12.4.8	ECOA Protections When Raising Federal Statutory Rights . . . . .	585
12.5	The Wrong Way to Improve a Credit Record . . . . .	586
12.5.1	Credit Repair . . . . .	586
12.5.2	Debt Elimination, Settlement, and Adjustment . . . . .	586
12.5.3	Making Payments on Old Defaults . . . . .	586
12.5.4	Taking on New Debt . . . . .	586
12.5.5	File Segregation Is Not Recommended . . . . .	587
12.6	Ways to Improve a Credit Record . . . . .	587
12.6.1	First Considerations . . . . .	587
12.6.2	Correcting Inaccurate Information . . . . .	588
12.6.2.1	Disputing the Information . . . . .	588
12.6.2.2	Steps the CRA and Creditor Must Take in Response to the Consumer’s Dispute . . . . .	588
12.6.2.3	Contacting the Creditor . . . . .	588
12.6.3	Dealing with Public Record Information . . . . .	589
12.6.4	Dealing with Negative Information When Settling Non-FCRA Litigation . . . . .	589
12.6.4.1	Importance of Resolving Credit Reporting Issues . . . . .	589
12.6.4.2	Negotiating a Settlement Covering Credit Reporting . . . . .	590
12.6.4.2.1	Introduction . . . . .	590
12.6.4.2.2	Creditor reluctance to address credit reporting issues . . . . .	590
12.6.4.2.3	Ability of creditors to delete or modify information . . . . .	590
12.6.4.3	Selecting the Correct Settlement Language . . . . .	590
12.6.4.4	Obtaining Court Approval . . . . .	591
12.6.4.5	Court Orders Should Cover Consumer Reporting Issues . . . . .	591
12.6.4.6	Cleaning Up the Consumer’s File Where Settlement Does Not Deal with Consumer Reporting . . . . .	592
12.6.4.7	Monitoring the Consumer’s File After Resolution of a Dispute . . . . .	592
12.6.5	Cleaning Up Student Loan Defaults . . . . .	592
12.6.6	Identity Theft . . . . .	593
12.6.6.1	Cleaning Up After Identity Theft . . . . .	593
12.6.6.2	Heading Off New Identity Theft Problems . . . . .	594
12.6.7	Removing Recent Delinquencies . . . . .	594
12.6.7.1	Introduction . . . . .	594
12.6.7.2	New Loans, Refinancing, and Shifting Payment Priorities . . . . .	595
12.6.7.3	Negotiating Repayment Schedules . . . . .	595
12.6.8	Discharging Obligations in Bankruptcy . . . . .	596
12.6.9	Providing Additional Information to the Creditor . . . . .	597
12.7	Implications of a Substandard Credit Record . . . . .	598
12.7.1	Automobile Loans and Leases . . . . .	598
12.7.2	Home Mortgage Applications . . . . .	599
12.7.2.1	Underwriting Guidelines Vary by the Class of Mortgage Loan . . . . .	599
12.7.2.2	Underwriting Factors . . . . .	599
12.7.2.3	Steps to Take in Applying for a Mortgage . . . . .	600

*Fair Credit Reporting*

12.7.3 Residential Lease Applications . . . . . 601  
12.7.4 Utility Service . . . . . 601  
12.7.5 Insurance . . . . . 601  
12.7.6 Access to a Credit Card. . . . . 602  
12.7.7 Banking and Check Cashing. . . . . 602  
12.7.8 Student Loans and Grants . . . . . 603  
12.7.9 Eligibility for Public Assistance . . . . . 603  
12.8 Consumer Reporting Issues for Immigrants . . . . . 603

Chapter 13

Investigative Consumer Reports

13.1 Introduction . . . . . 605  
13.1.1 What Is an Investigative Consumer Report? . . . . . 605  
13.1.2 Overview of Additional Obligations Required for an Investigative Consumer Report . . . . . 605  
13.2 FCRA Definition . . . . . 605  
13.2.1 General. . . . . 605  
13.2.2 Report Must Concern Character, General Reputation, Personal Characteristics, or Mode of Living . . . . . 606  
13.2.3 Information Must Be Obtained from Third Party Personal Interviews . . . . . 607  
13.2.4 Reports Excluded from the Definition . . . . . 607  
13.2.4.1 General . . . . . 607  
13.2.4.2 Employee Misconduct Investigation Reports. . . . . 607  
13.3 Types of Investigative Reports . . . . . 609  
13.3.1 Reports for Insurance Purposes. . . . . 609  
13.3.2 Reports for Employment Purposes. . . . . 609  
13.3.3 Reports for Landlords . . . . . 610  
13.3.4 Other Types of Investigative Reports . . . . . 611  
13.4 Consumer Disclosures Regarding Investigative Reports . . . . . 611  
13.4.1 User’s Notice That It Has Requested an Investigative Report . . . . . 611  
13.4.1.1 General . . . . . 611  
13.4.1.2 When Notice Must Be Sent. . . . . 611  
13.4.1.3 Content of Notice . . . . . 612  
13.4.1.4 Form of Notice . . . . . 612  
13.4.1.5 Certification to Consumer Reporting Agency of Notice to Consumer . . . . . 613  
13.4.1.6 Relationship to Notice of Adverse Action Based on Consumer Report . . . . . 613  
13.4.2 Consumer’s Right to Complete Disclosure of Nature of Investigation . . . . . 613  
13.4.2.1 General . . . . . 613  
13.4.2.2 User Must Disclose Questions Asked, Not Answers Given . . . . . 613  
13.4.2.3 Disclosure of Names of Sources Interviewed Not Required. . . . . 614  
13.4.2.4 Form of Disclosure . . . . . 614  
13.4.3 Users’ Reasonable Procedures Defense. . . . . 615  
13.4.4 Consumer Reporting Agency Must Disclose Consumer Report. . . . . 615  
13.4.5 Waiver of Consumer Rights . . . . . 615  
13.5 Consumer Utilization of Investigative Report Notices . . . . . 616  
13.5.1 Using the Initial Notice to Stop the Investigation . . . . . 616  
13.5.2 Keeping Inaccurate Information Out of the Investigative Report . . . . . 617  
13.6 Consumer Reporting Agency Procedures for Investigative Reports . . . . . 617  
13.6.1 Procedures Required for Any Consumer Report. . . . . 617  
13.6.2 Special Procedures for Investigative Consumer Reports . . . . . 618  
13.6.2.1 Information from Personal Interviews . . . . . 618  
13.6.2.2 Adverse Information Based on Public Records . . . . . 618  
13.6.2.3 Verification of Information for Re-Use in Subsequent Investigative Report . . . . . 618

13.7 State Laws on Investigative Reports . . . . . 619

Chapter 14

Credit Scoring

14.1 Introduction . . . . . 621

14.2 What Is Credit Scoring?. . . . . 621

    14.2.1 First Considerations . . . . . 621

        14.2.1.1 The Basic Concept. . . . . 621

        14.2.1.2 Credit Scores are Probabilistic (and Perhaps Overinclusive) . . . . . 621

    14.2.2 The Variations . . . . . 622

        14.2.2.1 Introduction . . . . . 622

        14.2.2.2 Credit Risk Scores. . . . . 622

        14.2.2.3 Custom Versus Generic Scores. . . . . 623

        14.2.2.4 Specialty Scores . . . . . 623

        14.2.2.5 Credit Application Scores . . . . . 624

    14.2.3 Definition of Credit Score . . . . . 624

        14.2.3.1 FCRA Definition . . . . . 624

        14.2.3.2 Regulation B Definition . . . . . 624

14.3 Widespread Use of Credit Scores. . . . . 625

14.4 FCRA Disclosure Requirements for Credit Scores . . . . . 626

    14.4.1 Disclosure of Generic Credit Scores Upon Request for a Fee. . . . . 626

        14.4.1.1 Which CRAs Are Required to Disclose Credit Scores . . . . . 626

        14.4.1.2 Required Disclosures . . . . . 626

        14.4.1.3 Price of a Credit Score . . . . . 626

        14.4.1.4 What Scores Are Required to Be Disclosed . . . . . 627

        14.4.1.5 How to Obtain a Credit Score . . . . . 627

    14.4.2 Mortgage Score Disclosure . . . . . 628

        14.4.2.1 When Required . . . . . 628

        14.4.2.2 Required Disclosure. . . . . 628

        14.4.2.3 Enforcement of Right and Preemption. . . . . 628

    14.4.3 Credit Scores Disclosure in Adverse Action and Risk-Based Pricing Notices . . . . . 629

    14.4.4 Variations in Credit Score . . . . . 629

        14.4.4.1 Variations by Consumer Reporting Agencies . . . . . 629

        14.4.4.2 VantageScore; In-House Educational Scores . . . . . 629

        14.4.4.3 FICO Variations . . . . . 630

        14.4.4.4 How Do these Variations Affect Consumers . . . . . 630

14.5 How a Credit Score Is Calculated . . . . . 630

    14.5.1 The Black Box. . . . . 630

    14.5.2 How FICO Scores Are Developed . . . . . 631

        14.5.2.1 FICO’s Scoring Factors . . . . . 631

            14.5.2.1.1 Overview . . . . . 631

            14.5.2.1.2 Payment history. . . . . 631

            14.5.2.1.3 Amounts owed . . . . . 632

            14.5.2.1.4 Length of credit history . . . . . 632

            14.5.2.1.5 New credit . . . . . 632

            14.5.2.1.6 Types of credit in use . . . . . 633

        14.5.2.2 FICO Scorecards . . . . . 633

    14.5.3 Factors in Freddie Mac’s Automated Underwriting System . . . . . 634

    14.5.4 Ideas on How to Peek Into the Black Box . . . . . 634

14.6 How Consumers Can Improve Their Credit Scores . . . . . 634

    14.6.1 Industry’s Advice . . . . . 634

    14.6.2 Additional Advice . . . . . 635

        14.6.2.1 General . . . . . 635

        14.6.2.2 Dispute Inaccurate Information . . . . . 635

        14.6.2.3 Ask For a Credit Line Increase . . . . . 635



- 14.6.2.4 Remove Duplicative or Old, Closed Accounts . . . . . 635
- 14.6.2.5 Do Not Pay Collection Accounts Without Reaching an Agreement  
With the Furnisher. . . . . 635
- 14.6.2.6 Pay Off Credit Cards Before the Billing Statement is Generated . . . . . 636
- 14.6.2.7 Get Added to a Spouse’s Account as an Authorized User . . . . . 636
- 14.6.3 Re-Scoring . . . . . 636
- 14.7 Policy Concerns with Credit Scoring Systems . . . . . 636
- 14.7.1 Lack of Transparency . . . . . 636
- 14.7.2 Lack of Flexibility . . . . . 636
- 14.7.3 Credit Scores, Risk-based Pricing, and Subprime Loans . . . . . 637
- 14.7.4 Credit Scores May Undermine FCRA’s Dispute Mechanisms . . . . . 637
- 14.8 Concerns About the Accuracy of Credit Scores . . . . . 639
- 14.8.1 Garbage In, Garbage Out: The Effect of Consumer Reporting Inaccuracies  
on Credit Scores. . . . . 639
- 14.8.2 The Effect of Inaccurate, Non-Derogatory Information . . . . . 639
- 14.8.2.1 General . . . . . 639
- 14.8.2.2 Credit Limits . . . . . 639
- 14.8.2.3 Unreported Information . . . . . 640
- 14.8.2.4 Student Loan Deferrals . . . . . 641
- 14.8.2.5 Duplicate Accounts . . . . . 641
- 14.8.2.6 Wrong Account Type . . . . . 641
- 14.8.2.7 Too Many Accounts. . . . . 641
- 14.8.3 Authorized User Issues . . . . . 641
- 14.8.4 Predictiveness of Credit Scores Over Time . . . . . 642
- 14.8.4.1 Lack of Validation and Re-Validation . . . . . 642
- 14.8.4.2 Credit Scores May Not be Reliable During Recessions. . . . . 642
- 14.8.5 Lender Misuse of Credit Scoring Models . . . . . 643
- 14.8.6 Impact of Credit Counseling and Debt Management Plans on Credit Scores . . . . . 644
- 14.8.7 Payment Plans and Loan Modifications . . . . . 644
- 14.9 Do Credit Scores Discriminate? . . . . . 644
- 14.9.1 Credit Scoring’s Disparate Impact . . . . . 644
- 14.9.2 The Growing Credit Scoring Gap . . . . . 645
- 14.10 Credit Scores and the Consumer Law Practitioner. . . . . 645
- 14.11 Credit Scores and Insurance . . . . . 646
- 14.12 Credit Scores and Utility Service . . . . . 647

Chapter 15

Credit Repair Legislation

- 15.1 General . . . . . 649
- 15.1.1 Nature of Credit Repair Organizations . . . . . 649
- 15.1.2 Overview of Credit Repair Laws. . . . . 650
- 15.1.3 The Surprising Reach of Credit Repair Laws . . . . . 650
- 15.2 Federal Credit Repair Organizations Act . . . . . 650
- 15.2.1 Introduction. . . . . 650
- 15.2.2 Scope . . . . . 651
- 15.2.2.1 Some CROA Restrictions Apply to “Credit Repair Organizations,”  
While Others Apply to Any Person . . . . . 651
- 15.2.2.2 Definition of “Credit Repair Organization” . . . . . 651
- 15.2.2.2.1 Broad definition covers wide array of entities . . . . . 651
- 15.2.2.2.2 “In return for the payment of money or other valuable  
consideration” . . . . . 653
- 15.2.2.2.3 Is the organization offering a “service”?. . . . . 654
- 15.2.2.2.4 Types of services and advertisements that meet the  
definition . . . . . 654

Contents

15.2.2.2.5	Services that claim to help consumer develop future creditworthy behavior . . . . .	655
15.2.2.2.6	Other definitions . . . . .	656
15.2.2.3	Exceptions to Definition of “Credit Repair Organization” . . . . .	656
15.2.2.3.1	Introduction. . . . .	656
15.2.2.3.2	Non-profit organizations . . . . .	656
15.2.2.3.3	Creditors restructuring a consumer’s debt . . . . .	657
15.2.2.3.4	Depository institutions and credit unions . . . . .	657
15.2.2.4	Credit Repair Services That Are Ancillary to Another Activity . . . . .	657
15.2.2.5	Attorneys . . . . .	658
15.2.2.6	Debt Collectors . . . . .	659
15.2.2.7	Sellers Who Advertise Credit Repair. . . . .	660
15.2.3	Credit Repair Organizations Must Make Specific Disclosures. . . . .	660
15.2.4	Requirements for Credit Repair Contracts. . . . .	661
15.2.5	Three-Day Right to Cancel . . . . .	661
15.2.6	Prohibition of Advance Payment to Credit Repair Organization . . . . .	662
15.2.7	Prohibitions of Deceptive Practices, Applicable to Any Person. . . . .	663
15.2.7.1	Applicability to Any “Person”. . . . .	663
15.2.7.1.1	General . . . . .	663
15.2.7.1.2	Case law limiting scope of any “person”. . . . .	663
15.2.7.2	Misstatements to Consumer Reporting Agencies or Creditors . . . . .	664
15.2.7.3	Concealment of the Consumer’s Identity . . . . .	666
15.2.7.4	Misrepresentations Regarding the Services of a Credit Repair Organization . . . . .	666
15.2.7.5	Fraud and Deception . . . . .	667
15.2.8	Private Remedies . . . . .	667
15.2.8.1	Noncomplying Contract Is Void . . . . .	667
15.2.8.2	Who May Sue. . . . .	668
15.2.8.3	Liability Not Limited to Credit Repair Organizations. . . . .	668
15.2.8.4	Does an Arbitration Requirement Apply to CROA Claims? . . . . .	669
15.2.8.4.1	Introduction. . . . .	669
15.2.8.4.2	Supreme Court finds arbitration consistent with CROA’s statutory language . . . . .	669
15.2.8.4.3	Supreme Court holds that arbitrator decides whether contract is void . . . . .	669
15.2.8.4.4	Supreme Court upholds bans on class arbitration. . . . .	670
15.2.8.4.5	Remaining challenges to CROA arbitration agreement . . . . .	670
15.2.8.5	Damages . . . . .	670
15.2.8.5.1	Statutory formula for damages . . . . .	670
15.2.8.5.2	Actual damages . . . . .	671
15.2.8.5.3	Punitive damages. . . . .	671
15.2.8.6	Attorney Fees . . . . .	671
15.2.8.7	Class Actions . . . . .	671
15.2.8.8	Jurisdiction. . . . .	672
15.2.8.9	Pleading. . . . .	672
15.2.8.10	Statute of Limitations . . . . .	673
15.2.8.11	Jury Trial . . . . .	673
15.2.9	Prohibition Against Waivers. . . . .	673
15.2.10	Relation to State Laws. . . . .	673
15.2.11	Federal and State Enforcement of the Federal Act . . . . .	674
15.3	State Credit Repair Laws . . . . .	674
15.3.1	Introduction. . . . .	674
15.3.2	Coverage . . . . .	674
15.3.3	Exemptions . . . . .	676

15.3.4 Application to Car Dealers, Contractors, Other Retailers Who Arrange Credit . . . . . 676

15.3.4.1 Introduction . . . . . 676

15.3.4.2 Requirement of Payment of Fee for the Credit Services . . . . . 676

15.3.4.3 Do Retailers Fall Within a Specific Statutory Exemption?. . . . . 677

15.3.4.4 Legislative Intent. . . . . 678

15.3.5 Substantive Prohibitions. . . . . 678

15.3.6 Private Causes of Action . . . . . 679

15.3.7 State Enforcement . . . . . 680

15.3.8 Federal Preemption. . . . . 680

15.4 Federal Telemarketing Statutes and Regulations . . . . . 680

15.4.1 Federal Telemarketing and Consumer Fraud and Abuse Prevention Act . . . . . 680

15.4.2 Federal Telephone Consumer Protection Act . . . . . 681

15.4.3 State Telemarketing Statutes. . . . . 682

Chapter 16

Privacy Protection

16.1 Overview. . . . . 683

16.2 Privacy from Governmental Intrusion. . . . . 685

16.3 Tort of Invasion of Privacy. . . . . 685

16.3.1 Four Different Torts of Invasion of Privacy. . . . . 685

16.3.2 Applicability to Consumer Reporting. . . . . 686

16.3.3 Tort of Public Disclosure of Private Facts. . . . . 686

16.3.4 Tort of Intrusion. . . . . 688

16.3.5 Tort of Appropriation . . . . . 689

16.4 Statutory Protection of Financial Information . . . . . 690

16.4.1 The Gramm-Leach-Bliley Act . . . . . 690

16.4.1.1 Overview . . . . . 690

16.4.1.2 Implementation and Enforcement of the Gramm-Leach-Bliley Act: Changes from the Dodd-Frank Act . . . . . 690

16.4.1.3 “Financial Institutions”—Entities That Must Comply with the Gramm-Leach-Bliley Act . . . . . 691

16.4.1.4 “Customers” and “Consumers”—Those Protected by the Gramm-Leach-Bliley Act . . . . . 691

16.4.1.5 “Nonpublic Personal Information”—the Information Covered by the Gramm-Leach-Bliley Act . . . . . 692

16.4.1.6 Exempt Disclosures . . . . . 693

16.4.1.6.1 Overview . . . . . 693

16.4.1.6.2 Disclosures to affiliates . . . . . 693

16.4.1.6.3 Categories of exempted disclosures . . . . . 693

16.4.1.6.4 The Gramm-Leach-Bliley Act’s limits on redisclosure and reuse of the information . . . . . 695

16.4.1.7 The Gramm-Leach-Bliley Act’s Privacy Notices Requirement . . . . . 695

16.4.1.7.1 General . . . . . 695

16.4.1.7.2 When a privacy notice must be given . . . . . 696

16.4.1.7.3 Contents of privacy notice . . . . . 696

16.4.1.7.4 Model privacy notice . . . . . 696

16.4.1.8 Opting Out . . . . . 697

16.4.1.8.1 General . . . . . 697

16.4.1.8.2 The opt-out notice . . . . . 697

16.4.1.8.3 Exercise of the opt-out right. . . . . 698

16.4.1.9 Limits on Sharing Account Number Information for Marketing Purposes . . . . . 698

16.4.1.10 The Gramm-Leach-Bliley Act’s Data Safeguard Requirements. . . . . 699

16.4.1.11 Impact on Fair Credit Reporting Act . . . . . 699

*Contents*

16.4.1.12 No Private Right of Action under the Gramm-Leach-Bliley Act . . . .	699
16.4.1.13 Limited Preemption of State Law . . . . .	700
16.4.1.14 Weaknesses of the Gramm-Leach-Bliley Act . . . . .	700
16.4.2 Other State and Federal Protections . . . . .	701
16.4.2.1 Protections Related to Computers and the Internet. . . . .	701
16.4.2.2 The Financial Information Privacy Act . . . . .	702
16.4.2.3 The Federal Trade Commission Act . . . . .	702
16.4.2.4 The Driver’s Privacy Protection Act . . . . .	702
16.4.2.5 State Statutes . . . . .	703
16.5 Common Law Protection of Financial Information . . . . .	705
16.6 Interests Impeding Legislative Protection of Financial Information . . . . .	707
Index . . . . .	709

## **Volume 2**

### **Appendix A**

#### **Fair Credit Reporting Act**

A.1 Cross-Reference Table of 15 U.S.C. Section Numbers with Fair Credit Reporting Act Section Numbers . . . . .	753
A.2 The Fair Credit Reporting Act . . . . .	754

### **Appendix B**

#### **FCRA Regulations, Interpretations, and Guidelines**

B.1 Introduction . . . . .	791
B.2 The Consumer Financial Protection Bureau . . . . .	792
B.2.1 Consumer Financial Protection Bureau Regulations . . . . .	792
B.2.2 Consumer Financial Protection Bureau Guidelines. . . . .	818
B.2.3 Rule Defining Larger Participants of the Consumer Reporting Market . . . . .	819
B.3 Federal Trade Commission Regulations . . . . .	821
B.3.1 Federal Trade Commission Regulations for the Red Flag Guidelines; Disposal of Consumer Information; and Other Provisions. . . . .	821
B.3.2 Parallel Citations for FTC Regulations Governing Motor Vehicle Dealers . . . . .	823
B.3.3 Appendix A to 16 C.F.R. Part 681—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation . . . . .	823
B.4 Citations for Banking Agencies’ FCRA Regulations. . . . .	825
B.5 Securities and Exchange Commission Regulations. . . . .	829

### **Appendix C**

#### **FCRA Model Forms**

C.1 Introduction . . . . .	831
C.2 Standardized Form for Requesting Annual File Disclosures (Requesting a Free Credit Report) . . . . .	831
C.3 General Summary of Consumer Rights . . . . .	833
C.4 Summary of Consumer Identity Theft Rights . . . . .	837
C.5 FTC Identity Theft Affidavit . . . . .	840
C.6 Notice of Furnisher Responsibilities . . . . .	843
C.7 Notice to Users of Consumer Reports . . . . .	847
C.8 Model Prescreen Opt-Out Notices. . . . .	854
C.9 ECOA Adverse Action Forms (Regulation B, 12 C.F.R. Part 1002, Appendix C) . . . . .	859
C.10 Risk-Based Pricing Notices . . . . .	868
C.11 Model Affiliate Marketing Opt-Out Notices. . . . .	882

Appendix D	FTC Staff Summary	
	D.1 Introduction . . . . .	887
	D.2 40 Years of Experience with the Fair Credit Reporting Act—an FTC Staff Report with Summary of Interpretations. . . . .	887
Appendix E	Index to Federal Trade Commission Informal Staff Opinion Letters with FCRA Sections . . . . .	937
Appendix F	Credit Repair Organizations Act. . . . .	945
Appendix G	The Gramm-Leach-Bliley Act	
	G.1 The Gramm-Leach-Bliley Act . . . . .	949
	G.2 CFPB and FTC Privacy of Consumer Financial Information Rules. . . . .	954
	G.2.1 CFPB Regulation P. . . . .	954
	G.2.2 FTC Safeguard Rules. . . . .	966
	G.3 Banking Agency Regulations on Data Safeguards . . . . .	966
	G.3.1 Office of the Comptroller of the Currency Regulations. . . . .	966
	G.3.2 Federal Reserve System Regulations. . . . .	970
	G.3.3 Federal Deposit Insurance Corporation Regulations. . . . .	978
	G.3.4 Office of Thrift Supervision Regulations . . . . .	982
	G.3.5 National Credit Union Administration Regulations . . . . .	986
	G.4 Sample Opt-Out Notice . . . . .	990
Appendix H	Summary of State Laws on Consumer Reporting, Identity Theft, Credit Repair, and Security Freezes	
	H.1 Introduction . . . . .	1001
	H.2 State-by-State Summaries of Laws on Credit Reports, Identity Theft, and Security Freezes. . . . .	1001
Appendix I	Sample Credit Reports and Industry Forms	
	I.1 Sample Credit Reports . . . . .	1071
	I.1.1 Equifax . . . . .	1071
	I.1.2 Experian . . . . .	1074
	I.1.3 TransUnion . . . . .	1078
	I.2 Universal Data Form . . . . .	1083
	I.3 Automated Consumer Dispute Verification Form. . . . .	1084
Appendix J	Sample Complaints and Settlement Language	
	J.1 Introduction . . . . .	1085
	J.2 Sample Settlement Language to Address Credit Reporting . . . . .	1085
	J.2.1 Introduction . . . . .	1085
	J.2.2 Alternative I: Deleting All Mention of the Debt. . . . .	1086
	J.2.3 Alternative II: Correcting the Status of an Account, But Retaining Information About the Account . . . . .	1086
	J.3 Complaints. . . . .	1087
	J.3.1 Complaint—Failure to Reinvestigate . . . . .	1087
	J.3.2 Complaint—Impermissible Purposes . . . . .	1089
	J.3.3 Complaint—Mixed File . . . . .	1090
	J.3.4 Complaint—Accuracy; Specialty Reporting Agency . . . . .	1092

*Contents*

	J.3.5 Complaint—Bankruptcy Reporting . . . . .	1098
	J.3.6 Complaint—Identity Theft . . . . .	1104
Appendix K	Government Enforcement Orders	
	K.1 Introduction . . . . .	1109
	K.2 Orders Against Experian (Formerly TRW) . . . . .	1109
	K.3 Orders Against Equifax . . . . .	1109
	K.4 Orders Against TransUnion . . . . .	1110
	K.5 Orders Against ChoicePoint . . . . .	1111
	K.6 Orders Against Specialty Consumer Reporting Agencies . . . . .	1111
	K.7 Orders Against Resellers of Consumer Reports . . . . .	1113
	K.8 Orders Against Users of Consumer Reports . . . . .	1114
	K.9 Orders Against Furnishers . . . . .	1115
	K.10 Orders Against Identity Thieves . . . . .	1116
Appendix L	Consumer Guides to Credit Reporting and Credit Scores (Appropriate for General Distribution) . . . . .	1119
Appendix M	Fair Credit Reporting Related Websites . . . . .	1125
Appendix N	List of Consumer Reporting Agencies and Other Database Companies . . . . .	1127
Appendix O	Finding Pleadings and Primary Sources on the Companion Website	
	O.1 Introduction . . . . .	1131
	O.2 Pleadings and Primary Sources Found on the Companion Website . . . . .	1131
	O.3 How to Access the Website . . . . .	1132
	O.4 Locating Documents on the Website . . . . .	1133
	O.5 How to Use the Documents, Find Microsoft Word Versions, and Locate Additional Features . . . . .	1136
	O.6 Electronic Searches of This and Other NCLC Titles' Chapters . . . . .	1136
	O.7 Finding Additional Pleadings . . . . .	1136

# Contents

## Volume 2

Appendix A	Fair Credit Reporting Act	
	A.1 Cross-Reference Table of 15 U.S.C. Section Numbers with Fair Credit Reporting Act Section Numbers . . . . .	753
	A.2 The Fair Credit Reporting Act . . . . .	754
Appendix B	FCRA Regulations, Interpretations, and Guidelines	
	B.1 Introduction . . . . .	791
	B.2 The Consumer Financial Protection Bureau . . . . .	792
	B.2.1 Consumer Financial Protection Bureau Regulations . . . . .	792
	B.2.2 Consumer Financial Protection Bureau Guidelines . . . . .	818
	B.2.3 Rule Defining Larger Participants of the Consumer Reporting Market . . . . .	819
	B.3 Federal Trade Commission Regulations . . . . .	821
	B.3.1 Federal Trade Commission Regulations for the Red Flag Guidelines; Disposal of Consumer Information; and Other Provisions . . . . .	821
	B.3.2 Parallel Citations for FTC Regulations Governing Motor Vehicle Dealers . . . . .	823
	B.3.3 Appendix A to 16 C.F.R. Part 681—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation . . . . .	823
	B.4 Citations for Banking Agencies’ FCRA Regulations . . . . .	825
	B.5 Securities and Exchange Commission Regulations . . . . .	829
Appendix C	FCRA Model Forms	
	C.1 Introduction . . . . .	831
	C.2 Standardized Form for Requesting Annual File Disclosures (Requesting a Free Credit Report) . . . . .	831
	C.3 General Summary of Consumer Rights . . . . .	833
	C.4 Summary of Consumer Identity Theft Rights . . . . .	837
	C.5 FTC Identity Theft Affidavit . . . . .	840
	C.6 Notice of Furnisher Responsibilities . . . . .	843
	C.7 Notice to Users of Consumer Reports . . . . .	847
	C.8 Model Prescreen Opt-Out Notices . . . . .	854
	C.9 ECOA Adverse Action Forms (Regulation B, 12 C.F.R. Part 1002, Appendix C) . . . . .	859
	C.10 Risk-Based Pricing Notices . . . . .	868
	C.11 Model Affiliate Marketing Opt-Out Notices . . . . .	882



*Fair Credit Reporting*

Appendix D	FTC Staff Summary	
	D.1 Introduction . . . . .	887
	D.2 40 Years of Experience with the Fair Credit Reporting Act—an FTC Staff Report with Summary of Interpretations. . . . .	887
Appendix E	Index to Federal Trade Commission Informal Staff Opinion Letters with FCRA Sections . . . . .	937
Appendix F	Credit Repair Organizations Act. . . . .	945
Appendix G	The Gramm-Leach-Bliley Act	
	G.1 The Gramm-Leach-Bliley Act . . . . .	949
	G.2 CFPB and FTC Privacy of Consumer Financial Information Rules. . . . .	954
	G.2.1 CFPB Regulation P. . . . .	954
	G.2.2 FTC Safeguard Rules. . . . .	966
	G.3 Banking Agency Regulations on Data Safeguards . . . . .	966
	G.3.1 Office of the Comptroller of the Currency Regulations. . . . .	966
	G.3.2 Federal Reserve System Regulations. . . . .	970
	G.3.3 Federal Deposit Insurance Corporation Regulations. . . . .	978
	G.3.4 Office of Thrift Supervision Regulations . . . . .	982
	G.3.5 National Credit Union Administration Regulations . . . . .	986
	G.4 Sample Opt-Out Notice . . . . .	990
Appendix H	Summary of State Laws on Consumer Reporting, Identity Theft, Credit Repair, and Security Freezes	
	H.1 Introduction . . . . .	1001
	H.2 State-by-State Summaries of Laws on Credit Reports, Identity Theft, and Security Freezes. . . . .	1001
Appendix I	Sample Credit Reports and Industry Forms	
	I.1 Sample Credit Reports . . . . .	1071
	I.1.1 Equifax . . . . .	1071
	I.1.2 Experian . . . . .	1074
	I.1.3 TransUnion . . . . .	1078
	I.2 Universal Data Form . . . . .	1083
	I.3 Automated Consumer Dispute Verification Form. . . . .	1084
Appendix J	Sample Complaints and Settlement Language	
	J.1 Introduction . . . . .	1085
	J.2 Sample Settlement Language to Address Credit Reporting . . . . .	1085
	J.2.1 Introduction . . . . .	1085
	J.2.2 Alternative I: Deleting All Mention of the Debt. . . . .	1086
	J.2.3 Alternative II: Correcting the Status of an Account, But Retaining Information About the Account . . . . .	1086
	J.3 Complaints. . . . .	1087
	J.3.1 Complaint—Failure to Reinvestigate . . . . .	1087
	J.3.2 Complaint—Impermissible Purposes . . . . .	1089
	J.3.3 Complaint—Mixed File . . . . .	1090
	J.3.4 Complaint—Accuracy; Specialty Reporting Agency . . . . .	1092

*Contents*

	J.3.5 Complaint—Bankruptcy Reporting . . . . .	1098
	J.3.6 Complaint—Identity Theft . . . . .	1104
Appendix K	Government Enforcement Orders	
	K.1 Introduction . . . . .	1109
	K.2 Orders Against Experian (Formerly TRW) . . . . .	1109
	K.3 Orders Against Equifax . . . . .	1109
	K.4 Orders Against TransUnion . . . . .	1110
	K.5 Orders Against ChoicePoint . . . . .	1111
	K.6 Orders Against Specialty Consumer Reporting Agencies . . . . .	1111
	K.7 Orders Against Resellers of Consumer Reports . . . . .	1113
	K.8 Orders Against Users of Consumer Reports . . . . .	1114
	K.9 Orders Against Furnishers . . . . .	1115
	K.10 Orders Against Identity Thieves . . . . .	1116
Appendix L	Consumer Guides to Credit Reporting and Credit Scores (Appropriate for General Distribution) . . . . .	1119
Appendix M	Fair Credit Reporting Related Websites . . . . .	1125
Appendix N	List of Consumer Reporting Agencies and Other Database Companies . . . . .	1127
Appendix O	Finding Pleadings and Primary Sources on the Companion Website	
	O.1 Introduction . . . . .	1131
	O.2 Pleadings and Primary Sources Found on the Companion Website . . . . .	1131
	O.3 How to Access the Website . . . . .	1132
	O.4 Locating Documents on the Website . . . . .	1133
	O.5 How to Use the Documents, Find Microsoft Word Versions, and Locate Additional Features . . . . .	1136
	O.6 Electronic Searches of This and Other NCLC Titles’ Chapters . . . . .	1136
	O.7 Finding Additional Pleadings . . . . .	1136

