

FACTA Changes to the Fair Credit Reporting Act

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Introduction to FACTA

The Fair and Accurate Credit Transactions Act of 2003 shows a change in emphasis from credit reporting to accuracy of information in credit transactions. Both identity theft and accuracy were major concerns expressed by legislators.¹ The Financial Literacy and Education Improvement Act, which is part of FACTA,² shows an emphasis on consumers accurately using financial information to make informed credit decisions. The goal is “not simply to improve knowledge, but rather to improve consumers’ financial choices and outcomes.”³

Several provisions in FACTA will be beneficial to consumers, but they come at the expense of preempting state law in several areas. Moreover, private enforcement of many of the new provisions in FACTA has been substantially limited. Each provision should be read carefully to determine the extent that private claims can be made and enforced by private attorneys or whether enforcement is limited to state and federal enforcement agencies.

On December 4, 2003, President Bush signed the Fair And Accurate Credit Transactions Act of 2003 (FACTA).⁴ The legislation contains significant amendments to the Fair Credit Reporting Act on a broad scope of topics and issues. This is an initial analysis of FACTA and the many changes it makes to the Fair Credit Reporting Act (FCRA).⁵

The most significant changes to the FCRA are:

[1] Existing FCRA preemption provisions are made permanent. Other preemption language has been added to affect other state and local laws, especially in specific areas relating to identity theft. However, all areas of identity theft are not now preempted.

[2] Fraud alerts can be placed on credit files by the consumer (90 Days for Temporary) [§1681c-1(a)(1)] (up to 7 Years for Extended) [1681c-1(b)]. Consumers can now force the blocking of information caused by identity theft or fraud. [1681c-2]. The FTC and other federal agencies must establish guidelines to protect against fraud and identity theft. FACTA provides for “active duty alerts” for active duty military personnel. [1681c-1(c)]

[3] When a consumer is granted credit, but, due to a negative credit rating or report, the credit granted is at a less advantageous rate or less than optimal rate, the consumer must receive an adverse action notice of that fact.

[4] Consumers now have the right to one free credit report a year from the national credit reporting agencies and other national specialty reporting agencies, a newly designated group of credit reporting agencies. [§1681j(a)] The FTC must prescribe regulations to provide procedures and processes for consumers to obtain free reports.

[5] The standard for furnisher accuracy has been changed from “knows or consciously avoids knowing” to the higher standard of “knows or has reasonable cause to believe” information is inaccurate. Regulators must establish guidelines for furnishers regarding the “accuracy and integrity” of information

furnished to credit reporting agencies. A study on the accuracy of consumer reports must also be conducted.

[6] Consumers may now dispute information and initiate an investigation directly with furnisher, as opposed to the agency dispute mechanism created by the 1996 FCRA amendments through sections 1681i[a] and 1681s-2. Furnishers cannot send or forward information to any credit reporting agency[ies] when a consumer submits an identity theft report to the furnisher relating to that information.

[7] A requirement that credit and debit card numbers be truncated on consumer receipts will be implemented over an extended period. [§1681c(g)] Consumers can request that their social security number be truncated on their credit report.

[8] Credit scores and how they are determined must be disclosed to consumers for a reasonable fee, as determined by the FTC. [1681g(f) and 1681g(g)] Consumers must be notified of this right. A study on the potential disparate impact of credit scores is required.

[9] Consumers can prohibit the sharing of information by affiliates that will be used for marketing purposes. [§1681s-3].

[10] Communications to employers from third party investigators are no longer considered consumer reports under the FCRA. However, employees must be notified by an adverse action notice if adverse action is taken based upon any such communications and employees have the right to a summary of the nature and substance of the adverse report/communication.

[11] Additional limits are placed on the sharing of medical information. [§1681b(g)(1) and §1681b(g)(2)]

[12] A financial literacy and education commission is created.

Endnotes:

1. Sen. Rep. No. 108-166, 108th Congress, 1st Sess, Amending the Fair Credit Reporting Act, p. 6-7 (Oct. 17, 2003); H. Rep. No. 108-263, 108th Congress, 1st Session, Fair and Accurate Credit Transactions Act of 2003, p.7 (Sept. 4, 2003).
2. Pub. L. No. 108-159 (2003), §511 (2003).
3. Pub. L. No. 108-159 (2003), §514 (a)(2)(J).
4. Pub. L. No. 108-159 (2003).
5. 15 U.S.C. 1681, et. seq.

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