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## Obtaining Credit Reports Properly

### Understanding Permissible Purposes under the Fair Credit Reporting Act

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# Overview

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- Permissible Purposes
- Cross-Selling
- Prescreen Offers
  - Required Disclosure & Opt-Out
- Negative Information Notice
- Other FCRA Issues

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# Fair Credit Reporting Act

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- Section 604 of Fair Credit Reporting Act
  - 15 U.S.C. 1681b
  - Except for prescreen offers, a **consumer reporting agency** may furnish a consumer report under the following circumstances and no other:
    1. In response to court order or a grand jury subpoena (not applicable to CUs)

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# Fair Credit Reporting Act

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- Under the following circumstances and no other:
  2. In accordance with the written instructions of the consumer to whom it relates;
- Strongest permissible purpose:
  - Member gives authorization, in writing
  - *Example:* Consent to credit report pull to establish membership or open new checking account

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# Fair Credit Reporting Act

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- Under the following circumstances and no other:
  3. To a person which it has reason to believe
    - A. Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;
      - Member loan application
      - Review existing member loan or account

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# Fair Credit Reporting Act

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- Under the following circumstances and no other:
  3. To a person which it has reason to believe
    - B. Intends to use the information for employment purposes;
    - C. Intends to use the information in connection with the underwriting of insurance involving the consumer;
- For employment purposes, special requirements under 15 U.S.C. 1681b(b) apply

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# Fair Credit Reporting Act

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- Under the following circumstances and no other:
  3. To a person which it has reason to believe
    - D. Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status;
    - E. Intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation;

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# Fair Credit Reporting Act

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- Under the following circumstances and no other:
  3. To a person which it has reason to believe
    - F. Otherwise has a legitimate business need for the information
      - i. In connection with a business transaction that is initiated by the consumer; or
      - ii. To review an account to determine whether the consumer continues to meet the terms of the account
    - G. Executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.

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# Fair Credit Reporting Act

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- Three Permissible Purposes for Member Transactions
  1. Written instructions
  2. In connection with a credit transaction (including review and collection)
  3. Other legitimate business need:
    - Transaction initiated by member
    - Review an account to determine if still meet the terms
- Each credit pull must have a permissible purpose
- Review existing procedures

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# Fair Credit Reporting Act

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## ■ **Compliance Review**

- When does our CU obtain credit reports?
  - Credit report versus consumer report?
  - Soft pull vs. Hard pull
  - Beacon, ChexSystems, FICO
- What is disclosed to members?
  - Membership application
  - Loan application
  - Written authorization?
- **Do we have a permissible purpose?**

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# Cross-Selling

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- Can we use a credit report pulled for membership to cross-sell a credit card?
  - **What was the permissible purpose?**
    - If it was to open the membership, the permissible purpose is limited to that action
      - Transaction initiated by the member
        - Membership request
        - Member did not request or authorize the cross-sell of the credit card or other loans

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# Cross-Selling

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- Federal Trade Commission Opinion
  - “Gowen Letter” – 1999
    - “Your questions raise the issue of whether a creditor in a **closed end credit transaction** may exploit consumer reports obtained for "review" purposes in order to market its products or services. In the circumstances you described, we believe the answer is "no."”

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# Cross-Selling

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- No permissible purpose for cross-selling
  - First, "review" is not a purpose for which a closed-end creditor would ordinarily need to obtain consumer reports on its customers.... The terms of a closed-end credit transaction are predetermined and generally may not be changed unilaterally by the creditor unless the contract expressly provides for such action (e.g., in the event of default). Therefore, the creditor is unlikely to have a reason to consider "whether to retain or modify current account terms" and, thus, would not have any routine need to procure consumer reports to "review" its accounts.

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# Cross-Selling

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- No permissible purpose for cross-selling
  - Second, the credit bureau must, pursuant to Section 607(a), require the creditor to *"certify the purposes for which the information is sought, and certify that the information will be used for no other purpose."* (emphasis added). Because Section 604(a) provides no authority for a creditor (or any party) to use a consumer report for marketing purposes, a creditor would violate its certification by using an existing report in such a manner.

<https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-gowen-04-29-99>

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# Cross-Selling

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- No permissible purpose for cross-selling
  - Credit union **cannot** use a credit report obtained for a membership or loan application for a second purpose
  - Similarly, credit union **cannot** use a credit report obtained for an “account review” for a second purpose
  - FCRA requires the CU to always be able to “point back to” the permissible purpose for that specific credit report usage
- **Solution:** Obtain the member’s written authorization that specifically grants the ability to cross-sell

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# Prescreen Offers

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- Prescreen Offers
  - Section 604(c) allows the credit union to prescreen members for “credit transactions that are not initiated by the consumer”
    - Prescreening is the credit reporting agency determining which members meet a credit union’s *predetermined criteria*
      - Excludes members who have opted out of prescreening and members under 21 (unless the member has opted in)

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# Prescreen Offers

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- Prescreen Offers
  - Credit union must provide a “firm offer of credit” to consumers meeting the criteria
    - **Firm Offer of Credit:** “any offer or credit...to a consumer that will be honored if the consumer is determined, based on information in a consumer report...to meet the specific criteria used to select the consumer for the offer...”
      - *Example:* All members with a 720 credit score will be offered a 9.99% APR credit card

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# Prescreen Offers

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- Prescreen Process
  - The credit union sends criteria to the credit bureau
  - Consumers meeting that criteria are sent the prescreened offer
  - A consumer accepting the offer must receive the offer (as long as they still meet the criteria)
  - The credit union cannot add new criteria or requirements (“postscreen”) when the consumer attempts to “accept” the firm offer
    - Cannot use a “Two-Step” process

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# Prescreen Offers

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- Prescreen Disclosure and Opt-Outs
  - Regulation V – 12 CFR 1022.54
  - (c) *Prescreen opt-out notice*. Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with the following statement, consisting of a **short portion** and a **long portion**, which shall be in the same language as the offer of credit or insurance:

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# Prescreen Offers

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- Prescreen Disclosure and Opt-Outs
  - Regulation V – 12 CFR 1022.54
  - **Short Notice** (Appendix D to 1022):

**You can choose to stop receiving “prescreened” offers of credit from this and other companies by calling [toll-free number]. See PRESCREEN & OPT-OUT NOTICE on the other side for more information about prescreened offers.**

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# Prescreen Offers

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- Prescreen Disclosure and Opt-Outs
  - Regulation V – 12 CFR 1022.54
  - Long Notice (Appendix D to 1022):

**PRESCREEN & OPT-OUT NOTICE**: This “prescreened” offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]. If you do not want to received prescreened offers of credit from this or other companies, call the consumer reporting agencies toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address].

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# Negative Information Notice

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- Fair Credit Reporting Act

- Section 623(a)(7)

- “(A) Notice to Consumer Required

(i) *In general.* If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.”

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# Negative Information Notice

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- Appendix B to 12 CFR 1022 (Regulation V)

- **Model B-1**

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

- **Model B-2**

We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

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# Other FCRA Issues

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- **Risk-Based Pricing Notices**
  - Subpart H to Regulation V (12 CFR 1022.70 – 75)
- **Adverse Action Notices**
  - Credit Score Disclosure
  - Includes denials for debit card; checking account
- **Affiliate Marketing**
  - Subpart C of Regulation V (1022.20 – 27)
- **Duties of Furnishers of Information**
  - Subpart E of Regulation V (1022.40 – 43)
  - Including direct disputes

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# Key Takeaways

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- Which permissible purposes can we use?
- **Which permissible purpose are we using?**
- What disclosure are we giving to members?
- Are we obtaining a member's written authorization?
  - Does that written authorization specifically discuss our ability to obtain and use credit reports for cross-selling?
- If we are prescreening, are we making firm offers of credit?
- Confirm we are providing negative information notice
- Review and confirm FCRA/Regulation V compliance

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## FCRA Permissible Purposes

### QUESTIONS?

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