

What does the new address discrepancy rule mean for employment screening?

Executive Summary

- An existing section of the FCRA requires national credit bureaus to send address discrepancy notices to their users when the consumer's address that the user provided does not match the address on file for the consumer. *This existing section only applies to credit reports, not non-credit consumer reports.*
- New rules supplement the existing FCRA section as of November 1, 2008. The new rules require the users to have reasonable procedures to resolve the address discrepancy when they receive the notices.
- The FCRA only requires address discrepancy notices for credit reports. Therefore, users won't be receiving address discrepancy notices for non-credit consumer reports. *Users don't need to design procedures for resolving address discrepancies for non-credit consumer reports.*
- Users do need to have procedures to resolve address discrepancy notices. In the employment screening scenario, *the main duty is to confirm that the credit report actually relates to the consumer.* In some cases, the user may also have to report the confirmed address back to the credit bureau.
- A number of summaries available on the web fail to emphasize these distinctions because they are not tightly focused on employment screening. They are consistent if you read them closely.

FACTA

One of the main themes of the Fair and Accurate Credit Transactions Act of 2003 was to reduce identity theft. One of the provisions intended to reduce the risk of identity theft is in FACTA section 315. It became 15U.S.C. § 1681c(h), which is FCRA section 605(h). Section 605(h)(1) is a statute that requires no regulations to come into effect. It reads:

If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

Section 603(p), in turn, reads as follows:

The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

The agencies identified in section 603(p) are the well-known national credit bureaus, such as Experian, Equifax, and TransUnion. So, section 605(h)(1) requires national credit bureaus to send address discrepancy notices when it sends a credit report to a user and the consumer's address that the user provided does not match the address in the consumer's file.

New Regulations

The second part of FACTA section 315 required various regulatory agencies to define the duties of a user who receives an address discrepancy notice. The relevant regulatory agencies issued those regulations in 2007. They come into effect on November 1, 2008.

Generally, the regulations are a series of very similar sets of regulation issued by each of the regulatory agencies. Each set has a slightly different target – banks, credit unions, etc. Apart from differences in the issuing agency and the target, each set of regulation is substantively the same. For employment screening, the best set to read is the one issued by the Federal Trade Commission. In the Federal Register, you can find this at 72 F.R. 63771 or 16 C.F.R. § 681.1. For employment screening, there are three important points.

1. Section 681.1(c) only requires the user to do anything “when the user receives a notice of address discrepancy.” Section 681.1(b) makes clear that this is the address discrepancy notice that FCRA section 605(e) requires a national credit bureau to send. For an employment screening situation, this means to watch the credit reports ordered from the national credit bureaus.
2. What section 681.1(c) requires the user to do is to use reasonable procedures to form a reasonable belief that the report relates to the consumer. For an employment screening situation, this means that the user has to use reasonable procedures to decide whether the consumer report really relates to the consumer. Because the national credit bureaus view any slight difference as an address discrepancy, the user may be able to resolve the majority of address discrepancy notices with nothing more than common sense. For the others, the user may have to review other records (such as a name and address history report) or ask the consumer.
3. Section 681.1(d) might require the user to provide a confirmed address back to the national credit bureau. This is a requirement only if the user “regularly and in the ordinary course of business furnishes information” to the national credit bureau that gave the address discrepancy notice. From other commentary in the notice adopting the regulations, it seems that this last requirement refers to creditors furnishing credit-related information to credit bureaus (such as delinquency and late payment information). Where this requirement applies, the user must furnish the confirmed report with the other information that the user regularly furnishes to the credit bureau. For an employment screening situation, this probably means that the user has little to do. Most employers do not regularly report credit-related information to a national credit bureau; even if it does, the user may use different credit bureaus for credit-related and employment-related credit reports. Even if it uses only one credit bureau, the user’s obligation is to furnish the confirmed address along with the other information that the user regularly furnishes to the credit bureau; this means asking the national credit bureau how to furnish the information.

Identity Theft Red Flags

One reason that the new regulation is difficult to digest for employment screening is that the regulatory agency combined the address discrepancy regulations with regulations under FACTA section 114. That section authorized regulations requiring financial institutions and creditors to adopt certain practices that would reduce the risk of identity theft. FACTA section 114 became 15 U.S.C. § 1681m(e), which is FCRA section 615(e). These provisions are usually irrelevant for the typical employment screening situation. Ignoring them on your first reading of the regulation will probably enhance your understanding of the parts of the regulation that apply to employment screening.

Further Reading

We are not a law firm. We cannot give you legal advice. If you need legal advice, you should hire a lawyer. If you want to make up your own mind, you can read the original documents on which we based our conclusions:

- The Fair and Accurate Credit Transactions Act of 2003:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ159.108.pdf
- The Fair Credit Reporting Act
<http://www.ftc.gov/os/statutes/031224fcra.pdf>
- Federal Register notice
<http://edocket.access.gpo.gov/2007/pdf/07-5453.pdf>
- Code of Federal Regulations
http://edocket.access.gpo.gov/cfr_2008/janqtr/pdf/16cfr681.1.pdf
http://edocket.access.gpo.gov/cfr_2008/janqtr/pdf/16cfr681.2.pdf
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