

# CRS Report for Congress

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## Fair Credit Reporting Act: Frequently Asked Questions

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### Summary

As financial privacy issues are debated in Congress, numerous questions about the Fair Credit Reporting Act (FCRA) have emerged. Enacted in 1970, the Fair Credit Reporting Act is the federal statute that establishes a regulatory framework for credit reporting in the United States and establishes a consumer's rights with respect to his or her credit report. This report attempts to answer frequently asked questions about the Fair Credit Reporting Act.<sup>1</sup> It will be updated as events warrant.

### Will the Fair Credit Reporting Act expire at the end of the year?

The Fair Credit Reporting Act itself will not expire at the end of this year. Only the provisions of the Act related to the preemption of state laws addressing specific subjects are set to expire as of January 1, 2004, absent congressional action.<sup>2</sup>

### What options are available for Congress?

The 108<sup>th</sup> Congress could (1) allow the preemption provisions to expire at the end of 2003; (2) renew only some or all of the preemption provisions for another set time period; or (3) make permanent only some or all of the preemption provisions. Three bills

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<sup>1</sup> For more information about the Fair Credit Reporting Act in general, see CRS Report RL31666, *Fair Credit Reporting Act: Rights and Responsibilities*.

<sup>2</sup> 15 U.S.C. 1681t(d). For more information on the preemption provisions in the Fair Credit Reporting Act, see CRS Report RS21449, *Fair Credit Reporting Act: Preemption of State Law*.

introduced in the 108<sup>th</sup> Congress, H.R. 2622, S. 660, and H.R. 1766, would make permanent the FCRA's preemption provisions. H.R. 2622 was reported out of the House Committee on Financial Services on July 24, 2003, and included a provision to make permanent the FCRA's current preemptions. No additional action has been taken on the other two bills.

### **What could states do if these provisions expire?**

If the preemption provisions are allowed to expire, as of January 1, 2004, states would be able to enact laws addressing issues that are currently addressed only under federal law. The newly enacted laws would have to state explicitly that the provision is intended to supplement the Fair Credit Reporting Act, and would have to provide the consumer with greater protection than is provided under federal law.<sup>3</sup>

### **How does the FCRA relate to the recently passed California financial privacy law?**

SB1, the California Financial Information Privacy Act, which was recently passed by the California State Legislature and is currently awaiting the Governor's signature, includes provisions on affiliate information sharing that attempt to provide greater consumer protection than what is required by federal law. If enacted, the law would require a financial institution to give customers the opportunity to "opt out" of having their nonpublic personal information shared with the company's affiliates, except when the affiliates share the same functional regulator, the same common brand, and are in the same line of business.

The affiliate information sharing provisions would presumably be preempted pursuant to the FCRA's current preemption provisions. However, it is unclear whether the affiliate information sharing provisions would continue to be preempted if Congress allows the current preemption language in the FCRA to expire at the end of 2003. If the preemption provisions are allowed to expire, states would be able to enact laws related to affiliate information sharing, but according to the specific language in the FCRA such laws must be *enacted* after January 1, 2004. The California law would have been enacted in 2003, but would not become effective until July 1, 2004.

### **What section of the FCRA addresses the sharing of information among affiliates?**

The FCRA does not explicitly address the sharing of information among affiliates.<sup>4</sup> However, communications among entities related by common ownership or affiliated by common corporate control are excluded from the definition of a consumer report so long

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<sup>3</sup> 15 U.S.C. 1681t(d)(2).

<sup>4</sup> For more information on the sharing of information among affiliates, see CRS Report RS21427, *Financial Privacy Laws Affecting Sharing of Customer Information Among Affiliated Institutions*.

as the consumer is provided an opportunity to direct that the information not be communicated among such entities.<sup>5</sup>

Additionally, under the FCRA's preemption provisions, states are prohibited from imposing any requirement or prohibition with respect to the exchange of information among entities affiliated by common ownership or common corporate control.<sup>6</sup>

## **What type of information can be shared among affiliates?**

The FCRA distinguishes between "transaction and experience" information and "other" information. Transaction and experience information between an institution and a consumer may be shared with affiliates. An example of this type of information could include a bank's opinion on the financial management habits of its customers.

Non-transaction, non-experience ("other") information obtained from third parties or from consumer applications may not be shared unless the consumer has been notified and given the opportunity to "opt out" from having such information shared.<sup>7</sup> Examples of non-transaction, non-experience information could include data contained in a consumer credit report and application information such as income and assets.

## **What other "opt-out" provisions are in the FCRA?**

The FCRA allows a consumer to "opt out" with respect to the release of information in connection with a credit or insurance transaction not initiated by the consumer.<sup>8</sup> Information in connection with a credit or insurance transaction not initiated by the consumer is generally released through a process referred to as "prescreening." Prescreening is the process whereby consumer reporting agencies compile lists of consumers who meet specific criteria provided by the requester, and then provide the lists to the requester or a third party (such as a mailing service), who uses the lists to solicit consumers with a firm offer for the requester's products or services, usually by mail.<sup>9</sup>

## **Can a consumer's credit report be released to anyone who requests it if he or she does not "opt out"?**

No. If a consumer does not "opt out", the limitations on uses of consumer credit reports still apply.<sup>10</sup> By not opting-out, a consumer is allowing limited information to be

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<sup>5</sup> 15 U.S.C. 1681a(d)(2)(A)(iii).

<sup>6</sup> 15 U.S.C. 1681t(b)(2).

<sup>7</sup> For more information, see CRS Report RL31758, *Financial Privacy: The Economics of Opt-In vs Opt-Out*.

<sup>8</sup> 15 U.S.C. 1681b(e).

<sup>9</sup> FTC Official Staff Commentary § 604(3)(A) item 6, reprinted in *Fair Credit Reporting*, 5<sup>th</sup> ed., National Consumer Law Center (2002), Appendix C.

<sup>10</sup> 15 U.S.C. 1681b. See also CRS Report RL31666, *Fair Credit Reporting Act: Rights and Responsibilities*, p. 3.

released in connection with transactions that he or she did not initiate, which may include firm offers for credit cards, loans, or insurance.<sup>11</sup>

## **Are consumers entitled to free copies of their credit reports under the FCRA?**

Generally, consumer reporting agencies may charge consumers up to \$9 for the disclosure of the information in their credit files.<sup>12</sup> However, under certain circumstances, a consumer may request a free copy of his or her credit report.<sup>13</sup> Under the FCRA, a consumer may, upon request, receive a free copy of his or her credit report under the following circumstances:

- the consumer receives a notice of adverse action,<sup>14</sup>
- the consumer is unemployed and seeking employment,<sup>15</sup>
- the consumer is on some form of public assistance,<sup>16</sup> or
- the consumer has reason to suspect that he/she is a victim of fraud.<sup>17</sup>

While the federal law requires the free disclosure of credit reports only under specific circumstances, several states have enacted laws allowing citizens of the state to obtain free copies of their credit reports. Residents of Colorado, Maryland, Massachusetts, New Jersey and Vermont can receive one free copy of their credit report per calendar year. Georgia residents are entitled to two free copies per year.

## **Does the FCRA require the disclosure of a consumer's credit score?**

No. Under the FCRA, consumer reporting agencies are not required to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.<sup>18</sup>

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<sup>11</sup> See 15 U.S.C. 1681a(l).

<sup>12</sup> 15 U.S.C. 1681j(a).

<sup>13</sup> For more information, see CRS Report RL32008, *A Consumer's Access to a Free Credit Report: A Legal and Economic Analysis*.

<sup>14</sup> 15 U.S.C. 1681j(b).

<sup>15</sup> 15 U.S.C. 1681j(c)(1).

<sup>16</sup> 15 U.S.C. 1681j(c)(2).

<sup>17</sup> 15 U.S.C. 1681j(c)(3).

<sup>18</sup> 15 U.S.C. 1681g(a)(1). For more information on credit scores, see CRS Report RS21298, *Credit Scores: Development, Use, and Policy Issues*.