



Obligations for Users of “Prescreened Lists”

The Federal Fair Credit Reporting Act (FCRA) strictly regulates the use of Consumer Credit Reports. The public policy is unmistakable. Consumers consider their credit history confidential; any provision that allows for its use and disclosure without their permission will be carefully limited. The provision for use of “Prescreened Lists” is carefully controlled by the FCRA. They may only be provided without the consumer’s permission if the transaction offered consists of a “firm offer of credit.”

Overview of Prescreening. Creditors have historically used prescreening to identify consumers who are qualified for and interested in particular credit products, such as credit cards or auto loans. Prescreening begins when a creditor selects criteria necessary for a consumer to qualify for a loan. The creditor may provide the criteria to a consumer reporting agency and instruct the agency to compile from the agency’s own files a “prescreened list” of consumers who meet those criteria. Sometimes the creditor gives the consumer reporting agency a list it has purchased to be screened; other times the prescreened list is “extracted” entirely from the consumer reporting agency’s own files.

Creating the “Firm offer of Credit” and Evaluating Consumer Responses. The thrust of the FCRA provisions is to ensure that there is a truly bona fide pre-approval process and that the plan isn’t just a guise to allow the creditor to use names from consumer credit reporting agencies to conduct “target marketing.” The law provides:

1. The creditor must establish its credit criteria in advance of the prescreening and is not permitted to add any new criteria once the prescreening has occurred.
2. The creditor must maintain a record of the criteria used for each prescreening for three years so it can show that the criteria did not change during the prescreening process.
3. The creditor is not required to disclose in its offers or solicitations the specific criteria it used, except for criteria relating to collateral required for the loan or account.
4. A creditor may “post-screen” each consumer who responds to the solicitation to determine whether the consumer actually meets the criteria established by the creditor in advance for the credit being offered.
 - a. The creditor may accomplish this post-screening by, for example:
 1. Obtaining and using a consumer reporting agency report.
 2. Reviewing information in the consumer’s response form.
 3. Considering any other information the creditor obtains bearing on the consumer’s credit worthiness. *Provided that* the information is used to verify that the consumer meets or continues to meet the criteria established by the creditor *in advance* for that solicitation.

- b. The creditor may also verify information included on the consumer's response form to determine that the consumer meets any additional credit criteria established in advance by the creditor.
5. A creditor that utilizes prescreening in connection with secured credit products may condition the offer of credit on the consumer furnishing the required collateral.
6. If the consumer does not qualify for the credit offered, the creditor may withdraw the offer. Such a post-screen rejection is adverse action for purposes of the FCRA and Regulation B.

Required Disclosures on the Solicitation. Whenever a creditor uses a "prescreened list" from a consumer credit reporting agency to create a "firm offer of credit," the FCRA requires both a short form and a long form disclosure to be included in the solicitation:

The short notice must be on the front page of the mailer in a box or otherwise set off. The disclosure must be in the same size type as the principal text on the page – but no smaller than 12-point type. The FTC sample short notice is as follows:

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

A long notice is also required. Below is a long notice sample suggested by the FTC:

PRESCREEN & OPT-OUT NOTICE: This "prescreened" offer of [credit or insurance] 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 receive prescreened offers of [credit or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address].