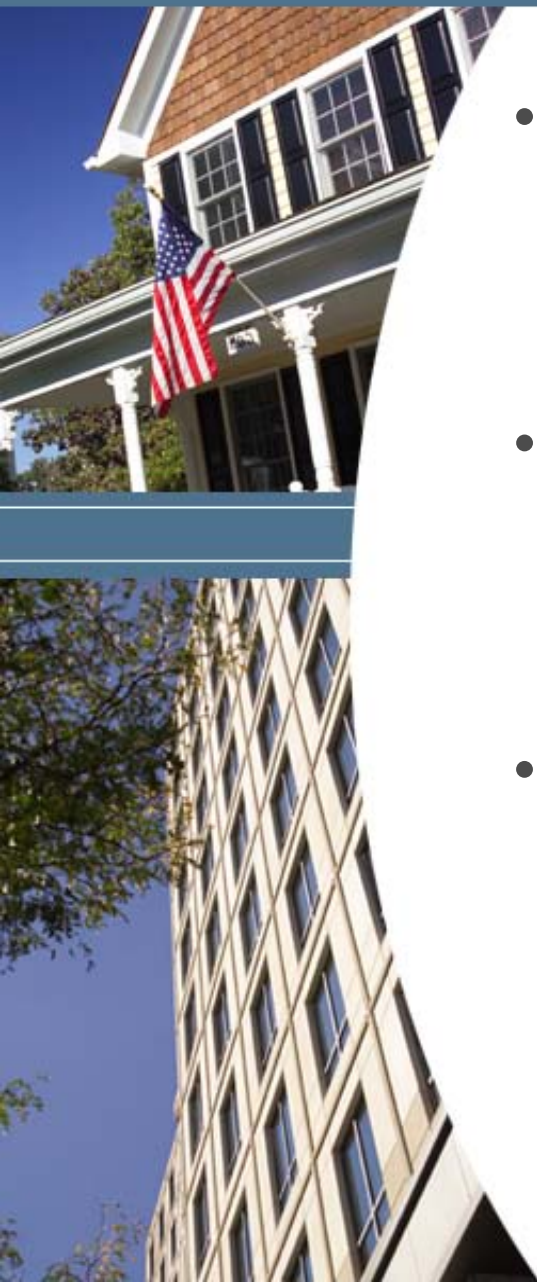




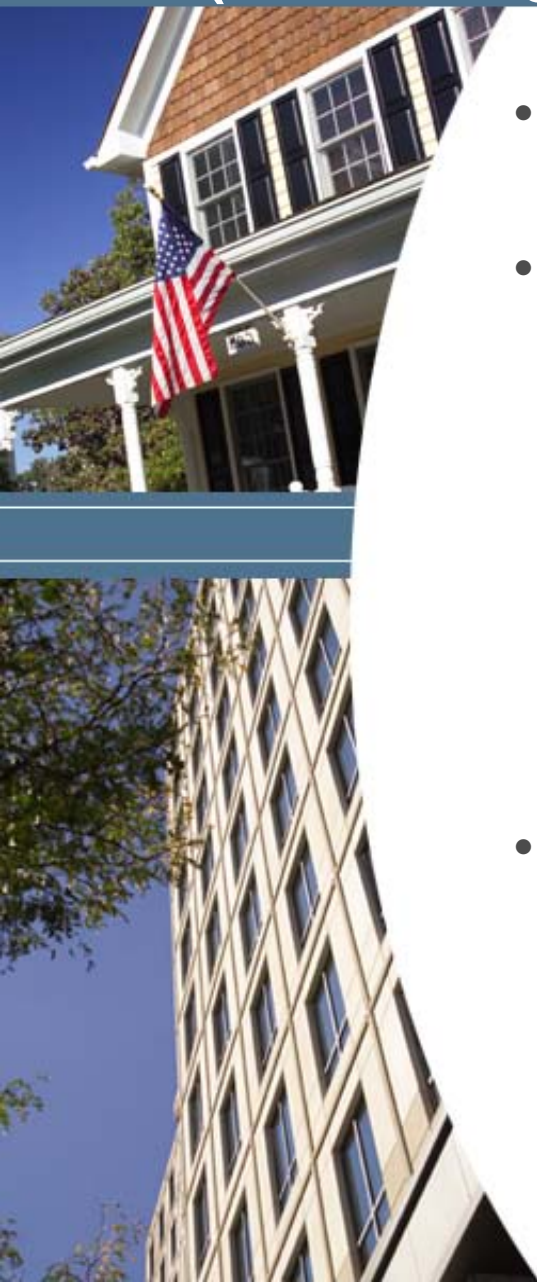
Alphabet Soup: HMDA and FCRA/FACT Act

Anand S. Raman

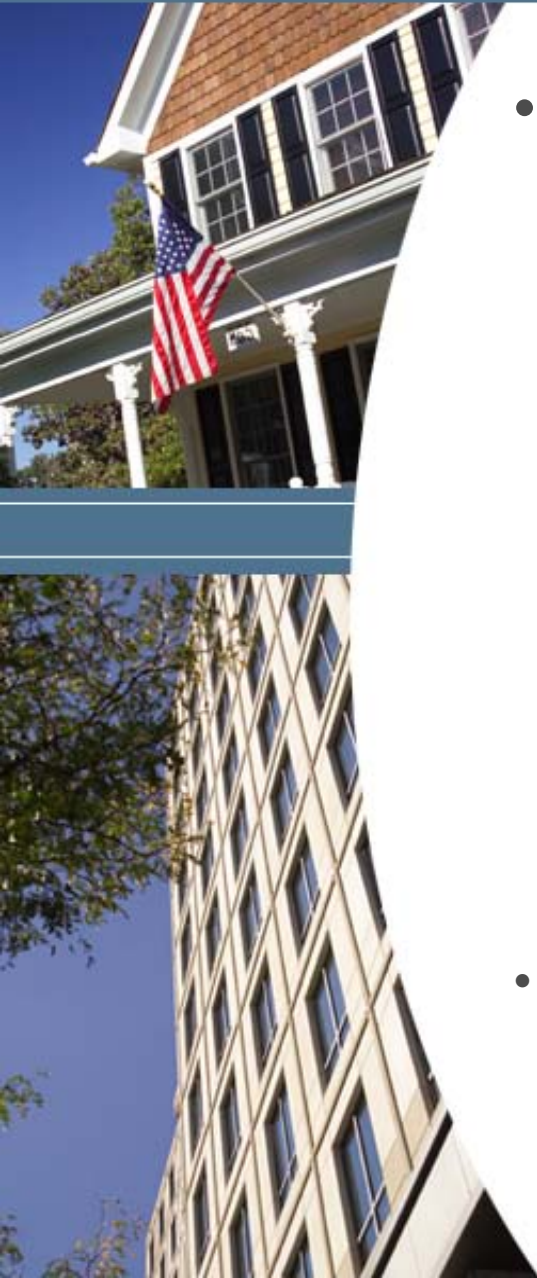
Skadden, Arps, Slate, Meagher & Flom LLP

- 
- Home Mortgage Disclosure Act (HMDA) (12 U.S.C. § 2801, et seq.; 12 C.F.R. Part 203)
 - » Applicability
 - » Key Provisions
 - Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681, et seq.)
 - » Applicability
 - » Key provisions
 - Fair and Accurate Credit Transactions Act (FACTA)
 - » Additional protections regarding identity theft and affiliate sharing incorporated into the FCRA in 2003

Overview of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.)

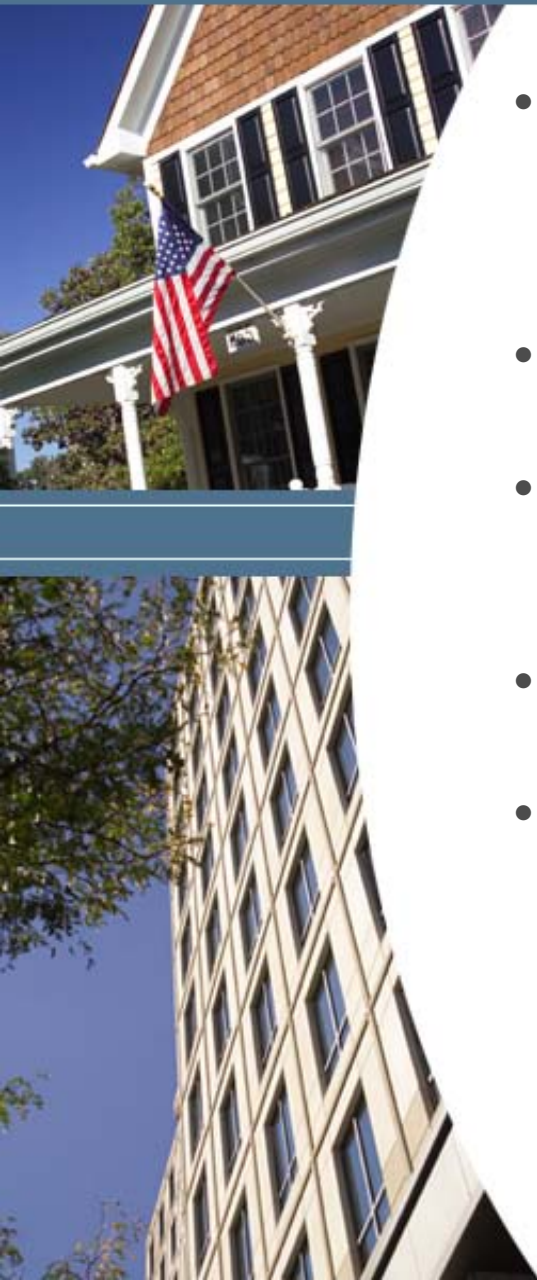
- 
- Requires covered institutions to collect and publicly disclose data relating to mortgage applications and loans.
 - Three main purposes of HMDA:
 - » Provide the public and government officials with information showing whether financial institutions are serving housing needs.
 - » Help public officials target investments to promote private investments in neighborhoods.
 - » Provide data that assist in identifying discriminatory lending patterns and enforcing anti-discrimination statutes.
 - HMDA is implemented by the Federal Reserve through Regulation C (12 C.F.R. Part 203).

What Is a “Covered” Institution?

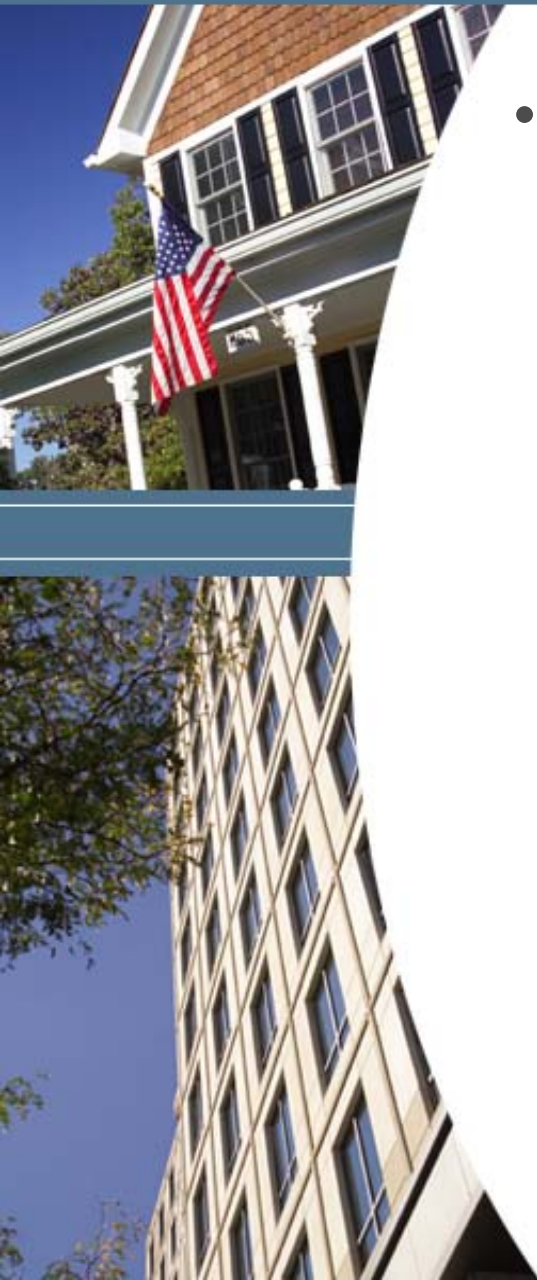


- HMDA reporting obligations apply to:
 - » Banks, credit unions or savings associations that:
 - On the preceding December 31, had total assets exceeding \$39 million; and
 - On the preceding December 31, had a home or branch office in an MSA; and
 - In the preceding calendar year, originated at least one home purchase loan or refinance loan secured by a first lien on a one-to-four-family dwelling; and
 - Is federally insured or regulated; the mortgage loan was insured, guaranteed or supplemented by a federal agency; or the loan was intended for sale to Fannie or Freddie.
- See 12 C.F.R. 203.2(e)


Data Collection and Reporting Obligations (12 C.F.R. 203.4-203.5)

- 
- Covered institutions must compile and disclose on a calendar-year basis information about applications for, originations of, and purchases of home purchase loans, home improvement loans, and refinancings.
 - Information must be recorded on the Loan/Application Register (HMDA-LAR).
 - Covered institutions must update the HMDA-LAR at least quarterly within 30 days after the end of the calendar quarter in which final action is taken.
 - The HMDA-LAR must be submitted by March 1 and then must be available to the public upon request by March 31.
 - A covered institution must make available to the public a “disclosure statement” prepared by the FFIEC within 3 days after it is provided by the FFIEC.

Data Collection and Reporting Obligations (12 C.F.R. 203.4-203.5)

- 
- Examples of information to be reported:
 - » Loan purpose;
 - » Whether the application is a request for preapproval and whether it resulted in a denial or in an origination;
 - » Property type;
 - » Owner-occupancy status;
 - » Amount of the loan or the amount applied for;
 - » Type of action taken, and the date;
 - » Ethnicity, race, and sex of the applicant or borrower, and the gross annual income relied on in processing the application.

Data Collection and Reporting Obligations (12 C.F.R. 203.4-203.5)

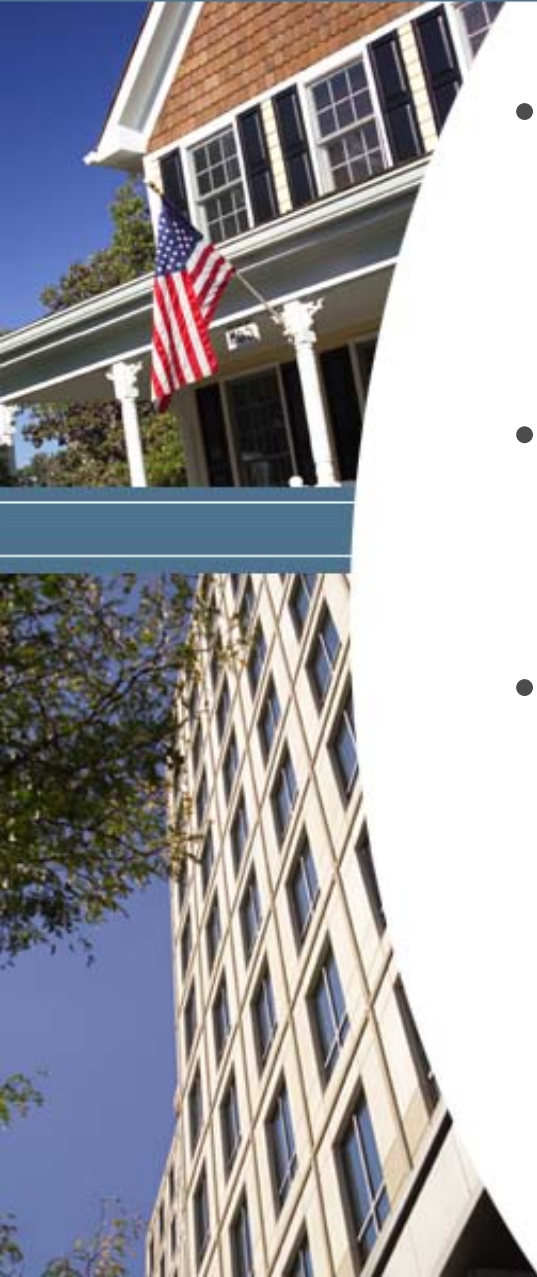
- 
- Rate Spread and HOEPA Status
 - » As of 2004, covered institutions must report APR “spreads” on certain loans.
 - » Effective as of October 1, 2009, covered institutions must report the spread between an APR and a survey-based estimate of APRs currently offered if the spread is equal to or greater than:
 - 1.5 points for first-lien secured loans;
 - 3.5 points for subordinate liens.
 - » Lenders also must report whether the loan is a “high cost mortgage” subject to the Home Ownership and Equity Protection Act.

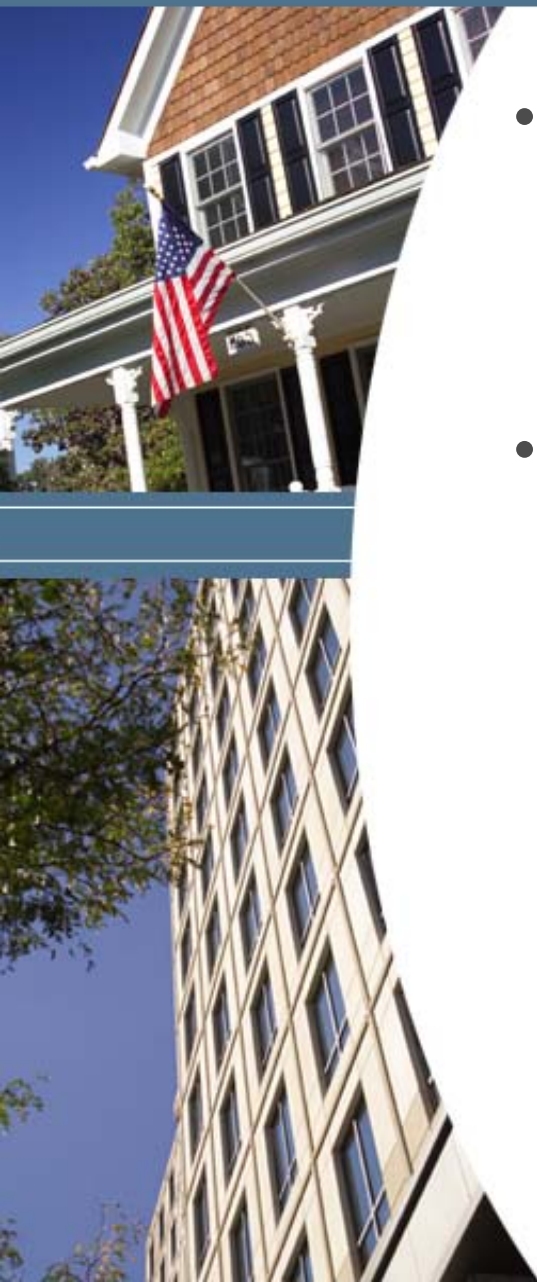
How HMDA Data Is Used



- Regulators frequently analyze HMDA data to identify potential discriminatory lending patterns, including with respect to:
 - » Underwriting;
 - » Loan pricing generally and APR specifically;
 - » Exercise of discretion by underwriters, loan officers or brokers.
- Community groups, the media and potential litigants also request HMDA data directly from financial institutions for that purpose.
- The Federal Reserve releases HMDA data to the public in aggregated form and recently has accompanied the release with its own report.

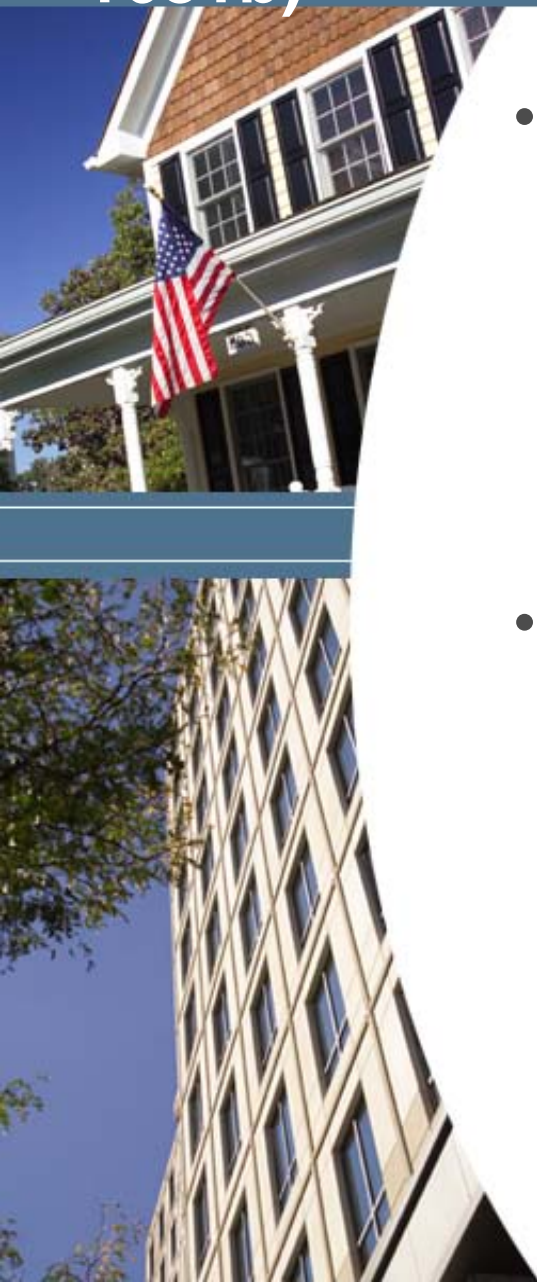
Overview of Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.)

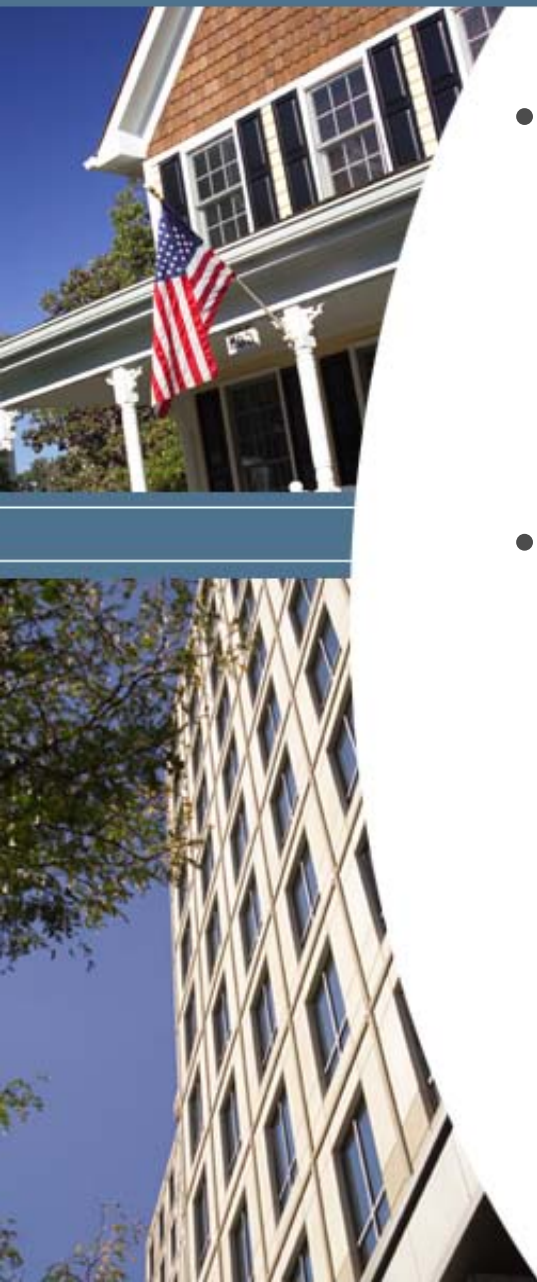
- 
- Fair Credit Reporting Act regulates conduct by:
 - » Consumer Reporting Agencies
 - » Users of Consumer Reports
 - » Furnishers of information
 - Contains provisions relating to, among other things, the accuracy of data, access to data, use of data, dispute resolution, and adverse action.
 - Administrative enforcement is performed primarily by the Federal Trade Commission.



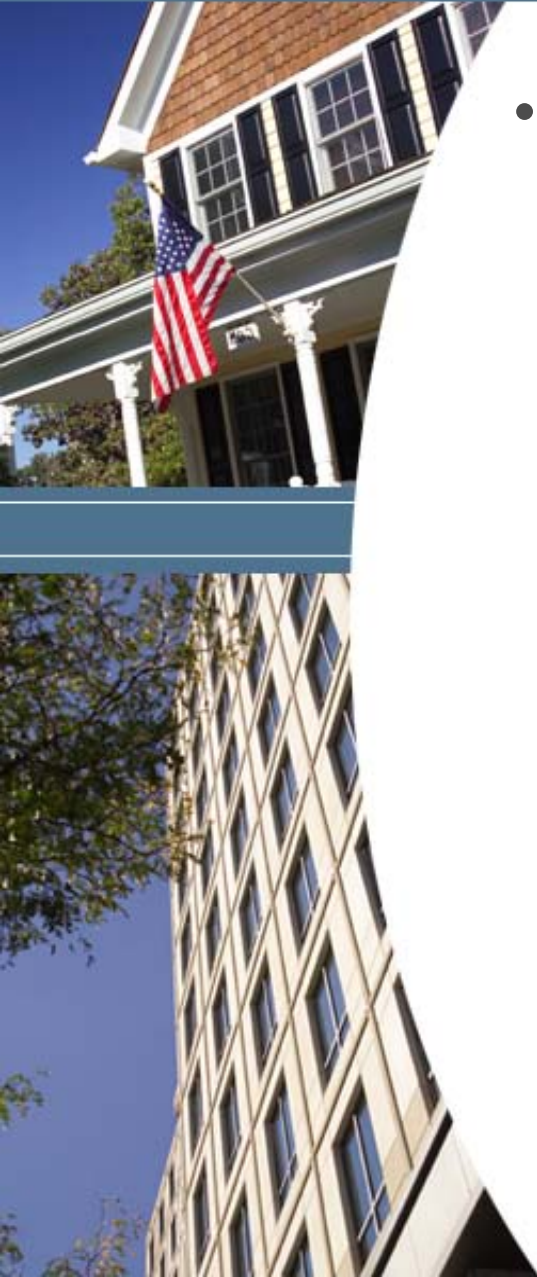
- A Consumer Reporting Agency is “any person who regularly engages in the assembly or evaluation of consumer credit information for the purpose of furnishing consumer reports to third parties.”
- A Consumer Report is defined broadly to include written, oral or other communications by CRAs with respect a broad variety of issues, including credit, employment, character, general reputation and personal characteristics.

Uses of Consumer Reports (15 U.S.C. § 1681b)

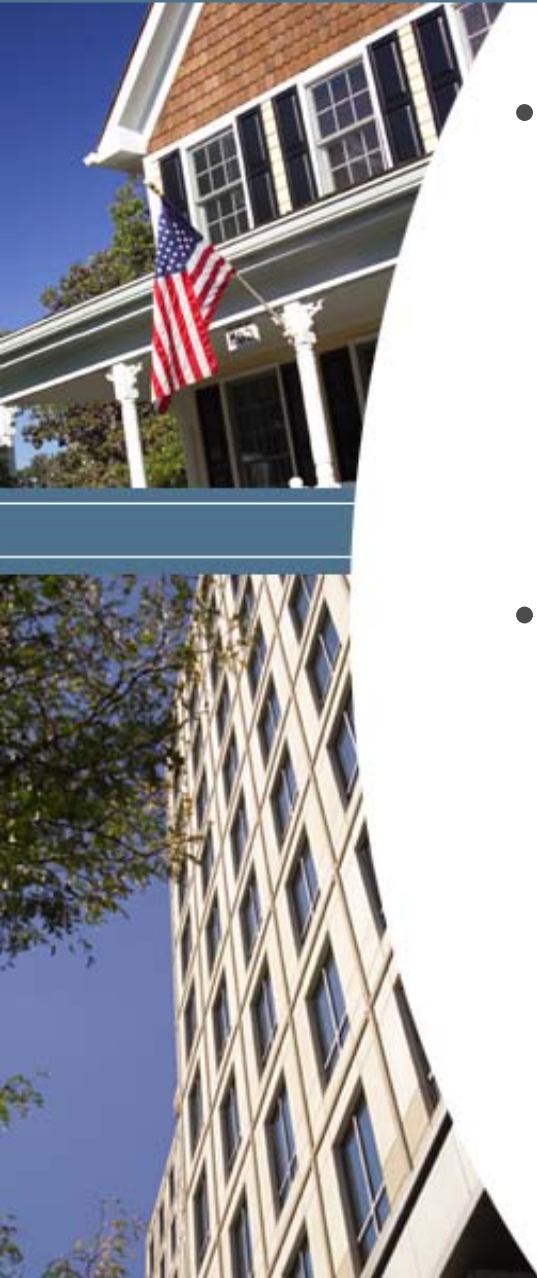
- 
- A CRA may furnish a consumer report (and a “User” may use it) only for a “Permissible Purpose”
 - » Permissible Purposes include employment, credit transactions, orders of a court, insurance transactions, “business transactions” initiated by the consumer, or written instructions from the consumer.
 - A CRA may also furnish consumer reports in connection with credit or insurance transactions not initiated by the consumer if the consumer authorizes the CRA to do so or the transaction consists of a firm offer of credit.

- 
- General Certification:
 - » A CRA must require that prospective users of consumer reports identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose (15 U.S.C. § 1681e).
 - Employment Certification:
 - » A CRA may furnish a consumer report for employment purposes only if the person who obtains the report certifies compliance with certain disclosure and adverse action requirements contained in 15 U.S.C. § 1681b.

Information Contained In Consumer Reports (15 U.S.C. § 1681c)

- 
- The FCRA broadly permits most types of data. However, a consumer reporting agency cannot report, for example:
 - » Civil suits, civil judgments and records of arrest that antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is longer;
 - » Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years;
 - » Certain other adverse items, other than records of convictions of crimes, which antedate the report by more than seven years.

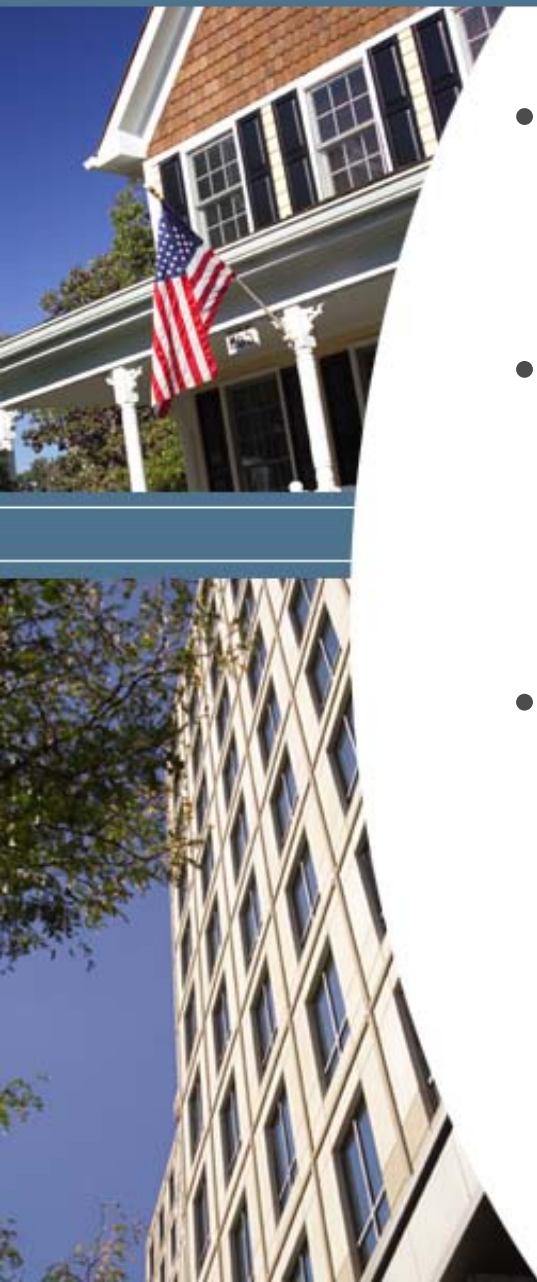
Other Obligations Imposed on CRAs and Users

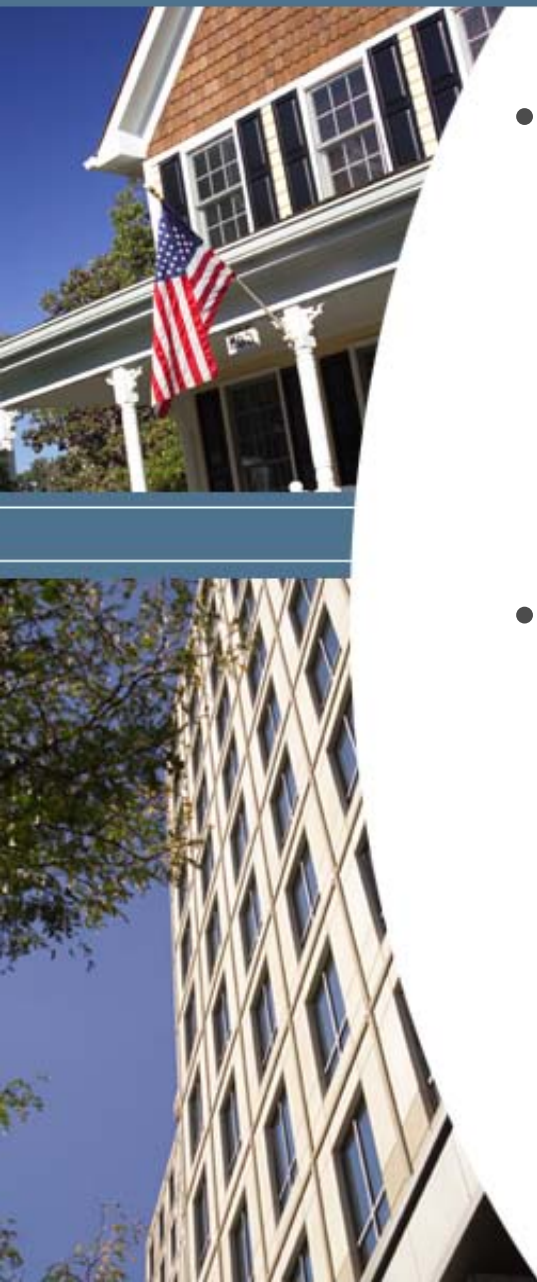
- 
- Accuracy
 - » CRAs must follow “reasonable procedures to assure maximum possible accuracy” (15 U.S.C. § 1681e).
 - » Furnishers of information must not report data that it knows or has reasonable cause to believe is inaccurate (15 U.S.C. § 1681s-2).
 - Access (15 U.S.C. § 1681g)
 - » CRAs must provide all information in its files for a person upon request.

Other Obligations Imposed on CRAs and Users

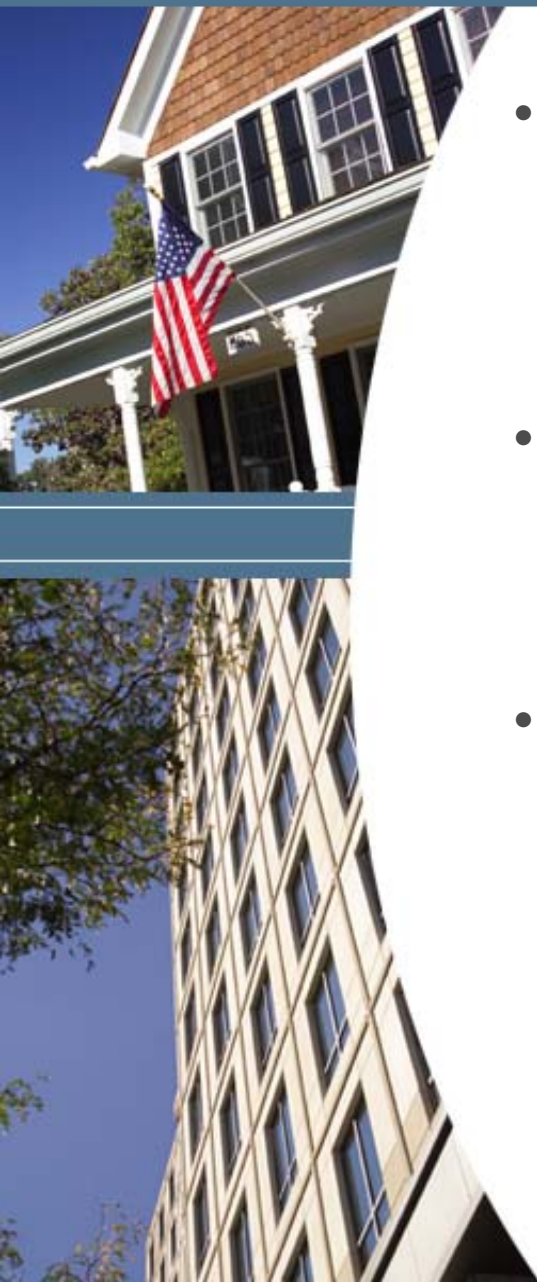
- Dispute and Correction (15 U.S.C. § 1681i)
 - » CRAs must investigate and, where appropriate, correct disputed information.
 - » Furnishers must correct and update information where appropriate.
- Notice of Adverse Action (15 U.S.C. § 1681m)
 - » Users must provide notices to consumers whenever a Consumer Report is used in whole or in part to take adverse action.

Recent Amendment to FCRA

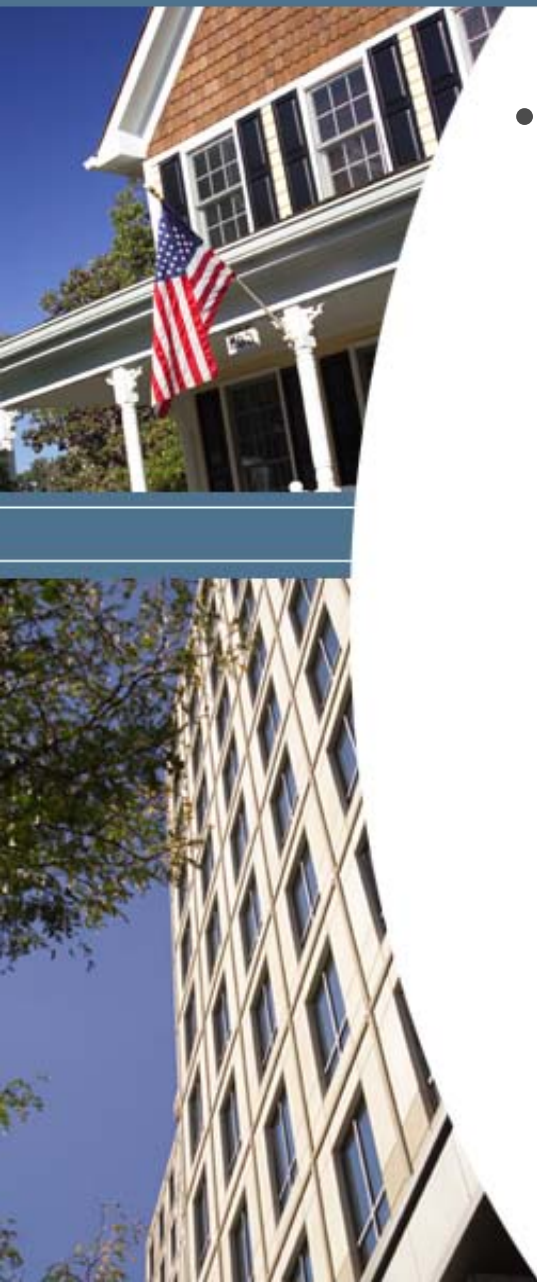
- 
- The Credit CARD Act of 2009 amended the FCRA to prevent deceptive marketing of “free” credit reports. (15 U.S.C. § 1681j)
 - Effective as of April 2, 2010, the FTC has issued a Final Rule implementing the statutory revision. The Final Rule requires ads for “free” credit reports to contain clear disclosures.
 - For example, web sites offering free credit reports must have a disclosure across the top of each page that mentions free credit reports, with links to AnnualCreditReport.com and FTC.gov.

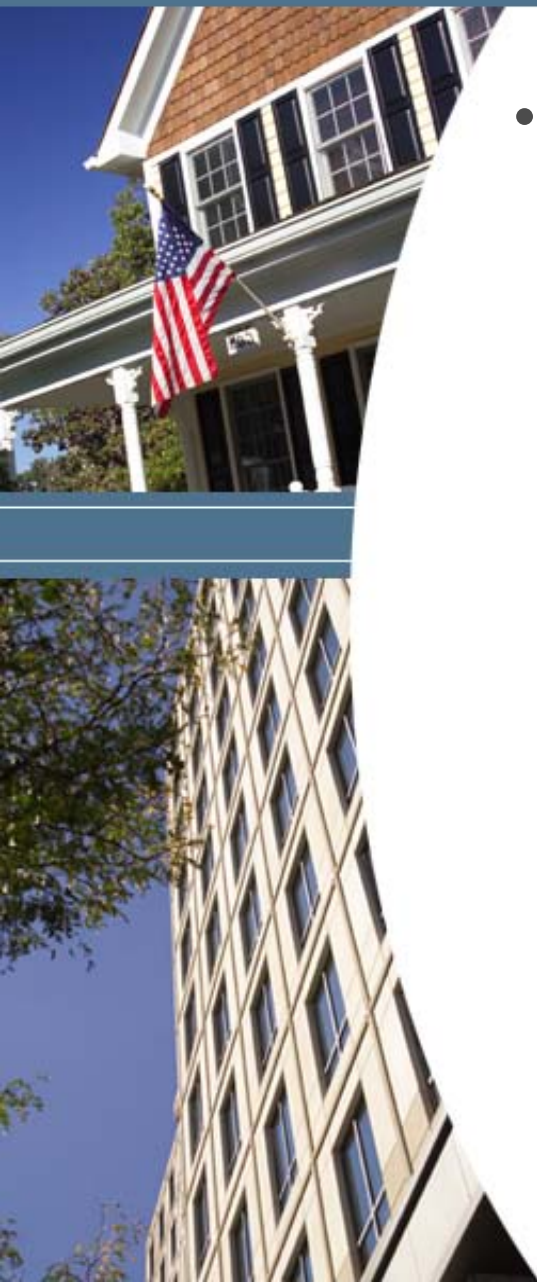


- FACT Act enacted in 2003
 - » Added important provisions to the FCRA, including:
 - Identify theft protections
 - Additional limits on the use of consumer information;
 - Improved access and accuracy.
- Identity theft and privacy protections now include, among other things:
 - » Fraud alerts;
 - » Truncation of credit card and debit card numbers;
 - » Affiliate sharing provisions.



- Identity Theft (15 U.S.C. § 1681c-1)
 - » Upon the request of a consumer, the CRA must include a fraud alert in the file and must provide the consumer with notice that he or she may obtain a free report.
- Truncation of credit card and debit card numbers (15 U.S.C. § 1681c(g))
 - » No person that accepts credit or debit cards shall print more than the last 5 digits of the card number.
- Free consumer reports (15 U.S.C. § 1681j)
 - » All consumer reporting agencies shall make disclosures to consumers once during any 12-month period upon the request of the consumer and without charge.

- 
- Affiliate Sharing (15 U.S.C. § 1681s-3)
 - » Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, but for exceptions relating to common ownership, may not use the information to make a solicitation for marketing purposes unless:
 - It is clearly and conspicuously disclosed to the consumer that the information may be communicated for solicitations; and
 - The consumer is given an opportunity to prohibit such solicitations.



- Notice of Negative Information (15 U.S.C. § 1681s-2(a)(7))
 - » If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a CRA furnishes negative information, the furnisher shall provide a notice in writing to the consumer within 30 days after providing the negative information.