

White Paper

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)

Section 1100 of Dodd-Frank amends Section 615 of the FCRA to add a new requirement that a person (End-user) taking Adverse Action... “provide to the consumer written or electronic disclosure (A) of a numerical Credit Score as defined in section 609(f)(2)(A) [of the FCRA] used by such person in taking any Adverse Action based in whole or in part on any information in a consumer report; and (B) of the information set forth in subparagraphs (B) through (E) of section 609(f)(1),” including:

- Numerical Score
- Score Range
- Score Factors
- Score Date
- Score Source

Section 609(f)(2)(A) defines a Credit Score as a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default. The numerical value or the categorization derived from such analysis may also be referred to as a "risk predictor" or "risk score". However, 609(f)(2)(A)(ii) says that the definition of Credit Score "...does not include any... score or rating... that considers one or more factors in addition to credit information, including <things like>loan to value ratios....”

A conservative reading of this is that a numerical value is a Credit Score if it is used by persons who make or arrange loans, whether or not the Adverse Action taken relates to the making of loans. FICO (and many similar) scores are used to make loans. Those scores (and derivatives of those scores) are often provided by tenant screening companies and used by landlords to underwrite prospective tenants.

Screening companies make recommendations, return risk assessments or simply provide data. It varies.

Screening companies may or may not use scores as defined and may or may not include raw Credit Scores (FICO, for example) in tenant screening reports.

Landlords (End-users) decide whether to approve, approve conditionally or deny tenancy – and may or may not (often do not) accept the screening company’s recommendation.

This amendment to Section 615 seems in conflict with Section 609(a)(1)(B) of the FCRA... regarding Disclosures to Consumers (by Consumer Reporting Agencies - CRA's). It says that all information in the consumer's file at the time of the request must be shared (by the consumer reporting agency) except that... " (B) ***nothing in this paragraph shall be construed to require*** a consumer reporting agency (generally refers to the credit bureaus) to disclose to a consumer any information concerning Credit Scores or any other risk scores or predictors related to the consumer."

At least one bureau's reseller agreement prohibits screening companies and End-users from disclosing Credit Score information, presumably based on 609(a)(1)(B). Dodd-Frank would seem to preempt that provision.

Bottom line... CRA's (which includes screening companies) are not required by law (or in some cases allowed contractually) to disclose information regarding Credit Scores. However, End-user are required (by Dodd-Frank) to do so when Adverse Action is taken. Fascinating.

Incidentally, at least one bureau has no such restriction in their policy. Resellers (screening companies) and End-users are not forbidden from sharing credit reports (including credit score information) with applicants upon request or in the case of adverse action. This strikes me as a more enlightened approach in terms of security, compliance with Dodd-Frank and alignment with current legislative and regulatory activity.

Decision only tenant screening models present an interesting dilemma. They generally include a *risk assessment* of some kind (based in whole or in part on score) but no credit detail (or Credit Score information). Compliance with Dodd-Frank, therefore, would seem to require CRA's to include Credit Score information along with the *decision* or *risk assessment* in these reports.

Summary

1. Tenant screening companies make recommendations, provide risk assessments or simply data. It varies.
2. Tenant screening companies may or may not use scores as defined and may or may not include raw Credit Scores (FICO, for example) in the tenant screening report.
3. Landlords (End-users) decide whether Adverse Action is taken.
4. End-users are responsible (under the FCRA) for providing Adverse Action notification (including the above Dodd-Frank disclosure) – not CRA's (credit bureaus or tenant screening companies).

5. End-users must make the disclosure any time a Credit Score (as defined) is used in taking Adverse Action.
6. Given the ambiguity of the statute, End-users are well advised to disclose Credit Score information any time a Credit Score is included in the consumer report, whether or not the score itself is used in the decision and whether or not the tenant screening report includes a proprietary score or risk assessment (which incorporate more than just credit information).

Conclusion

1. If End-users **DO NOT RECEIVE** a Credit Score - *no action* is required.
2. If End-users **RECEIVE** but **DO NOT USE** a Credit Score - it is best to *remove the Credit Score* from their reports.
3. If End-users (or their screening provider) **RECEIVE** and **USE** a Credit Score - they must *comply with the above disclosure* requirement.

Moco is taking several steps to assist clients to comply with the new law. We will:

1. Remove Credit Scores from reports where those scores are not specifically requested by the client and when evaluation of the Credit Score is not part of your rental criteria.
2. Add a second Adverse Action Notice (Score) which includes fields to prompt clients to include Credit Score information as described above.
3. Incorporate merge codes in the integrated version of our Adverse Action Notice (Credit Score) to reduce data entry by automatically populating the above information.

Prepare by:

Paul A Prudente
Moco Inc

Disclaimer

This document was not prepared by an attorney and does not constitute legal advice. You may wish to consult with your attorney if you have questions or need advice regarding your specific course of action.