

# Farm Credit Administration

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## INFORMATIONAL MEMORANDUM



March 8, 2013

To: Chief Executive Officer  
All Farm Credit System Institutions

From: Samuel R. Coleman, Director and Chief Examiner  
Office of Examination

Subject: Clarification to FCA Regulation §618.8320(b)(7)

A handwritten signature in black ink that reads "Samuel R. Coleman".

This Informational Memorandum (IM) replaces our IM dated November 19, 2012, which was on the same subject, and that IM is hereby withdrawn. The purpose of the original IM was to clarify FCA Regulation §618.8320(b)(7). That clarification was necessary in light of an interpretation of the Fair Credit Reporting Act (FCRA) by the staff of the Federal Trade Commission (FTC). We issue this replacement IM to make an additional clarification.

### FCRA Requirements

The FTC has interpreted Section 615(a) of the FCRA (15 U.S.C. §1681m(a)) to require a creditor to provide notice to an applicant/co-applicant who is an individual when it takes adverse action in a commercial credit transaction based, in whole or in part, on the personal credit report of an individual, whether this individual is the applicant/co-applicant or whether this individual is a guarantor or would otherwise be liable on the credit. See attached PDF, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, Federal Trade Commission (July 2011), pages 10, 21, 34, 45, and 83, and references cited therein.

### FCA Regulatory Requirements

FCA regulation §618.8320(a) generally requires System institutions and their personnel to hold in strict confidence all information regarding the character, credit standing, and property of borrowers and applicants for loans. FCA regulation §618.8320(b)(7) authorizes System institutions to comply with FCRA section 615(a) by providing an exception to this general rule; the exception requires institutions to provide an FCRA notice to each "unsuccessful applicant

for credit which primarily is for personal, family, or household purposes, if his application was rejected either wholly or partly because of information contained in a personal credit report.” ***We now clarify that a System institution does not violate FCA Regulation §618.8320(a) when it complies with FCRA section 615(a) by providing to an individual who is an applicant/co-applicant the required FCRA notice when the creditor takes adverse action in a commercial credit transaction based, in whole or in part, on a report on the personal credit of an individual (whether that individual is the applicant/co-applicant or whether that individual is a guarantor or is otherwise liable on the debt).***

Several System institutions asked whether the adverse action notice provided to one individual (an applicant or co-applicant) should contain the credit score of another individual (whether applicant, co-applicant, or guarantor). The FTC 2011 Staff Report provides no guidance on this issue. FTC staff recently advised us informally that they believe a creditor should not share the credit score of one individual with another, but this is not official FTC policy. We remind you that the FTC enforces the FCRA with respect to System institutions, although the FCA examines for compliance under its general authority to protect the safety and soundness of System institutions. In the absence of official guidance from the FTC or other applicable enforcement agency, FCA believes the more safe and sound practice is to follow the guidance provided informally by FTC staff.

The FCA is providing this information as a courtesy to keep you informed of issues that may affect your institution. This information should not be seen as a replacement for management's due diligence in monitoring issues that may affect your institution.

If you have any questions about this Informational Memorandum, please contact Jennifer A. Cohn, Senior Counsel, Office of General Counsel, at 703-883-4028, or by email at [cohni@fca.gov](mailto:cohni@fca.gov), and/or Dan Fennewald, Director, Examination Policy Division, Office of Examination, at 952-259-0432, or by email at [fennewaldd@fca.gov](mailto:fennewaldd@fca.gov).

Attachment