



FAIR CREDIT REPORTING ACT

FIL-61-2001
July 11, 2001

TO: CHIEF EXECUTIVE OFFICER AND COMPLIANCE OFFICER

SUBJECT: *Guidance on the Permissible Use of Consumer
Reports in Certain Business-Related Extensions of Credit*

Staff from the Federal Trade Commission (FTC) issued the attached staff opinion letter (Tatelbaum opinion) on July 26, 2000, about the use of consumer reports in situations where financial institutions were extending credit to a closely held business and were requesting the personal guarantee of the principal of that business. The Tatelbaum opinion stated that without the specific written consent of the individual, there would not be a permissible purpose under Section 604 of the Fair Credit Reporting Act (FCRA) for a financial institution to obtain a consumer report on the guarantor of a business loan.

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency and the Office of Thrift Supervision (the agencies) sent a letter to the FTC on May 31, 2001, asking that the FTC staff reconsider the Tatelbaum opinion. The request, which is attached, was based on the agencies' understanding of the FCRA, their collective experiences with banking practices, and concerns about the possible impact of the Tatelbaum opinion on safe and sound lending operations.

FTC staff responded to the agencies' request on June 22, 2001. In that response, which is also attached, FTC staff indicated that where an individual is personally liable for repayment of an extension of credit for business purposes, the business transaction may be viewed as involving a consumer, thereby providing a permissible purpose for a lender to obtain a consumer report under Section 604(a)(3)(A) of the FCRA. Based on this interpretation, Section 604(a)(3)(A) of the FCRA would permit a lender to obtain a consumer report on an individual in connection with a business credit transaction where the person is an individual proprietor, co-signer or guarantor.

While this recent response from the FTC staff revises a prior staff interpretation, financial institutions should note that the agencies agree with FTC staff that there would not be a permissible purpose under Section 604 of the FCRA to obtain a consumer report on an individual for an extension of credit for a business purpose when the person would not be personally liable for repayment. This would include situations where the individual is merely a shareholder, director or officer of a corporation, but neither guarantees or co-signs the loan, nor is an individual proprietor liable for the loan.

Financial institutions should carefully review their practices for obtaining consumer reports, particularly for extensions of business-related credit, to ensure that the requirements of the FCRA for the permissible use of consumer reports are met.

For more information, please contact Ken Baebel (202-942-3086), Assistant Director - Compliance Policy, or John Jackwood (202-942-3854), Senior Policy Analyst, in the FDIC's Division of Compliance and Consumer Affairs; or Ann Johnson (202-898-3573) or Nancy Schucker Recchia (202-898-8885), Counsels in the FDIC's Legal Division.

Stephen M. Cross
Director

Attachments:

- [Tatelbaum Opinion Letter, dated July 26, 2000](#)
- [Letter from Banking Agencies to FTC, dated May 31, 2001](#)
- [FTC Staff Letter to the Banking Agencies, dated June 22, 2001](#)

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