

**SUMMARY OF FACT ACT REQUIREMENTS
REGARDING USE OF CONSUMER CREDIT REPORTS
BY MORTGAGE LENDERS AND BROKERS**

**Provided by Old Republic Credit Services
November 23, 2004**

Old Republic Credit Services (ORCS) is making this summary available to provide general, basic information about certain provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) that relate to the use of consumer credit reports by mortgage lenders and brokers. Unless noted in the description of a particular provision, the requirements discussed herein go into effect on ***December 1, 2004***.

We have identified four areas of the FACT Act that impose significant new requirements for mortgage lender and broker users of credit reports:

- Address Discrepancy Notices (*§605 (H) of the FACT Act*)
- Fraud Alerts and Active Duty Alerts (*§605A*)
- Required Disclosure of Credit Scores By Mortgage Lenders (*§609(G)*)
- Notice Requirements With Regard To Risk Based Pricing (*§615(H)*)

For each of these areas of the FACT Act, we provide a summary of the requirement, what ORCS has done to help ensure your compliance, and, a “User Responsibility” paragraph describing what you are required to do.

Please note, this summary does not reflect all of the requirements of the FACT Act that may be relevant to your business. For example, there are significant new obligations on furnishers of data that are not addressed in detail herein. The last section of this document lists some additional sections of the FACT Act that do not relate to use of credit reports but may well be relevant to your business.

The information is not to be relied upon and is not intended to be, nor should it be used or construed as legal advice. Old Republic Credit Services assumes no liability for any omissions in the information. Compliance with the FACT Act and its regulations is the responsibility of each entity to which the law and the regulations apply, and we encourage you to work with your legal counsel to understand the FACT Act and its impact on your business.

ADDRESS DISCREPANCY NOTICE (§605 (H))

The credit repositories are required to flag any report where the address of the consumer differs substantially from the addresses contained in the consumer's file. ORCS will display the address discrepancy information provided by each bureau.

USER RESPONSIBILITY: The FACT Act requires the Federal banking agencies, National Credit Union Administration and the FTC to establish regulations for data users when they are notified of an address discrepancy on a consumer report. The FACT Act requires that the regulations include the requirements that i) a user of a consumer report which has an address discrepancy must form a "reasonable belief" that the consumer is in fact the person to whom the report pertains before relying on the report, and ii) if the user forms a continuous relationship with the consumer and regularly furnishes information to the repository or repositories that have the address discrepancy then the user must provide the consumer's current address to the particular repository or repositories.

These regulations have not been established as of the date of this Summary. It is ORCS' belief that the requirement listed above will not go into effect until after the federal regulators issue the regulations, however we encourage you to discuss this with legal counsel.

FRAUD ALERTS AND ACTIVE DUTY ALERTS (§605A)

Experian, Trans Union and Equifax are required, at the request of the consumer and with appropriate proof, to place certain alerts on the consumer's report – there are three types of alerts identified by the FACT Act - Initial Fraud Alerts, Extended Fraud Alerts and Active Duty Alerts. ORCS will display the alerts provided by each credit bureau.

USER RESPONSIBILITY:

Initial Fraud Alerts and Active Duty Alerts. When an Initial Fraud Alert or an Active Duty Alert is returned on the consumer report, a user cannot establish credit, issue a new credit card, or increase a credit limit unless they first use reasonable procedures to confirm the identity of the person making the request. If the consumer has provided a telephone number to be used for identity verification purposes, the user shall contact the consumer using the telephone number, or take other reasonable steps to verify the consumer's identity and confirm that the application is not the result of identity theft.

Extended Alerts. When an Extended Fraud Alert is returned on the consumer report, a user cannot establish credit, issue a new credit card, or increase a credit limit without first contacting the consumer using the phone number included with the alert or by such other means as designated by the consumer in the alert to confirm that the application is not the result of identity theft.

DISCLOSURE OF CREDIT SCORES BY MORTGAGE LENDERS (§609(G))

§609(G) requires that mortgage lenders and brokers **provide to all applicants** a disclosure regarding credit scores that were used in the decision process. The disclosure must include:

- The credit score from each bureau
- Range of possible scores for each score
- The four key factor that affected the score, plus if inquiries were a factor but not one of the four key factors, then inquiries must be included as a fifth factor
- The name and contact information for the bureaus and the credit score creator (Fair Isaac)
- A notice containing language proscribed by the statute – the required language is at §609(G)(1)(D).

ORCS will include with each report it issues a one page credit score disclosure that contains all the information required to be disclosed and the FACT Act required notice. For joint reports, ORCS will include a separate disclosure for each applicant.

USER RESPONSIBILITY: Users must provide **to all applicants**, the ORCS created disclosure, or an internally created disclosure document containing all the information required by §609(G). Users are not responsible for explaining the information contained in the disclosure and are not required to provide more than one disclosure per loan transaction.

NOTICE REQUIREMENTS WITH REGARD TO RISK BASED PRICING (§615(H))

§615(H) requires that a notice be provide to consumers where there is an application for, or a grant, extension or, other provision of, credit and the material terms that are offered are “materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that user.” Generally, no disclosure is required where the consumer applies for specific credit terms and was granted those terms or if the creditor provides an FCRA adverse action notice. The disclosure shall include the following information:

A statement informing the consumer that the terms offered to the consumer are based on information from a consumer report, (B) Identifying the consumer reporting agency furnishing the report, (C) Include a statement informing the consumer that the consumer may obtain a copy of their report free of charge from the consumer reporting agency, and (D) Contact information for that consumer reporting agency.

The FACT Act requires the Federal Trade Commission and Federal Reserve Board to issue regulations to provide clarification around certain of the terms used in the regulation and also to create a model notice. The regulating agencies have not yet issued such regulations.

USER RESPONSIBILITY – To provide the notice as described above in the circumstances described above. The FACT Act requires the Federal Trade Commission and Federal Reserve Board to issue regulations to provide clarification around certain of the terms used in the regulation and also to create a model notice. The regulating agencies have not yet issued such regulations. Industry trade groups have issued a formal request that the risk-based pricing notice requirement not go into effect until such regulations are issued. It is not clear to ORCS whether lender/brokers will have to comply with this provision starting on Dec. 1, 2004 even if regulations have not yet been issued - we encourage you to discuss with your legal counsel.

THE FOLLOWING SECTIONS OF THE FCRA MAY ALSO BE RELEVANT TO YOUR BUSINESS

We have also identified other Sections that, while not directly related to the use of credit reports, will likely be relevant to your business.

§609(E) which requires that where a business has had a transaction with a person who may have committed identity theft, that business must provide to the victim and to law enforcement the associated application and business transaction records.

§615(F) which prohibits the sale or transfer of debts where the holder of the debt has been notified by a consumer reporting agency that the tradeline has been blocked.

§623 which provides significant new obligations on furnishers of data to the big three consumer reporting agencies.