

One More Reason to be Careful About the Information Your Credit Union Sends to Consumer Reporting Agencies

Members today have greater access to and more knowledge of the information in their consumer reports than ever before. Non-compliance can lead to regulatory criticism, reputational damage, and monetary loss. Under Section 617 of the Fair Credit Report Act, negligent noncompliance can result in liability for actual damages, attorney fees and costs for bringing the action. Under Section 616, willful noncompliance can result in statutory damages of up to \$1000 plus punitive damages, attorney fees and costs.

On March 27, 2012, the Tennessee Supreme Court in Discover Bank v. Morgan held that damages can include ascertainable loss of credit. For example, if a member could prove that they were denied credit from credit union A because incorrect information provided to a consumer reporting agency from credit union B lowered their credit score, the member now has Tennessee case law to support their claim for damages against credit union B. Using this reasoning, a court could also find that credit granted at a higher rate because of incorrect information provided to a consumer reporting agency could also be considered damages. The potential for consumers to claim damages is almost unlimited, ranging from not qualifying for 0% financing for a new car to not being able to buy a house.

Credit unions should make sure that they have adequate policies and procedures in place to ensure compliance with all aspects of the Fair Credit Reporting Act. Among the items that these policies and procedures should address are:

- Only obtaining and using consumer reports for a permissible purpose;
- Obtaining proper written consent and providing the required disclosures when a consumer report is used for employment purposes;
- Excluding information prohibited from being reported under the Act;
- Properly responding to fraud and active duty alerts;
- Properly responding to reports of identity theft;
- Not reporting information the credit union knows or has reason to know is incorrect;
- Responding to notices of dispute from the consumer or a consumer reporting agency in a timely manner;
- Compliance with disclosure requirements related to adverse action, reporting of negative information to a consumer reporting agency, disclosure of credit scores, and risk based pricing notices;
- Noting that the consumer disputes the information being reported when required to do so; and
- Disclosing the sharing of information with affiliates and providing the proper opt out notice when required.

If your credit union would like assistance in compliance with the Fair Credit Reporting Act, please contact T. Wayne Hood at either whood@millermartin.com or 615-744-8421, or any other member of Miller & Martin's Financial Services Practice Group.

recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

ATLANTA

1170 Peachtree Street N.E.
Suite 800
Atlanta, GA 30309

CHATTANOOGA

832 Georgia Avenue
Suite 1000 Volunteer Building
Chattanooga, TN 37402

NASHVILLE

150 Fourth Avenue, North
1200 One Nashville Place
Nashville, TN 37219