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Transmittal – See OCC 2020-11

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Fair Credit Reporting Medical Information Regulations: Final Rule

The Office of the Comptroller of the Currency (OCC) issued the attached final rule, which was published in the *Federal Register* on November 22, 2005. The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (NCUA) issued substantively identical final rules. The final rules implement section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The final rules are substantially identical to the interim final rules issued in June 2005.

Section 411 of the FACT Act prohibits creditors from obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. The statute directs the federal banking agencies and the NCUA to prescribe regulations to permit transactions deemed necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs. Accordingly, the final rules create exceptions to permit creditors to obtain and use medical information that is typically considered in credit underwriting.

In the OCC's rule, these exceptions apply to national banks, federal branches and agencies, their respective subsidiaries (both operating and financial subsidiaries), and any other person that participates as a creditor in a transaction involving one of these entities such as arrangers and assignees of credit.

Section 411 also restricts the sharing of medical information among affiliated companies, except for purposes specifically mentioned in the statute. The final rules contain these statutory exceptions but further provide that a creditor may share medical information with an affiliate for use in making credit decisions consistent with the exceptions in the rule, or by order of the OCC.

By contrast to the broad scope provisions for the general exceptions discussed above, these affiliate sharing exceptions in the OCC's rule apply only to national banks, federal branches and agencies, and their respective operating subsidiaries. This narrower scope stems from the more restrictive grant of rulemaking authority in the FACT Act for these provisions.

Additionally, section 411 limits the ability of any person to disclose medical information that it receives from a credit bureau or an affiliate, to any other person, except as necessary to carry out the purpose for which the information was initially disclosed. The final rules reiterate this statutory limitation without further interpretation. This provision also applies only to national banks, federal branches and agencies, and their respective operating subsidiaries.

To

Chief Executive Officers of All
National Banks, Federal
Branches and Agencies,
Department and Division Heads,
and All Examining Personnel

You may direct any questions to your supervisory office or OCC Compliance Division (202) 649-5470.

Julie L. Williams

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Related Links

- [Final Rule 70 FR 70664](#)

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