

# Fair Credit Reporting Medical Information Regulations

## Comments Submitted to the Federal Banking Agencies by the Privacy Rights Clearinghouse

July 11, 2005

Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, D.C. 20429

Submitted by E-Mail and by Online Portal: [Comments@FDIC.gov](mailto:Comments@FDIC.gov)  
<http://www.regulations.gov>

**RE: Interim Final Rules -- Fair Credit Reporting Medical Information  
Regulations – RIN 3064-AC81**  
<http://www.regulations.gov/fredpdfs/05-11356.pdf>

Dear Mr. Feldman:

The Privacy Rights Clearinghouse (PRC) is pleased to join the Health Privacy Project (HPP) and others in commenting on the federal banking agencies<sup>1</sup> (“agencies”) joint interim final rules (IFR) about medical privacy provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The PRC in particular endorses the HPP’s observation that, with few exceptions, the agencies’ interpretations of FACTA’s medical rights favor consumer privacy interests.

We submit these comments independently in order to encourage the agencies to develop a public education program on when and how creditors, employers, and insurers can use medical information

The Privacy Rights Clearinghouse is a nonprofit consumer education and advocacy organization based in San Diego, CA, and established in 1992. The PRC advises consumers on a variety of informational privacy issues, including financial privacy,

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<sup>1</sup> The Federal Deposit Insurance Corporation (FDIC) issued the IFR jointly with the Office of Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS); and National Credit Union Administration (NCUA). We provide comments only to the FDIC with the understanding that comments will be shared with other banking agencies.

medical privacy and identity theft, through a series of fact sheets as well as individual counseling available via telephone and e-mail. The PRC represents consumers' interests in legislative and regulatory proceedings on the state and federal levels.

[www.privacyrights.org](http://www.privacyrights.org)

From years of experience communicating directly with consumers, we know that medical privacy is a top priority. A major concern is the secondary use of medical information. For example, many worry that a medical condition, even one from years past and successfully treated, can harm one's job prospects and employment security, or eliminate eligibility for fairly priced insurance or credit. Others mistakenly believe that medical information by its very nature is subject to universal privacy protection and are unaware of the many situations in which they have little or no privacy protection.

There is, in short, a serious need for public education about how medical information can be collected and used in all circumstances. The agencies' implementation of the FACT Act medical privacy protections provides an excellent opportunity for public education on when and how creditors, employers, and insurers can use medical information. The proposed regulations and the IFR provide good examples of when and how creditors may use medical information. However, with multi-agency numbering systems and technical language, the regulations are difficult to follow and therefore inaccessible to most consumers.

We suggest the agencies adopt plain language consumer guides about medical information and credit to be published on each agency's web site as well as the web site for the federal Financial Literacy and Education Commission [www.mymoney.gov](http://www.mymoney.gov) The agencies' educational materials should address such topics as:

- The entities covered by the FACT Act medical privacy rules.
- Situations in which employers or insurers can ask for medical information.
- Limits on the collection and use of medical information for credit determinations.
- The effect of voluntarily supplying medical information.
- How and where to complain about a suspected violation of the rule.

In earlier comments on the proposed medical privacy rules, [www.privacyrights.org/ar/MedFACTA.htm](http://www.privacyrights.org/ar/MedFACTA.htm), we suggested that mandatory training and a comprehensive compliance program is necessary for consumers to reap the benefits intended by Congress. We reiterate that opinion here. The FACT Act includes some important safeguards for medical information. However, these rights are only valuable if: (1) consumers are aware of their rights, (2) bank employees and others involved in credit decisions are adequately trained, and (3) the agencies' examiners are alert to potential abuses.

Again, we appreciate the opportunity to comment, and we endorse the joint comments submitted by the HPP.

Sincerely,

A handwritten signature in cursive script that reads "Beth Givens". The ink is dark and the signature is centered at the top of the page.

Beth Givens, Director  
Tena Friery, Research Director  
Privacy Rights Clearinghouse

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