

# FTC Enforces FCRA and ECOA

In recent actions against AT&T Corporation and Sprint Corporation, the **Federal Trade Commission** (FTC) cited violations of the *Fair Credit Reporting Act* (FCRA), the *Equal Credit Opportunity Act* (ECOA), and *Regulation B* (the implementing regulation for ECOA). The judgments against the companies explain that both have been acting as creditors because they require consumers to complete an application to apply for telephone service which is offered on a credit basis. Consumers pay for the service after they have received it, making it a credit transaction.

As part of the companies' determination regarding the approval of credit, they use consumers' credit reports to determine their eligibility. Sometimes the companies deny service completely and in others they require consumers to make an advance payment or deposit or cap the charges they may incur if the credit review shows the consumer to be a credit risk. The FTC complaints against the companies allege that all of these actions are "adverse actions" under the FCRA, thereby triggering the companies' obligation to provide the consumers with a notice disclosing:

- The adverse action;
- The name, address, and phone number of the credit bureau from which the consumer's credit report was obtained;
- That the credit bureau did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken;
- The consumer's right to obtain a free copy of the consumer report within 60 days from the credit bureau; and
- The consumer's right to dispute with the credit bureau the accuracy of any information in his or her report.

According to the FTC, AT&T and Sprint in many instances took adverse action, but failed to provide completed notices in violation of the FCRA. In fact, in several cases, Sprint failed to provide any notice regarding the action taken. The FTC alleges that the incomplete notices failed to tell consumers, among other things, of their right to a free credit report and to dispute the accuracy of it. In the case of Sprint, the FTC alleges it violated ECOA by failing to provide notices as mandated.

As a result of these violations, the FTC determined that both companies did, in fact, violate the ECOA, Regulation B, and the FCRA. They were cited for violations of ECOA which constituted unfair or deceptive acts or practices in violation of Section 5(A) of the *Federal Trade Commission Act* (FTCA). In addition, they were also cited for a pattern or practice of knowing violations.

In AT&T's case, they will be paying \$365,000 in civil penalties. Sprint has agreed to pay \$1,125,000 in civil penalties. As the FTC points out, agreement to the Orders by the companies does not constitute an admission of guilt.

Companies must look closely at the types of transactions they perform and determine whether they fall under the various consumer regulations. In these cases, for example, both companies should have known that their approval process constituted a credit application by the consumer and a credit decision by the company itself.

While financial institutions know that Regulation B applies to them, for example, it is still not uncommon to find violations regarding the information required to be provided on an adverse action notice. Staff training can go a long way in correcting errors of this type.