Prescreening, Prequalifying and Postscreening in the Era of Big Data

American Bar Association Meeting
Business Law Section
Consumer Financial Services Committee
September 12-14
Washington, DC
Agenda

• What is big data?
• What is prescreening?
• What is prequalification?
• What is postscreening?
• Legal issues
What is big data?

- Datasets whose size is beyond the ability of typical software tools to capture, store, manage and analyze (McKinsey)
- The 3 V’s
  - Volume
  - Velocity
  - Variety
- For consumer financial services, involves data beyond traditional credit reports
Types of big data that pose challenges

- Social media connections/relationships
- Academic records/educational background
- Job type/status
- Online shopping purchase patterns/behaviors
- Website subscriptions
- GPS/location data
- IP address
Prescreening

The term “firm offer of credit or insurance” means any offer of credit...to a consumer that will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer...”
Prescreening

- Initiated by consumer
- Firm offer required
- Response from CRA = Yes or non-response
- Soft pull only on approved responses
Prequalification

- “Would you like to see the types of loans for which you might qualify?”
- Initiated by consumer
- No firm offer required
- Full credit report/score returned
- Soft inquiry
Postscreening

[T]he offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer’s application for the credit..., to meet specific criteria bearing on credit worthiness or insurability, as applicable....
Postscreening

Verification...that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer...
Postscreening

[Verification] of the information in the consumer’s application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability
Are data sources subject to FCRA?

• Key issue is whether data source is subject to FCRA
• Is the data source providing “consumer reports”?
  – communication of information
  – by a CRA (circular)
  – bearing on an [identifiable] consumer’s “seven factors”
  – which are used or expected to be used or collected
  – for the purpose of serving as a factor in establishing eligibility
Are data sources subject to FCRA?

• Is the data source a “consumer reporting agency”?
  – regularly engages in assembling or evaluating credit information
  – on consumers
  – for the purpose of providing reports to third parties
  – [and maintains “files”]
Other legal issues

• What if a second data source is involved?
  – Non-FCRA source
  – FCRA source

• How much “postscreening” is too much?

• Low risk methods of postscreening
QUESTIONS?