

FCRA and the CARES Act: How COVID-19 Has Impacted Credit Reporting

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Meet the Speakers

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What is the FCRA?

- Statute (Fair Credit Reporting Act) governing the collection, maintenance, and disclosure of consumers' personal information
- Regulates consumer reporting agencies
- Also regulates parties that supply consumer information to credit reporting agencies (furnishers) and third parties that request and use consumer reports



EQUIFAX

 **TransUnion**

 **Experian**



What is a Consumer Report?

- Any written or oral communication that meets all of the following conditions:
 - Prepared by a Consumer Reporting Agency
 - Bears on consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living
 - Used or collected to establish a consumer's eligibility for a *particular purpose*



How Furnishers Provide Consumer Information to CRAs and Vice Versa

- Furnisher → Consumer Reporting Agency
 - Furnishes via ACDV or AUD
 - E-Oscar System to communicate
 - “Language” = METRO 2
- Consumer Reporting Agency → Furnisher
 - Consumer Disputes
 - Via ACDV

CREDIT DISPUTES



Common Claims Under the FCRA

- Failure to follow reasonable procedures for ensuring accuracy of consumer information (15 U.S.C. § 1681e(b))
- Failure to properly investigate or reinvestigate a consumer's dispute (15 U.S.C. § § 1681i(a)(1)(A), 1681s-2(b))
- Issuing or obtaining a consumer report for an impermissible purpose (15 U.S.C. § 1681b)



Culpable Mental States Under the FCRA

(1) **Negligent Violations**

- Did D act *reasonably*
- Causal relationship
- Damages

(2) **Willful Violations**

- D *knowingly* or *recklessly* violated the statute



Damages & Remedies

- **Costs and Reasonable Attorneys' Fees &**
- **Willful Violations**
 - Actual OR statutory (\$100-1,000/violation)
 - Punitive damages
- **Negligent Violations**
 - Actual damages
- Actual damages includes emotional distress damages
- No cap on statutory damages in class actions



The CARES Act



- **15 U.S.C. § 1681s-2(a)(1) amended to add § 1681s-2(a)(1)(F)**
 - If a creditor or other furnisher of information provides an *accommodation* to a consumer affected by COVID-19 in connection with consumer’s account or other credit obligation and the consumer satisfies the accommodation, the furnisher must report the consumer account as current for the “covered period.”
 - If the consumer was delinquent prior to the accommodation, the furnisher may continue to report the consumer as delinquent until the consumer brings the account current



The CARES Act - The CFPB Weighs in

- CFPB will take a “flexible supervisory and enforcement approach” during the COVID-19 pandemic
- Furnishers should continue to report accurate information
- CFPB will not cite in examination or take enforcement actions against furnishers who are accurately reporting the payment relief measures being afforded to borrowers during the crisis
 - CFPB will consider the circumstances entities face and the good faith efforts they make to comply with their statutory and regulatory obligations



**You have
QUESTIONS**

**We have
ANSWERS**



Thank You For Attending

Contact Us

- John Asas
- The Alzheimer Group



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