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CFPB's Spring Supervisory Highlights Report Reinforces Focus on Consumer Reporting, Furnisher Activities

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On April 8, 2024, the Consumer Financial Protection Bureau (CFPB) published the 32nd edition of its Supervisory Highlights report. As discussed in more detail below, the report highlights consumer reporting issues identified in examinations completed from April 2023 through December 2023. It also sets forth recent supervisory program and enforcement developments concerning furnishers and consumer reporting agencies (CRAs).

The Supervisory Highlights' focus on consumer reporting issues is unsurprising in light of the CFPB's recently published Consumer Response Annual Report, which reflects that consumer reporting, including credit reporting, was again the most-complained-about financial product or service in 2023 – accounting for more than 81% of all consumer complaints sent by the CFPB to companies for review.

To that end, within the Supervisory Highlights, the CFPB emphasizes that "[i]naccuracy in the credit reporting system is a long-standing issue that remains a problem today" and that the CFPB would continue to "prioritize examinations of consumer reporting companies … and furnishers" going forward.

CFPB's key observations

The CFPB identified deficiencies in CRAs' and furnishers' compliance with the Fair Credit Reporting Act (FCRA) and Regulation V.

CRAs

The CFPB identified certain issues with CRAs' practices, as outlined below.

CRAs failed to block information after consumers submitted the requisite identity theft documentation.

The CFPB observed that CRAs failed to block the reporting of information after consumers provided them with the requisite identity theft documentation, and without otherwise making a reasonable determination that there was a statutory basis to deny the block.

In addition, the CFPB observed that CRAs failed to:

1. Notify consumers, as required by the FCRA, within five business days after declining to block information, or rescinding a block of information, that consumers had identified as resulting from identity theft.
2. Provide consumers who contacted the CRAs to express a belief that they were victims of fraud or identity theft with a summary of rights containing all the information required by the CFPB in its model summary of rights form.

Issues with CRAs' handling of identity theft claims also were recently highlighted in the CFPB's Consumer Response Annual Report, where the CFPB emphasized that consumers seemed to face many difficulties in addressing tradeline inaccuracies in their consumer report as a result of alleged identity theft.

CRAs failed to block adverse information resulting from human trafficking.

In 2022, the CFPB issued a rule under Regulation V, requiring that CRAs block adverse items of information identified by consumers or their representative as resulting from a severe form of human trafficking. In its examinations, the CFPB observed that CRAs failed to block such information in response to a qualifying consumer request, either in whole or in part, or within four business days of receiving the consumer request, as generally required under the rule.

CRAs failed to follow reasonable procedures to ensure maximum possible accuracy by accepting information from unreliable furnishers.
The CFPB found that CRAs failed to follow procedures to ensure the maximum possible accuracy of the information included in consumer reports where they failed to sufficiently monitor dispute metrics, such as those showing that, over several months, a furnisher had not responded to all or nearly all disputes or, alternatively, had responded to all disputes in the same manner, and still continued to include information from such furnishers in their consumer reports.

This is not the first time the CFPB has taken issue with CRAs' monitoring of dispute trends. In its summer 2021 Supervisory Highlights and a 2022 advisory opinion, the CFPB explained that CRAs failed to follow reasonable procedures for assuring maximum possible accuracy of consumer reports when they "continued to include information in consumer reports that was provided by unreliable furnishers," meaning furnishers whose dispute response behavior suggested that they "were no longer sources of reliable, verifiable information about consumers."

Furnishers

The report also emphasizes key observations in the CFPB's examination of furnishers of information to CRAs, including the issues outlined below.

Furnishers failed to promptly update inaccurate or incomplete information.
The CFPB contends that furnishers are continuing to violate the FCRA by failing to promptly correct and update information reported to the CRAs after finding it is incomplete or inaccurate.

To underscore this point, the CFPB highlights that furnishers failed to update dates of first delinquency (DOFD) for several months after determining such were inaccurately reported. Importantly, unaddressed DOFD issues also were a central focus of the CFPB's 2022 advisory opinion on the prevalence of what the CFPB called "facially false data" in consumer reports, as well as several furnisher enforcement actions brought by the CFPB.

In the Supervisory Highlights, the CFPB also spotlights specific bankruptcy, auto lease and deposit account inaccuracies which, according to the CFPB, were left unaddressed by furnishers. The CFPB stated that, in response to these findings, furnishers were updating internal controls and/or "conducting lookbacks" to ensure that corrections or updates were made to impacted accounts.

Furnishers failed to provide required notifications/information to CRAs.
The FCRA requires that furnishers notify CRAs when an item of information provided to the CRAs by the furnisher is subject to a direct dispute and, also, that furnishers inform the CRAs of the DOFD associated with applicable accounts. The CFPB observed that furnishers failed to communicate this information to CRAs consistent with their obligation under the FCRA.

In particular, the CFPB emphasized issues with reporting of the DOFD by auto loan furnishers, including that they inaccurately reported the DOFD as the first day of a statement cycle following a missed payment, rather than 30 days after the missed payment, and, also, that they changed the DOFD for accounts that continued to be delinquent month after month, where such should remain unchanged.

Furnishers failed to reasonably investigate direct disputes.
A theme throughout several editions of the CFPB's Supervisory Highlights, including the latest edition, is that furnishers are not meeting their obligation to conduct reasonable investigations of direct disputes.

In particular, the CFPB asserts that furnishers required consumers to provide additional information, beyond what is required under Regulation V, in order to initiate a direct dispute investigation. This observation follows a 2022 CFPB circular warning furnishers that they "are liable under the FCRA if they fail to investigate any dispute that meets the statutory and regulatory requirements."

In addition, the Supervisory Highlights report raises that debt collection furnishers were automatically deleting tradelines upon receipt of a dispute, rather than conducting a reasonable investigation – a practice that the CFPB previously said can harm consumers.

Furnishers failed to prevent furnishing of information upon receipt of an identity theft report.
Finally, the CFPB explained that furnishers were continuing to report information after receiving an identity theft report, reflecting that the information resulted from identity theft, at the address specified by the furnisher for

receipt of such documentation. Although the FCRA allows furnishers to reinitiate reporting of such information if the furnisher subsequently knows or is informed by the consumer that the information is, in fact, correct, the CFPB asserted such knowledge or information had not been obtained by furnishers in the scenarios it identified.

Looking ahead

The Supervisory Highlights report reflects the CFPB's continued concern over inaccuracies in consumer reports. Several of the issues identified in the latest edition are issues that the CFPB has previously identified as problematic. CRAs and furnishers should take note – and consider reviewing their consumer reporting policies and procedures to ensure they align with CFPB expectations. It may be particularly prudent to conduct such a review in advance of the CFPB's expected FCRA rulemaking proposal, which, as recently indicated by the CFPB, is expected later this year and likely will add to CRAs' and furnishers' obligations under the FCRA.

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