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On June 28, 2022, the Consumer Financial Protection Bureau issued an interpretive rule under the Fair Credit Reporting Act (FCRA) clarifying that states have the ability to protect their residents by enacting their own fair credit reporting laws, notwithstanding existing federal law. Specifically, the interpretive rule highlights the bureau's position that the FCRA preempts state laws regulating the conduct of consumer reporting agencies (CRAs), furnishers and users of consumer reports only in certain limited, enumerated instances. The CFPB's rule emphasizes that states can enhance consumer protections by passing stricter laws regulating credit reporting practices when expressly not preempted by the federal statute.

Preemption under the FCRA

The interpretive rule states that:

- State fair credit reporting laws that are more protective of consumers than the FCRA are generally not preempted unless they fall within one of the preemption categories enumerated under FCRA Section 1681t(b).
- The FCRA's express preemption categories are narrow and targeted in scope, as they only relate to the specific conduct required or subject matter regulated under each preemption provision. Thus, if a state law does not "concern" the subject matter or conduct regulated under a FCRA preemption category, it is not preempted.
- The FCRA generally only regulates how long certain information (e.g., bankruptcies) can continue to appear on a consumer report, but does not otherwise preempt state requirements related to whether – or when – certain information can initially be included in a consumer report.

The interpretive rule provides examples of state fair credit reporting laws that would not, according to the bureau, be preempted by the FCRA – which, not surprisingly, focus on many of the same issues the bureau has flagged in recent months:

- State laws forbidding CRAs from including information about medical debt, eviction information, arrest records, or rental arrears in a consumer report (or from including such information only after a certain period of time).
- State laws prohibiting furnishers from reporting certain information to CRAs, such as medical debt, or requiring that furnishers report certain information only after a period of time.
- State laws requiring that CRAs provide, at the consumer's request, disclosures and information covered by the FCRA in languages other than English.

What to expect?

Most states already have enacted their own fair credit reporting laws, but only a handful of them, such as California, confer additional protections to those provided under the FCRA. The interpretive rule paves the way for states to more strictly regulate credit reporting practices at the local level. A state-by-state approach – tailored to each state legislature's specific agenda and priorities – would require the credit reporting industry to comply with a patchwork of state statutes, in addition to the FCRA.

Additionally, the interpretive rule hits on two recent CFPB initiatives. First, it is another example of the CFPB's recent efforts to encourage states to become more active in a number of consumer protection areas, including by pursuing enforcement under the Consumer Financial Protection Act and state laws prohibiting unfair or deceptive acts and practices. Second, it reiterates the CFPB's renewed focus on medical debt reporting, which has been the subject of three separate guidance documents published by the bureau since the beginning of the year. Consistent with Director Rohit Chopra's position that medical debt should not be included in consumer report due to its lower predictive value, the CFPB's push for states to regulate the furnishing and reporting of medical debt does not come as a surprise. The interpretive rule takes a similar position with respect to rental history and eviction records, indicating that such information is critical to consumers' access to housing and credit but often rife with errors. Furnishers of medical debt data or rental information should thus expect increased scrutiny by the bureau, as well as stricter regulations at the state level.

Finally, while the interpretive rule gives the green light for states to enact stricter fair credit reporting laws, we also expect that zealous state attorneys general and regulators will leverage the CFPB's reasoning to limit the scope of the FCRA's preemption under their existing state credit reporting requirements.

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