



Who is on First: Credit Bureaus or Lenders?

Joel E. Tasca, Ballard Spahr LLP

Scott E. Wortman, Blank Rome LLP

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Civil Liability of Furnishers

- A “furnisher” is any entity that sends consumer information regarding creditworthiness to a CRA.
- Elements of a civil claim:
 - Inaccuracy
 - Disputed to a CRA
 - CRA then sends the furnisher an Automated Dispute Verification Form (ACDV)
 - Failure to perform reasonable investigation and/or update reporting (15 U.S.C. § 1681s-2(b))
 - Willfulness

Potential Furnisher Defenses

- Wrong provision of FCRA
- No notice of dispute from CRA
- No inaccuracy
- Reasonable investigation
- Furnisher made requested correction
- No actual damages/causation
- No standing

Reasonable Investigation

- 15 U.S.C. sec. 1681s-2(b)(1)(A)-(E)
- “Reasonableness” requirement added by case law
- What is “reasonable”?
 - Breadth of investigation depends largely on info received from CRA (*see, e.g., Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147 (9th Cir. 2009))
 - Depth of investigation
 - Dependent on “status” of furnisher (*see, e.g., Hinkle v. Midland Credit Management, Inc.*, 827 F.3d 1295 (11th Cir. 2016))
 - Dependent on other dispute-related information in furnisher’s possession or to which furnisher has access (*see, e.g., Hinkle, supra*)
- More rigorous investigation required for fraud/ID theft

Accuracy – Role of CRRG

- Arises when furnisher provides information inconsistent with the CRRG's recommendations
- CRRG = Credit Reporting Resource Guide
 - Published by the Consumer Data Industry Association
 - Guide to Metro 2[®] reporting
- Does the CRRG define “accurate” reporting?
 - Majority view: CRRG is not the legal standard for accuracy under the FCRA

Accuracy – Factual vs. Legal “Inaccuracy”

- Arises when a plaintiff claims inaccuracy based on a legal issue, like a legal defense to payment
- View 1: A plaintiff must show a factual inaccuracy
 - Furnishers “are neither qualified nor obligated” to resolve legal issues. *See Chiang v. Verizon New Eng., Inc.*, 595 F.3d 26, 38 (1st Cir. 2010).
- View 2: No distinction between a “factual” or “legal” inaccuracy
 - Simply apply “materially misleading” standard. *See, e.g., Hrebal v. Seterus, Inc.*, 598 B.R. 252, 269 (D. Minn. Bankr. 2019).

Accuracy – Post-Sale Obligation to Update

- Arises after furnisher has sold loan
- Post-sale event concerning consumer (*e.g.*, bankruptcy filing)
- Furnisher receives notice of dispute from CRA
- FAQ 47 of CRRG
- *See, e.g., Roberts v. Equifax Information Servs., LLC, et al., No. 1:19-CV-01365-WMR (N.D. Ga. Nov. 7, 2019)*

Accuracy – Bankruptcy Issues

- Arises when a plaintiff has filed for bankruptcy, especially Chapter 13
- Evolving claims
 - Reporting historical delinquencies for time when bankruptcy was pending – generally accurate.
 - Reporting account balance after discharge – generally not accurate
 - Recent theories – reporting after plan confirmation
- CRRG FAQs 23-31

Accuracy – “Disputed” Notation

- Arises after furnisher receives dispute and investigates
- “Disputed” notation required after investigation if materially misleading to report trade line as *undisputed*
- Triggered only when “bona fide” or not “meritless” dispute
- Case law
 - *Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142 (4th Cir. 2008); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147 (9th Cir. 2009); *Seamans v. Temple Univ.*, 744 F.3d 853 (3d Cir. 2014)
- Beginning to see claims alleging violation in failing to remove a dispute flag

Accuracy – Scheduled Payments

- Arises after an account is charged off, settled, accelerated, or discharged
- “Scheduled payment”
 - Regular monthly payment amount
 - Minimum monthly payment due based on balance
- Split of authority
 - *E.g., Williams v. Equifax Info. Servs., LLC*, No. ED CV18-02457 JAK (SHKx), 2019 U.S. Dist. LEXIS 140431, at *12 (C.D. Cal. May 6, 2019) (dismissing claim based on scheduled monthly payment after charge off)

Identity Theft

- Furnisher's FCRA obligations – 15 USC § 1681s-2(a)(6)
 - Reasonable procedures when report from CRA
 - Report directly from consumer
- “Identity Theft Report” – 12 CFR §1022.3(i)
 - Basic requirements
 - Ability of furnisher to make *reasonable* requests for additional information

Users of Consumer Reports

FCRA Permissible Purpose

Court Order

Written Authorization of the Consumer

Credit Transaction (extension of credit / review or collection of an account)

Underwriting of Insurance

Employment

Users of Consumer Reports

Certification of Permissible Purpose



Users of Consumer Reports

Disposal Rule

- Added to FCRA by the Fair and Accurate Credit Transactions Act of 2003. Codified at 15 U.S.C. § 1681w. See, e.g., 16 C.F.R Part 682 (FTC version).
- Provide rules to help ensure that any person who maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose properly disposes of the information.
- Does not impose any requirement to dispose of customer information and does not alter any existing record retention requirements.

Users of Consumer Reports

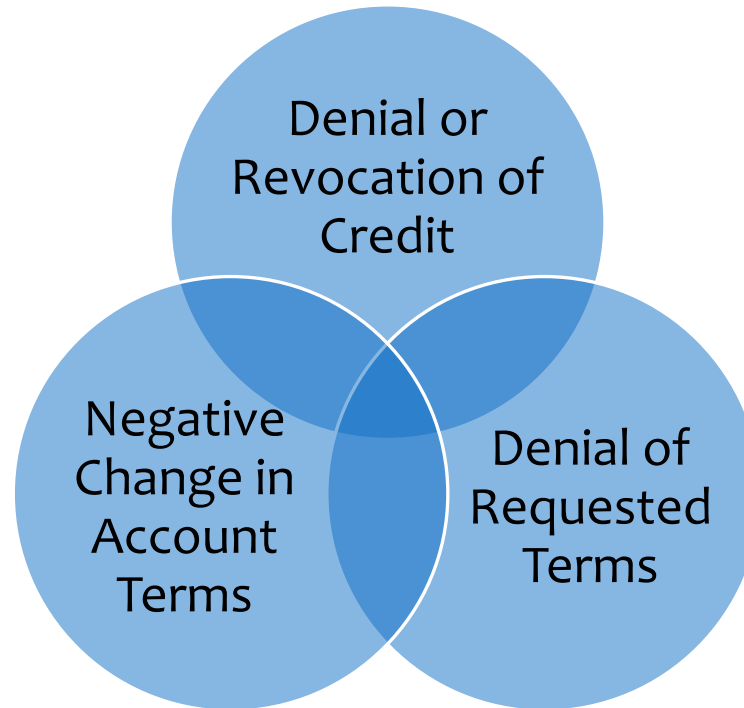
Address Discrepancy Rule

- Consumer reporting agencies are required to notify users of consumer reports when there is a substantial difference between the consumer's address identified by the user in its request for a consumer report and the address information in the consumer reporting agency's file. 15 U.S.C. § 1681c(h)(1).
- What must a user do when it receives an address discrepancy notice?

Users of Consumer Reports

Adverse Action Based on Consumer Report

NOTIFICATION REQUIRED:



Model Notices at 12 CFR Part 1002 (Regulation B), Appendix C

CFPB – Enforcement by the Numbers

Data snapshot through 2020

\$12.9 billion in
consumer relief

Monetary compensation, principal reductions, canceled debts, and other consumer relief ordered as a result of enforcement actions.

175 million people
eligible for relief

Estimated consumers or consumer accounts eligible to receive relief from enforcement actions.

\$1.6 billion in penalties

Civil money penalties ordered as a result of enforcement actions.

* www.consumerfinance.gov/enforcement/enforcement-by-the-numbers

CFPB – FCRA Regulatory Update

Advisory Opinion: Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports (July 7, 2022)

Interpretative Rule: The Fair Credit Reporting Act’s Limited Preemption of State Laws (June 28, 2022)

Advisory Opinion: Name-Only Matching (November 4, 2021)

CFPB Enforcement Activity

FCRA Procedures - Credit Repair Organizations

Proliferation of Credit Repair Organizations: Impact on Furnishers of Information Subject to the FCRA

❖ High Volume Automated Letter Disputes and FCRA Compliance

❖ Credit Repair Organization or Law Firm? Why it Matters

❖ Protocol and Suggestions for Furnishers

Questions/Discussion

If you would like to ask a question, you can ASK or type your question into the CHAT feature NOW.

Contact Information

Joel E. Tasca, Partner, Ballard Spahr LLP, 702-868-7511,
tasca@ballardspahr.com

Scott E. Wortman, Partner, Blank Rome LLP, 212-885-5359,
scott.wortman@blankrome.com