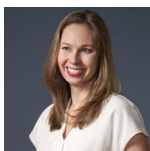


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FCRA DEVELOPMENTS: WHAT DATA PROVIDERS, USERS, AND FURNISHERS SHOULD KNOW

OLA Legal Issues Conference
February 11, 2024

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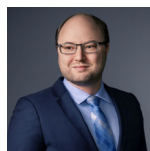
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Christa maintains an active pro bono practice which concentrates on immigration matters. Previously, Christa was an extern for the Consumer Financial Protection Bureau.



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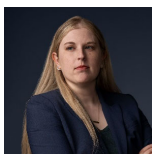
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Eric Mitzenmacher provides regulatory compliance advice to companies that offer consumer and small business credit, as well as conducting regulatory reviews on behalf of investors in, and financing sources for, such companies. His experience spans product lifecycles, including initial program development, day-to-day compliance, transactional support, and government examinations and enforcement actions.

Eric's experience covers a range of products and program structures, including Fintech and marketplace lending programs, retail and home improvement financing, credit cards, student lending, and small business lending and alternative financing. He regularly provides guidance on federal consumer financial laws such as the ECOA, FCRA, GLBA, MLA, SCRA, TILA, and prohibitions on UDAPs. He also advises companies regarding state law requirements, including licensing, usury and other restrictions on product terms, disclosures, and the preemption of state requirements by federal banking and consumer financial laws.

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Grace is a co-chair of the Asian-American Pacific Islander Affinity Group of the Washington DC office.

Grace previously served as an extern for the Hon. Virginia M. Kendall on the US District Court for the Northern District of Illinois.

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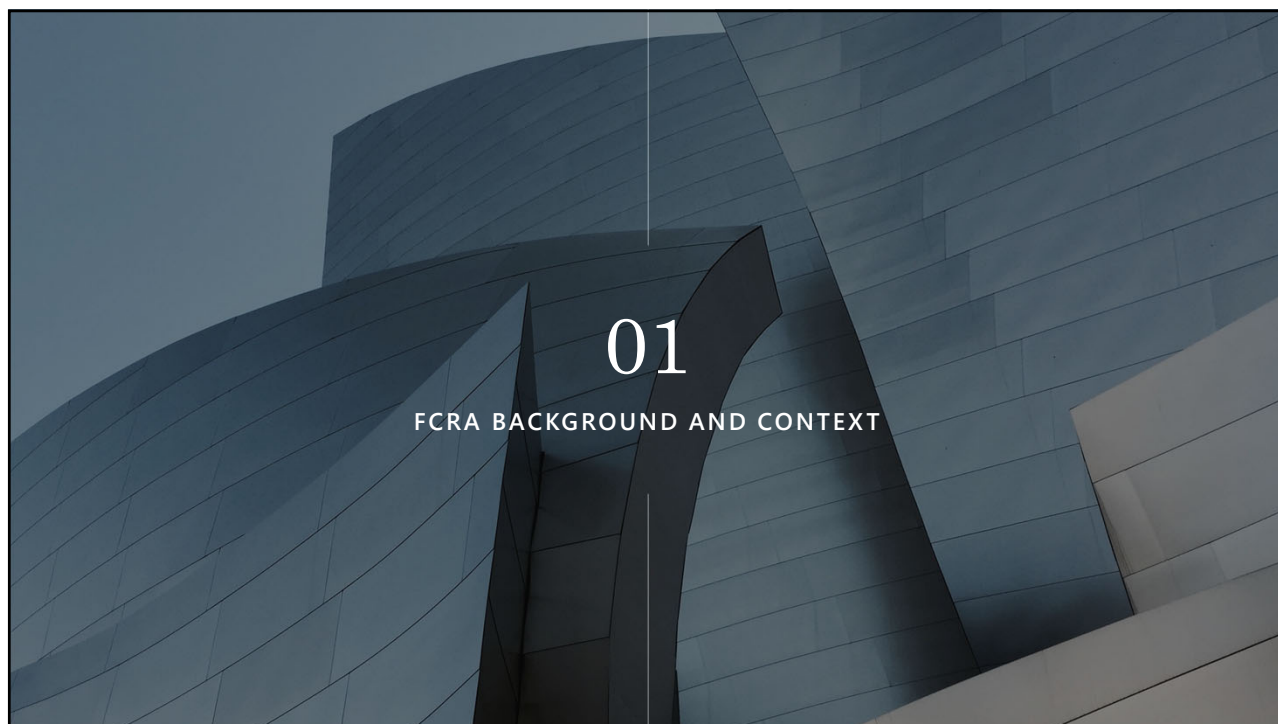
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AGENDA

- FCRA Background and Context
 - Purpose and Scope
 - Key Requirements
- FCRA Modernization Rulemaking Efforts
 - Regulatory Intentions
 - Proposals and Final Rules
- Enforcement and Supervision Priorities
 - Enforcement Trends
 - Supervision Trends
 - A Look Ahead
- Questions?



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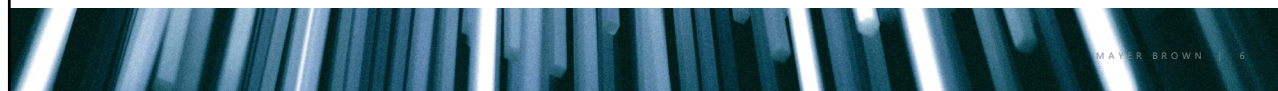
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FCRA BACKGROUND AND CONTEXT

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PURPOSE

- The US has a uniquely robust system of gathering and using information on individuals for the purpose of determining their eligibility for credit, insurance, rental, employment, and other business transactions.
- Consumers have significant interests in both:
 - The accuracy of information used in this system; and
 - Limitations on the flow of their personal information.
- Banks, insurers, and other users of consumer reports have significant interests in the accuracy and completeness of the information they obtain; and the Federal government is exposed to risks via FDIC insurance and various loan insurance and guaranty purposes.
- Consumer reporting agencies (“CRAs”) implement many steps of the process as a black box to the other non-government participants involved.



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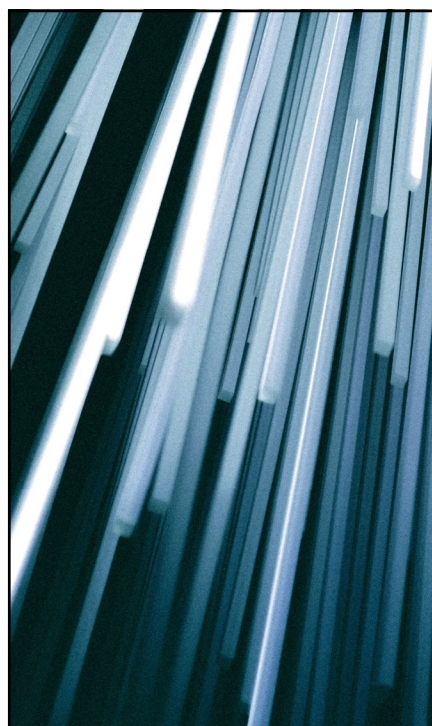
SCOPE

- FCRA primarily governs the development, maintenance, and use of “consumer reports.”
- Subject to certain exceptions, a “consumer report” is:
 - Any written, oral, or other communication of any information
 - By a consumer reporting agency
 - Bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living
 - Which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for: (i) credit or insurance to be used primarily for personal, family, or household purposes; (ii) employment purposes; or (iii) any other purpose authorized under [FCRA]

15 U.S.C. § 1681a(d)

ROLES

- Parties may become subject to FCRA requirements as one or more of:
 - Consumer Reporting Agencies or Resellers of Consumer Reports
 - Users of Consumer Reports
 - Furnishers of Information to Consumer Reporting Agencies



FCRA REQUIREMENTS FOR CRAS

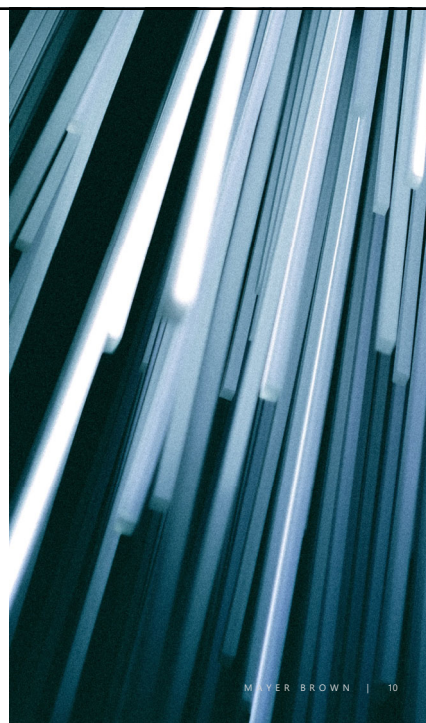
- FCRA and Regulation V impose a wide-range of requirements on CRAs, including requirements related to:
 - Conditions under which a CRA may provide a consumer report (“permissible purposes”)
 - Accuracy of reported information
 - Filtering of outdated adverse information
 - Handling of disputes
 - Specific requirements related to identity theft prevention
 - Provision of various disclosures or consumer report information to consumers
 - Information security and consumer privacy
 - Compliance management with respect to FCRA-related obligations, including maintenance of reasonable policies and procedures addressing various requirements

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FCRA REQUIREMENTS FOR USERS

- Permissible Purpose
 - A user must have a permissible purpose to obtain a consumer report.
 - No use other than for the permissible purpose certified to the CRA.
 - Prohibition on obtaining information under false pretenses.
 - Special rules for transactions not initiated by the consumer, use for employment purposes, and disclosure of medical information
- ID Theft Prevention
 - Financial institutions and creditors must develop and maintain programs to prevent identity theft (the “Red Flags Rule”)
 - Procedural requirements for clearing initial, extended, and active-duty fraud alerts appearing on consumer reports.
- Consumer Notices
 - Adverse Action Notices
 - Risk-Based Pricing Notices



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FCRA REQUIREMENTS FOR FURNISHERS

- Accuracy
 - Generally, furnishers may not report information that they know or have reasonable cause to believe is inaccurate. 15 U.S.C. § 1681s-2(a)(1). Furnishers may be exempt from this requirement if they provide consumers an address to report inaccurate information, but they still may not report information a consumer has told them is inaccurate (and that is, in fact, inaccurate).
 - If a furnisher determines information they furnished is not complete or accurate, they must promptly notify the CRAs and correct the information. 15 U.S.C. § 1681s-2(a)(2).
 - Regulation V requires furnishers to establish and implement reasonable policies and procedures regarding the accuracy and integrity of the information that they furnish to a CRA.
- Dispute Resolution
 - Reasonable investigation, timing, and procedural requirements upon receipt of a dispute.
 - Coverage for both direct disputes (received from the consumer by the furnisher) and indirect disputes (received from the consumer by a CRA, which then communicated with the furnisher).

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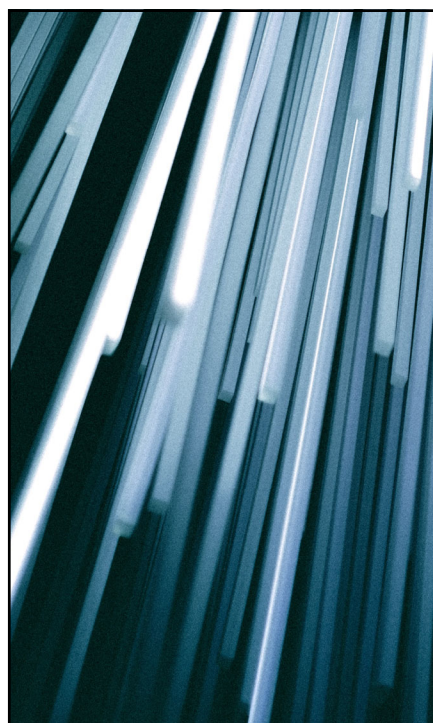
REGULATORY AND COMPLIANCE ENVIRONMENT

- Rulemaking
 - Largely by the CFPB, except for limited categories of users/furnishers exempt from CFPB rulemaking
 - Previously, rulemaking authority was vested in the FTC, which also was more active in providing guidance through responses to industry questions and reports.
- Federal Supervision and Enforcement
 - Shared among the CFPB, banking agencies, and FTC
- State Role
 - Potential for supervision and enforcement of FCRA requirements to the extent incorporated into state law, but subject to various preemption standards on a requirement-by-requirement basis
- Private Right of Action

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CFPB FCRA RULEMAKING EFFORTS

- December 2023 Final SBREFA Report
 - Clarifying or Broadening FCRA Scope
 - Limiting Permissible Purposes
 - Restructuring Dispute Resolution Requirements
 - Data Breach Obligations
 - Limiting Medical Debt Information Furnishing and Use
- Rulemaking Activities
 - December 3, 2024—Broad Regulation V Proposal (the “Data Broker” Rule)
 - December 9, 2024—ANPR on ID Theft and Coerced Debt
 - January 7, 2025—Final Medical Debt Information Rule
- Under Further Consideration
 - Dispute Resolution
 - Data Breach Obligations

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SBREFA CONSIDERATIONS—DATA BROKERS AND AGGREGATORS

- Consumer information provided to a user who uses it for a permissible purpose is a “consumer report” regardless of whether the data broker knew or should have known the user would use it for that purpose, or intended the user to use it for that purpose
- Data brokers selling specified information typically used for credit and employment eligibility are selling consumer reports
- Data brokers collecting consumer information for permissible purposes may not sell it for non-permissible purposes
- Data brokers may not obtain consumer report information from CRAs without a permissible purpose or sell information derived from a CRA without a permissible purpose
- Definitions of “assembling or evaluating” information would be clarified to better address data aggregator conduct, including consumer-permissioned information

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SBREFA CONSIDERATIONS—CREDIT HEADER DATA

- Credit Header data includes consumer identification data such as name, SSN, addresses, phone numbers etc. separate from tradeline information
- Uses include KYC and anti-fraud activities, skip-tracing, and as lead generation information for various background checks (*i.e.*, identifying potential sources of reference information)
- Also used for marketing purposes, which is conduct about which the CFPB has expressed concerns
- Initial question is whether/when such information is a consumer report, which then generates or avoids FCRA obligations

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SBREFA CONSIDERATIONS—TARGETED MARKETING

- Consumer report information is available for marketing purposes only in limited circumstances, including:
 - Prescreened solicitation
 - Pursuant to the written instructions of the consumer (but CRAs vary in their acceptance of this approach)
- Targeted marketing data can be obtained:
 - From non-CRA data brokers, subject to restrictions on how the data is sourced and used to prevent the data broker from becoming a CRA
 - If the data does not reflect FCRA-regulated consumer characteristics
 - In aggregated form that does not identify individual consumers (and cannot be reverse engineered)
- The CFPB is considering proposals that would limit business models under which CRAs themselves actively participate in targeted marketing without technically furnishing a consumer report to the company
- The CFPB is considering broadening FCRA guidance to cover at least some aggregated or anonymized data

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SBREFA CONSIDERATIONS—PERMISSIBLE PURPOSE

- Written instructions of the consumer
 - More specific authorization processes and language
 - Limitation on number of uses that could be included in a given authorization
 - Process for revoking instructions
- Legitimate business need
 - Limiting use to consumer-purpose transactions
 - Limiting use for “eligibility” to determining eligibility of the consumer for the transaction
 - Limiting use for “account review” to circumstances where the consumer report is needed to make a decision about whether the consumer continues to meet the terms of the account, rather than for more general “review” purposes

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SBREFA CONSIDERATIONS—OTHER

- Enhanced data security and data breach notification requirements
- Disputes
 - Clarification that FCRA dispute resolution applies to both legal and factual disputes
 - Differentiation between dispute resolution for one-off issues vs. systemic issues that may affect multiple consumers
- Medical Debt Information
 - Prohibition on creditors obtaining or using medical debt collection information to make determinations about consumer eligibility
 - Prohibition on CRAs including medical debt collection tradelines on consumer reports furnished to creditors
 - The only element of the SBREFA considerations that has now moved to a Final Rule stage

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DATA BROKER RULE

- Proposed December 3, 2024 with comments due March 3, 2025
- SBREFA Topics Addressed
 - Interpretation of “consumer report” and “consumer reporting agency” definitions to capture more data broker and data intermediary activities
 - Broadening of “use” prong to include any actual use of data by initial recipient or downstream recipient for eligibility purposes notwithstanding a data provider’s expectation that no such use would occur
 - Broadening of “expected use” prong to include certain categorical information (credit history, credit score, debt payments, income, or financial tier)
 - Treatment of credit header data as a “consumer report” even when conveyed without tradeline or other more detailed information
 - Limitations on use of anonymized/depersonalized data
 - Clarification of which parties are involved in “assembling or evaluating” information
 - Disclosure, authorization, and procedural requirements and limitations on “permissible purpose”
 - Written instructions limited (*e.g.*, timing and revocation requirements)
 - Legitimate business need in a consumer-initiated transaction limited (*e.g.*, express exclusion of marketing)

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ID THEFT AND COERCED DEBT

- ANPR issued December 9, 2024 with comments due March 7, 2025
- Suggests a potential broadening of “identity theft” concepts to capture situations in which a consumer in fact does obtain credit, but does so under coercion.
- Requests industry and consumer advocate participation in understanding causes, consequences, and potential regulatory reactions to financial abuse in the form of debt coercion.

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MEDICAL DEBT INFORMATION RULE

- Proposed June 11, 2024 and finalized January 7, 2025
- Scheduled to become effective March 14, 2025
- Prohibits creditors from obtaining medical debt information for the purpose of underwriting
- Removes an exception that previously permitted consideration of medical information (including medical debt information) if it was obtained without specifically requesting medical information and
 - The creditor uses information in the same manner as other debt information that was not medical in nature
 - For limited purposes relating to powers of attorney, compliance with law, continued qualification for a special purpose credit program, fraud prevention, validation of the medical purpose of a loan if the creditor is underwriting medical financing, determining eligibility for certain insurance or debt cancellation benefit, or—at the consumer’s request—eligibility for an accommodation
- Medical debt information may still be conveyed to other users

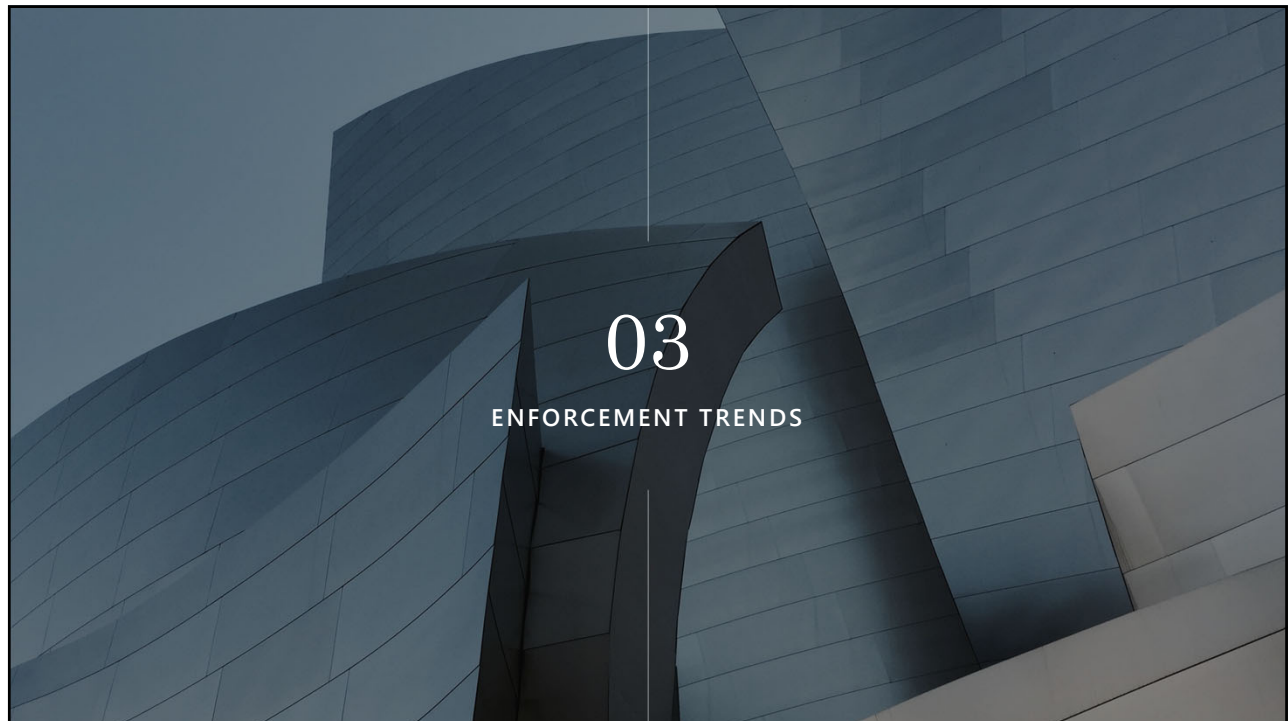
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IMPACT OF THE NEW ADMINISTRATION

- Broader modernization rulemaking and guidance unlikely to continue
 - Data broker proposal uncertain to be finalized, in whole or in part
 - ID Theft and Coerced Debt rulemaking may see delayed finalization, though there is a greater likelihood that it will move forward in some form
 - Medical debt information rulemaking effective date may be delayed
- CFPB's position on many elements of the SBREFA process and rulemakings to date is that the underlying themes already are incorporated into FCRA guidance and case law. The CFPB's process to create more bright-line rules and clarifications in many cases, even if various aspects also served as expansions.
 - Could still see incremental use of these underlying themes in supervision and enforcement
 - States may move to fill void on certain aspects, including regulation of data broker activities and consumer information flow outside of "consumer report" scope

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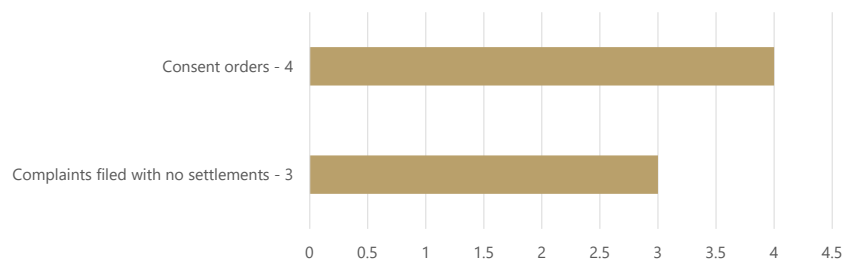


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TRENDS IN FCRA ENFORCEMENT

- FCRA has been a significant focus of CFPB enforcement efforts in recent years.
- The Bureau has targeted furnishers, users, and consumer reporting agencies.

CFPB FCRA Enforcement at a Glance January 2024 - January 2025 (13 months)

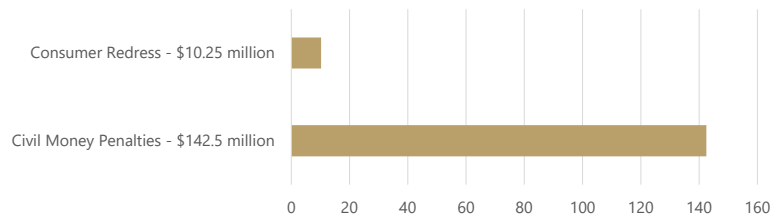


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TRENDS IN FCRA ENFORCEMENT

CMPs and Consumer Redress Ordered CFPB FCRA Settlements January 2024 - January 2025



It is notable that the CMP amount is significantly higher than the redress amount and may, in part, reflect the fact that it is often difficult to tie FCRA violations to concrete monetary harm

* Note: One 2024 FCRA-related consent order does not specify the redress amount.

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PENNSYLVANIA EDUCATION SERVICES REPORTING ACCOUNTS IN BANKRUPTCY

- Complaint filed May 2024
- According to the CFPB, Pennsylvania Education Services failed to maintain adequate furnishing policies and procedures re: private student loans discharged in bankruptcy
- Legal Claims:
 - Engaged in a UDAAP by failing to maintain policies and procedures to determine whether loans are discharged in bankruptcy and collecting and furnishing on discharged debts
 - Violated Regulation V by failing to establish policies or procedures regarding furnishing loans that were discharged in bankruptcy
- Matter is consistent with the Bureau's increased focus on bankruptcy and demonstrates that the Bureau may deem failing to maintain appropriate controls a UDAAP.

ACIMA HOLDINGS VARIETY OF FURNISHER AND USER REQUIREMENTS

- Complaint filed May 2024
- The Bureau alleged that Acima violated numerous FCRA and Regulation V furnisher and user requirements.
- Legal Claims:
 - Violated FCRA and Regulation V by failing to establish reasonable policies or procedures regarding furnished information
 - Violated FCRA by furnishing information the Company had reasonable cause to believe was inaccurate
 - According to the Bureau, Acima had reasonable cause to believe certain information – including information about loan type and outstanding balance – was inaccurate because “they were aware that it did not conform to the reality of their consumers’ accounts”
 - Violated FCRA and Regulation V by failing to conduct reasonable investigations of disputes
 - The complaint alleges that Acima refused to conduct an investigation if a consumer alleged fraud or ID theft and did not submit a police report
 - Violated FCRA by failing to send consumers required notices alerting them to the furnishing of negative information
 - Violated FCRA by obtaining consumer reports in the form of “prescreened” lists from CRAs without a permissible purpose

FIFTH THIRD BANK CREDIT REPORTING ERRORS CAUSED BY SERVICING ISSUE

- Consent Order Entered July 2024
- According to the CFPB, the bank furnished inaccurate information to consumer reporting agencies regarding repossessions
- Legal Claims:
 - Violated FCRA by furnishing inaccurate or incomplete information to consumer reporting agencies regarding repossessions that were caused by unfairly placed forced placed insurance
- Ordered to pay consumer redress and a \$5 million CMP
- Underscores the importance of considering credit reporting impacts after identifying a servicing issue

TD BANK LAUNDRY LIST OF FURNISHER-RELATED ALLEGATIONS

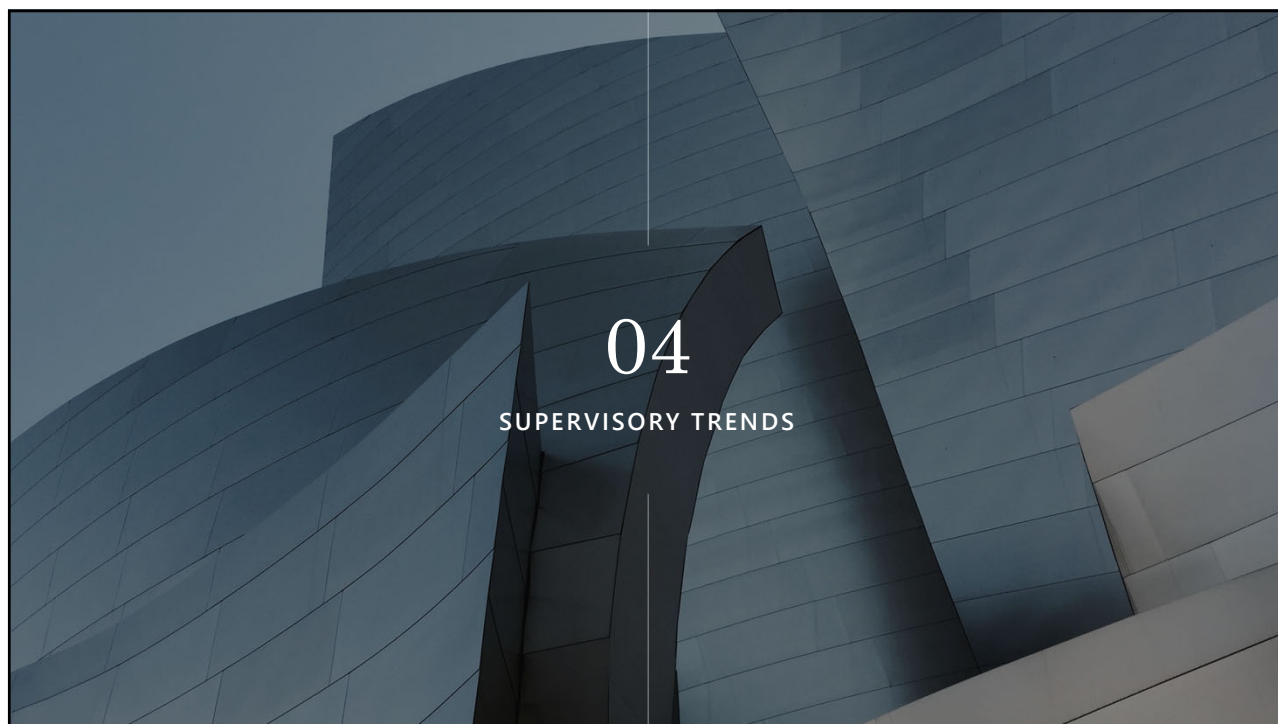
- Consent Order Entered September 2024
- According to the CFPB, TD Bank repeatedly furnished to information containing numerous systemic errors and that it knew of many of these inaccuracies for a year or more before fixing them.
- Legal Claims:
 - Violated FCRA by failing to promptly correct furnished information after it determined the information was inaccurate or incomplete.
 - Engaged in abusive act or practice and violated FCRA by failing to timely investigate and respond to disputes.
 - Violated FCRA by failing to report an accurate DOFD.
 - Violated FCRA by failing to properly notify consumers when the company deemed disputes frivolous or irrelevant.
 - Violated FCRA, as amended by the CARES Act, by failing to properly report account statuses.
 - Violated FCRA by failing to maintain sufficient policies and procedures related to reporting.
- Ordered to pay \$7.76 million in redress and a \$20 million CMP
- As demonstrated by this matter, the Bureau is taking an increased interest in technical Metro 2 furnishing requirements and the speed at which entities remediate such issues after identification

HONDA FINANCE CORPORATION ANOTHER LAUNDRY LIST OF FURNISHER-RELATED ALLEGATIONS

- Consent Order Issued January 2025
- The Bureau alleged that Honda Finance violated a number of FCRA and Regulation V furnisher requirements.
- Legal Claims:
 - Violated FCRA by reporting consumers delinquent while on COVID-19 accommodations.
 - Violated FCRA by failing to promptly update and correct information it furnished to CRAs that it determined was not complete or accurate.
 - Violated FCRA and Regulation V by failing to complete direct dispute investigations timely.
 - Violated Regulation V by failing to implement reasonable written policies and procedures appropriate internal controls regarding furnished information.
 - Violated Regulation V by failing to conduct reasonable investigations of direct disputes.
- Ordered to pay \$10.3 million in consumer redress and a \$2.5 million civil money penalty

HIGH-LEVEL THEMES

- Focus on:
 - Prompt correction of furnished information that is inaccurate or incomplete
 - Date of First Delinquency
 - Accounts in bankruptcy
 - Identity theft and fraud
 - Furnishing for consumers on COVID-19 accommodations
 - Reasonable policies and procedures
 - Reasonable investigation of disputes
 - Timely resolution of disputes
 - Failing to maintain appropriate controls or P&Ps as UDAAPs
 - Permissible purpose requirements



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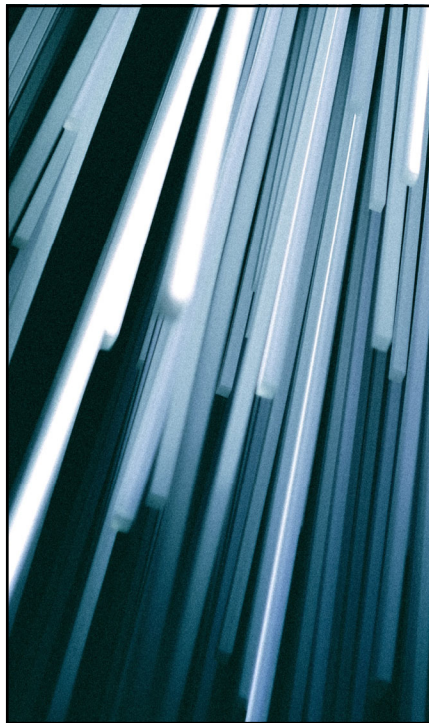


SUPERVISORY HIGHLIGHTS: FURNISHERS

- The Bureau has actively supervised furnishers and CRAs for FCRA compliance in recent years.
 - Spring 2024 issue of Supervisory Highlights focused entirely on CRAs and furnishers
 - Winter and Fall 2024 issues of Supervisory Highlights included sections focused on furnishers
- Among other things, the Bureau cited furnishers for:
 - Failing to promptly correct and update incomplete or inaccurate information
 - Reporting information with actual knowledge of errors
 - Failing to notify CRAs of direct disputes
 - Reporting an inaccurate DOFD
 - The Bureau noted that coding errors resulted in furnishers inaccurately reporting DOFD
 - Failing to conduct reasonable investigations of disputes
 - The Bureau referenced the importance of reaching out to third parties where necessary

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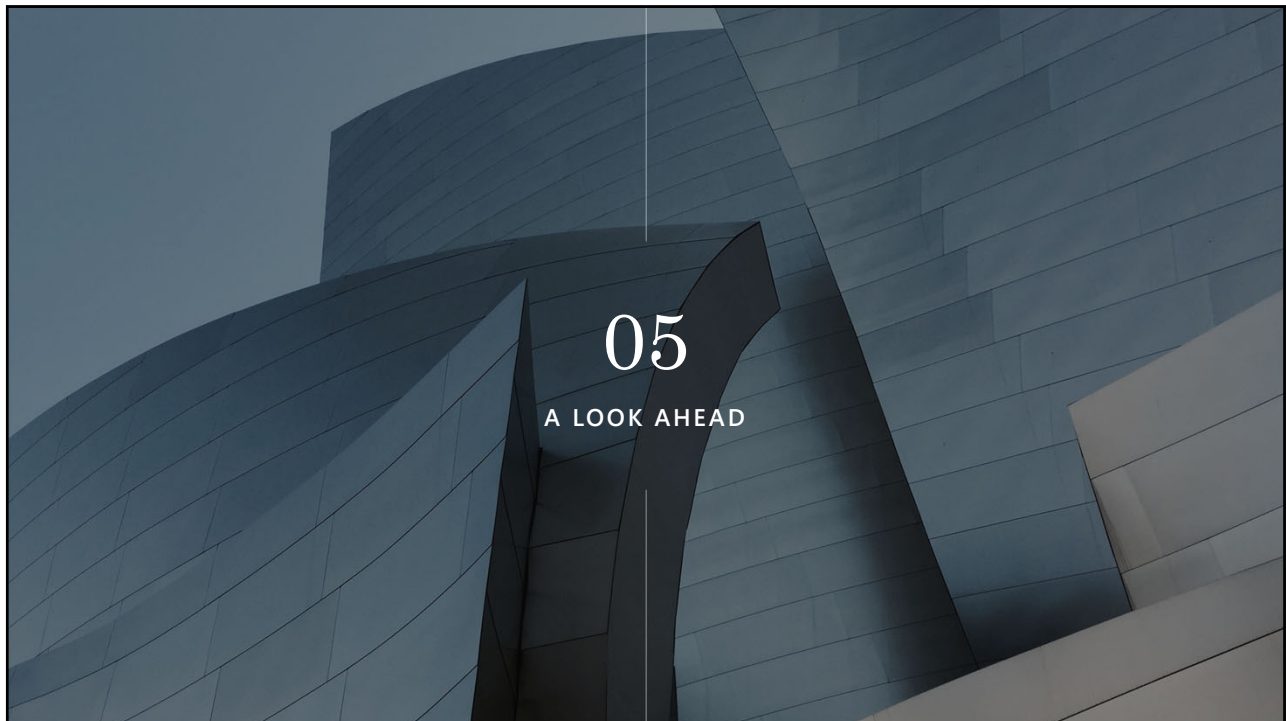


SUPERVISORY HIGHLIGHTS: FURNISHERS CONT.

- Furnishing information that purports to relate to a consumer upon receipt of an identity theft report
- Failing to maintain reasonable procedures to respond to identity theft block request notifications from CRAs
- Failing to implement reasonable procedures concerning the accuracy and integrity of furnished information
 - Among other things, the Bureau cited entities for:
 - Relying solely on external procedures regarding the technical steps for creating and transmitting reporting files
 - Lacking procedures for considering feedback received by CRAs
 - Lacking procedures to replace dispute codes following the resolution of disputes
 - Inadequate quality assurance processes

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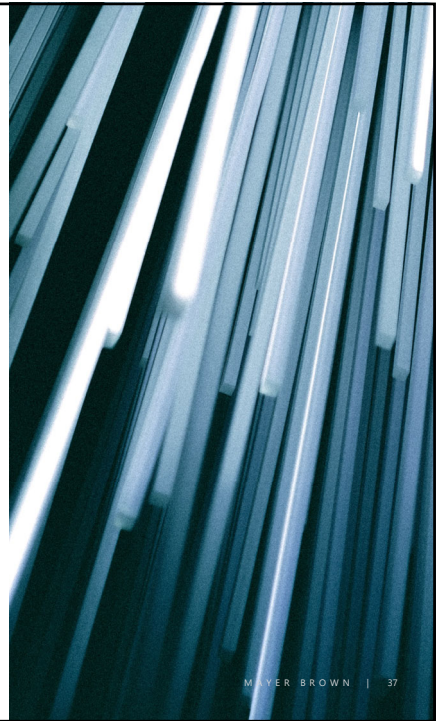
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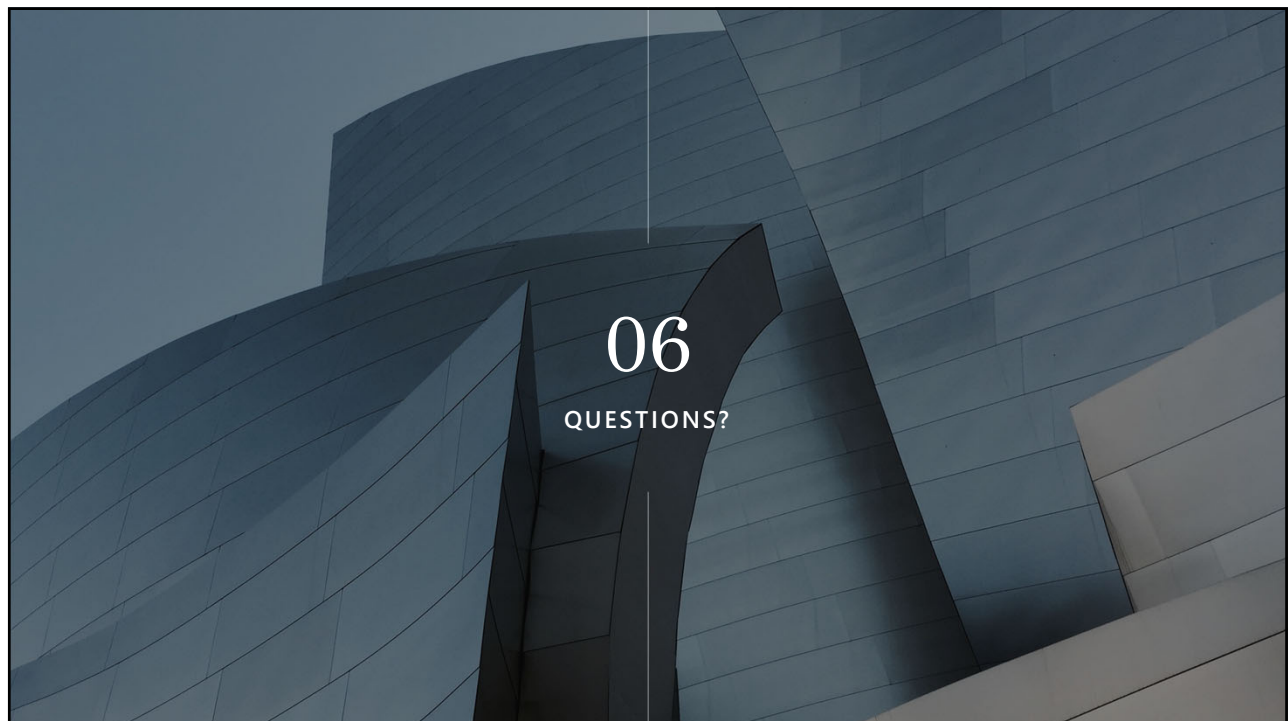
FUTURE TRENDS IN FCRA SUPERVISION AND ENFORCEMENT

- Given the nature of FCRA requirements, it seems possible that the CFPB will continue to bring FCRA claims under the Trump administration.
 - The Bureau continued to bring FCRA claims under the prior Trump administration.
- We may continue to see an emphasis on furnishers and CRAs.
 - Possible new focus on users and data providers.
- Also consider statute of limitations under FCRA and the CFPA



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