

CFPB Relaxes Enforcement of FCRA in the Wake of Coronavirus Crisis But Furnishers' Obligations to Consumers Remain Unchanged

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to the continuing threat posed by the coronavirus (COVID-19) pandemic. Among other provisions, the CARES Act amends the Fair Credit Reporting Act (FCRA) with the intent to stop adverse credit reporting during the period of national emergency related to the coronavirus crisis. Despite this, furnishers should be aware that their procedures for responding to consumer disputes during the crisis period should not be relaxed.

There are two critical components to the FCRA amendment and the CFPB's subsequent policy statement.

First, under the amended FCRA, a consumer and a furnisher can enter into an agreement (referred to as an "accommodation") under which the creditor must report the consumer's credit obligation or account as "current" to consumer reporting agencies (CRAs), so long as the consumer was not delinquent on their account before the accommodation was made. "Accommodation" is defined as an agreement to:

- Defer one or more payments;
- Make a partial payment;
- Forbear any delinquent payments;
- Modify a loan or contract; or
- Any other assistance or relief granted to a consumer who is affected by the coronavirus disease during the covered period.

If the consumer was delinquent on his or her account before an accommodation was made, furnishers shall (i) maintain the delinquent status during the period of accommodation, and (ii) report the credit obligation or account as current *if* the consumer brings his or her account current during the period of accommodation.

Accounts or obligations that have been “charged-off” are not subject to the FCRA amendment and may still be reported as such by furnishers.

And second, following enactment of the CARES Act, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a nonbinding [policy statement](#) (Statement) on April 3, 2020, which details their “Supervisory and Enforcement Practices” in light of the amendment to the FCRA. The Statement announced that the CFPB would take a “flexible supervisory and enforcement approach during this pandemic regarding compliance” with the FCRA recognizing that the coronavirus crisis “poses operational challenges for consumer reporting agencies and furnishers.”

Specifically, the CFPB “will consider a consumer reporting agency’s or a furnisher’s individual circumstances and does not intend to cite in an examination or bring an enforcement action against [such entities] making good faith efforts to investigate disputes as quickly as possible, even if dispute investigations take longer than the statutory time frame.”

This is good news for furnishers with regard to the CFPB’s enforcement of the FCRA. However, while the Bureau is backing off, furnishers still have an affirmative obligation to investigate and respond to consumer disputes **within thirty (30) days** after receiving notice of the dispute from a credit reporting agency. The CARES Act’s amendment to the FCRA **does not** extend the FCRA’s 30-day deadline for furnishers to respond to consumer disputes. The upshot is that while the CFPB intends to forbear on bringing enforcement actions against furnishers who are unable to comply with their statutory obligations during the crisis period, consumers—and the plaintiffs’ bar in particular—might not be so amenable. And despite the CFPB’s position, a private right of action against furnishers still exists for consumers who may have been harmed by a furnisher’s failure to timely comply with the FCRA’s provisions regarding the investigation of disputes.

Perhaps anticipating an increase in consumer disputes during the crisis period, the CFPB, in its Statement, “reminds” furnishers that they may avail themselves of the statutory and regulatory provisions that eliminate the obligation to investigate disputes that are reasonably determined to be either frivolous or irrelevant. Ultimately, however, furnishers cannot relax their procedures for responding to consumer disputes, even during the crisis period.

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Topics

CFPB, FCRA, Fair Credit Reporting Act, Consumer Financial Protection Bureau, COVID-19, Coronavirus, Coronavirus Aid, Relief, And Economic Security Act, CARES Act, Credit Reporting Agencies