

Credit Reporting During a Pandemic

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The economic impact of COVID-19 has already proven catastrophic for many businesses and consumers. Many employers are reducing their staffing or closing their doors permanently. As of May 8, 2020, the unemployment rate was at 14.7% and 20.5 million jobs were lost in April alone. In response, many lenders and loan servicers are tirelessly working to assist customers through economic uncertainty by offering them a range of hardship accommodations. At the same time, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide specific relief to those impacted by the widespread global shutdown. Although the CARES Act covers a wide range of issues, this article focuses on Section 4021, “Credit Protection During COVID-19.” This section amends Section 623(a)(1) of the Fair Credit Reporting Act (FCRA), which generally prohibits a party from furnishing information to a consumer reporting agency that the furnisher knows or should know is inaccurate.

The CARES Act amendment provides a blueprint for a furnisher to report accurately during the COVID-19 pandemic. The Act defines an “accommodation” as an agreement to defer one or more payments, make partial payments, forbear delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer affected by COVID-19 during the “covered period,” which began January 31, 2020, and ends on the later of 120 days after March 27, 2020, or 120 days after the national emergency terminates. Different reporting requirements apply, depending on whether the consumer’s credit obligation is current or delinquent when the furnisher makes an accommodation. If a furnisher makes an accommodation with respect to one or more payments on a consumer’s credit obligation or account when it is not delinquent, and the consumer makes the payments or is not required to make one or more payments under the accommodation, then the furnisher must report the obligation as “current.” If the obligation or account is delinquent before the accommodation (but not yet charged-off), the furnisher must maintain the delinquent status while the accommodation is in effect and, if the consumer brings the obligation or account current during the accommodation period, the furnisher must report it as current.

The CARES Act does not create a new obligation to report consumer credit information. Creditors are still free either to use or not use the credit reporting system. Section 4021 of the CARES Act was designed to prevent creditors from reporting consumers as delinquent simply due to hardships they encountered as a result of COVID-19, despite their satisfactory performance under an accommodation plan.

Reporting accurate information about consumers is crucial to the credit reporting system, as the Consumer Financial Protection Bureau (CFPB) stressed in a Policy Statement released on April 1, 2020. In the press release, Director Kraninger stated: “Consumers rely on their credit report to purchase a new car, their new home, or to finance their college education. An effective consumer reporting system is critical in promoting fair and efficient access to credit in the consumer financial services market.”

Every creditor that furnishes information to a consumer reporting agency must understand the new requirements and scope of the CARES Act. Creditors should carefully review their account servicing and credit reporting policies, systems, and training to ensure they can furnish accurate information as required by the CARES Act about consumers protected by accommodation plans made during the covered period.

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