

FCRA Enforcement and the CARES Act

April 06, 2020

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Amongst its many provisions is an amendment to the Fair Credit Reporting Act, 15 U.S.C. § 1681 (FCRA) that adds Section 1681-s(2)(a)(1)(F): a temporary reporting requirement for furnishers of credit information concerning consumers affected by COVID-19.

Section 1681s-2(a)(1)(F) provides as follows:

(F) Reporting information during COVID-19 pandemic.

(i) Definitions. In this subsection:

(I) Accommodation. The term “accommodation” includes an agreement to defer 1 or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the coronavirus disease 2019 (COVID-19) pandemic during the covered period.

(II) Covered period. The term “covered period” means the period beginning on January 31, 2020 and ending on the later of—

(aa) 120 days after the date of enactment of this subparagraph [enacted March 27, 2020]; or

(bb) 120 days after the date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act ([50 U.S.C. 1601](#) et seq.) terminates.

(ii) Reporting. Except as provided in clause (iii), if a furnisher makes an accommodation with respect to 1 or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make 1 or more payments pursuant to the accommodation, the furnisher shall—

(I) report the credit obligation or account as current; or

(II) if the credit obligation or account was delinquent before the accommodation—

(aa) maintain the delinquent status during the period in which the accommodation is in effect; and

(bb) if the consumer brings the credit obligation or account current during the period described in item (aa), report the credit obligation or account as current.

(iii) Exception. Clause (ii) shall not apply with respect to a credit obligation or account of a consumer that has been charged-off.

Cut to its core, the new section provides that if a lender makes an accommodation to a consumer affected by COVID-19 regarding an outstanding debt during the covered period and the consumer complies with that accommodation, whether that includes not making payments or making reduced payments, the lender must report the account to the credit reporting agencies as having the same (or better) status that it had prior to the accommodation. Therefore, if the account was current then the status must remain current while the accommodation is in effect, and if it was delinquent then the reported length of delinquency cannot increase during the accommodation.

Notably, the “covered period” begins on January 31, 2020, nearly two months prior to the enactment of the CARES Act. As a result, furnishers will need to ensure they retroactively apply these new reporting obligations. In addition, although the statute requires the consumer to have been “affected” by COVID-19, it does not explain **how** the consumer needs to have been affected by COVID-19, nor does the statute expressly limit its application to “accommodations” that were provided because of the impact of COVID-19. Therefore, care must be used when determining how to comply with these new reporting obligations.

On April 1, 2020, the Bureau of Consumer Financial Protection (CFPB) [issued a statement](#) on supervisory and enforcement practices regarding the FCRA and Regulation V in light of the CARES Act. The CFPB recognized the evolving challenges faced by both consumers and the industry and indicated that it will be flexible regarding the timeline for investigating disputes. While the CFPB expects furnishers to comply with the CARES Act, it will also work with furnishers to help them do so.

The general rule is that furnishers must respond to disputes within 30 days and that 30 day period may be extended to 45 days if the consumer provides additional information relevant during the 30 day period. However, in evaluating compliance with the FCRA because of the pandemic, the CFPB will consider a furnisher’s individual circumstances and does not intend to cite or bring an enforcement action against a furnisher making good faith efforts to investigate disputes as quickly as possible, even if the dispute investigation exceed the statutory timeframe.

However, even if the CFPB will be more lenient and there is no private right of action under 15 U.S.C. §1681s-2(a), it behooves all furnishers to update their systems to account for these new obligations. This way a furnisher can accurately respond to an Automated Credit Dispute Verification (ACDV) and minimize the risk of being sued under the FCRA for failing to conduct a reasonable investigation.

If you have any questions, please do not hesitate to contact the authors or visit our [COVID-19 Resource Center](#).

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