

FTC Issues Practical Guidance on Furnisher Responsibilities

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In addition to the recent “how-to” guide on Red Flags Rule compliance ([read the online version of our article discussing the guide](#)), the Federal Trade Commission (“FTC”) recently issued a practical guide to help businesses that furnish consumer information to credit reporting agencies understand and comply with their responsibilities under the Fair Credit Reporting Act (“FCRA”).

Under the FCRA, furnishers must create, implement and periodically update written policies and procedures regarding the accuracy and integrity of the information that they furnish to credit reporting agencies (“Furnisher Rule Policies and Procedures”). 12 C.F.R. § 1022.42. In 2009, the FTC, OCC, Federal Reserve, FDIC, OTS and NCUA issued Interagency Guidelines that a furnisher must consider in creating its written Furnisher Rule Policies and Procedures. These Guidelines were subsequently adopted by the CFPB.

The recent FTC guidance supplements the Interagency Guidelines and provides a refresher on furnisher duties along with practical examples for furnishers to consider. These examples include how a furnisher may comply with its obligation to report the date of delinquency of a debt that has been referred to a collection agency or charged off. 15 U.S.C. § 1681s-2(a)(5)(A). This date of delinquency is important as it determines how long the debt may be reported on the consumer’s credit report. The FTC’s recent issuance provides particular guidance to debt collectors when the creditor does not report the date of delinquency, when the consumer makes partial payments after the initial delinquency, when the debt is transferred to additional collection agencies and when the date of delinquency cannot be determined from the creditor’s records or other reliable sources.

- The recent FTC/CFPB Debt Collection Roundtable also focused on the accuracy and integrity of information provided to debt collectors and debt buyers (read our article discussing the roundtable here). We expect to see continued emphasis on this issue among the various federal regulators through their exercise of supervisory and enforcement authority. The FTC guidance includes the helpful reminder: “If you don’t comply with the FCRA, you may be sued by the FTC, Consumer Financial Protection Bureau (CFPB), state governments, or in some cases, consumers. The FCRA provides for maximum penalties of \$3,500 per violation in the case of lawsuits brought by the FTC.”

The FTC’s guidance also emphasizes the duty of furnishers to respond to disputes received from credit reporting agencies and received directly from consumers. Even though there is no private right of action for noncompliance with their requirements, a furnisher that receives a dispute directly from a consumer regarding information it furnished to credit reporting agencies are obligated to conduct a reasonable investigation, review all relevant information provided by the consumer, report the results of the investigation to the consumer (generally within 30 days) and notify each credit reporting agency to which it provided inaccurate information, if applicable. The FTC’s guidance explains the limited exceptions to these requirements.

- When creating or updating your Furnisher Rule Policies and Procedures consider how you determine what constitutes a “dispute” for FCRA purposes and whether a “dispute” may also fall under the protections of and require a response under other consumer protection laws, like those relating to consumer complaints (received directly from the consumer or from the CFPB, Better Business Bureau, state Attorney General or other regulator), disputes under the Fair Debt Collection Practices Act (“FDCPA”), qualified written requests (“QWRs”) under the Real Estate Settlement Procedures Act (“RESPA”) or the new categories of “notice of error” and “request for information” under the Dodd-Frank amendments to RESPA and the CFPB’s new mortgage servicing rules.

The FTC’s two FCRA guides follow the agency’s February 2013 report on its findings from a ten-year study on the accuracy of credit reports, as well as the CFPB’s 2012 final rule defining larger participants for the credit reporting industry. Alleged FCRA violations have also been included in FTC and CFPB enforcement actions and warning letters. We recommend that creditors and servicers review their Furnisher Rule Policies and Procedures in light of the FTC’s recent guidance and CFPB’s examination manual.

If you have any questions about the FTC’s recent guidance on furnisher responsibilities or about your organization’s compliance with the Fair Credit Reporting Act, please contact one of the authors of this alert.

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