

Important Developments on Credit Reporting During COVID-19 Pandemic

April 3, 2020

There have been important developments on how and when financial institutions may report certain consumer credit information to credit bureaus during the COVID-19 pandemic.

Effective March 27, 2020, the Fair Credit Reporting Act (“FCRA”) was amended to require a furnisher of consumer credit information who makes an “accommodation” (see definition below) to a consumer impacted by the COVID-19 pandemic with respect to one or more payments on a credit obligation or account to report the credit obligation or account as current if the account or the consumer meets certain conditions.

On April 1, 2020, the Consumer Financial Protection Bureau (“CFPB”) issued a policy statement summarizing the new FCRA amendment and providing regulatory and enforcement relief on timing requirements for investigating disputes.

A summary of the FCRA amendment and CFPB policy statement are set forth below.

Amendment to FCRA on Reporting Consumer Credit Information During COVID-19 Pandemic

Section 4021 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) amends the FCRA by adding a new Section 623(a)(1)(F) titled “Reporting Information During COVID-19 Pandemic.”

This new provision applies to furnishers of consumer credit information to consumer reporting agencies during the COVID-19 pandemic, which include certain lenders and loan servicers. The new provision of the FCRA applies to “an accommodation with respect to 1 or more payments on a credit obligation or account of a consumer” during the “covered period.”

- The term “account” means a demand deposit, savings deposit, or other asset account established primarily for personal, family, or household purposes. It does not include an account held by a financial institution pursuant to a bona fide trust agreement. [1]
- The term “accommodation” is broadly defined to include an agreement to defer one 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 COVID-19 pandemic during the covered period. [2]
- The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor. [3]

- The “covered period” is from January 31, 2020 until either: (i) July 25, 2020 (120 days from the passage of the CARES Act); or (ii) 120 days after the ‘National Emergency’ terminates, whichever is later.^[4] The National Emergency was declared by President Trump on March 13, 2020 by Executive Order pursuant to the National Emergencies Act (“NEA”). Under the NEA, unless the President requests an extension, an emergency declaration terminates if: (i) there is enacted into law a joint resolution terminating the emergency declaration; (ii) the President issues a proclamation rescinding it; or (iii) automatically one year following date of issuance.^[5]

Under the new FCRA provision, except for a credit obligation or account being charged off, if a lender or other furnisher makes an accommodation (as defined above) for a consumer, and the consumer makes the payment or is not required to make one or more payments pursuant to the accommodation, the lender or other furnisher must:

- report the credit obligation or account as current; **or**
- if the credit obligation or account was delinquent before the accommodation, (i) maintain the delinquent status during the effective period of the accommodation, and (ii) if the consumer brings the credit obligation or account current during the accommodation period, report the credit obligation or account as current.

The reporting obligations of a furnisher under the FCRA do not change where the furnisher has not made an accommodation for a consumer during the covered period. Also, while enacted as part of the CARES Act, the coverage of this new provision is not limited to federally-insured mortgages addressed under the CARES Act.

CFPB Guidance on Credit Reporting Responsibility During the COVID-19 Pandemic

The CFPB issued [The Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act](#) on April 1, 2020. This statement provides guidance on how the CFPB exercises its supervisory and enforcement authorities in connection with credit reporting under the FCRA and its implementing Regulation V.

The statement acknowledges the passage of the CARES Act and summarizes the amendment to the FCRA outlined above. The CFPB encourages lenders as furnishers to voluntarily provide accommodations to consumers and to report accurate information to credit bureaus in connection with such accommodations. The CFPB also notes that it does not intend to cite in an examination or take enforcement action against covered entities who furnish information to credit reporting agencies that accurately reflects the payment relief measures covered entities are employing.

In light of potential operational disruptions caused by the COVID-19 pandemic, such as the shortage of staffing and resources, the CFPB is providing regulatory and enforcement relief on the required timeframe for investigating disputes.

- Specifically, the 30-day period for furnishers and consumer reporting agencies to investigate disputes as required under FCRA is extended to 45 days if the consumer provides additional information that is relevant to the investigation during the 30-day period.
- Additionally, the CFPB does not intend to cite in an examination or bring an enforcement action for exceeding the deadlines to investigate such disputes, provided that a good faith effort to meet the deadline is exercised during the COVID-19 pandemic.

- The CFPB also reminds furnishers and consumer reporting agencies that they do not need to investigate disputes submitted by credit repair organizations and frivolous or irrelevant disputes.

Further Information

If you have any questions regarding the FCRA amendment, the CFPB policy statement, or a financial institution's obligations during this time, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Footnotes:

[1] See 15 U.S.C.A. § 1681a(r)(4) cross referencing 15 U.S.C.A. § 1693a (2).

[2] See 15 U.S.C.A. § 1681s-2(a)(1)(F)(i)(I).

[3] See 15 U.S.C.A. § 1681a(r)(5) cross referencing 15 U.S.C.A. § 1691a (d).

[4] See 15 U.S.C.A. § 1681s-2(a)(1)(F)(i)(II).

[5] See 50 U.S.C. §§ 1622(a)-(b), (d).

Practices

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