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How to Avoid Credit Reporting Compliance Pitfalls

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The Consumer Financial Protection Bureau (CFPB) states that complaints about credit reports top the list of all consumer complaints received in 2018.

While many of these complaints relate directly to the major credit reporting agencies (Equifax, Experian and TransUnion), financial institutions that furnish data are to blame for reporting incorrect or outdated information on consumers' credit reports. And considering that mistakes on credit reports can lead to consumers having to pay more for credit or being turned down for jobs or mortgages, it is critical that furnishers of consumer information report data accurately.

Regulation V, "Fair Credit Reporting," has long set standards for collecting, communicating, and using information related to a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and mode of living.

As furnishers of consumer information to consumer reporting companies, financial services companies are required to have reasonable written policies and procedures regarding the accuracy and integrity of information provided to a consumer reporting agency.

Financial institutions should periodically review and update policies and procedures as they grow, to ensure continued effectiveness given the nature, size, complexity and scope of their activities. It's not a good idea to wait until a regulatory exam or consumer complaints increase to find out that procedures are coming up short.

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Overview of the requirements

Appendix E to Regulation V explicitly requires an information furnisher “to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies.” Appendix E lays out prescriptive guidelines on the topics such policies and procedures should address, including:

- Compiling and furnishing information
- Data reporting formats
- Recordkeeping to substantiate the accuracy of furnished information that is subject to a direct dispute by the consumer
- Internal controls over the accuracy and integrity of information
- Training for staff involved in furnishing information
- Overseeing relevant service providers
- Furnishing information after mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations
- Deleting, updating, and correcting information
- Investigating disputes
- Technological and other means of communication with consumer reporting agencies
- Provision of identifying information

In addition to the increasing number of consumer complaints, recent regulatory activities also indicate that the establishment and implementation of reasonable policies and procedures in these areas are critical to address a worrisome vulnerability for many financial services companies.

The current regulatory environment

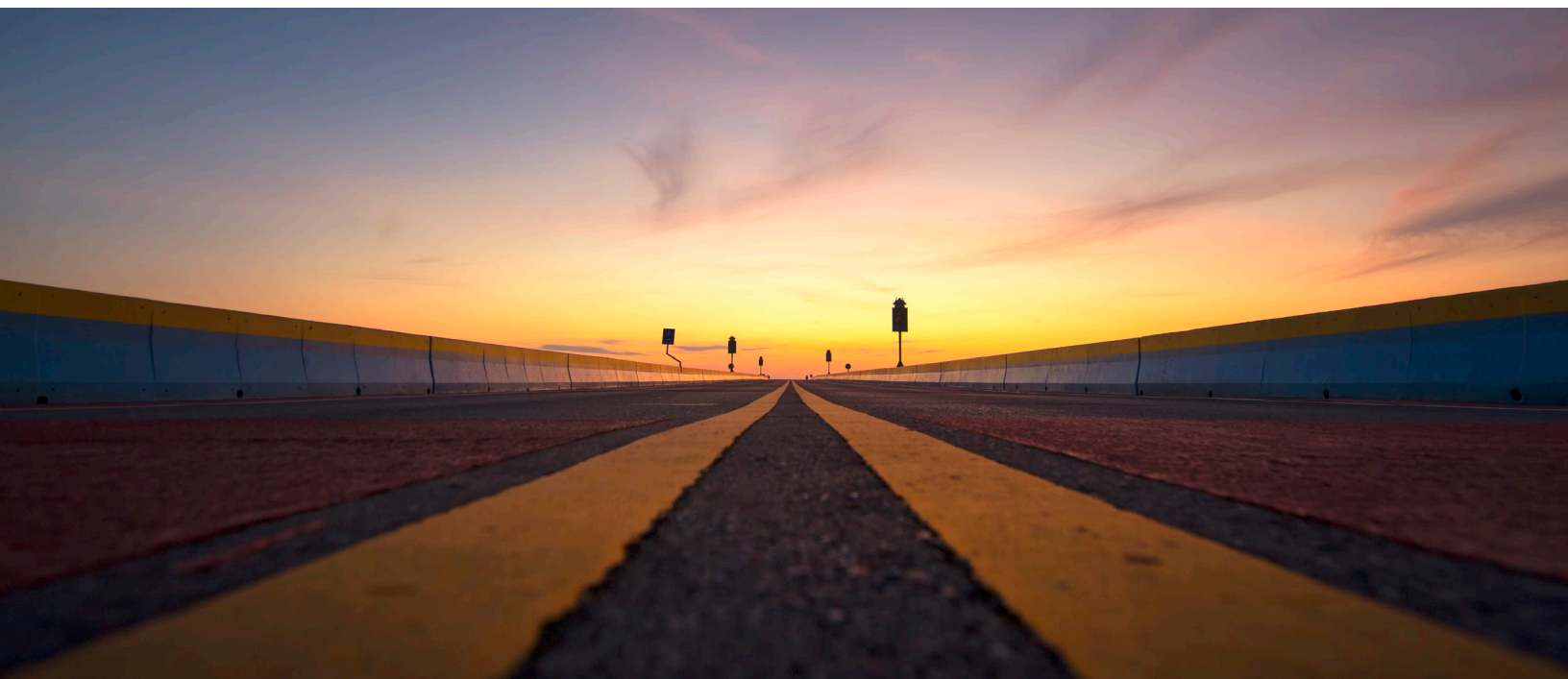
In September 2019, the CFPB published its Summer 2019 Supervisory Highlights, which focuses on critical areas that have been recurring issues during examinations. Examiners, it said, had recently found compliance deficiencies in banks furnishing information to consumer reporting agencies, specifically around the accuracy of information and dispute investigation requirements. Deficiencies included in the Supervisory Highlights include:

- Failure to complete dispute investigations timely (or at all)
- Failure to provide results of investigations to all consumer reporting agencies to whom the company regularly reports
- Failure to send corrected information to the consumer reporting agencies after resolving a dispute
- Failure to implement policies and procedures

The CFPB also has pursued enforcement actions related to furnishing in the past several years. For example:

- In December 2018, it entered a consent order with a national bank regarding numerous violations. These included:
 - Furnishing information about consumers’ credit that it knew or had reasonable cause to believe was inaccurate
 - Failing to promptly update or correct furnished information
 - Furnishing information to consumer reporting agencies without providing notice that the information was disputed by the consumer
 - Failing to establish the required written policies and procedures

- In September 2016, the CFPB took action against an online lender that began making loans advertised as credit builder loans in 2012. Among other violations, the company did not furnish credit reporting agencies with information about any loans until at least February 2014. Until April 2015, it also failed to have the requisite written policies and procedures. The CFPB ordered the company to provide redress to consumers and pay a civil money penalty.
 - In August 2016, the CFPB entered a consent order with a national bank that routinely furnished information about consumers' performance on loans to one or more credit reporting agencies. It found that the bank failed to establish and implement the reasonable written policies and procedures that would ensure the updating of prior reporting with respect to partial payments that, if aggregated pursuant to the bank's payment aggregation policies, would have constituted an eligible payment. For this and other violations, the bank agreed to pay consumer redress and a civil money penalty.
 - In December 2015, the CFPB took action against an auto dealer and its affiliated financing company for providing damaging, inaccurate consumer information to consumer reporting agencies. The dealer and its affiliate also failed to provide accurate, positive credit information that they promised consumers they would furnish to the consumer reporting agencies. An investigation "found that the companies inaccurately reported information for more than 84,000 accounts on a widespread and systematic basis" from January 2009 until September 2013. The companies were ordered to pay a civil penalty of almost \$6.5 million. Notably, the CFPB found that the written policies and procedures adopted by the financing company in August 2013 "were not reasonable or appropriate to the nature, size, complexity, and scope of the company's activities."
- Financial services companies cannot afford to overlook their potential exposure to FCRA/Regulation V violations related to furnishing of credit information.



Tips to improve the accuracy and integrity of credit reporting

Appendix E to Regulation V provides guidance financial services companies can use to develop their written policies and procedures. When developing procedures based on this guidance, furnishers should follow a three-step approach:

1. Take inventory

The guidance directs that furnishers should identify the practices or activities that could compromise the accuracy or integrity of furnished information, including the technological means and other methods used to furnish data, as well as the associated frequency and timing in furnishing information. Many financial services companies rely so heavily on automated processes that they might never have taken stock of the practices that could affect information accuracy and integrity.

This first step calls for a collaborative effort. The compliance department should work closely with the lines of business (LOBs) to understand the nuts and bolts of day-to-day practices to prevent information from falling through the cracks. For example, what needs to be done so that a loan subjected to loss mitigation is still reported accurately?

The loan servicing, loss mitigation, collections, special assets, IT, and deposit operations departments all might need to be involved in a collaborative effort to understand the end-to-end flow of data.

While determining which departments are or should be involved in credit reporting, a financial services company also should inventory all the agencies to whom those departments submit consumer information. This is a great opportunity to streamline data flows and consolidate databases, to reduce the risk that there may be inconsistent data across different systems that would have to be reconciled before reporting.

The guidance suggests that furnishers identify the potentially risky practices and activities by reviewing both their existing practices and activities and reviewing historical records relating to accuracy, integrity, and disputes. Furnishers should consider the types of errors, omissions, or other problems that could have affected accuracy or integrity.

One area that might require additional focus is acquired loans. For example, a financial services company might identify issues regarding the re-aging of information, such as the date of first delinquency following an acquisition. If the date is reported as later than it actually occurred, the information on that delinquency will remain on the consumer's report for longer than appropriate and potentially interfere with the ability to obtain credit. This discrepancy has been a problem with acquired accounts in which the furnisher inaccurately reports the date of acquisition as the date of delinquency. Onboarding of acquired accounts also might involve other data points that do not translate as expected and subsequently compromise accuracy.

According to the guidance, feedback plays a critical role, too. Furnishers should consider any feedback received from consumer reporting agencies, consumers, or other appropriate parties as well as any feedback from the furnisher's staff when identifying potential compromising practices. Consumer complaints can also provide a great deal of insightful information.

2. Develop and implement policies and procedures

The LOBs and Compliance should work collaboratively to evaluate the effectiveness of existing policies and procedures to determine whether new, additional, or different policies and procedures are necessary. In addition, consider the effectiveness of specific methods (including technological means) used to provide information to consumer reporting agencies, and how they might affect the accuracy and integrity of the information. New, additional, or different methods could be necessary.

3. Institute controls and monitoring

As with all compliance-related banking programs, ongoing monitoring and internal controls are crucial. Appendix E suggests controls such as implementing standard procedures and verifying random samples of furnished information. Consumer

reporting agencies generally will grant furnishers access to a snapshot of a consumer's report for verification purposes, without requiring a hard or soft inquiry.

Whether it is monitoring conducted by the compliance department, or review and testing performed by the internal audit department, data accuracy must be subject to regular validation and testing on a risk-based approach. Additionally, the LOBs can perform their own testing, with oversight from the compliance or internal audit department lending some independence to the results.

Heightened controls and monitoring are necessary at every point of manual interaction with the system. Loss mitigation, for example, requires controls on the manual updates to consumer information and testing to make sure the updated reporting is accurate. Banks cannot rely on their automated core systems to guarantee accuracy on manually entered data because, as the saying goes, "garbage in, garbage out."

Dispute handling

Among the various obligations applicable to data furnishers, conducting a timely and comprehensive investigation of consumer disputes and promptly correcting inaccurate data are among the highest priorities. Failure to do so can result in direct consumer harm and expose the institution to consumer complaints, consumer litigation as well as regulatory enforcement action.

The CFPB's Summer 2019 Supervisory Highlights cites several violations related to the handling of credit reporting disputes across several FCRA requirements, including:

- When a furnisher receives notice of a dispute from a credit reporting company, it generally must complete its investigation within 30 days from the date the credit reporting company received the dispute. This period can be extended to 45 days in certain limited circumstances.
- If a dispute investigation finds that disputed information is incomplete or inaccurate, the furnisher must report the results to the credit reporting company that sent the result and to all nationwide consumer reporting agencies that received the information from the furnisher.
- If a furnisher determines that previously furnished information is not complete or accurate, it must promptly notify the credit reporting company and provide it with any corrections or additional information needed to make the information complete and accurate.

- Furnishers must provide notice to consumer reporting agencies when furnishing information that is disputed by a consumer.

Such violations run the risk of aggressive enforcement. For example, in the same month that the CFPB released its Summer 2019 Supervisory Highlights, [it filed a complaint](#) in federal district court against a debt collection company — as well as its chief executive officer, president, director, and owner — alleging violations of FCRA and Regulation V.

The bureau claims the company failed to maintain reasonable policies and procedures regarding the accuracy and integrity of furnished information, including the handling of consumer disputes, failing to conduct reasonable investigations of certain disputes, and failing to cease furnishing information that was alleged to have been the result of identity theft before making any determination of whether the information was accurate. The complaint seeks an injunction against the company, plus damages, redress to consumers, and the imposition of a civil money penalty.

Financial services organizations should act to avoid a similar fate. One common area of weakness is the training and written procedures around e-OSCAR, the automated web-based solution for responding to disputes. The system is not self-explanatory for first-time users. For example, it will reject an input without explaining why. Yet financial services companies often rely on a single person to work with the system, frequently without any written procedures that would allow another employee to step into his or her shoes.

Another potential problem is the failure to use trending analysis, despite clear regulatory expectations around the practice. A dispute could prove to be a one-off, but it also might be a sign of a systematic issue. Trending and root cause analyses of disputes and related complaints are necessary to make this determination.

Direct disputes by consumers also pose problems for some financial services companies, particularly those disputes that arrive from credit repair businesses that might not appear legitimate but are conveying real disputes from their customers. Furnishers need strong processes for responding to and tracking these disputes.

Act now

Credit reporting that complies with the requirements of FCRA and Regulation V is not as straightforward or easy as it might seem. Inaccurate reporting can lead to significant consumer harm, and it is attracting increased scrutiny from regulators. The prospect of reputational damages and stiff civil money penalties make solid policies, procedures, and controls essential for financial services companies. At a minimum, regulators expect organizations to have evaluated their policies and procedures around credit reporting, so they would be wise to get ahead of the regulatory curve by doing so as soon as possible.

ABA resources

ABA members can access the following reports:

“Summary of Fall 2019 CFPB Supervisory Highlights: FCRA Furnisher Provisions,” by Nessa E. Feddis, www.aba.com/advocacy/policy-analysis/fcra-furnisher-provisions

ABA staff analysis: “Basics of Certain Provisions of the Fair Credit Reporting Act and Related Provisions of Equal Credit Opportunity Act (Regulation B),” www.aba.com/advocacy/policy-analysis/provisions-fcra-related-provisions-ecoa

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