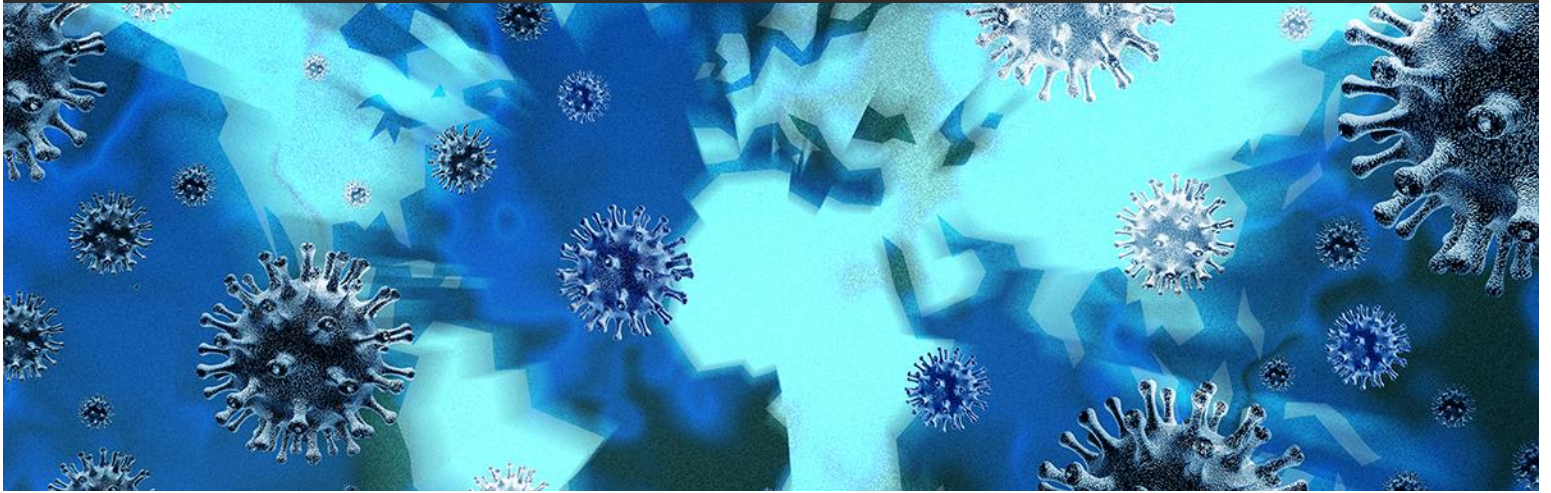


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



April 8, 2020

Fair Credit Reporting Act (FCRA) Furnishers’ Responsibilities Under the CARES Act

The recent passage and enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) placed significant short-term obligations and restrictions on the rights of lenders and servicers of Federally-backed loans. As part of these limitations, which include moratoriums on foreclosures and mandatory forbearance obligations, the CARES Act placed short-term restrictions and requirements on the obligations of furnishers of information under the Fair Credit Reporting Act (FCRA). This GT Alert provides a brief outline of the FCRA reporting obligations created by the CARES Act, identifies some potential litigation concerns, and discusses certain considerations for minimizing risk of exposure.

Changes to the Fair Credit Reporting Act

Pursuant to the CARES Act, furnishers have new obligations as to reporting any “accommodation” made with a borrower affected by the Coronavirus Disease 2019 (COVID-19) pandemic. Specifically, if a borrower is current at the time of the accommodation, the furnisher must continue to report the account as current while the accommodation remains in effect. An accommodation is broadly defined to include any “agreement to defer 1 or more payments, make partial payments, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer....” This essentially includes any change or deferral of any loan obligation so long as there is an “agreement” between the borrower and the furnisher. Any accommodation is permissive, meaning that furnishers are not obligated to reach agreements with borrowers except as otherwise required under the CARES Act.

On April 1, 2020, Consumer Financial Protection Bureau issued a policy statement to highlight furnishers' responsibilities under the CARES Act. The Bureau encouraged financial institutions to work constructively with borrowers and other customers affected by COVID-19, and indicated that it does not intend to cite in examinations or take enforcement actions against those who furnish information to consumer reporting agencies that accurately reflects the payment relief measures they are employing. Further, the Bureau extended the time period for furnishers to investigate consumer disputes from 30 to 45 days. In evaluating compliance with the FCRA as a result of the pandemic, the Bureau will consider a consumer reporting agency's or furnisher's individual circumstances and does not intend to cite in an examination or bring an enforcement action against a consumer reporting agency or furnisher making good faith efforts to investigate disputes as quickly as possible, even if dispute investigations take longer than the statutory timeframe.

The obligation to report a borrower as current applies to any accommodation from Jan. 31, 2020, to the later of 120 days after the CARES Act is enacted (July 26, 2020) or 120 days after the declared COVID-19 national emergency is terminated. While it is unknown when the national emergency declaration will terminate, it is certain at present that any accommodation made between Jan. 31, 2020 and at least July 26, 2020, will be subject to the reporting mandate. However, the reporting obligation only applies to accommodations where the borrower was either (1) current at the time of the accommodation or (2) cures any pre-existing delinquency during the period of the accommodation. For any accounts that were reported as delinquent prior to the accommodation that remain delinquent, a furnisher may continue to report said accounts as delinquent.

Potential Litigation Pitfalls

While evaluating potential litigation risks, consider that the modifications to the FCRA's reporting requirements do not otherwise modify the statutory scheme. This includes the statutory requirements for borrowers initiating credit disputes and the reinvestigation obligations of furnishers receiving a dispute. Thus, while the CARES Act creates new obligations for furnishers, liability for any violations is still subject to the procedural requirements of the FCRA.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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