

Back to Basics, Continued—The Obligation on Furnishers of Consumer Information

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This content was published prior to the combination of Dentons Sirote. Learn more about Dentons Sirote.

Furnishing information to a Credit Reporting Agency (CRA) about the payment performance of one's customers is a basic duty of a consumer finance office. The general agreement between the consumer finance company and the CRA includes an obligation on the creditor to report credit information. This is the underpinning of the credit reporting industry. It is a mutual system that depends on creditors sharing accurate information with CRAs, so that when a credit report is obtained by a creditor, such report will accurately reflect the credit standing of the applicant.

The basic rules for "furnishers" of data under the Fair and Accurate Credit Transactions Act (FACTA) are to provide accurate information and to correct and update inaccurate information. That is, furnishers have a duty not to furnish information with actual knowledge of errors. Further, under FACTA, if there has been a direct dispute by the consumer of information held by a creditor with respect to a consumer, the furnisher has a duty to investigate alleged errors, and notify the complaining consumer of the result of the investigation. If information held by a creditor is found to be in error or cannot be verified, then the furnisher has a duty to send a corrective report to its CRA.

This obligation is pretty simple and straightforward. A problem arises however, when FACTA is used as a sword by an undeserving debtor trying to improve his or her credit standing, by demanding that derogatory but truthful information held by a creditor be deleted from the credit history. Deleting truthful credit history is problematic for the success of the credit reporting industry. Derogatory information is just as critical in the process of credit analysis as is positive information.

Too often, creditors are challenged by demands for removing truthful, trade-line information. Some creditors take the position that it is better to accede to a debtor's demand that a creditor change its reporting, than to maintain a truthful and accurate response. While it may seem simpler to concede the issue, if creditors do this routinely, the worth of a credit report becomes valueless. And, there is generally a contractual obligation that creditors accurately report to their CRAs.

It is exceedingly important that creditors maintain a system for the accuracy and integrity of information that they furnish to CRAs. Further, when a customer lodges a direct dispute of information being reported, absent the same being "frivolous or irrelevant," creditors must respond accordingly. Policies should be in place to effect this requirement of law.

We'll take a look at the proper method for responding to frivolous or irrelevant complaints next.

Your Key Contacts



Maurice Shevin

Shareholder, Birmingham

D +1 205 930 5149

maurice.shevin@dentons.com