



Legal Strategies to Address Coerced Debt in Texas

Part 2: Using the Fair Credit Reporting Act (FCRA) to Help Victims of Coerced Debt



General Terms and
Definitions under the FCRA

Overview of Rights and
Remedies under the FCRA

Litigation Strategies

General Terms and Definitions

15 U.S.C. § 1681

Accuracy, preparation, and correction of consumer reports

Access to consumer reports

Adverse actions based on consumer reports

What is a consumer report?

“Any written, oral, or other communication of any information by a consumer reporting agency” about a “consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living,” which is used or expected to be used for determining eligibility for credit/insurance, employment, or other permissible purpose.

15 U.S.C. § 1681a(d)

Any person/entity which, “for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.”

15 U.S.C. § 1681a(f)

What is a
consumer
reporting
agency
(CRA)?

Different types of CRAs

Nationwide consumer
reporting agencies

Nationwide specialty
consumer reporting agencies

Resellers of Information

Nationwide consumer reporting agencies

“Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis”

A consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer’s credit worthiness, credit standing, or credit capacity

15 U.S.C.A. § 1681a(p)

https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list.pdf

Nationwide specialty consumer reporting agencies

A consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

medical records or payments;
residential or tenant history;
check writing history;
employment history; or
insurance claims.

15 U.S.C. § 1681a(x)

https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list.pdf

“Reseller” of Information

A consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

15 U.S.C. § 1681a(u)

Many specialty reporting agencies are actually resellers of the big 3 but then also a CRA under 1681a(f)

What basic
duty does a
CRA have?

“Whenever a consumer reporting agency prepares a consumer report it shall follow ***reasonable procedures to assure maximum possible accuracy*** of the information concerning the individual about whom the report relates.”

1681e(b)

Who provides information to the CRAs?

Furnishers: 1681s-2

- Debt collectors
- Credit card companies
- Medical debt collectors
- Landlords
- Lenders (mortgages, student loans, auto loans, etc.)
- Government agencies
- Utility/telecom companies

What information can you find in a report prepared by the Big 3?

Monetary (credit) accounts in good standing and adverse accounts

Date opened, balance, payment history, type of account, whether account is disputed

Personal identifying information such as SSNs, DOB, addresses, telephone numbers

Employment information

Bankruptcies

Public records?

What about specialty reports?

Often will include information from one of the Big 3 or a report from one of the Big 3

If tenant screening: tenant history, eviction or other civil suit judgments incl. filing, criminal history

If employment screening: employment history, criminal history, civil suit judgments and liens

If check and bank screening: past accounts, overdrafts, unpaid balances, etc.

If insurance underwriting: past claims



Other terms

File v. report 1681a(g)

Tradeline

Credit Score

Adverse Actions – 1681a(k)

Who can access consumer reports?

- Consumers have a right to their files
- Third parties or “users” who have a permissible purpose under § 1681b
 - Their access to the report is called an “inquiry,” “pull,” or “access;”
 - Different types of inquiries: promotional, soft, hard

Consumers' right to a file: 1681g and 1681j

<https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/consumer-reporting-companies/companies-list/>

Free every 12 months without charge if by the Big 3

Free within 60 days of an adverse action

Free if consumer certifies in writing that they are unemployed and intends to apply for employment within 60 days; are on public assistance; or think there is fraud

Users with a permissible purpose- examples

Written request from consumer

In connection with a credit transaction

To review an account to determine whether consumer continues to meet the terms of the account

Employment purposes

Underwriting insurance

Court order

Child support agency (to establish or enforce child support)

Determining eligibility of a government issued license

Common Problems

Overview of Rights and Remedies Under the FCRA

Inaccuracies: not updating accounts or public records

- Obsolescence- old adverse accounts or adverse info. (1681c)
- Bankruptcy – not accurately reporting / updating accounts (1681c)
- Payment history – not reporting accurately
- Public information that should not appear

The Dispute Process: Reinvestigation under 1681i

Reasonable reinvestigation to determine if disputed information is inaccurate ... before the end of the 30-day period from when the CRA receives notice of dispute from the consumer or reseller

CRA sends dispute to furnisher within 5-business days starting on date of receipt of dispute notice

CRA must delete info or modify if inaccurate, incomplete, or can't be verified

Info can be reinserted if furnisher certifies info is complete and accurate

If reinserted, CRA must notify consumer in writing not later than 5 business days after reinsertion

The Dispute Process: Reinvestigation

Notice of results after reinvestigation 1681i(a)(6)

In writing, not later than 5 business days after completion of reinvestigation

Statement that reinvestigation completed

A copy of revised consumer report

Notice that consumer has right to add a statement to file disputing accuracy or completeness of disputed info.

The Dispute Process: Reinvestigation under 1681s-2

1681s-2 deals with reinvestigation and furnishers

Investigation by furnisher after consumer disputes to CRA must be reasonable and their investigation must look at the merits of the dispute

Searching inquiry, much higher standard than validation required by FDCPA 1692g

Possible
claims under
the FCRA for
not updating
accounts or
public
records

1681c for obsolete info. against CRA

1681 e(b) for failure to maintain reasonable
procedures to assure maximum possible
accuracy against CRA

1681i for reinvestigation against CRA

1681s-2(b) for reinvestigation against furnisher

Identity Theft

Rights of ID theft victims under the FCRA:

- Block
- Security Freeze
- Fraud alerts
 - Initial
 - Extended

ID Theft Block under 1681c-2

An ID theft victim has the right to block all information that resulted from ID theft from showing on their report

To obtain a block, need an identity theft report

An identity theft report is also necessary if the victim wants to place an extended fraud alert on her file

The CRA is responsible for the block.

What is an ID theft report?

Police report

FTC Identity Theft Report

U.S. Postal Inspection Service Report –
only if theft by mail

FBI Internet Crimes Report

Report to local District Attorney

Short term fraud alerts

Anyone can request

- 1 year, can be renewed
- Only required to request from 1 of the Big 3 CRAs who then must inform the others
- Must disclose right to request a free copy of report and provide the report within 3 days request made

Short term fraud alerts

- No new credit extended except for open-end credit account... unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request, OR
- If consumer specified a telephone number to be used for id verification purposes, must first contact the consumer or take reasonable steps to verify the consumer's identity and confirm that the application for a new credit plan is not the result of identity theft.
- **In other words, won't prevent new credit card accounts from being opened; but if request make sure the consumer gives updated contact info.**

Extended fraud alerts

Only ID theft victims can request

- 7 years; 5 years no inclusion in list for offers of credit/insurance
- Only required to request from 1 of the Big 3 CRAs who then must inform the others
- Gives two free credit reports from each of the 3 CRAs annually and must provide the requested report within 3 days request made

Extended fraud alerts

- Must send an ID theft report (a police report or a report with a government agency) with the request
- Info on getting started with the FTC ID theft report:
www.idtheft.gov
- U.S. Postal Inspection Service is a possible alternative:
www.postalinspectors.uspis.gov
- CRAs can request more info.

Extended fraud alerts

Limitations on use for extending credit

- No new credit extended except for open-end credit account... including issuance of new card or increase of credit limit on an existing account **UNLESS** contacts the consumer in person or using the contact method designated by the consumer to confirm that it's not the result of identity theft.
- CRA must provide a User with a telephone number or other reasonable contact method designated by the consumer.
- **In other words, won't prevent new credit card accounts from being opened; but if request make sure the consumer gives updated contact info.**

Credit or Security Freezes

A security freeze prevents anyone from opening new accounts

- Only a limited number of entities can see file while a freeze is in place, including:
 - Creditors of existing accounts
 - Certain government entities like child support agencies
 - Companies hired to monitor credit file to prevent fraud
- Need to request a lift every time need to obtain credit but not for housing or employment screening

Credit or Security Freezes

Anyone can request and it's free after Equifax breach

- Most secure
- Must request with each CRA (websites below)

https://help.equifax.com/app/answers/detail/a_id/75/search/1

http://www.experian.com/consumer/security_freeze.html

<http://www.transunion.com/credit-freeze/place-credit-freeze>

Possible claims under the FCRA for identity theft

- 1681c-2 (failure to block by CRA)
- 1681c-1 (failure to place alert or freeze by CRA)
- 1681i (reinvestigation by CRA)
- 1681s-2 (reinvestigation by furnisher)

Mixed/Merged File

Possible claims under the FCRA for a mixed or a merged file

1681e(b) failure to maintain reasonable procedures to ensure maximum possible accuracy against CRA

1681i reinvestigation against CRA

Damages and Statute of Limitations Under FCRA

Most common claims under FCRA:

Against CRAs:

- 1681e(b) failure to have reasonable procedures to assure max poss. accuracy
- 1681i reinvestigation failures
- 1681g failure to disclose of consumer's file to consumer
- 1681c report containing obsolete info.(tied to 1681e(a) if negligent in maintaining reasonable procedures to avoid reporting obsolete info.)
- 1681k violations re. adverse public info. for employment purposes

Most common claims under FCRA:

Against users:

- 1681b(f) obtaining a report for an impermissible purpose

Against furnishers:

- No private remedy for most furnisher violations
 - Exception for reinvestigation 1681s-2(b)

No private remedy for 1681m provisions as amended by FACTA

Damages §1681n and §1681o

- Willful: 1681(n)(a)
 - Actual or statutory damages from \$100-\$1,000 and punitive damages, plus court costs and attorney's fees
- Negligence: 1681o(a)
 - Actual damages, court costs, attorney's fees
- Each failure to comply is a separate violation

- Consensus from practitioners that multiple disputes are best for purposes of building case and violations.
- Other credit history a consideration (other negative info. that is accurate that could have been the source of the injury). Need to show substantial factor, not that it was the only cause.
- Can possibly require an expert witness on credit reputation damage, but client can testify as to emotional impact and/or wage loss.
- Need to plead injury-in-fact. *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016); and *TransUnion v. Ramirez* 2021 WL 2599472 (U.S. June 25, 2021)

Actual Damages

Punitive Damages

Safeco is the standard for determining willfulness. *Safeco Ins. Co. v. Burr*, 551 U.S. 47, 127 S. Ct. 2201, 167 L. Ed. 2d 1045 (2007)

- Essentially, a Plaintiff must demonstrate that the Defendant knew or should have known that their conduct violated the statute.
- It can be extremely helpful to use/read enforcement actions and consent decrees by CFPB and FTC to show that conduct was willful

Statute of limitations

- SOL 2 years from discovery or 5 years from when event occurs. § 1681p
- Each failure triggers a new SOL

Resources

- NCLC's Fair Credit Reporting Manual
<https://library.nclc.org/>
- National Association of Consumer Advocates (NACA) for co-counseling:
<https://www.consumeradvocates.org/find-an-attorney>
- Submit a complaint to the Consumer Financial Protection Bureau:
<https://www.consumerfinance.gov/complaint/>

Questions?

For questions and to join the TCCD GoogleGroup Community

Email us at:

texascoalitiononcoerceddebt@gmail.com

Check out our Coerced Debt Toolkit for more information and resources:

<http://financialabusehelp.org/>