

# Is it time to “tune up” your compliance with the Fair Credit Reporting Act (“FCRA”)?

In September 2021, the FTC approved technical changes to five regulations implementing the Fair Credit Reporting Act.

Under the Dodd-Frank Act, the CFPB may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. However, the CFPB maintains authority over a motor vehicle dealer (i) providing extension of retail credit or retail leases directly to consumers and not routinely assigning such contracts to an unaffiliated third party finance or leasing source; or (ii) offering or providing a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

Because the FTC is the primary regulator for motor vehicle dealers, it retains rulemaking authority for the following FCRA rules that apply to motor vehicle dealers:

- **Address Discrepancy Rule.** The Rule outlines the obligations of dealers using consumer reports when they receive notices of address discrepancies from a nationwide consumer reporting agency (CRA). The Address Discrepancy Rule requires a user of consumer reports (dealer) to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested a consumer report, when the user receives a notice of address discrepancy.

- **Affiliate Marketing Rule.** The Rule gives consumers the right to restrict a dealer from using certain information obtained from an affiliate to make solicitations to the consumer. If a dealer receives certain consumer eligibility information from an affiliate, the dealer may not use that information to make solicitations to the consumer about its products or services, unless the consumer is given notice and an opportunity (via a simple method) to opt out of such use of the information, and the consumer does not opt out. The FTC final rule is substantially similar to the CFPB’s Regulation V, subpart C.

- **Furnisher Rule.** The Rule requires entities (dealers) that furnish information to CRAs to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers provided to a CRA. A furnisher must reinvestigate direct consumer disputes concerning the accuracy of information provided by the furnisher to a CRA and respond to direct disputes from consumers.

- **Pre-screen Opt-Out Notice Rule.** The Rule outlines requirements for dealers who use consumer report information

to make unsolicited credit offers to consumers. In order to make an unsolicited firm offer of credit to the consumer (“prescreened offer” or “prescreened solicitation”) dealers must provide with each written solicitation a clear and conspicuous statement that contains some very technical information and disclosures, including but not limited to a statement that the information contained in the consumer’s consumer report was used in connection with offer and that the consumer received the offer of credit because the consumer satisfied the criteria for credit worthiness. Other technical requirements apply. The Pre-Screen Opt-Out Rule also added the web address where consumers can opt-out of credit offers to the model notices that motor vehicle dealers can use.

- **Risk-Based Pricing Rule.** Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Dealers that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories. The Rule requires dealers who use information from a consumer report to offer less favorable terms to consumers to provide them with a notice about the use of such data. The risk-based pricing notice is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports so consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information.

Although the FTC’s changes were technical—it’s a reminder that now may be a good time to “tune up” and check your compliance with these rules.

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