Fair Credit Reporting – CFPB Report

Executive Summary

On December 13, 2012, the Bureau of Consumer Financial Protection ("CFPB" or "Bureau") released a review of the U.S. credit reporting system based on the operations of the three largest nationwide consumer reporting agencies ("NCRAs"). The review, entitled "*Key Dimensions and Processes in the U.S. Credit Reporting System*," provides a basic outline of the movement and processing of information that is essential to the compilation of credit reports, the management of credit report accuracy, and compliance with the governing regulations. The findings generally indicate that:

- The credit information provided to NCRAs is highly concentrated by furnisher (entities that provide information about borrowers) and by product. More than 50 percent of information is supplied by credit card companies. Mortgage information comprises 7 percent.
- Incoming information is subject to a highly automated process that includes quality controls and matching to individual consumers. The consumer disputes process is also automated.
- Inaccuracies enter into credit reports through a variety of ways though the extent of material inaccuracies is unknown.
- Consumers have the right to obtain one free copy of their credit report annually. Only 20 percent of consumers obtain copies of their credit reports.
- Consumers have the right to dispute inaccuracies on their credit reports. Approximately 40 percent of disputes were linked to debt collections. Approximately 85 percent of disputes were forwarded to furnishers for resolution.

On December 19, 2012, the U.S. Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Financial Institutions and Consumer Protection conducted a hearing to consider "*Making Sense of Consumer Credit Reports*." Three witnesses provided testimony representing the CFPB, data furnishers, and consumer law advocates. Their testimonies covered the mechanics of the credit reporting industry, the CFPB's review report and compliance issues.

The Bureau began accepting consumer complaints related to consumer credit reporting in October 2012 and it has expanded its nonbank supervision program to include the larger participants of the consumer credit reporting and consumer debt collection markets. In combination with its supervisory authority over large financial institutions, the CFPB has authority over most of the credit reporting industry (from furnishers to reporters to users). The consumer credit reporting industry is likely to face significant oversight in the coming years.

Background

Most decisions to grant credit, including mortgage loans, auto loans, credit cards, and private student loans, incorporate information contained in credit reports, and the credit scores derived from them, as part of the lending decision. These reports are also used in other spheres of decision-making, including eligibility for rental housing, setting premiums for auto and homeowners insurance in some states, or determining whether to hire an applicant for a job. The CFPB review found the NCRAs each maintain credit files on over 200,000,000 adults and receive information from approximately 10,000 furnishers of data. On a monthly basis, these furnishers provide information on over 1.3 billion consumer credit accounts or other "trade lines".

Credit reports are a form of "consumer report" covered by the *Fair Credit Reporting Act* ("FCRA"), which was enacted in 1970, and its implementing Regulation V. The CFPB has rulemaking authority for the FCRA.

The CFPB released two separate final rules to define "larger participants" in the consumer credit reporting and consumer debt collection markets, respectively, for purposes of identifying certain nonbank financial services providers that would be subject to supervision under the Bureau's nonbank supervision program. Under these rules, a "larger participant":

- In the consumer reporting market is defined as a company that receives more than $7 million in annual receipts from consumer reporting activities. In early 2012, the CPFB estimated approximately 30 companies, including the three largest NCRAs, would meet this requirement, representing 7 percent of consumer reporting companies and 94 percent of consumer reporting revenues. Supervision of consumer credit reporting companies began on September 30, 2012.
- In the consumer debt collection market to include debt collectors with more than $10 million in annual receipts from debt collecting activities. The CFPB estimated approximately 175 companies comprising 4 percent of the debt collection companies and more than 60 percent of the market receipts would meet this threshold. Supervision of consumer debt collection companies began on January 2, 2013.

In September 2012, the CFPB released an *Analysis of Differences Between Consumer and Creditor-Purchased Credit Scores*. The study compared credit scores sold to creditors and those sold to consumers by the three largest NCRAs, and found that while credit scores sold by credit bureaus to consumers were generally highly correlated with credit scores used by lenders, approximately 20 percent of consumers were likely to receive a score that could be materially different from what a lender would see. Further, consumers would have no way to know how the scores they received differ from the scores received by lenders and the CFPB suggests such discrepancies have the potential to generate consumer harm.

Description

Key Dimensions and Processes in the U.S. Credit Reporting System – CFPB White Paper

The CFPB's review of the U.S. credit reporting system focused on the databases of the three largest NCRAs during 2011. The report is intended to describe technical processes involved in the collection, screening, and correction of credit information and, from a broad perspective, their impact on the accuracy of information provided in credit reports provided by the NCRAs. The CFPB states that the review does not seek to characterize or quantify either the general level of accuracy of credit report information, or the harms that may result to consumers affected by credit report inaccuracies.

The outline of this Regulatory Practice Letter follows the outline in the CFPB's paper.

Credit Bureaus, Credit Files, Credit Reports, Credit Scores

The CFPB describes the consumer reporting industry as including:

- Large national consumer reporting agencies like the NCRAs;
- Consumer reporting agencies with credit information such as payday loans, utility and telephone accounts, and other credit relationships;
- Specialized consumer reporting agencies with medical information, employment history, residential history, check writing history, checking account history, insurance claims, and other non-credit relationships; and
- Resellers of credit reports.

Components of a credit file, defined as the information about a consumer that is maintained in the databases of the NCRAs, include:

- Header/Identifying information – including name, address, date of birth, and social security number, among other data.
- Trade lines – credit specific information including type of credit, credit limit, account balance, payment history, and delinquency status, among other things.
- Public record information – such as bankruptcies, judgments, and Federal and state tax liens.
- Collections – reported by debt buyers or collection agencies on behalf of creditors.
- Inquiries – requests for a consumer report initiated in the prior two years.
- Information about whether the consumer has initiated a security freeze, fraud alert, active duty alert, or filed a consumer statement on his or her file.

The NCRAs supply lenders with credit reports and credit scores derived from the credit file information. Consumers with high credit scores are considered to present lower credit risk and so receive more favorable interest rates and other loan terms. Multiple scoring models are in use (proprietary models used by the NCRAs and/or lenders or models supplied by third-party vendors) and the credit scores offered by the NCRAs to lenders can vary by score provider, by model and by industry. In September 2012, the CFPB released a report highlighting that credit scores supplied to lenders may be different than the credit scores supplied to consumers.

Lenders, or creditors, use credit scores to enhance the efficiency and consistency of credit decision-making. The CFPB suggests that the use of credit scores may also reduce the possibility of subjective decision-making by lenders based on impermissible factors under fair lending laws such as the *Equal Credit Opportunity Act* ('ECOA'), like marital status, age or national origin.

Furnishers and Users

Furnishers of credit information are also creditors who use credit reports. Approximately 10,000 furnishers provide information to the NCRA's though the top 10 furnishers provide approximately 57 percent of the trade lines and the top 50 furnishers provide 72 percent of the trade lines. Reporting follows a standardized electronic format though providing information is voluntary.

Financial institutions furnish the bulk of trade lines. Forty percent are bank card trade lines. The remaining 60 percent come from banks that issue retail cards (18 percent), accounts in collection reported by collections agencies and debt buyers (13 percent), the education industry (7 percent), sales finance providers (e.g., closed-end loans including auto loans) (7 percent), mortgage lenders or servicers (7 percent), auto lenders (4 percent), and other unspecified creditors (4 percent).

Furnishers and Data Screening

Furnishers are subject to initial screening by the NCRAs, including assessments of capacity, accuracy, and business history. NCRA policies may trigger reinspections after risk events such as consumer complaints, suspicious trade lines, variations in data submissions, odd anomalies, and changes in company ownership occur. Further, the NCRAs continue to monitor furnishers for data quality and fraud once a furnisher starts contributing live trade line data.

Data submitted by a furnisher to an NCRA generally goes through a multi-stage process to identify data irregularities. The NCRAs' data screens highlight errors by identifying anomalies and inconsistencies, though these checks rely on underlying furnisher data to be valid. The NCRAs do not conduct independent checks or audits to determine if the data is accurate, such as contacting a consumer to ask if the consumer is properly associated with an account or if the balance reported on an account is true, or checking the record-keeping practices of a furnisher. The NCRAs generally rely on furnishers to report information on consumers that is complete and accurate.

Pursuant to the *Fair and Accurate Credit Transactions Act* ("FACT Act"), which amended the FCRA, and the Furnishers Rule (implementing regulations to the FACT Act jointly issued by six Federal regulators), furnishers are required to maintain, establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information they furnish to consumer reporting agencies. The procedures should address "deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information". The procedures must be appropriate to the "nature, size, complexity, and scope of each furnisher's activities".

Compiling Credit Files: Matching

The CFPB review finds that each of the NCRAs has over 200 million active files on individual consumers which are non-duplicative within the particular NCRA. The average credit file contains 13 past and current credit obligations, including nine bank and retail cards and four installment loans (e.g., auto loans, mortgage loans, student loans). In a typical month, an NCRA receives updates on over 1.3 billion trade lines.

To locate and identify a consumer, NCRAs will use various combinations of personal identifying information such as name, address, phone number, date of birth, address, and social security number ("SSN"). A given trade line reported by a furnisher may not contain all of this identifying information.

Inaccuracies in Credit Files and Credit Reports

Inaccuracies in credit files and credit reports can occur where information that does not belong to a consumer is attached to his or her file, where information belonging to a consumer is omitted from the file, or where there are factual inaccuracies in trade line or other information in the consumer's file. Some of these inaccuracies can be attributed to matching challenges in assigning a trade line to a consumer's file. Other causes of inaccuracies include data and data entry errors, NCRA system or process inaccuracies, furnisher system or process inaccuracies, identity fraud, or time lags. Each of these types of credit report errors may affect how a creditor assesses or a credit score reflects the credit worthiness of a consumer.

Disputing Credit Report Errors

The FCRA gives consumers the right to dispute information they deem inaccurate with an NCRA, a furnisher (in cases covered by the Furnisher Rule), or both. The FCRA requires NCRAs and furnishers to "reinvestigate" information contained in a consumer's credit file when the consumer disputes its accuracy. Further, the statute gives consumers several mechanisms for obtaining the information contained in their credit files in order to review them for possible inaccuracies.

The CFPB estimates that as many as 44 million consumers obtained copies of their credit report or consumer file disclosure annually in 2010 and 2011 through one of these methods:

- Free:
  - Once every 12 months from the NCRAs and nationwide specialty consumer reporting agencies;
  - In connection with risk-based pricing and adverse action notices;
  - If they are unemployed and intend to apply for employment within 60 days;
  - If they are recipients of welfare assistance;
  - If they have reason to believe their credit file is inaccurate due to fraud;
  - In connection with requested initial or extended fraud alerts; or
  - If permitted by state law.
- Purchasing them directly or when they receive their credit files as part of a paid credit monitoring service subscription.
- Receiving information from reports or copies of reports from a user such as a bank, mortgage broker, or landlord.

In 2011, the NCRAs received approximately 8 million consumer contacts disputing the completeness or accuracy of one or more trade lines, public records, or credit header information (i.e., identification information) in their files. Many of these consumers disputed information about more than one trade line or other item in their file, leading to approximately 32 to 38 million dispute reinvestigations. The CFPB indicates this volume is significantly less than the volume in 2007 when consumers more actively applied for credit, particularly in the mortgage market, and questioned 47 to 63 million items.

If a consumer disputes the completeness or accuracy of his or her credit file, the credit bureau has an obligation to conduct a reasonable reinvestigation. The bureau must generally complete a reinvestigation within 30 days, to consider all relevant information supplied by the consumer. Moreover, the bureau has five business days to forward the dispute to the relevant furnisher. Furnishers have independent obligations under the FCRA, after receiving notice from a CRA of a consumer dispute, In particular, they must conduct an investigation into the disputed information, review all the relevant information provided by the CRA, and report the results of the investigation to the CRA, including providing corrected information if appropriate.

Variations in dispute rates occur by furnisher, account status, and industry. The report indicates that dispute rates for the active trade lines among the 100 largest furnishers generally fall within a range between 0.05 percent and 2.0 percent. Collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines – four times higher than auto and five times higher than mortgage dispute rates. Collections and delinquent trade lines also reflect a disproportionate percentage of all accuracy disputes by consumers with the NCRAs. Almost 40 percent of all consumer disputes at the NCRAs, on average, can be linked to collections items. The CFPB states the Top 10 furnishers provide a majority of each of the NCRAs' trade lines. These furnishers are multi-line banks and financial services providers with high proportions of prime borrowers. Higher dispute rates among the smaller furnishers (ranked by the number of trade lines each furnisher reports) may reflect that more of them are collection agencies (described by the CFPB as "a fragmented industry including many small firms") or have proportionately larger subprime lending portfolios (which the CFPB notes include accounts that are more likely to be delinquent and to generate consumer disputes).

The NCRAs handle most consumers' trade line disputes they receive through an electronic information network. An average of 15 percent of the disputes they received in 2011 were resolved internally or rejected. (The report does not offer explanation of what would constitute the basis for rejection of a consumer dispute. A separate discussion of furnisher trade line data indicated that rejections not corrected by furnishers could result from data errors, incorrect coding or unfamiliar formatting based on systems changes. Consumers submitting disputes are expected to provide reason codes to characterize their dispute.) If a dispute cannot be resolved internally, the NCRA will forward the dispute through to the appropriate furnisher through an electronic form and tagged with dispute codes. Although consumers can provide supplementary documentation (such as billing or other records or letters to and from creditors) regarding a dispute via mail to an NCRA, it appears the NCRAs generally do not pass these documents along to furnishers.

Monitoring and Measuring Credit Report Accuracy

The CFPB expects ongoing efforts to measure credit report accuracy will likely continue to rely on consumers to identify potential inaccuracies in their credit reports and to rely on the dispute resolution system to validate that inaccuracies have occurred.

Senate Subcommittee Hearing

On December 19, 2012, the U.S. Senate Committee on Banking, Housing and Urban Affairs' Subcommittee on Financial Institutions and Consumer Protection conducted a hearing to consider "*Making Sense of Consumer Credit Reports*." Three witnesses provided testimony including a representative from the CFPB, a trade association for furnishers of consumer data and analytical tools, and a consumer law advocate.

The CFPB representative briefly outlined the findings in the review, describing it as "one of the most comprehensive looks at the consumer reporting industry to date". He added, "And it represents a significant step forward in understanding this industry and making it more transparent for consumers." The trade association representative highlighted the efforts taken by the industry to ensure data accuracy, noting the significant volume of data reported and handled each month. In contrast, the consumer law advocate related the personal stories of individuals whose lives were significantly harmed by errors in their credit reports. Observations and suggestions made by these witnesses included the following, among others:

- NCRAs should be required to forward to furnishers copies of actual documents submitted by consumers to support disputes.
- NCRAs should be required to conduct detailed inquiry or systematic examination of evidence submitted by consumers to support disputes.
- Good faith disputes should be excluded from the consumer's credit score.
- Consumer should have the right to ask a court to order NCRAs and furnishers to fix a credit report when there is an error.
- CRAs should be required to undergo independent audits of their data and records for accuracy.
- Consumers should have the right to obtain their FICO scores (a type of credit score frequently supplied to creditors/lenders but not generally available to consumers) before applying for credit or at least once per year.

The witnesses also suggested that, with the availability of credit report data, consumers will grow in the understanding of their right to dispute an item directly with a furnisher and will do so more frequently going forward. In references to the results of the CFPB's report on the differences between consumer and creditor-purchased credit scores, one suggested that the variety of credit scores available to lenders increases for consumers the importance of shopping around for the best credit terms.

Commentary

In announcing the Bureau's new authorities to supervise credit reporting agencies, CFPB Director Richard Cordray indicated that the agency would treat as its

Initial examination priorities CRA compliance with the FCRA and other consumer financial protection laws, the accuracy of the information received by the credit reporting companies from furnishers, the CRAs accuracy in assembling and maintaining that information, and the processes that govern error resolution. It is significant that the CFPB has supervisory authority over the CRAs and most of the furnishers that provide credit information to the CRAs. In addition, the Bureau directly accepts consumer complaints regarding credit reporting issues and will work to resolve errors, as needed, which will provide new pressures for the furnishers and CRAs regarding dispute resolution.

The CFPB suggests that having such broad authorities in the credit reporting markets will give the Bureau an opportunity to "further evaluate the potential roles of credit report accuracy measurements and of metrics related to the NCRAs' and furnishers' various business processes in improving overall accuracy in the U.S. credit reporting system." The CFPB indicates that it may consider the development and implementation of data quality and accuracy metrics to reduce risk to consumers and assure compliance with FCRA obligations.

Financial institutions and nonbank financial services providers subject to CFPB supervision are encouraged to review their activities surrounding consumer credit reporting, including reviews of:

- Policies, procedures and internal controls associated with Federal consumer financial law compliance, including the FCRA, the FACT Act and the *Fair Credit Billing Act*, among others;
- Strategic business decision-making related to credit bureau reporting (e.g., what to report, what not to report);
- Training programs related to consumer reporting requirements;
- Compensation policies;
- Data flows;
- Systems and technology requirements associated with electronic submissions of credit reporting data to CRAs;
- Monitoring and testing of data quality for items submitted to consumer reporting agencies;
- Monitoring and testing of information submitted to CRAs, including analyses of reject rates and related reasons as well as consumer disputed information referred by CRAs for resolution; and
- Processes and testing of the receipt and resolution of consumer disputes and/or complaints submitted directly by consumers.

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