Increase in Fair Credit Reporting Complaints May Lead to Increased Litigation

Approximately 42,400 (April) and 44,100 (May) Consumer Financial Protection Bureau (CFPB) complaints were received. These numbers are the highest monthly complaint volumes in the Bureau’s history. The increase in CFPB complaints is a likely indication that lawsuits and regulatory enforcement actions may follow.

Details

In April and May, the CFPB received approximately 42,400 and 44,100 complaints, respectively—the highest monthly complaint volumes in the Bureau’s history. The most common creditor violations of Fair Credit Reporting Act (FCRA) include:

- Creditors provide inaccurate financial information to reporting agencies
- Creditors fail to send notifications about credit report or score
- Creditors pull credit reports for an impermissible purpose
- Creditors utilize credit reports pulled for a permissible purpose to market or cross-sell additional products and services

The most recent issue impacting credit unions is based in the requirement to establish a permissible purpose before pulling a member’s individual credit report, as established in Section 604 of the FCRA which defines permissible purposes under law:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)(2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)
- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)

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It is anticipated that it will continue to be an issue for credit unions wishing to send pre-screened offers to their membership as well as evaluate portfolio risk. The FCRA strictly regulates the use of consumer reports, which contain highly sensitive information bearing on a member's credit standing. A credit union must have a permissible purpose to obtain a consumer report. To avoid violating the FCRA, credit unions must develop internal processes to ensure that the FCRA's proscriptive requirements are satisfied prior to requesting a new or update to member credit reports.

Prescreening is the only circumstance in which consumer report information may be used for marketing purposes, and one of the few circumstances in which consumer report information may be provided in the absence of a consumer-initiated transaction. The other instance is for portfolio review; however, the following guidance should be considered when a portfolio wide credit pull is planned:

- Determine whether the credit union obtained and used prescreened consumer reports in connection with offers of credit and/or insurance.
- Evaluate the credit union’s policies and procedures to determine if a list of the criteria used for prescreened offers, including all post-application criteria, is maintained in the credit union’s files and the criteria are consistently applied when consumers respond to the offers.
- Determine if written solicitations contain the required disclosure of the right to opt-out of prescreened solicitations and comply with all requirements applicable at the time of the offer.
- Determine if the credit union maintains on file the criteria used to select members to receive the offer, all criteria bearing on credit worthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance under each offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, for three years beginning on the date on which the offer is made to the consumer.
- Verify that the member continues to have a valid membership and at least one open credit account.
- Scrub the list for any members that may have filed for bankruptcy or had debt discharged as the result of a bankruptcy filing.

Risk Mitigation Tips

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Risk Prevention Resources

Access CUNA Mutual Group’s Protection Resource Center at cunamutual.com for exclusive risk resources to assist with your loss control. The Protection Resource Center requires a User ID and password.

Contact a CUNA Mutual Group Risk Consultant at 800.637.2676 or email riskconsultant@cunamutual.com.

Facing risk challenges? Schedule a free personalized discussion with a Risk Consultant to learn more about managing risk.


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