

Furnishers' Beware: The CFPB Argues that the FCRA Requires Investigation of Legal Issues Raised in Indirect Disputes

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Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the May 2022 edition.

Several courts have interpreted the text of the FCRA to require furnishers to reasonably investigate factual questions, but not disputed legal issues such as whether a consumer is liable for a reported debt. Yet, the CFPB now argues that the FCRA does not exempt furnishers from investigating disputes based on legal questions as opposed to factual inaccuracies.

In *Milgram v. JPMorgan Chase Bank, N.A.*, No. 19-cv-60929, 2021 WL 6755283 (S.D. Fla. Dec. 30, 2021), the district court considered questions relating to the scope of a furnisher's duty to investigate an indirect dispute. Granting the defendant's motion for summary judgment and denying the plaintiff's motion for partial summary judgment, the district court characterized the investigation duties FCRA imposes on furnishers as "procedural" and "far afield" from legal "questions of liability under state-law principles of negligence, apparent authority, and related inquiries." Ultimately, the district court reasoned that there was no genuine dispute that the defendant conducted a reasonable investigation because the plaintiff did not identify any particular procedural deficiencies in the defendant's investigations. On January 19, 2022, the plaintiff filed an appeal to the Court of Appeals for the Eleventh Circuit.

On April 7, 2022, the CFPB filed an amicus brief in the Eleventh Circuit appeal claiming to have a substantial interest in the issues before the court. Contrary to the distinction between legal and factual questions recognized by several federal courts, the CFPB asks the Eleventh Circuit to clarify "that furnishers are statutorily obligated to reasonably investigate both legal and factual questions raised in indirect disputes to CRAs about the accuracy or completeness of information they furnish." In making this request, the CFPB argues that creating an exemption for legal questions that a dispute raises would:

1. Curtail the reach of the FCRA's investigation requirement in a way that runs counter to the purpose of the provision to require meaningful investigation to ensure accuracy on credit

reports;

2. Result in an unworkable standard where mixed questions of fact and law are presented;
3. Encourage evasion of statutory obligations by allowing furnishers to characterize disputes as legal; and
4. Lead to the continued reporting of data that resulted from fraud, which Congress was particularly keen to omit.

Despite the CFPB's argument that furnishers are qualified and obligated to assess legal issues, acceptance of these arguments by the Eleventh Circuit would cause substantial uncertainty for furnishers attempting to conduct investigations in compliance with the FCRA. In addition, it would create a circuit split with the First Circuit, which has held that a legal dispute over liability for an account may not form the basis of a claim for violation of section 1681s-2(b) of the FCRA. This amicus brief is representative of the CFPB's continuing interest in the accuracy and dispute resolution in the credit reporting space.

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Practice Areas

Financial Services

