

The Times and Crimes of Consumer Fraud: FCRA Best Practices for Identity Theft Claims

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Identity Theft is on the Rise

Identity theft is at an all-time high. Opportunities for cybercriminals to steal or misuse personal financial information are becoming more prevalent with increased access to personal information online and the pervasive use of artificial intelligence, such as ChatGPT.

As one may expect, there is a direct correlation between the rise in identify theft and increased consumer credit reporting disputes submitted to credit reporting agencies. Commonly, furnishers of credit information (“**furnishers**”) receive thousands of credit reporting disputes per month, but only a small percentage arises from legitimate claims of identity theft. It is often challenging for a furnisher to sift through these disputes and identify which disputes are made in good faith.

The Fair Credit Reporting Act

In 1970, Congress enacted the Fair Credit Reporting Act (the “**FCRA**”). The FCRA’s primary purpose is to ensure fair and accurate credit reporting and to protect consumer privacy. Credit reporting agencies (“**CRAs**”), which are governed and regulated by the FCRA, are entities that collect consumer credit data from furnishers and use that information to prepare a consumer credit report.

Consumers who disagree with the information provided in their credit report may submit a dispute to the CRA that issued the report. The CRA is then legally obligated to forward the dispute to the furnisher. This is referred to as an automated credit dispute verification or ACDV. The receipt of an ACDV by a furnisher triggers the furnisher’s statutory obligation to conduct an investigation with respect to the disputed information. This function of the FCRA serves as an important tool to assist victims of identity theft.

Furnishers’ Duties Under the Fair Credit Reporting Act

To satisfy its duty to investigate, the furnisher must demonstrate it followed the FCRA’s protocol, which includes:

- 1) Conducting an investigation;
- 2) Reviewing the relevant information provided by the CRA;
- 3) Reporting the results of the investigation to the CRA;
- 4) If information is found to be incorrect, the furnisher must report the results to all CRAs that the initial information was reported to; and
- 5) If the information is incorrect, the furnisher must modify, delete, or permanently block the reporting of the information.

The FCRA does not define “investigation,” nor does it outline what steps a furnisher must take to investigate a dispute received from a CRA. Rather, federal appellate courts have held that a “reasonable” investigation is required to determine whether disputed information can be verified. What constitutes a “reasonable” investigation for purposes of the FCRA depends on the nature of the dispute, the actions taken, and, if the subject of litigation, the court in which the lawsuit is pending.

For these reasons, it can be challenging to craft a blanket policy regarding best practices for investigating disputes. Any such policy must account for differing court decisions from across the country. What is “reasonable” for one appellate court may not be reasonable for another court.

Investigating Claims of Identity Theft in Compliance with the FCRA

A survey of relevant court decisions suggests that a more thorough investigation may be required if a consumer’s dispute includes a claim of identity theft, particularly when the dispute includes an identity theft affidavit or a copy of a police report.

Below are general guidelines for conducting an investigation under the FCRA in connection with an identity theft claim:

- 1) Determine the scope of the investigation based on the information provided by the CRA, but generally, more than a few minutes should be spent on each investigation.
- 2) Ensure the investigator reviews all the information and documents provided by the CRA.
- 3) Depending on the complexity of the facts, consider contacting the creditor and claimant regarding the dispute, but be cautious not to “offload” the investigative obligations to the claimant.
- 4) Employ agents who have received comprehensive training, including more than just on-the-job training.

Conclusion

If your company furnishes information to credit reporting agencies, please contact one of the attorneys in our Financial Services group. They can assist with reviewing and analyzing your policies and practices related to conducting investigations under the FCRA.

Attorneys

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