

Bridgeforce jointly presented with Bridgeforce Law at CBA LIVE in Phoenix on Consumer Reporting and Disputes. The session kicked off with an update on the legal environment and moved into a discussion of industry hot topics in reporting and disputes. This document shares the key themes and takeaways from this session.



Legal Update | Bridgeforce Law

The legal landscape for furnishers of data to credit reporting agencies (CRAs) has changed dramatically over the years.

Not unlike a seismic event, the current setting is a result of actions, events and forces that have built up over time and resulted in a completely different setting today than ten years ago. The *Report to Congress on the Fair Credit Reporting Act Dispute Process* that was submitted jointly by the FTC and the Fed in August 2006 described an operating environment in which it was normal for furnishers to perform investigations of disputes that primarily focused upon verification of the customer's identification.

In this regard, the only information furnishers typically received to investigate was a dispute code, which 30-40% of the time was a generic "other" code. As further explained below, "the norm" from 2006 will not meet today's standards. Understanding the current legal landscape, and the various forces that produced it, is a critical step toward effective risk mitigation.

Over the past several years, the CFPB has taken a series of steps that collectively raised the pressure for furnishers. Those steps include the CFPB's exercise of direct supervision over the largest CRAs, and its multi-faceted campaign to create increased

consumer access to, and general awareness of, credit reports and credit scores. The latter has generated a pronounced spike in the number of CFPB complaints concerning all aspects of the credit reporting process, including the investigation of disputes. Moreover, in December 2014 the CRAs began reporting to the CFPB on:

1. furnishers with the most disputes,
2. industries with the most disputes,
3. furnishers with the highest dispute rates relative to their peers.

Arguably, however, the most impactful development to date is the CFPB's success in persuading CRAs to enhance the ability of consumers to submit supporting documentation for disputes, which is passed along to data furnishers by the CRAs through e-OSCAR. The inclusion of this additional documentation in investigations breathed new life into what had been largely nuisance lawsuits alleging violations of Section 623(b).

A total of six US Courts of Appeals—the jurisdiction of which encompasses most of the US—have considered and found a private right of action under Section 623(b). The resulting judicial decisions have set an increasingly higher bar for what constitutes a "reasonable" investigation by a furnisher. In particular,

decisions of the Sixth and Third Circuits, issued in 2012 and 2014, respectively, turned a spotlight on the adequacy of a furnisher's policies, procedures, training, and third party oversight related to the investigation of disputes.

Given furnisher's increased access to dispute-related documentation from CRAs—and the greater likelihood such documentation will exist due to the CFPB's efforts to generate consumer awareness—the number and frequency of these lawsuits is likely to rise, and could mushroom depending on the outcome of a pending U.S. Supreme Court case. Moreover, in the same way that seismic pressure in one place may cause an earthquake somewhere else, intensified scrutiny on furnishers has spurred judicial actions based on other laws besides the FCRA, including all manner of state tort claims and alleged violations of the U.S. Bankruptcy Code.



TAKEAWAY #1

Consumer education can help reduce disputes

Consumers often don't understand how the credit reporting process works—so they are more likely to dispute items on their credit report due to a lack of understanding.

Best Practices

1. Consider offering educational material/references to help explain any misunderstandings when a consumer's dispute appears unsubstantiated.
2. Quickly provide educational information, share publicly available documents about handling certain items such as inquiries, and how consumers' credit scores work.
3. Look at every interaction as an opportunity to educate the customer—ensure they feel their voice is heard and define success as educating the customer so they are less likely to dispute in the future.



TAKEAWAY #2

There's no absolute definition of accuracy—but following best practices can help drive success

The furnisher rule states that “accuracy” means that information provided to a CRA from a furnisher, about an account or other relationship with the consumer, will correctly:

- Reflect the terms and liability for the account or other relationship;
- Reflect the consumer's performance and other conduct with respect to the account or other relationship; and
- Identify the appropriate consumer.

While this definition is a useful guide, it does not cover many of the nuances furnishers may face. So, to address evolving accuracy expectations, furnishers have focused on the implementation of multiple validation checkpoints throughout the furnishing process to identify and resolve discrepancies. This includes using preventative tools and testing in addition to detective quality controls such as error reports or dispute processes.

Best Practices

1. Proactively evaluate Metro 2 file quality before and/or after transmitting the file to the CRAs. The Bridgeforce® Data Quality Scanner™ is an example of a tool that can do this on an automated basis.
2. Always evaluate Metro 2 files as part of regression testing when a source system is modified—to ensure that consumer reporting processes weren't inadvertently impacted.
3. Develop and maintain a document that clarifies how each field in the file submitted to a CRA is mapped from a source system. Having this understanding will help to maintain accuracy during systems changes.

TAKEAWAY #3

Defining frivolous & irrelevant disputes is critical and often more complicated than expected

While there's no clear definition for it, a dispute would be considered frivolous or irrelevant when a consumer does not provide sufficient information to investigate the disputed information. In light of the lack of clarity, care should be taken in determining how to investigate these disputes.

Best Practices

1. Complete reviews consistently—dive deep enough to validate each piece of information provided by the consumer. Review each account to identify where an error might exist.
2. If it is a repeat dispute, treat each dispute independently.
3. If you choose, based on a business decision, not to investigate certain disputes that you define as frivolous or repetitive, make sure you have clearly defined definitions and logic for why a dispute should not be investigated.



Michelle Macartney, Speaker at CBA LIVE 2016 & Bridgeforce Managing Director

TAKEAWAY #4

Not every Credit Repair Organization (CRO) form letter is created equal

You aren't legally obligated to respond if the CRO is for-profit, according to the Credit Repair Organizations Act. However, not all CRO form letters come from a for-profit organization. For example, the FTC provides a form letter for consumers on their website, so choosing not to investigate certain form letters requires thoughtful controls.

Best Practices

1. If you choose to dismiss certain form letters, have a clear and controlled process to show how you discern a for-profit CRO form letter from another organization's form letters. Clear procedures with very specific guidance—and strong quality control process—are a must to prove you are investigating the right disputes.
2. Agents should be trained to be aware of the differences in form letters and have a deep understanding of the regulatory impacts. They should know the implications/risks that come from assuming a form letter is from a for-profit CRO—if they are unsure, they should investigate.

TAKEAWAY #5

Establish sustainable processes for ongoing root cause analysis

Solid root cause analysis is an essential function across consumer reporting and disputes operations and is a critical control component for improving accuracy. Root cause analysis means understanding the underlying issue that drove the dispute, identifying/solving for other accounts that may be impacted and fixing the systemic or process issue ultimately contributing to the error.

Best Practices

1. Closely monitor dispute trends and the nature of disputes and report regularly for root cause investigation.
2. Establish process improvement teams to identify and address sources of root causes to prevent future occurrences. Teams should work with other groups in the organization to own the changes required to prevent future disputes.

References:

Federal Register 2009 / Rules and Regulations:

<https://www.gpo.gov/fdsys/pkg/FR-2009-07-01/pdf/E9-15322.pdf>

Fair Credit Reporting Act:

<https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>

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