

# Minimizing Legal and Compliance Risk for Credit Furnishers

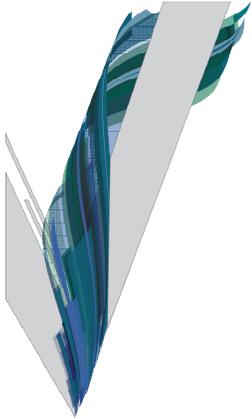
Wednesday, November 18, 2015  
2:00 p.m. – 3:00 p.m. EST  
Webinar

## Speakers

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Financial Protection Bureau Task Force, Venable LLP

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# Welcome to Today's Webinar

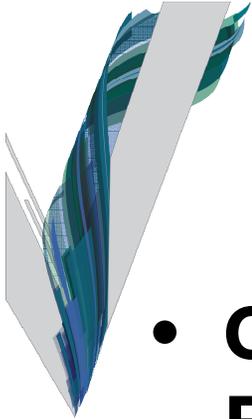
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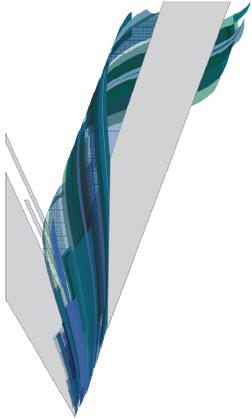
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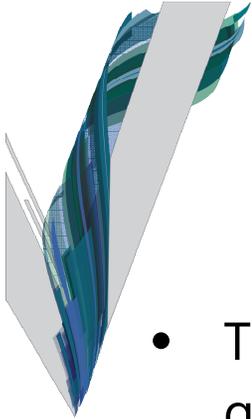
## Today's Topics Include:

- **Overview of the FCRA's Furnisher Rule;**
- **Accurate Reporting;**
- **Investigation of Disputes;**
- **Regulatory Expectations and Recent Enforcement Activity; and**
- **Key Takeaways.**



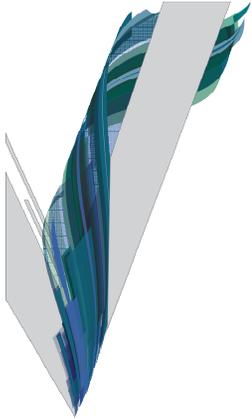


# **Overview of the FCRA's Furnisher Rule**

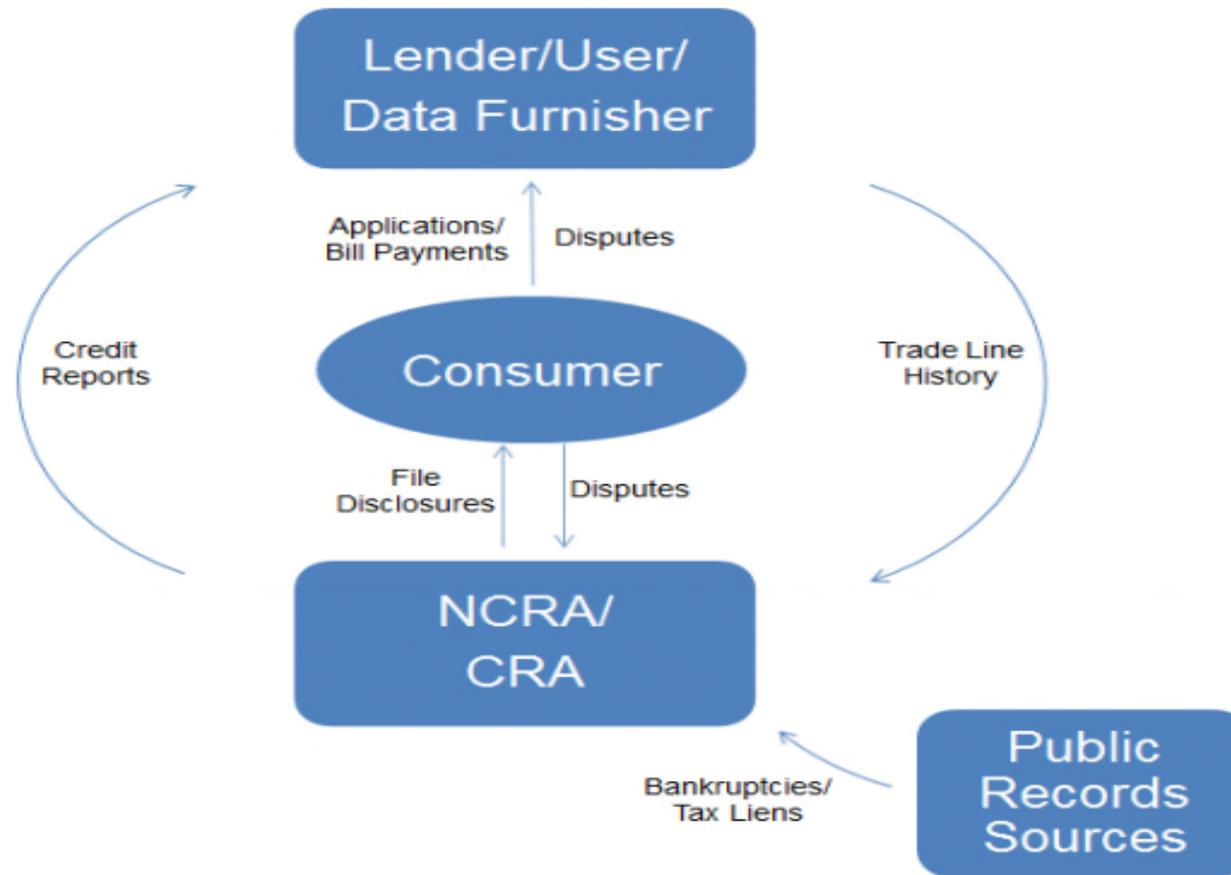


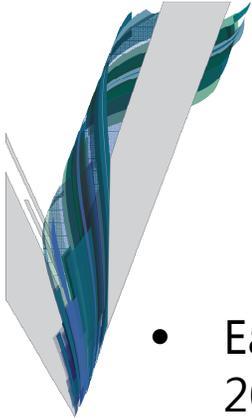
# Statutory Background

- The **Fair Credit Reporting Act (FCRA)** was passed in 1970 to govern the collection, assembly, and use of consumer information by consumer reporting agencies ("**CRAs**") and their customers, and provides the framework for the credit reporting system in the United States. 12 C.F.R. §§ 1022.1 *et seq.*
- Amendments in 1996 imposed duties on furnishers by including requirements relating to accuracy and the handling of disputes.
  - Furnishers are entities that report information on consumers to at least one consumer reporting agency. Includes lenders, merchants, debt collectors, courts, and others.
- In 2003 the **Fair and Accurate Credit Transactions Act (FACTA)** addressed the growing problem of identity theft through various provisions.



# The Credit Reporting System



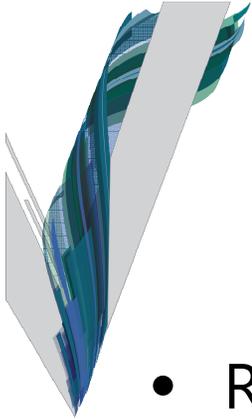


# Credit Reporting Is Ubiquitous

- Each national consumer reporting agency maintains credit files on over 200,000,000 adults, and these agencies 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.”

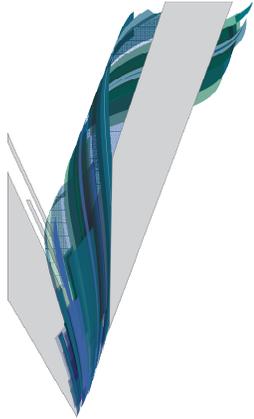
“Credit reports play an increasingly important role in the lives of American consumers. Most decisions to grant credit – including mortgage loans, auto loans, credit cards, and private student loans – include information contained in credit reports as part of the lending decision. These reports are also 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.”

CFPB Report Key Dimensions and Processes in the U.S. Credit Reporting System (Dec. 2012)



# Regulations and Sources of Guidance Under the FCRA

- Rules are implemented first by federal banking agencies and then by the FTC.
- After the passage of the Consumer Financial Protection Act, the bulk of this rulemaking authority was transferred to the CFPB.
- FTC, CFPB, and banking agencies have each published a **Furnisher Rule**, which are identical in substance.
- FTC has issued several informal opinion letters and guidance.
- CFPB has issued several bulletins on credit reporting.

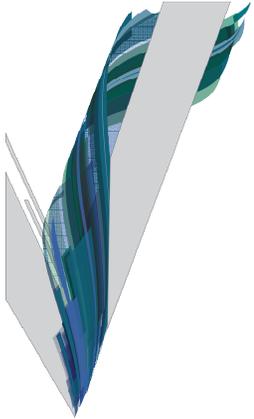


# Enforcement of the FCRA

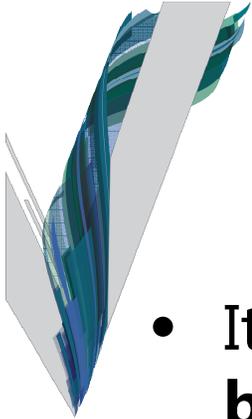


Consumer Financial  
Protection Bureau



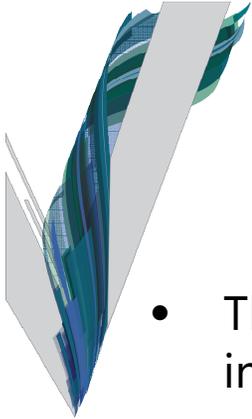


# Accurate Reporting



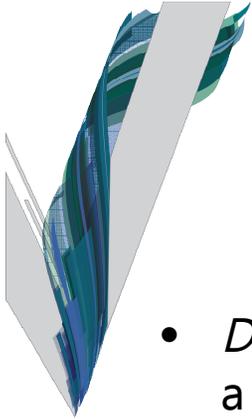
# Obligation to Report Accurately

- It is illegal to report information that you **know or believe is inaccurate**.
- You have "**reasonable cause to believe**" that information is inaccurate if you have knowledge, other than allegations from the consumer, that would lead a reasonable person to doubt the accuracy of the information.
- If you furnish information to a CRA on a regular basis and determine that any information you provided is inaccurate or incomplete, **you must promptly notify the CRA and provide corrections or additions**. Going forward, you must **furnish only the correct information** to the CRA.



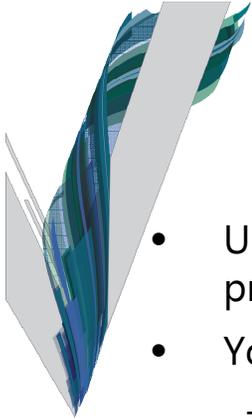
# Furnishing Specific Information

- The FCRA requires that if you furnish any information to a CRA, you must include the following items (as applicable):
  - *Credit Limits* — Usually, you must include a consumer's credit limit.
  - *Disputed Information* — Once a consumer disputes information, you may not report that information to a CRA without telling the CRA that the information is in dispute.
  - *Closed Accounts* — If you furnish information to a CRA on a regular basis, you must notify the CRA that *a consumer has voluntarily closed an account* the next time you send information that would normally include that account.



# Furnishing Specific Information

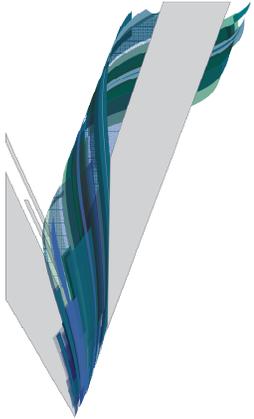
- *Delinquent Accounts* — When you refer an account for collection and notify a CRA that you have done so, you also must report the date of delinquency to the CRA within 90 days.
  - The date of delinquency is the month and year the consumer's delinquency began.
  - The date of delinquency determines how long the debt can be reported on a consumer's credit report. Generally, a CRA may report a delinquent debt for seven years from the date of delinquency. If the debt was discharged in bankruptcy, however, a CRA may report it for 10 years.
  - For debt collectors furnishing information about the accounts of a creditor, you must report the date of delinquency given to you by the creditor.



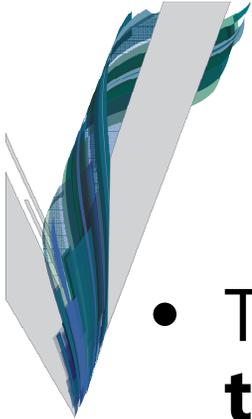
# Written Policies and Procedures

- Under the Furnisher Rule, a furnisher must establish and implement written policies and procedures regarding the accuracy and integrity of information you furnish to a CRA.
- Your policies and procedures:
  - must be appropriate to the nature, size, complexity, and scope of your activities;
  - must be reviewed periodically and updated, as necessary;
  - should ensure that information provided to a CRA is for the right person, and reflects the terms of the account and the consumer's performance on the account;
  - require maintenance of records for a reasonable amount of time;
  - establish internal controls for the accuracy and integrity of information, such as through random sampling;
  - prevent re-aging (inaccurately changing the date of first delinquency on a consumer's account to a later date) and duplicative reporting, particularly following portfolio acquisitions or sales, mergers, and other transfers; and
  - require updating of furnished information where necessary.
- Information should:
  - be substantiated by your records when it is furnished;
  - include consumer identifiers, like name(s), date of birth, Social Security number, telephone number(s), or address(es); and
  - be furnished in a standardized form and specify the time period it pertains to.

Regulation V, 12 C.F.R. §§ 1022 *et seq.*

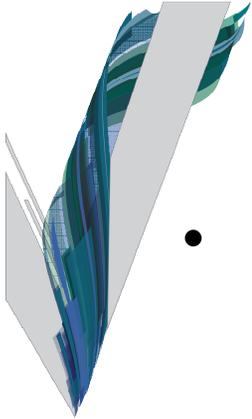


# Investigation of Disputes



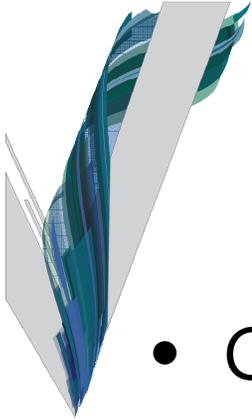
## What Is a Dispute?

- The FCRA gives consumers the **right to dispute the accuracy or completeness** of any **information** appearing **in a credit report** with the **CRAs** or directly with the **furnisher**.
- **CRAs** have developed a **system for categorizing and forwarding disputes** to furnishers.
- For *debt collectors*, consumers also have right to dispute under **Fair Debt Collection Practices Act**, resulting in two partially overlapping regimes for handling disputes.



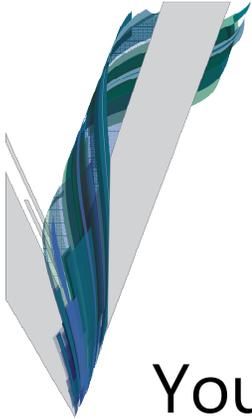
# Indirect Disputes

- If a CRA notifies you that a consumer disputes information you provided—typically through eOscar—you must:
  - **investigate the dispute and review all relevant information** provided by the CRA about the dispute;
  - **report findings** to the CRA;
  - **provide corrected information** to every CRA that received the information if your investigation shows the information is incomplete or inaccurate; and
  - **modify** the information, **delete** it, *or* permanently **block** its reporting **if** the information turns out to be **inaccurate or incomplete or can't be verified**.
- This must be done within **30 days after the CRA gets the dispute** from the consumer. If the consumer provides additional relevant information during the 30-day period, however, the CRA has 15 more days to resolve the dispute.
- The CRA must give you all the relevant information it gets within 5 business days of receipt, and must promptly give you additional relevant information provided by the consumer.



## Direct Disputes

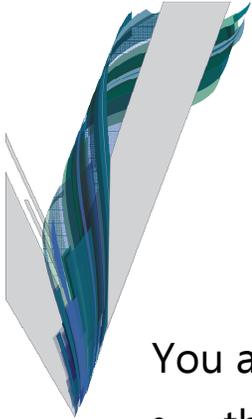
- Consumers also have the right to dispute directly with furnishers. If the nature and form of the dispute meet specific criteria, you are required to:
  - **Investigate** the dispute;
  - **Report results** to the consumer within 30 days;
  - And, **if** you find that the **information** was **inaccurate, notify** each CRA to which you furnished the information.



# When Is Investigation of Direct Dispute Required?

You must investigate a consumer's direct dispute if it relates to:

1. The consumer's liability for a credit account or other debt with you;
2. The terms of a credit account or other debt with you;
3. The consumer's performance or other conduct concerning an account or other relationship with you; or
4. Any other information in a consumer report about an account or relationship with you that affects the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or lifestyle.



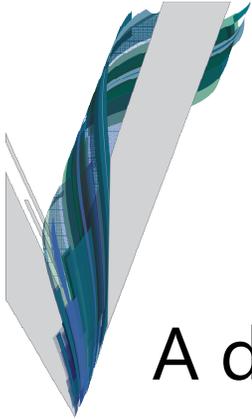
# When Is Investigation of Direct Dispute Required? (cont'd)

You are **not** required to investigate the direct dispute if it relates to:

- the consumer's identifying information on a consumer report, including name, date of birth, Social Security number, phone number, or address;
- the names of previous or current employers;
- inquiries or requests for consumer reports;
- information from public records, including judgments, bankruptcies, and liens; information related to fraud alerts or active duty alerts;
- information provided to a CRA by another furnisher.

You are also **not** required to investigate the direct dispute:

- when you believe that the dispute is submitted by, prepared on behalf of the consumer by, or submitted on a form supplied to the consumer by a credit repair organization;
- the dispute is not submitted in writing to the address; or
- the dispute is "frivolous or irrelevant."

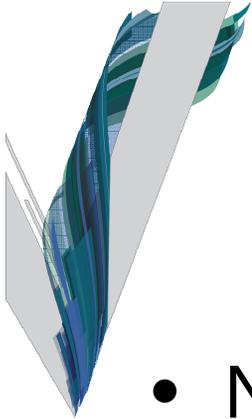


## Frivolous or Irrelevant Disputes

A dispute is frivolous or irrelevant if:

- the consumer didn't provide enough information to investigate; or
- the dispute is substantially the same as a dispute previously submitted, you have already fulfilled your obligation, and there is no new information.

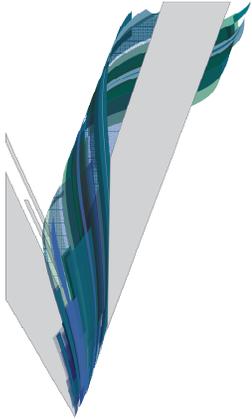
If a dispute is found to be frivolous or irrelevant, you must notify the consumer within five business days of receiving the dispute.



# What Is a “Reasonable” Investigation?

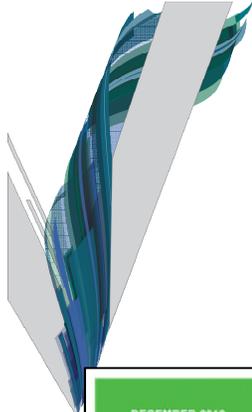
- Not defined in the statute or rules.
- The standard is shaped by court decisions and regulatory actions.
- According to *CFPB Bulletin 2013-09*:

The CFPB expects furnishers to have reasonable systems and technology in place to receive and process notices of disputes and information regarding disputes, including relevant documentation, forwarded to them by CRAs. The CFPB also expects every furnisher to review and consider “all relevant information” relating to the dispute, including documents that the CRA includes with the notice of dispute or transmits during the investigation, and the furnisher’s own information with respect to the dispute.



# **Regulatory Expectations and Recent Enforcement Activity**

# CFPB Reports and Bulletins



DECEMBER 2012

## Key Dimensions and Processes in the U.S. Credit Reporting System:

A review of how the nation's largest credit bureaus manage consumer data

**cfpb** Consumer Financial Protection Bureau

**cfpb** Consumer Financial Protection Bureau  
1700 O Street, N.W., Washington, DC 20002

**CFPB Bulletin 2013-09**

**Date:** September 4, 2013

**Subject:** The FCRA's requirement to investigate disputes and review "all relevant" information provided by consumer reporting agencies (CRAs) about the dispute

The Fair Credit Reporting Act (FCRA) generally requires a consumer reporting agency (CRA) to notify a furnisher when a consumer disputes the accuracy or completeness of an item of information provided by the furnisher to the CRA.<sup>1</sup> The CRA must also promptly provide the furnisher "all relevant information" regarding the dispute that the CRA timely received from the consumer.<sup>2</sup> The furnisher, in turn, must "conduct an investigation with respect to the disputed information," "review all relevant information" provided by the CRA, and respond appropriately based on the result of the investigation.<sup>3</sup> The CFPB expects CRAs and furnishers to comply fully with these FCRA requirements, thereby promoting the accuracy and completeness of information in the consumer reporting system.

This bulletin specifically addresses furnishers' obligations to "review all relevant information" they receive in connection with disputes forwarded by CRAs.

The CFPB expects furnishers to have reasonable systems and technology in place to receive and process notices of disputes and information regarding disputes, including relevant documentation, forwarded to them by CRAs. The CFPB also expects every furnisher to review and consider "all relevant information" relating to the dispute, including documents that the CRA includes with the notice of dispute or transmits during the investigation, and the furnisher's own information with respect to the dispute.

<sup>1</sup> 15 U.S.C. § 1681(i)(2)(A).  
<sup>2</sup> 15 U.S.C. § 1681(i)(2)(A), (B).  
<sup>3</sup> 15 U.S.C. § 1681a-2(b)(1).

**cfpb** Consumer Financial Protection Bureau  
1700 O Street, N.W., Washington, DC 20002

**CFPB Bulletin 2014-01**

**Date:** February 27, 2014

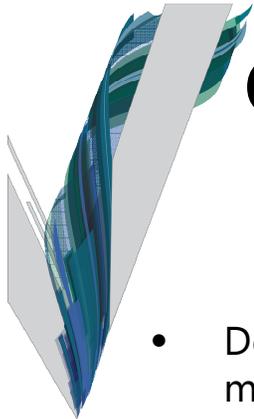
**Subject:** The FCRA's requirement that furnishers conduct investigations of disputed information

Debt buyers, debt collectors, and others who furnish information to credit reporting agencies have a variety of obligations under the Fair Credit Reporting Act (FCRA)<sup>1</sup> and Regulation V.<sup>2</sup> The Consumer Financial Protection Bureau (CFPB) issues this bulletin<sup>3</sup> to highlight one of those obligations – the obligation of furnishers to investigate disputed information in a consumer report. The CFPB is concerned that, when a furnisher responds to a consumer's dispute, it may, without conducting an investigation, simply direct the consumer reporting agency (CRA) to delete the item it has furnished.

Investigations of disputes are important because they provide a critical check on the accuracy of furnished items. Not only do they prompt a furnisher to reconsider information that a consumer has identified as incorrect, investigations can also help a furnisher identify problems with respect to the general accuracy of the information that it furnishes to CRAs. That is, when the furnisher conducts an investigation, it may learn of a systemic problem, thereby benefiting not only the consumer who raised the dispute, but also other similarly situated consumers who did not submit disputes. In addition, if a furnisher does not conduct investigations, consumers can be harmed because the furnisher may not carry out additional steps that the FCRA calls for with respect to a dispute. These include the obligation of a furnisher to provide notice of information found to be inaccurate to all consumer reporting agencies to which it reported.

For purposes of this bulletin, a furnisher is an entity that provides information that relates to consumers to a CRA for inclusion in consumer reports.<sup>4</sup> If a consumer submits a dispute to a CRA regarding an account in a consumer report and the CRA provides the furnisher of that account with notice of that dispute, the furnisher

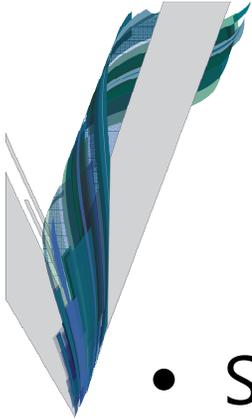
<sup>1</sup> 15 U.S.C. §§ 1681 – 1681v.  
<sup>2</sup> 12 C.F.R. Part 1012.  
<sup>3</sup> On September 4, 2013, the CFPB issued a bulletin discussing a furnisher's obligation to review all relevant information it receives from a consumer reporting agency in connection with a dispute. CFPB Bulletin 2013-09.  
<sup>4</sup> 12 C.F.R. § 1012.4(c).



# CFPB Furnisher Accountability Initiative (2014)

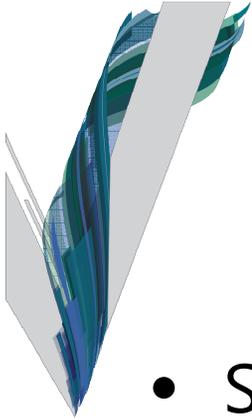
- Dec. 2014 – CFPB announced it is requiring major CRAs to provide **regular accuracy reports** as part of ongoing examinations.
- Reports will highlight key risk areas for consumers, including disputes filed with the CRAs.
  - CFPB expects the credit reporting agency to investigate, determine if there is a problem, and take appropriate action if furnisher has outsized number of disputes.
  - Industries with the most disputes: CRAs have to list the top industries they are reporting on, the volume of information received from those industries, and the total number of disputes generated by those industries.
  - Furnishers with particularly high disputes relative to their industry peers. For each industry named, the CRA must also name the top furnishers with the largest number of consumer disputes.

Source: [http://files.consumerfinance.gov/f/201412\\_cfpb\\_sample-accuracy-report.pdf](http://files.consumerfinance.gov/f/201412_cfpb_sample-accuracy-report.pdf)



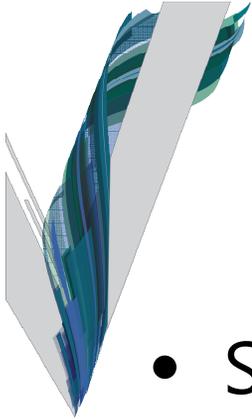
## General Information Services, Inc.

- Settlement with CFPB announced October 2015.
- Bureau alleged that the companies violated the FCRA for **failing to take necessary steps to ensure accuracy of consumer information and for including impermissible information** in consumer reports.
- Consent Order requires company to:
  - Pay **\$2.5M in penalties;**
  - Pay **\$10.5M** in remediation to consumers; and
  - **Revise compliance procedures** and **develop audit program** to test accuracy of credit reports.



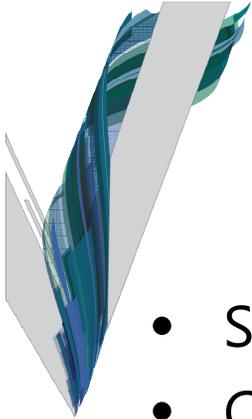
## Encore Capital Group, Inc.

- Settlement with CFPB announced September 2015.
- Alleged the debt buyer/collector, among other things, disregarded or failed to adequately investigate consumers' disputes.
- Consent Order requires company to:
  - Pay **\$10M** in penalties;
  - Pay **\$42M** in consumer remediation;
  - **Cease collections on \$125M** of debt; and
  - Review **account-level documentation** if a consumer, at any time, files a written or verbal dispute.



# Syndicated Office Systems

- Settlement with CFPB announced June 2015.
- CFPB found, among other things, that Syndicated Office Systems failed to respond to more than 13,000 consumer credit report disputes within the 30-day time frame required by law.
- Consent Order requires company to:
  - Pay **\$500K** in penalties;
  - Pay **\$5M** in consumer remediation; and
  - Correct errors on credit reports and establish safeguards.



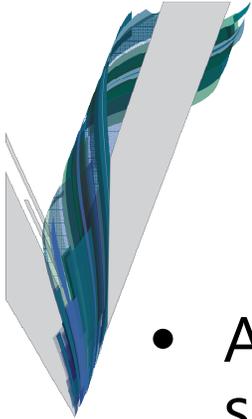
# DriveTime Automotive Group, Inc.

- Settlement with CFPB announced November 2014.
- CFPB alleged that DriveTime, among other things, **provided inaccurate repossession information to credit reporting agencies; failed to properly handle disputes; and failed to implement reasonable procedures to ensure the accuracy of consumers' credit information.**
- The Consent Order requires the company to:
  - Pay **\$8M** in penalties;
  - Cease furnishing information related to the repossession of a consumer's vehicle, unless the company has **confirmed that the information is correct**; and
  - Correct credit reporting information.



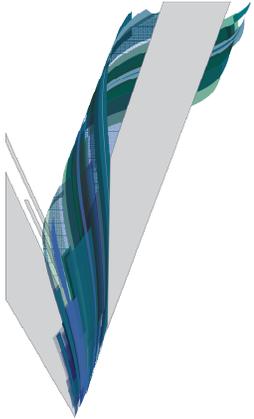
## First Investors Financial Services Group

- Settlement with CFPB announced July 2014.
- CFPB alleged that First Investors Financial Services Group **provided distorted information to credit reporting agencies regarding how its customers were performing on their accounts.**
- The Consent Order requires the company to:
  - Pay **\$2.75M** in penalties; and
  - Correct errors on credit reports and help consumers obtain free copy of credit report.

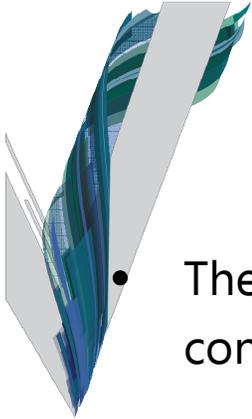


# CFPB Supervisory Highlights

- About four times a year, the CFPB issues a report summarizing its supervisory observations.
- The ***Fall 2015 Supervisory Highlights*** addressed furnishing activities. Specifically, examiners observed furnishers failed to:
  - establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information reported to CRAs;
  - periodically review and update policies and procedures;
  - notify consumers of results of investigations of direct disputes;
  - distinguish FCRA disputes from other communications and monitor and track direct disputes; and
  - properly train employees who oversee furnishing.

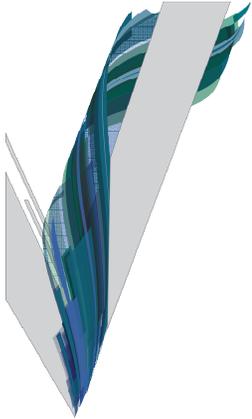


# Key Takeaways



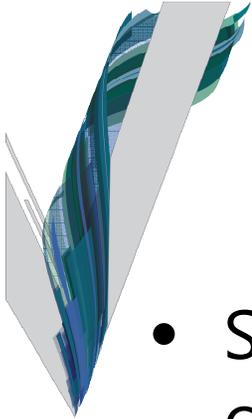
# Key Takeaways

- The Furnisher Rule applies broadly to any entity that reports information about consumers to CRAs.
  - Banks
  - Auto lenders
  - Credit card companies
  - Debt collectors
  - Etc.
- Pursuing violations of the Furnisher Rule is an enforcement priority for the CFPB and FTC.
- Direct and indirect disputes differ in several important respects, including technical legal obligations in dealing with each and the role of technology in the case of indirect disputes.



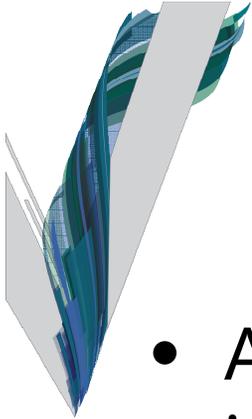
## Key Takeaways

- Regulatory expectations regarding what constitutes a reasonable investigation are evolving to require review of more than account records used to furnish the information in the first place.
- Reporting on delinquent accounts receivables is increasingly complex because of the unique overlap between Furnisher Rule and obligations with FDCPA and UDAAP.



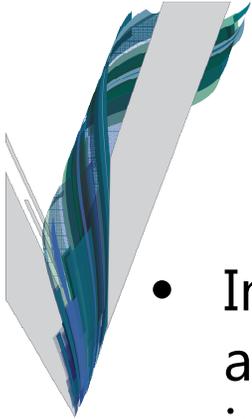
# Key Takeaways

- Starting point for compliance is establishment of a compliance management system (“CMS”). A CMS is how a supervised entity:
  - Establishes its compliance responsibilities;
  - Communicates those responsibilities to employees;
  - Ensures that responsibilities for meeting legal requirements and internal policies are incorporated into business processes;
  - Reviews operations to ensure responsibilities are carried out and legal requirements are met; and
  - Takes corrective action and updates tools, systems, and materials as necessary.



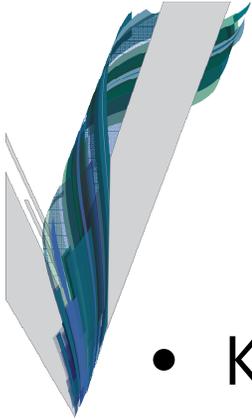
## Key Takeaways

- An effective CMS commonly has four interdependent control components:
  - Board and management oversight;
  - Compliance program;
  - Response to consumer complaints; and
  - Compliance audit.
- The CMS establishes a commitment to compliance and standards of good governance.



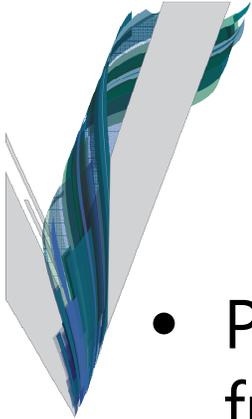
# Key Takeaways

- Implement written policies and procedures that ensure the accuracy of reported information and require reasonable investigations of information that is disputed by consumers.
  - Establish internal controls for the accuracy and integrity of information, such as through random sampling.
  - Make sure information is substantiated by records when furnished.
  - Require updating of furnished information where necessary.
  - Train staff on the investigation process and tailor consumer disclosures accordingly.
  - Monitor furnishing for compliance with applicable laws and regulations, and audit operations for adherence to governing policies and procedures.
  - Monitor and oversee vendors involved in providing financial products and services, including credit reporting systems.



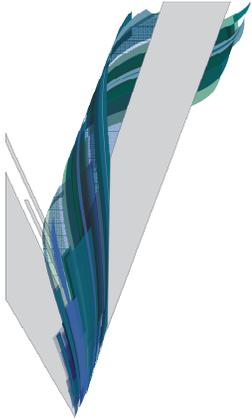
## Key Takeaways

- Keep an eye out for future CFPB bulletins, reports, and rulemakings that may impact furnishers, such as:
  - CFPB’s Announced Notice of Proposed Rulemaking for Debt Collection (pending);
  - Rulemakings for payday, auto title, and other loans;
  - Voluntary disclosures of non-public CFPB Investigations;
  - Announcements of settlements or enforcement actions;
  - Supervisory Highlights; and
  - Bulletins.
- Monitor changes or updates to credit reporting formats.



# Key Takeaways

- Prepare for potential examinations that focus on furnisher issues.
  - The CFPB regularly investigates compliance with the Furnisher Rule when examining regulated entities.
- If you identify violations, consider taking action to remediate prior to regulator involvement.
  - The Bureau has issued a “Responsible Business Conduct” bulletin advising that it will consider as part of an enforcement investigation whether the entity proactively self-policed for potential violations, promptly self-reported, quickly and completely remediated the harm, and cooperated with any Bureau investigation.



# Questions?

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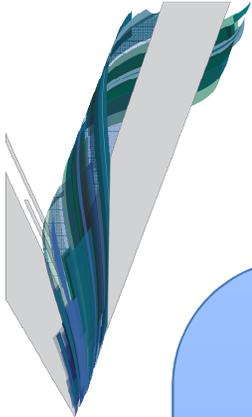
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# Additional Resources

## Upcoming Webinar

**“Consumer Financial  
Protection Bureau 2016  
Outlook”**

**January 12, 2016  
2:00-3:30 pm EST**

**[Sign up now!](#)**

## Venable’s CFPB Task Force

**For an index of articles and  
presentations on related  
topics, see:**

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