

Practice Update

CFPB Issues Compliance Aid Regarding CARES Act Credit Reporting Provisions

June 25, 2020

By [Eric I. Goldberg](#), [William P. Heller](#), and [Thomas J. Kearney](#)

On June 16, the Consumer Financial Protection Bureau (CFPB) issued a compliance guide clarifying the credit reporting protections provided by the Coronavirus Aid, Relief and Economic Security (CARES) Act. Our alerts about other CARES Act guidance and consumer finance provisions are available [here](#).

Section 4021 of the CARES Act amends the Fair Credit Report Act (FCRA) to address coronavirus-related accommodations made by furnishers. New FCRA § 623(a)(1)(F) requires a furnisher making a COVID-19 related accommodation on a consumer's loan account to report the account as current unless the account was delinquent prior to the accommodation.

On April 1, the CFPB issued a policy statement highlighting furnishers' responsibilities under CARES Act section 4021 and informing consumer reporting agencies (CRAs) and furnishers of the CFPB's flexible supervisory and enforcement approach regarding compliance with the FCRA. The CFPB's recent compliance guide seeks to clarify the information in the policy statement by addressing common issues concerning the provisions of Section 4021:

Related People

[Eric I. Goldberg](#)
[William P. Heller](#)
[Thomas J. Kearney](#)

Related Work

[Consumer Financial Services, Data and Technology \(CFS+\) Financial Services](#)

Related Offices

[Fort Lauderdale](#)
[Los Angeles](#)
[Washington, D.C.](#)

Coronavirus Resource Center

[Visit the Resource Center](#)



Policy Statement Overview. The CFPB stated in the Policy Statement that it expects furnishers and CRAs to comply with the credit reporting provisions of the CARES Act and the FCRA's implementing regulation, Regulation V, and to investigate disputes as quickly as possible in accordance with FCRA requirements to the extent possible under the circumstances. For a detailed summary, please review our separate alert on the Policy Statement available [here](#).

Enforcement of Dispute Investigation. The Bureau will provide some flexibility in its supervisory and enforcement approach during the pandemic. However, furnishers and CRAs should make good faith efforts to timely investigate disputes involving a consumer's credit report. The Bureau will evaluate compliance for dispute investigations on an individual basis in light of the unique challenges each CRA or furnisher is facing due to the pandemic.

Definition of Accommodation. An "accommodation" includes any payment assistance or relief, including forbearance, payment deferment, or loan modification, granted voluntarily or by statute to a consumer affected by COVID-19 during the period from January 31, 2020 until 120 days after the termination of the national emergency.

Required Accommodations. The CARES Act requires: (i) forbearance for consumers with a Federally backed mortgage loan and (ii) automatic suspension of principal and interest payments on Federally held student loans through September 30, 2020.

Credit Reporting Obligations Concerning Accommodations. Section 4021 applies if: (i) a furnisher makes an accommodation with respect to payments on a credit obligation or a consumer account and (ii) the consumer makes the payments or is not required to make payments under said accommodation. The CARES Act does not apply to charged-off obligations or accounts.

Furnishers' reporting obligations under Section 4021 include:

- Reporting a qualifying credit obligation or account as current if it was current before an accommodation.
- Not advancing the delinquent status of a loan if the credit obligation or account was delinquent before an accommodation (e.g., if a customer's account was 30 days past due before an accommodation, a furnisher may not report the account as 60 days past due during the accommodation).
- Ensuring credit reports accurately reflect a consumer's account as current under the CARES Act.

When an accommodation ends, furnishers cannot subsequently report a consumer account reported as current under Section 4201 as delinquent based on the time period covered by the accommodation (assuming payments were not required or the consumer satisfied any payment requirements). Similarly, a furnisher cannot later advance a consumer's delinquency maintained under Section 4201 based on the time period covered by the accommodation.

Note also, a standard comment code indicating a consumer account is impacted by a natural/declared disaster or in forbearance does not satisfy the specific reporting obligations provided under the CARES Act. Additionally, a furnisher should not report all its consumer accounts or a group of accounts in a particular product line as in forbearance as such generalized reporting would increase the risk of inaccurate reports and consumer confusion by mislabeling accounts which are not in forbearance.

This information is intended to inform firm clients and friends about legal developments, including

recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.