

# FCRA and FDCPA Recent Developments and Updates

December 18, 2025

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## About Us



**Thomas A. Laser**  
Partner  
Saul Ewing

- Experience handling a variety of matters involving complex commercial disputes, both at the trial and appellate level, including litigating claims for consumer financial services companies.
- Previously served as a judicial law clerk at the Circuit Court of Cook County in Chicago.



**Sanjana Palla**  
Senior Counsel,  
Privacy  
TransUnion

- Part of the US Data Privacy team at TransUnion. Experience advising on complex privacy, incident response, and AI issues.
- Previously worked as a privacy and cybersecurity associate at law firms, handling privacy compliance and incident response matters.

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# Fair Credit Reporting Act

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## CFPB Withdrawal of Data Broker Rule

- Data Brokers = companies that collect, aggregate, sell, resell, license, enable the use of, or otherwise share consumers' information. They gather information about credit, criminal, employment, and rental histories of hundreds of millions of Americans, along with other sensitive information.
- CFPB concerns that "data brokers" had ability to sell Americans' personal and financial information to potentially bad actors
- December 2024, CFPB proposed a new rule to amend Regulation V—the statute that implements the FCRA—to expand regulations directed at "data brokers"
- Goals were to:
  - Address national security and surveillance risks: prevent sensitive information from falling to the wrong hands
  - Deter criminal exploitation
  - Avoid stalking and threats to personal safety

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## CFPB Withdrawal of Data Broker Rule

- Expanded definition of terms “consumer report” and “consumer reporting agency”
  - Would classify data broker as “consumer reporting agency” if
    - they sell consumer credit history information and either
      - (1) know or expect the recipient to use it in connection with a consumer report, or
      - (2) it is information about a consumer’s credit history, credit score, debt payments, or income or financial tier
  - Would consider a “consumer reporting agency” any entity that assembles or evaluates information about consumers, including by even collecting, gathering, or retaining; assessing, verifying, or validating; or contributing to or altering the content of such information
    - Broadens the scope of entities that could be considered a “consumer reporting agency” because they “assemble” or “evaluate” information about a consumer

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## CFPB Withdrawal of Data Broker Rule

- Expanded definition of terms “consumer report” and “consumer reporting agency” (cont.)
  - Would expand definition of “consumer report” to include any communication by a “consumer reporting agency” that includes a personal identifier (*ie*, name, DOB, SSN, etc.)
    - Means that a “consumer reporting agency” seeking to send such a communication could only do so if the entity to receive the communication has a permissible purpose to receive it under the FCRA
  - Would also:
    - Impose more stringent requirement on how de-identified treatment is still subject to all FCRA protections,
    - Require certain disclosures be furnished to consumers before fulfilling a consumer’s request to provide a consumer report to another person or entity, and
    - Limit ability to furnish consumer reports in connection with marketing activities

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## CFPB Withdrawal of Data Broker Rule

- Rule withdrawn on May 14, 2025
- CFPB’s withdrawal notice includes very little explanation for the decision, and merely states that:
  - “The Bureau has determined that legislative rulemaking is not necessary or appropriate at this time to address the subject matter of the [proposed rule]. The Bureau will not take any further action on the [proposed rule].”

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## Removal of Medical Debt from Credit Reports and Credit Decisions



- CFPB found medical debt imposes particular burdens on thousands of households
  - Often a large, unforeseeable, nondiscretionary expense
  - Less reliable indicator of credit repayment than other forms of debt
  - More pivotal, private, and personal than other forms of debt on a credit report

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## Removal of Medical Debt from Credit Reports and Credit Decisions

- CFPB issued final rule (“Final Rule”) on January 7, 2025 amending Regulation V
  - Prohibits creditors from considering medical information in credit eligibility determinations
  - Removes a regulatory exception that had permitted creditors to obtain and use information on medical debts
  - Generally prohibits a consumer reporting agency from furnishing to a creditor a consumer report containing information on medical debt

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## Removal of Medical Debt from Credit Reports and Credit Decisions

- Final Rule challenged in litigation brought by trade associations
- *Cornerstone Credit Union League, et al. v. CFPB*; Case No. 25-CV-16-SDJ, 2025 WL 1920148 (July 11, 2025) – Eastern District of Texas
- Challengers argued:
  - Rule exceeds statutory authority because FCRA—a Congressionally enacted statute—expressly permits consideration of medical debt, and a regulation cannot supersede that statutory authority
  - Rule violates Administrative Procedure Act because it relied on outdated data regarding use of medical debts, and employs a flawed cost-benefit analysis
  - Rule contradicts itself by prohibiting creditor consideration of medical debt while simultaneously requiring consideration of medical debt if it is furnished by the consumer

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## Removal of Medical Debt from Credit Reports and Credit Decisions

- Transfer from Biden to Trump executive administration
- CFPB obtained 90-day stay, from March 17 to June 15, 2025, so CFPB could consider what position to take
- National Consumer Law Center (among other consumer protection organizations) intervened, concerned that the CFPB would no longer fight to uphold the rule under Trump administration
- CFPB eventually changed course and agreed to withdraw the rule
- CFPB and trade associations filed agreed motion for a consent judgment vacating the rule

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## Removal of Medical Debt from Credit Reports and Credit Decisions

- Intervenors objected to the request for consent judgment on the grounds that the medical debt rule was permissible, but the court disagreed
- Court said that the medical debt rule, which is a non-statutory regulation, impermissibly contradicted 15 U.S.C. § 1681b(a) and (g)(1)-(2), which expressly permits credit reporting agencies to receive and use consumer medical information so long as the information is coded and used for an otherwise proper purpose
- Court vacated the rule on July 11, 2025 – no further activity since

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## Consumer Leasing Act Exemption

- The Consumer Leasing Act (“CLA”) mandates certain disclosures be included in consumer leases
- “Consumer lease” = lease for personal property exceeding four months in duration with a total contractual obligation below a certain dollar threshold
- The CLA requires clear lease disclosures on costs and terms, standardized lease advertising, and other disclosures
- Dodd-Frank amended the CLA to require that the dollar threshold setting the minimum dollar amount for leases to be exempt from the CLA be adjusted annually
- Effective January 1, 2025, the exemption threshold increased from \$69,500 to \$71,900

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## VantageScore

- In July 2025, Federal Housing Finance Agency authorized use of credit scoring platform VantageScore 4.0 when lenders issue loans sold to Fannie Mae and Freddie Mac (50% of all mortgage originations)
- Previously, a FICO score was required
- Unlike FICO scores, VantageScores incorporate alternative data such as rent, utility and telecom payment history

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## FICO (Fair Isaac Co.) Scores

- Resellers and mortgage underwriters used to buy FICO scores through any of Equifax, Transunion, or Experian to provide lenders with a combined report drawing information from all three reporting companies
- FICO recently made changes that will allow purchase direct from FICO, rather than going through the credit reporting companies
- Industry insiders believe this change is in response to pressure from the White House and housing regulators to reduce the cost of obtaining credit scores

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## Federal Preemption of State Credit Reporting Laws

- Original FCRA preempted state law *“to the extent that those laws are inconsistent with any provision of”* the FCRA
- In 1996, Congress added the “strong preemption provision,” which amended the FCRA such that it preempted any State regulation related to specifically enumerated subjects already regulated by the FCRA



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## Federal Preemption of State Credit Reporting Laws

- Relevant statute, 15 U.S.C. 1681t(b):
  - “(b) General Exceptions: No requirement or prohibition may be imposed under the laws of any State-- . . . (1) with respect to any subject matter regulated under—”
  - 11 subparagraphs follow
  - Each includes a cited FCRA provision, followed by the phrase “relating to,” and then a description of the 11 preempted subjects
  - Preempted subjects include prescreening of consumer reports, the time by which a consumer reporting agency must take action in response to a dispute, the duties of those who take adverse action against a consumer, the duties of those who use consumer reports, among other subjects

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## Federal Preemption of State Credit Reporting Laws

- July 2022 CFPB interpretive rule
  - Brought forth on July 11, 2022 during the Biden administration, and by former CFPB director Rohit Chopra
  - Analyzed the preemptive provision and characterized it as a “narrow sweep” that left considerable room for states to regulate these subjects
  - According to the 2022 interpretive rule, unless a statute or regulation specifically concerned a requirement or obligation addressed in the specifically enumerated FCRA provision, it was not preempted

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## Federal Preemption of State Credit Reporting Laws

- May 2025 withdrawal
  - CFPB withdrew the July 2022 interpretive rule—among other guidance documents—by guidance posted May 12, 2025
  - In doing so, CFPB said it was “committed to issuing guidance only where that guidance is necessary and would reduce compliance burdens rather than increase them.”



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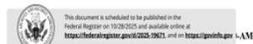
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## Federal Preemption of State Credit Reporting Laws

- October 2025 withdrawal confirmation and clarification
  - On October 28, 2025, CFPB issued interpretive rule confirming withdrawal of the July 2022 interpretive rule
  - CFPB says that it has reviewed the July 2022 rule through the lens of its commitment to reducing compliance burdens and now confirms withdrawal of the rule



CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1022

Fair Credit Reporting Act; Preemption of State Laws

AGENCY: Consumer Financial Protection Bureau.

ACTION: Interpretive rule.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau) is issuing this interpretive rule to clarify that the Fair Credit Reporting Act (FCRA) generally preempts State laws that touch on broad areas of credit reporting, consistent with Congress's intent to create national standards for the credit reporting system. This interpretive rule replaces a July 2022 interpretive rule that the Bureau withdrew in May 2025.

**DATES:** This interpretive rule is applicable on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB\_Accessibility@cfpb.gov.

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## Federal Preemption of State Credit Reporting Laws

- CFPB offered several explanations of their purported rationales for withdrawing:
  - Preemption is not for federal agencies to determine. FCRA does not authorize the CFPB to propose legally binding views on preemption. Rather, courts are the ultimate arbiters of statutory meaning, so anyone seeking clarification should litigate the issue in court.



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## Federal Preemption of State Credit Reporting Laws

- CFPB also found July 2022 interpretation flawed:
  1. Not a narrow sweep to begin with: statutory text uses very broad terms and phrases, saying “[n]o requirement or prohibition” may be imposed by a State “with respect to any subject matter regulated under” a specified provision of the FCRA, which provision is then followed by the phrase “relating to” and then a description of the subject matter of that provision
  2. Improper interpretation of 1681t: “with respect to” is broad rather than narrow in its preemptive effect. Also, July 2022 rule’s interpretation would essentially read the “relating to” clause out of effect in violation of the statutory interpretation principle that requires all words used to be ascribed some meaning and intention
  3. Legislative history confirms broad sweep: since FCRA’s enactment in 1970, Congress has consistently expanded the scope of its preemption and to thereby avoid a patchwork of differing state laws

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## Federal Preemption of State Credit Reporting Laws

- CFPB also found July 2022 interpretation flawed (cont.):
- 4. Uniformity: FCRA and consumer lending market intended to create uniformity; July 2022 rule interpretation undermines that uniformity
- 5. Artificial distinctions: July 2022 rule draws an artificial distinction between the length of time issue and the content issue
  - Example: Following this interpretation would disallow states to regulate how long a given item could remain on a credit report, but allow them to regulate what categories of information can be included in the credit report to begin with. October 2025 interpretation describes this as illogical

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## Federal Preemption of State Credit Reporting Laws

- Take-Aways and Interpretations
  - Trump administration efforts to do away with rules that it sees as creating unnecessary obstacles to businesses and increasing their compliance costs
  - In response to these initiatives and the general pause that the administration has implemented at the CFPB, many states have taken consumer finance regulation matters into their own hands
  - This new interpretation appears to be an effort to curb states' abilities to do so
  - Interpretation ties states' hands and prevents them from doing anything further to regulate credit reporting

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## Homebuyers Privacy Protection Act

- Prohibits credit reporting agencies from furnishing trigger leads,
- Trigger leads = when a prospective homebuyer applies for a mortgage, which triggers the sale of their financial information from their application to other lenders → homebuyer then starts getting ads from other lenders
- New law prohibits a credit reporting agency from furnishing trigger leads unless authorized by the consumer
- Amendment to the FCRA to limit a credit reporting agency's ability to sell trigger leads in connection with a mortgage transaction

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## Homebuyers Privacy Protection Act

(B) LIMITATION.—If a person requests a consumer report from a consumer reporting agency in connection with a credit transaction involving a residential mortgage loan, that agency may not, based in whole or in part on that request, furnish a consumer report to another person under this subsection unless—

- (i) the transaction consists of a firm offer of credit or insurance; and
- (ii) that other person—
  - (I) has submitted documentation to that agency certifying that such other person has, pursuant to paragraph (1)(A), the authorization of the consumer to whom the consumer report relates; or
  - (II)(aa) has originated a current residential mortgage loan of the consumer to whom the consumer report relates;
  - (bb) is the servicer of a current residential mortgage loan of the consumer to whom the consumer report relates; or
  - (cc)(AA) is an insured depository institution or credit union; and (BB) holds a current account for the consumer to whom the consumer report relates.

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# Fair Debt Collection Practices Act

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## Non-Reissuance of Medical Debt Collection Advisory Opinion

- CFPB issued Advisory Opinion in 2024 to “remind debt collectors of their obligations to comply with the Fair Debt Collection Practices Act [FDCPA] and Regulation F’s prohibition on false, deceptive, or misleading representations or means in connection with the collection of any medical debt and unfair or unconscionable means to collect or attempt to collect any medical debt.”
- Advisory Opinion challenged in District of Columbia (Case Nos. 24-cv-03118 and 24-cv-03149) by ACA International and Collection Bureau Services, Inc., who argued the Advisory Opinion was issued without proper basis or public input, and that the language of the FDCPA and Consumer Financial Protection Act did not allow the CFPB to issue the Advisory Opinion on this topic
- July 14, 2025: CFPB filed status report in the litigation stating that it would **not reissue** the Advisory Opinion

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## ***Six v. IQ Data* – Circuit Split re: FDCPA Article III Standing**

- IQ acquired Six's debt for his failure to pay a residential lease
- When Six learned of the debt, he sent a letter to dispute it and request documentation about the debt
- On the same day, Six's attorney sent IQ a letter advising of his engagement and telling IQ to conduct all communication to Six through counsel

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## ***Six v. IQ Data* – Circuit Split re: FDCPA Article III Standing**

- IQ got both letters, but processed Six's letter before the attorney's, which resulted in IQ sending Six—rather than his attorney—a letter confirming the debt and providing the documentation he requested
- Six got the letter and sued for violation of Section 1692c(a)(2), which prohibits debt collectors from communicating directly with an individual they know is represented by counsel

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## ***Six v. IQ Data* – Circuit Split re: FDCPA Article III Standing**

- The district court entered summary judgment for IQ, finding the one letter did not create the “injury in fact” needed to confer Article III standing



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## ***Six v. IQ Data* – Circuit Split re: FDCPA Article III Standing**

- According to the 9<sup>th</sup> Circuit, when Congress enacted the FDCPA, it recognized that “[a]busive debt collection practices contribute to ... invasions of individual privacy[,]”
- Sending a letter to someone represented by an attorney in violation of Section 1692c(a)(2) is akin to intrusion upon seclusion
- Six’s receipt of the letter was the type of “injury in fact” Congress meant to prevent
- Article III standing upheld

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## ***Six v. IQ Data* – Circuit Split re: FDCPA Article III Standing**

- The 9<sup>th</sup> Circuit’s decision arguably creates circuit split with 7<sup>th</sup> Circuit’s April 2023 decision in *Pucillo v. National Credit Systems, Inc.*, 66 F.4th 634 (7<sup>th</sup> Cir. 2023):
  - In *Pucillo*, a debtor sued a debt collector for sending him two letters regarding a debt that had been discharged in bankruptcy
  - The 7<sup>th</sup> Circuit held these letters were “too far afield” from the traditional tort of intrusion on seclusion
  - 7<sup>th</sup> Circuit explained reasoning, drawing a line between unactionable letters and actionable text messages

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## ***Six v. IQ Data* – Circuit Split re: FDCPA Article III Standing**

- 9<sup>th</sup> Circuit disagreed with 7<sup>th</sup> Circuit’s reasoning, finding that under 7<sup>th</sup> Circuit’s approach, debt collector could send hundreds of letters to consumer’s mailbox without violating FDCPA’s no-contact provisions, and that could not have been Congress’s intent
- IQ petitioned for writ of cert. to the US Supreme Court, but Supreme Court denied cert. on October 6, 2025

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## California Rosenthal Act Expansion to Cover Limited Commercial Debts

- Collection law traditionally geared toward regulating the collection of *consumer* debts
- California's Rosenthal Fair Debt Collection Practices Act recently expanded to regulate the collection some of *commercial debts*



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## California Rosenthal Act Expansion to Cover Limited Commercial Debts

- Commercial debts of \$500,000 or less
- Debt tied to a "commercial credit transaction," where an individual, but not a company, borrows money for a commercial purpose (still applies to personal guarantors of company debts)



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## California Rosenthal Act Expansion to Cover Limited Commercial Debts

- Does not apply to “trade credit”
  - “Trade credit” = Credit extended by someone whose primary business is providing goods, materials, equipment, or services; and credit extended in connection with furnishing those goods or services (unless structured as “lease financing” under the Financial Code)
  - Law applies to a small business loan but not to a deferred payment arrangement
  - Trade credit exemption passed on October 1, 2025 and will go into effect January 1, 2026

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## California Rosenthal Act Expansion to Cover Limited Commercial Debts

- Prohibits:
  - Threats to take unlawful action (imprisonment, physical violence, etc.),
  - Harassing behavior (obscene language, repeated phone calls, etc.),
  - Seeking to collect amounts not authorized by law (ex: attorneys’ fees where statute does not allow),
  - Communicating with third parties about the debtor’s debt, and
  - Falsely representing creditor’s status as an attorney

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## California Rosenthal Act Expansion to Cover Limited Commercial Debts

- Requirements and additional prohibitions
  - Creditor must provide debtor certain notices with first communication (debt balance, proof of debt assignment, etc.)
  - Limits on venue where suit to collect can be brought
  - Criminalization of communication(s) intended to give appearance that it is coming from government agency
  - Creditor must cease collection efforts if debtor advises that debt is result of identity theft or was fraudulently obtained

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## FCRA and FDCPA Themes

- Data privacy and protection
- Access to credit
- Market innovation in credit scoring
- Regulator tug-of-war: Deregulation at federal level, regulation at state level in response, and federal efforts to curb state regulatory abilities
- Voluntary deregulation at CFPB

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## Connect With Our Team!

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