



Defense Wins Championships

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One of the very first lessons I learned when I played football as a kid was that defense wins championships. Sure, offense wins games (and, frankly, puts butts in the seats), but defense wins championships. That may be an old sports cliché, but it was certainly proved true in Super Bowl 50. Denver's defense stymied "dab"-less Cam Newton the entire game. And it worked, with Denver's offense and "The Sheriff" doing just enough to win the game. The game showed the importance of having a great defensive philosophy and game plan. But defense is important beyond sports. A great defense can be vitally important in dealing with the Consumer Financial Protection Bureau.

The CFPB recently issued Compliance Bulletin 2016-01, reminding persons who furnish information to consumer reporting agencies of their obligation under Regulation V, which implements the Fair Credit Reporting Act, to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information furnished to CRAs. The bulletin was issued in conjunction with a CFPB field hearing on access to checking accounts and the announcement that letters were sent to a number of top banks encouraging them to offer "lower risk" checking accounts to consumers who may have had a prior negative history with handling accounts, such as overdrafts. In the bulletin, the CFPB noted its focus on the accuracy of information in consumer reports about banking history, past NSF activity, unpaid or outstanding bounced checks, overdrafts, involuntary account closures, and fraud. Although the bulletin was issued in conjunction with the field hearing on access to checking accounts, the fact that the CFPB took the time to prepare and release another bulletin on furnisher responsibilities demonstrates that the CFPB still has credit reporting and furnishers in its sights.

The CFPB notes in the new bulletin that its supervisory experience suggests that some financial institutions are not compliant with their obligations with regard to furnishing information to specialty CRAs. As you may know, under the Furnisher Rule, which has been in effect for almost six years, furnishers are required to establish and implement reasonable *written* policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to CRAs. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of each furnisher's activities. In creating the policies and procedures, furnishers must consider the factors listed in the *Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies* and incorporate those guidelines that are appropriate. Additionally, each furnisher must periodically review and update its policies and procedures to ensure their continued effectiveness.

The bulletin emphasizes that a furnisher's obligation to have policies and procedures that satisfy Regulation V's requirement extends to information furnished to *all* types of CRAs, including the furnishing of deposit account information to specialty CRAs. The type, frequency, and nature of the information furnished to CRAs can vary, and there may be significant differences in the reporting formats and codes used. A furnisher's obligation to have reasonable written policies and procedures applies to all types of information related to consumers furnished to each of the CRAs. The bulletin ends with a warning that the CFPB will continue to monitor furnishers' compliance with the Regulation V requirement to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of all furnished information. If the CFPB finds that a furnisher violated Regulation V and the Furnisher Rule, it will take supervisory and enforcement actions against the violator, which can include civil monetary penalties and payments to affected consumers. We've already seen the CFPB attack an automotive finance company, a buy-here, pay-here dealer and its related finance company, and a few others for alleged violations of Regulation V and their furnisher responsibilities.

If you're a furnisher and you haven't yet developed reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that you furnish, simply grabbing a policy off the shelf or buying a template from a vendor is not sufficient to meet the CFPB's compliance expectations. You must take the policy and tailor it to be appropriate to the nature, size, complexity, and scope of each of your activities. In addition, you'll need to consider the factors in the *Interagency Guidelines* and incorporate those guidelines that are appropriate to your business, operations, and actions. Finally, you may have the perfect written policy, but you can't just file it away. It must be periodically reviewed and updated to make sure it follows your practices and is still effective. An effective written furnisher policy is a great defense against the CFPB's attacks on those who furnish information to CRAs. After all, defense wins championships.

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