

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Rescission of Statement of Policy on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Rescission of statement of policy.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is rescinding the Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act.

DATES: This rescission is applicable on April 1, 2021.

FOR FURTHER INFORMATION CONTACT: Mehul Madia, Division of Supervision, Enforcement, and Fair Lending, at (202) 435-7104. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

On April 1, 2020, the Bureau issued a statement entitled, “Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act” (Statement), regarding the Bureau’s exercise of its supervisory and enforcement discretion in enforcing the Fair Credit Reporting Act (FCRA) and Regulation V.¹ Specifically, the statement highlights furnishers’ responsibilities under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and informs consumer reporting agencies and furnishers of the Bureau’s flexible supervisory and enforcement approach during the COVID-19 pandemic

¹ https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

regarding compliance with FCRA and Regulation V. As part of that flexible approach, the Bureau also stated that it intended to consider the circumstances that entities face as a result of the pandemic and their good faith efforts to comply with their statutory and regulatory obligations.

The Bureau hereby rescinds, as of April 1, 2021, the portion of the Statement that sets forth the Bureau’s flexible supervisory and enforcement approach during the pandemic regarding compliance with FCRA and Regulation V, and announces its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and FCRA and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau. This rescission does not apply to the portion of the Statement that is under the heading “Furnishing Consumer Information Impacted by COVID-19.”

The Statement expressed the Bureau’s recognition of the impact of the COVID-19 pandemic on the operations of many consumer reporting agencies and furnishers, including staffing and related resource challenges confronting consumer reporting agencies and furnishers and their counsel. The Bureau has concluded that since release of this statement such circumstances have changed. Since March 2020 and over the course of the COVID-19 pandemic, consumer reporting agencies and furnishers, have adjusted operations by, for example, shifting to a remote mode of operation. As States and other jurisdictions have rescinded and modified stay-at-home orders over the course of the pandemic, the Bureau has learned that many entities have resumed some level of in-person operations and, in many instances combined with more robust remote capabilities, have demonstrated improved business continuity.

With regard to the temporary flexibility announced in the Statement, the Bureau believes

that consumer reporting agencies and furnishers have had sufficient time to adapt to the pandemic and should be able to regularly meet their obligations under FCRA and Regulation V. In addition, because the Statement did not create binding legal obligations on the Bureau or create or confer any substantive rights on external parties, it did not create any reasonable reliance interests for industry participants.

The Bureau continues to encourage institutions to meet the financial services needs of their customers affected by the COVID-19 pandemic.² The COVID-19 pandemic is a national emergency that threatens the financial well-being of millions of Americans, with particularly dire effects to communities of color. As the pandemic continues to unfold, compliance with consumer law has never been more important. We thus expect that institutions will adhere to consumer protection requirements, in their interactions with consumers. The Bureau's statutory purposes include "ensuring . . . that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. 5511(a). The information from consumer reports is used to make many kinds of important decisions, including whether a consumer can borrow money or how much he or she will pay in interest to finance a home, a car, or a higher education. Consumer reporting information is also commonly used for other purposes too, beyond credit, such as to determine if consumers can rent housing or obtain insurance and, if so, at what price. In short, accurate consumer reporting has a profound influence on the lives of consumers and whether they will be able to take advantage of certain opportunities. Declining to cite conduct that is a violation of FCRA, and Regulation V based on the articulated principles in the

² See, e.g., [Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus](#) (Revised) (April 7, 2020); [Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act](#) (April 3, 2020); [Joint Press Release: Agencies provide additional information to encourage financial institutions to work with borrowers affected by COVID-19](#) (March 22, 2020); [Joint Press Release: Agencies encourage financial institutions to meet financial needs of customers and members affected by coronavirus](#) (March 9, 2020).

Statement may skew the consumer financial marketplace, to the detriment of market participants who do not act in violation. To fulfill its statutory mandate, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to the prevention of harm to consumers from unlawful acts and practices.

It is therefore more important than ever that institutions adhere to consumer protection and consumer reporting requirements and that the Bureau use its supervisory and enforcement tools to the full extent and with the full flexibility afforded by Congress. Accordingly, the Bureau hereby rescinds as of April 1, 2021 the portion of the Statement that sets forth the Bureau's flexible supervisory and enforcement approach during the pandemic regarding compliance with FCRA and Regulation V.³ Instead, in its discretion, the Bureau intends to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau.

Regulatory Requirements

The Statement constituted a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It was intended to provide information regarding the Bureau's general plans to exercise its supervisory and enforcement discretion and did not impose any legal requirements on external parties, nor did it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. This rescission likewise is a general statement of policy exempt from the notice and comment rulemaking requirements of the APA. It is intended to

³ This rescission does not apply to the portion of the Statement that is under the heading "Furnishing Consumer Information Impacted by COVID-19." The Bureau does not intend to cite in an examination or initiate an enforcement action against any entity that did not comply with the FCRA and Regulation V requirements as described in the Statement between April 1, 2020, and March 31, 2021.

provide information regarding the Bureau’s general plans to exercise its supervision and enforcement discretion and does not impose any legal requirements on external parties or create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceedings. No notice of proposed rulemaking was originally required in issuing the Statement and it is not required in issuing this rescission. The Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis for this rescission. The Bureau has also determined that the rescission of the Statement does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

Dated: March 29, 2021.

/s/ David Uejio

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.