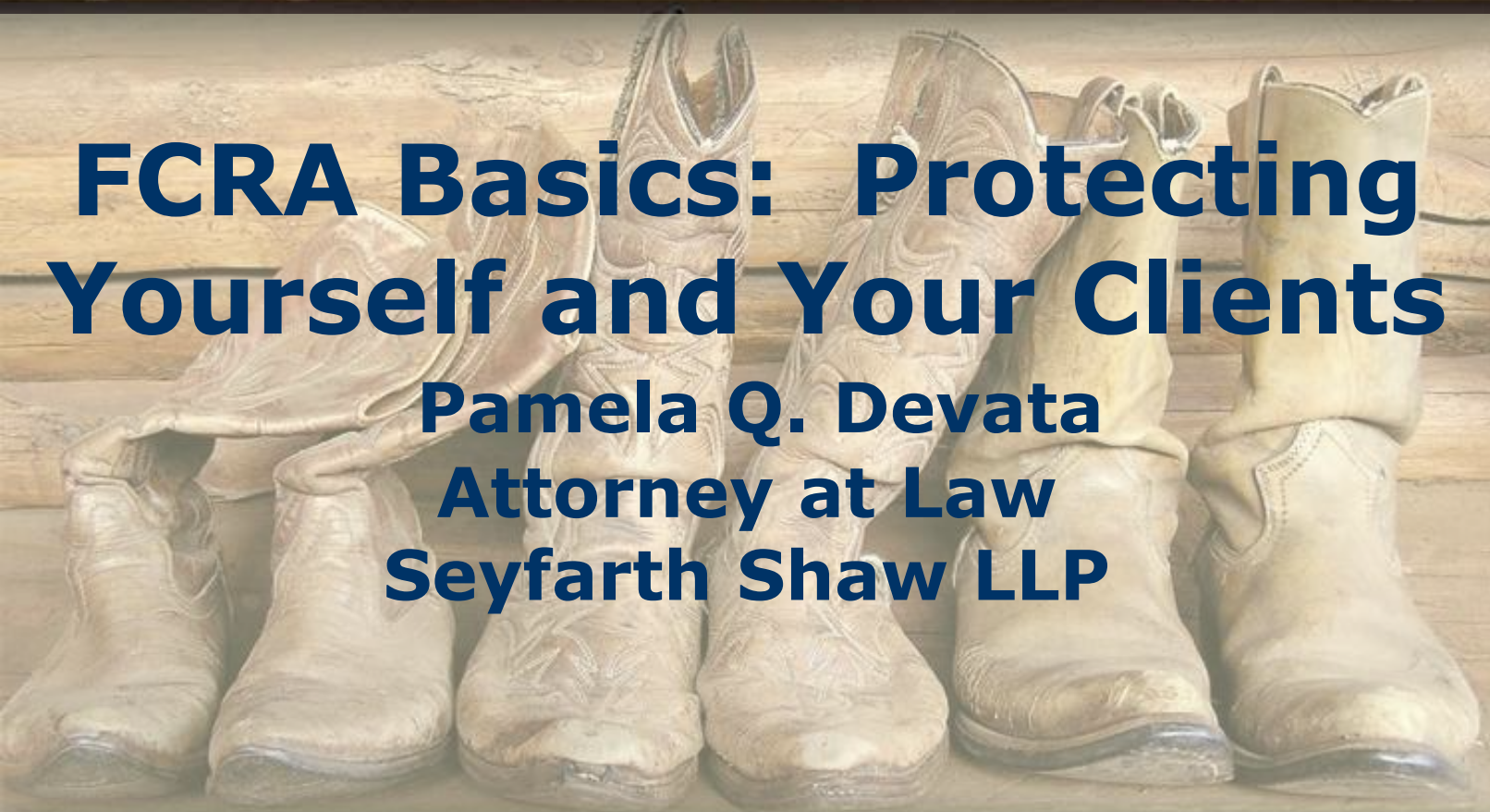


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FCRA Basics: Protecting Yourself and Your Clients

**Pamela Q. Devata
Attorney at Law
Seyfarth Shaw LLP**



**POSITION YOURSELF
TAKE ADVANTAGE OF A CHANGING MARKET**

Introduction

- **The Fair Credit Reporting Act (FCRA) is designed to regulate the use of consumer report information and other background information received about individuals from consumer reporting agencies (CRAs).**
- **The FCRA also puts in place procedures to guarantee that the background information reported is as accurate as possible. As applied in the employment context, the FCRA regulates the way that background checks are performed on job applicants and/or current employees.**

Introduction (con't)

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- **The entities that supply the information – CRAs – are the focal point of most of those transactions, and there are more sections in the Act that relate to CRAs than any other type of entity.**

Introduction (con't)

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- **The Act defines a CRA as any person who:**
 - for monetary fees, dues, or on a cooperative nonprofit basis (**Money**)
 - **regularly engages** in whole or in part in the practice of
 - **assembling or evaluating** consumer credit information or other information on consumers for the purpose of furnishing **consumer reports** to third parties.

Introduction (con't)

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- **The Act defines two types of reports compiled by CRAs into “consumer reports” or “investigative consumer reports.”**
 - Consumer reports are written, oral or other communications of a consumer reporting agency which bear upon a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which are used (or expected to be used) as a factor in establishing eligibility for employment purposes or for obtaining credit or a loan. These reports include items such as credit history, driving record, criminal record, etc.
 - Investigative consumer reports include information on a consumer’s character, general reputation, personal characteristics or mode of living obtained through personal interviews with neighbors, friends or associates of the consumer or acquaintances of the consumer. The most common type of investigative consumer reports are education or employment reference checks.

Background

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- **The FCRA applies to a number of different types of entities (called “persons” in the Act). In addition to CRAs, these include:**
 - furnishers of information;
 - end-users;
 - resellers; and,
 - individuals who are the subject of the consumer report, namely, consumers.

A. Furnishers of Information

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- **Report information about consumers to CRAs are considered “furnishers” of information under the FCRA.**
- **Furnishers:**
 - Provide information regularly and in the course of business (such as a bank) or only occasionally (such as a landlord who confirms that a tenant paid his or her rent on time).
 - Have a duty to avoid providing information they know is inaccurate.
 - Who provide information regularly in the course of their business also have the duty to correct incomplete or inaccurate information when they become aware of the inaccuracy, and must also inform any CRA using the information of the inaccuracy.
 - If a consumer disputes the accuracy of certain information and adds a statement to his or her report, furnishers must inform the CRA that the information is in dispute when providing it.

B. End-users

- **Individuals or entities that buy consumer reports to use for business or employment purposes.**
 - For example, a department store that buys credit reports on customers who apply for store credit cards is an end-user, as is a company that orders background checks about job applicants.

C. Resellers

- **Obtain consumer reports from other sources and pass background information on to end-users (or other resellers).**
- **Reseller's activities set it apart from the general definition of a CRA.**
- **May assemble and merge information from the databases of one or more CRAs, but they cannot maintain their own databases of consumer credit information from which new consumer reports may be produced.**

CRA'S RESPONSIBILITIES UNDER THE ACT

A. Summary

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- **Compliance procedures;**
- **Disclosures to end-users and consumers;**
and,
- **Dispute resolution.**

B. Compliance Procedures – 15 U.S.C. § 1681e

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- **CRAs must maintain reasonable procedures designed to avoid the inclusion of impermissible information in consumer reports and the furnishing of consumer reports for impermissible purposes.**
- **“Reasonable procedures” include having the end-user:**
 - identify itself;
 - certify the purposes for which the information is sought; and,
 - certify that the information will be used for no other purpose.

B. Compliance Procedures – 15 U.S.C. § 1681e

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- ❑ **No consumer reports may issue to end-users if the CRA has reasonable grounds for believing it will be used other than for a permissible purpose.**
- ❑ **There is no definition of what constitutes “maximum possible accuracy,” as defined in the regulations.**
- ❑ **CRAs must provide persons who regularly and in the ordinary course of business furnish information with a notice of their responsibilities under the Act.**
- ❑ **CRAs must provide end-users to whom it provides a report notice of their responsibilities under the Act. These notices have been prepared by the FTC and are available on the FTC’s website.**

C. Reporting Public Record Information

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- CRAs have even more stringent requirements when dealing with public records. They must maintain strict procedures to ensure the information is up to date (or let the consumer know they are using public record information).
- Records will be considered “up to date” if the consumer report indicates the current status of the public record at the time the report is made.
- Regulations provide that “a [CRA] must also adopt reasonable procedures to eliminate systematic errors that it knows about, or should reasonably be aware of, resulting from procedures followed by its sources of information.”*

*16 C.F.R. § 600, App. (2005).

D. Disclosures to Consumers – 15 U.S.C. § 1681g

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- **Upon request, a CRA must “clearly and accurately” disclose to the consumer:**
 - All information in the consumer’s file at the time of the request, other than credit or risk scores or predictors and the first five (5) digits of the consumer’s social security number (or other identification number) shall be truncated in the disclosure.
 - The sources of the information, other than those acquired for an investigative consumer report. The latter need not be disclosed until discovery in a lawsuit (unless regulated by state law).
 - The identity of each person (including end-users) that procured a consumer report in the last year (2 years for employment purposes) – including that person’s full (trade) name and, upon request of the consumer, the address and telephone number of the person.

D. Disclosures to Consumers (con't)

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- The dates, original payees, and amounts of any checks providing the basis for adverse characterization;
- A record of all inquiries received by the agency during the 1 year period preceding the request in connection with a credit or insurance transaction not initiated by the consumer.
- If the consumer requests a credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

D. Disclosures to Consumers (con't)

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- A copy of the FTC's Summary of Rights and:
 - if the CRA operates nationwide, a toll-free telephone number;
 - a list of all Federal agencies responsible for enforcing any provision of the FCRA, complete with address and any appropriate phone number;
 - a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent) to learn about those rights; and
 - a statement that the CRA is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 1681c.

D. Disclosures to Consumers (con't)

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- **Conditions and Form of Disclosure to Consumers**
 - The disclosures to consumers identified above may only be provided upon the consumer furnishing proper identification, and must be provided in writing unless the consumer specifies that the disclosure may be made by the following means:
 - in person at the CRA's place of business during normal business hours, and on reasonable notice;
 - by telephone, pursuant to written request;
 - by electronic means; or
 - by any other reasonable means.

E. Procedure in Case of Disputed Accuracy – 15 U.S.C. § 1681i

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- **If a consumer disputes the completeness or accuracy of information contained in his or her file, and the consumer notifies the CRA directly (or indirectly through a reseller) of such dispute, within 30 days of receipt of notice of the inaccuracy, the CRA must:**
 - conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate or incomplete – free of charge – , and
 - record the current status of the disputed information, or
 - delete the item from the file.

E. Procedure in Case of Disputed Accuracy – (con't)

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- **The CRA also must establish an address or notification mechanism through which resellers can notify the CRA of consumer disputes.* The 30-day period can be extended by no more than 15 days if the consumer provides information during the 30-day period that is relevant to the investigation, if the CRA otherwise has not already found that the information is inaccurate or incomplete.**
- **Upon notice of a dispute, the CRA has five (5) business days to:**
 - relay all relevant information regarding the dispute to any provider of the information in dispute;
 - promptly relay to the provider of information all relevant information received from the consumer or the reseller thereafter, until the expiration of the 30-day time limit;
 - review and consider all relevant information submitted by the

*15 U.S.C. § 1681i(f).

E. Procedure in Case of Disputed Accuracy (con't)

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- **Termination of reinvestigation**
 - A CRA may terminate a reinvestigation of information in dispute if it reasonably determines that the dispute by the consumer is frivolous or irrelevant. Within five (5) business days of making such a determination, the CRA must notify the consumer of the determination by mail or other authorized means.
 - The notice must state the reasons for the determination including any need information for the CRA to complete reinvestigation by mail.

E. Procedure in Case of Disputed Accuracy (con't)

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□ **Deletion of inaccurate information**

- If, after reinvestigation, any item of information is found to be inaccurate, incomplete or cannot be verified, the CRA must promptly delete that item of information, or modify that item and promptly notify the furnisher of information.
- Deleted information may not be reinserted unless the furnisher of information certifies it is complete and accurate. If such information is reinserted, the CRA must notify the consumer within five (5) business days including:
 - A statement that the disputed information has been reinserted;
 - The name, address and telephone number of any relevant furnisher of information; and
 - A notice that the consumer has a right to add a statement to his or her file disputing the accuracy or completeness of the disputed information.

E. Procedure in Case of Disputed Accuracy (con't)

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- A CRA must maintain reasonable procedures to prevent the reappearance of information deleted pursuant to reinvestigation. CRAs operating on a nationwide basis must implement an automated system through which furnishers of information can report the results of reinvestigations finding incomplete or inaccurate information to other CRAs.
- Upon request, a CRA must provide the consumer with a description of the procedure used to reinvestigate, including the business name, address and telephone number of any relevant furnisher of information within 15 days of receiving the request.

E. Procedure in Case of Disputed Accuracy (con't)

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- **Failure to resolve dispute upon reinvestigation**
 - If reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.
 - The CRA must clearly note that the information at issue is disputed by the consumer, and provide either a copy of the consumer's statement or a clear and accurate codification or summary thereof in subsequent consumer reports.
 - If a dispute is resolved by deleting/correcting the information or by including a statement of the dispute in the consumer's file, the consumer has the right to request that the CRA notify past recipients of the consumer report (in the prior two (2) years for employment purposes.

E. Procedure in Case of Disputed Accuracy (con't)

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- **Written notice to consumer.**
 - A CRA must also provide written notice to the consumer of the results of a reinvestigation by mail or other authorized means within five (5) business days of reinvestigation its completion. The notice must contain:
 - A statement that the reinvestigation is completed;
 - An updated copy of the consumer report;
 - A notice that, upon request, the CRA will provide the consumer with a description of the procedure used to reinvestigate;

E. Procedure in Case of Disputed Accuracy (con't)

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- A notice that the consumer has the right to add a statement to his or her file disputing the accuracy or completeness of the information as discussed above; and
- A notice that the consumer has the right to request that the CRA notify past recipients of his or her consumer report about the dispute, as discussed above.

SPECIAL ISSUES FOR RESELLERS

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- **FACT Act introduced a new definition of “reseller”, including the term CRA in its definition. A reseller is now defined as a CRA that:**
 - Assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for the purpose of furnishing such information to any third party, to the extent of such activities; and,
 - Does not maintain a database of the assembled or merged information from which new consumer reports are produced.*

*15 U.S.C. § 1681a(u).

A. Compliance

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- **A person procuring a consumer report for the purpose of reselling the report must disclose to the CRA originally furnishing the report:**
 - The identity of the end-user of the report; and,
 - The permissible purpose(s) for which the report is being furnished to the end-user.

A. Compliance (con't)

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- **Resellers must establish and comply with reasonable procedures designed to ensure that the report is resold only for a permissible purpose, and must require that each person to whom the report is resold, or that that resells or provides the report to any other person to do the following:**
 - Identify each end-user of the resold report;
 - Certify each purpose for which the report will be used; and,
 - Certify that the report will be used for no other purpose.
- **Resellers also must, before reselling the report, make reasonable efforts to verify the identifications and certifications identified above.**

B. Disputed Accuracy

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- **Resellers are exempted from the general reinvestigation requirements imposed upon CRAs.* If a reseller receives notice of a dispute it must within five (5) business days and free of charge:**
 - ▣ determine whether the reseller's own act or omission caused the information to be incomplete or inaccurate and, if it was caused by the reseller, correct the information in the report or delete it within 20 days; or
 - ▣ if not, convey notice of the dispute with all relevant information to each CRA that provided the information, using an address or a notification mechanism specified by

*15 U.S.C. § 1681n(4).

B. Disputed Accuracy (con't)

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- **If a CRA conducts a reinvestigation pursuant to a notice of dispute received from a reseller, it must:**
 - ▣ provide notice of the results of the reinvestigation, a description of the reinvestigation procedure and/or notice of expedited resolution by deletion (i.e., the notices required under 15 U.S.C. § 1681i(a)(6-8)) to the reseller; and
 - ▣ the reseller then must immediately convey any such notice to the consumer.

FREE FILE DISCLOSURES

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- **When the FACT Act went into effect, it included the requirement that all “nationwide consumer reporting agencies” (NCRAs) and “nationwide specialty consumer reporting agencies” (NSCRAs) provide – upon request from a consumer – one free file disclosure to that consumer every twelve-months.**
- **A file disclosure includes “[a]ll information in the consumer’s file at the time of the request,” 15 U.S.C. 1681g(a), which would include all consumer reports.**

FREE FILE DISCLOSURES

(con't)

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- **NCRAs are required to create their own “streamlined process” for accepting and processing requests for annual file disclosures.**
- **At a minimum, this process must include:**
 - establishing a toll-free telephone number for accepting such requests, and
 - clearly and conspicuously notify consumers that they can receive a free annual file disclosure – the toll-free number must also be published in all telephone directories in which the entity publishes a phone number and on any website.

A. What is an NSCRA?

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- **The definition of a “nationwide specialty consumer reporting agency” is, simply put, a CRA that compiles reports relating to:**
 - medical records or payments;
 - residential or tenant history;
 - check writing history;
 - employment history; or
 - insurance claims on a nationwide basis.

B. What does it mean to be “nationwide?”

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- **The FACT Act does not define the term “nationwide” (except to refer to a nationwide CRA).**
- **Nationwide CRA vs. Nationwide Specialty CRA**
- **A staff attorney for the FTC however, offered the following general guidance interpreting these questions:**
 - **A nationwide company does not necessarily operate in all 50 states;**
 - **An entity that operates only in one region (i.e., the Southeast), will likely not be considered “nationwide;”**

B. What does it mean to be “nationwide?” (con’t)

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- Factors include the number of contacts a company has in a specific state, the total percentage of the company’s business that occurs in any given state, number of states in which a CRA practices.
- Entities that do a large portion of their business over the internet should expect that they may be NSCRAs.

STATE LAW NUANCES

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- **17 States Have Own Credit/Consumer Reporting Acts Similar to the FCRA**
(AZ, CA, CO, FL, KS, ME, MD, MA, MN, MT, NV, NH, NJ, NY, TX, VT, WA)
 - Some deal only with credit reports
 - Some deal with all consumer reports

STATE LAW NUANCES (CON'T)

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- **17 States have GREATER LIMITATIONS on what a CRA can report than the FCRA.**
- **Of those, at least 4 states have laws likely preempted by the FCRA (Colorado, Maine, Montana, Texas).**

QUESTIONS???