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# Consumer Credit Law Manual

Publication 1064 Release 26 September 2024

## HIGHLIGHTS

- This release contains updates and revisions to Chapters 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, and 16 to provide the current status of consumer credit law, including recent developments in case, statutory, and regulatory law.
- The new 2024 edition of the Consumer Credit Law Manual Primary Source Pamphlet includes changes to certain relevant consumer regulations and statutes.

**Chapter 5—Credit Discrimination.** *Civil Rights Acts claims.* Some defendants have argued that plaintiffs should not be permitted to circumvent Congress' intent not to proscribe discrimination based on alienage, immigration status, or residency status in the ECOA by bringing a claim under section 1981. Courts, however, have held that the ECOA and Regulation B do not displace a section 1981 action for credit discrimination. *Camacho v. Alliant Credit Union*, 2023 U.S. Dist. LEXIS 4322 (N.D. Cal. Jan. 10, 2023) (denying motion to dismiss plaintiff's section 1981 claim); *Perez v. Wells Fargo, & Co.,* 2017 U.S. Dist. LEXIS 122772 (N.D. Cal. Aug. 3, 2017) (court was not persuaded that Congress, by enacting the ECOA, intended to withdraw from aliens the protections provided by § 1981); *Ayala v. Valley Fist Credit Union*, 2023 U.S. Dist. LEXIS 200783 (E.D. Cal. Nov. 8, 2023) (granting preliminary approval of class action settlement in case where a DACA recipient alleged that defendant violated section 1981 by denying her a personal loan and membership because she could provide only a "work only" Social Security number); *Maystrenko v. Wells Fargo,*

*N.A.,* 2021 U.S. Dist. LEXIS 218093 (N.D. Cal. Nov. 10, 2021) (allowing ECOA and section 1981 claims to go forward where bank denied plaintiffs banking services based on a policy of discriminating against non-citizens); *Garcia v. Harborstone Credit Union*, 2021 U.S. Dist. LEXIS 149267 (W.D. Wash. Aug. 9, 2021) (finding plausible allegations that credit union had a policy of refusing to extend credit to non-citizens in violation of section 1981). See § 5.01[5] and § 5.03[3][d].

*Adverse actions involving existing accounts.* No adverse action where defendants failed to respond to plaintiff's repayment plan application within thirty days since the loan was in default. *Foster v. Reverse Mortg. Solutions., Inc*., 2020 U.S. Dist. LEXIS 137727 (C.D. Cal. May 13, 2020). Although defendant asserted that when a creditor denies a loan modification requested by a delinquent debtor it is not considered an adverse action, ECOA claim could proceed where plaintiff specifically alleged that he was not in default at the time of the request. *Flores v. Wells Fargo Bank, N.A.,* 623 F. Supp. 3d 1142, 1150 (W.D. Wash. 2022). There was no dispute that mortgage loan was in default, so denial of loan modification request was not adverse action. *Peek v. SunTrust Bank, Inc.,* 2020 U.S. Dist. LEXIS 52270 (D.D.C. Mar. 24, 2020). See § 5.07[5][b]. A written warning that an existing account may be terminated or otherwise restricted does not constitute sufficient notice of adverse action under the ECOA. Nia v. Bank of Am., N.A., 603 F. Supp. 3d 894 (S.D. Cal. 2022). See § 5.07[5][e].

*Redlining.* Consent orders announced by the Department of Justice to resolve allegations of redlining include settlements with Park National Bank of Newark, Ohio; ESSA Bank & Trust in Philadelphia; American Bank of Oklahoma; Washington Trust Company in Rhode Island; Ameris Bank in Jacksonville, Florida; Patriot Bank in Memphis; First National Bank of Pennsylvania. See § 5.09[4][e].

*Enforcement at state and local levels.* A county's experts attempted to establish proximate cause through data indicating that lenders engaged in an equity-skimming scheme that involved discriminatory loan origination, servicing, and foreclosure practices. The Seventh Circuit, affirming a summary judgment ruling against the county, accepted the analysis of two trial courts that the number of entities involved and defects in sampling techniques rendered this key causation evidence either inadmissible or unreliable. *County of Cook v. Bank of Am. Corp.,* 78 F. 4th 970 (7th Cir. 2023). See § 5.12[4].

In a ruling on consolidated FHA claims against Wells Fargo by three Georgia counties, a district court held that the complaint sufficiently alleged proximate causation for the counties' injuries related to decreased property tax revenue and increased costs due to processing foreclosures, but not vacant properties and increased costs for municipal services. *Fulton County v. Wells Fargo & Co.*, 2022

U.S. Dist. LEXIS 51259 (N.D. Ga. Mar. 22, 2022). Another Georgia district court ruling on similar claims against Bank of America held the complaint satisfied proximate cause standards for claims related to lost property tax revenue and increased foreclosure costs, but not for increased municipal services. *Cobb County v. Bank of Am. Corp.*, 2020 U.S. Dist. LEXIS 263087 (N.D. Ga. Sept. 18, 2020). See § 5.12[4].

**Chapter 6—The Cost of Credit.** *Preemption.* As applied to banks chartered by the federal government, the National Bank Act (NBA) preempts New York statute that requires mortgage lenders to pay a two percent minimum interest rate on mortgage escrow accounts. *Cantero v. Bank of Am.*, 49 F.4th 121 (2d Cir. 2022). See § 6.02[11].

*Usury.* In the context of a motion to dismiss a usury claim against a shared equity option contract, whether the transaction was subject to the usury statute was question of fact; the substance of the transaction rather than the form is examined to determine whether the transaction should be considered a loan. *Singhal v. Unison Agreement Corp.*, 2023 U.S. Dist. LEXIS 56933 (S.D. Fla. Mar. 31, 2023). See § 6.05[2][c].

*Fraud and misrepresentation.* Common law fraud, fraudulent inducement, and intentional misrepresentation all have same elements. *Capital Inv. Funding, L.L.C. v. Lancaster Group, L.L.C.*, 2023 U.S. Dist. LEXIS 56365 (D.N.J. Mar. 30, 2023). See § 6.09[6].

**Chapter 8—Fair Debt Collection.** *Interstate commerce.* A business based in New York, with a home jurisdiction in Delaware, registered as a business in Minnesota, with a debt collection license in Minnesota that filed a state lawsuit in Texas was using an instrumentality of interstate commerce to collect debt from the plaintiff. Wilde v. UHG I, L.L.C., 2023 U.S. Dist. LEXIS 115080 (W.D.N.Y. July 5, 2023). A debt buyer, through its attorney, used the mail to send collection letters. *Villalba v. Houslanger & Assocs., PLLC,* 2022 U.S. Dist. LEXIS 55076 (E.D.N.Y. Mar. 28, 2022). See § 8.02[1][a].

*Mortgage servicer activities.* Section 1692e claims could proceed against servicer based on servicer's implementation of loan modification with undisclosed balloon payment, threats of foreclosure, and inadequate responses to RESPA notices of error. *Poulton v. Specialized Loan Servicing, L.L.C.*, 2023 U.S. Dist. LEXIS 32361 (N.D. Ohio Feb. 27, 2023). FDCPA claim could proceed against servicer that improperly assessed charges for force-placed insurance and included inflated escrow charges in payment demands. *Cardin v. NewRez L.L.C.*, 637 F. Supp. 3d 581 (N.D. Ill. 2022). Servicer held mortgage payments in suspense or returned them, sent mortgage statements alleging default, charged late fees, and erroneously maintained escrow account. *Oh v. PHH Mortg. Corp.*, 2021 U.S. Dist. LEXIS 210342 (N.D. Ill. Nov. 1, 2021). See § 8.02[1][d].

*Second mortgage debt.* In 2023, the CFPB issued an Advisory Opinion on FDCPA and Regulation F violations associated with collection of time-barred ("zombie") second mortgage debt. The CFPB specifically refers to FDCPA § 1692f(6) as a tool available to combat the abusive collection practices associated with the resurrection of long-dormant second mortgage debts. Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act (Regulation F); Time-Barred Debt, 88 Fed. Reg. 26,475, 26,476 (May 1, 2023). See § 8.02[1][d] and § 8.02[3].

*Law firms.* Law firm did not regularly collect debts where firm handled two debt collection cases in five years and debt collection cases constituted less than 7% of the firm's revenue. *Corditz v. Johnson Legal Offices, L.L.C.*, 2022 U.S. Dist. LEXIS 232230 (N.D. Ga. Sept. 30, 2022). Law firm was not a covered debt collector where collecting debts constituted less than 5% of its practice and it did not collect debts for creditor "as a matter of course." *Dunn v. Adams, Stepner, Woltermann & Dusing, P.L.L.C.*, 2021 U.S. Dist. LEXIS 145882 (E.D. Ky. Aug. 4, 2021). Even though debt collection matters may amount to less than 10% of lead attorney's practice and less than 2% of a firm's practice, a lead attorney testified he had handled "hundreds" of collection matters since he joined the firm over ten years ago and at least three other attorneys at firm handled similar matters. *Ahmed v. West Coast Servicing Inc.*, 541 F. Supp. 3d 563 (E.D. Pa. 2021). See § 8.02[1][f].

*Excluded entities.* Exclusion from the term "debt collector" does not apply to a process server while filing false affidavits that process was served. *Avina v. Patenaude & Felix, A.P.C.*, 2021 U.S. Dist. LEXIS 44048 (S.D. Cal. Mar. 9, 2021), related case, 2021 U.S. Dist. LEXIS 241814 (S.D. Cal. Dec. 17, 2021); *Capela v. Armcon Corp.*, 2021 U.S. Dist. LEXIS 68873 (C.D. Cal. Feb. 19, 2021). The exclusion does not apply to a process server seeking to collect payment on a debt. *Espinosa v. Metcalf*, 2022 U.S. Dist. LEXIS 131262 (D. Mass. July 25, 2022). See § 8.02[3].

*Principles of construction.* Courts apply a "least sophisticated" or "unsophisticated" consumer standard to analyze many of the protections of the FDCPA. In 2022, the Tenth Circuit adopted a "reasonable consumer" standard, noting that this is "comparable in practice" with the "least sophisticated consumer" standard that incorporates elements of reasonableness. *Tavernaro v. Pioneer Credit Recovery, Inc.*, 43 F.4th 1062 (10th Cir. 2022). See § 8.03[1].

*Time-barred suit.* In 2023, the CFPB issued an advisory opinion clarifying that entities that qualify as debt collectors under the FDCPA that bring or threaten to bring state court foreclosure actions on time-barred mortgage debt may violate Regulation F § 1006.26, even if the debt collector did not know that the debt was time-barred. See § 8.03[4][c][iii].

*Regulation F model validation notice.* Some lower courts have held that the consumer stated a claim for a violation of FDCPA § 1692g(a)(1) where the validation notice, which adopted the Regulation F model validation notice, was not dated. *Roger v. GC Servs. L.P.*, 655 F. Supp. 3d 1201 (S.D. Fla. 2023); *Bellini v. Patenaude & Felix APC*, 2023 U.S. Dist. LEXIS 171289 (D. Ariz. Sept. 26, 2023); *Ginsberg v. I.C. Sys., Inc.*, 2023 U.S. Dist. LEXIS 148470 (D.N.J. Aug. 23, 2023). See § 8.03[4][e].

*Pay-to-pay fees.* The CFPB issued an advisory opinion to clarify when a debt collector charging pay-to-pay or convenience fees violates FDCPA § 1692f(1). The opinion also explained that debt collectors may violate section 1692f(1) when using payment processors that charge pay-to-pay fees. 87 Fed. Reg. 39,733 (July 5, 2022). See § 8.03[5][b].

*Actual damages.* Recent cases awarding damages for emotional distress include *Williams v. Hillcrest, Davidson & Assoc*., 2023 U.S. Dist. LEXIS 133101 (W.D. Tex. June 5, 2023); *Towles v. Eastern Account Sys. of Conn., Inc.*, 2023 U.S. Dist. LEXIS 5751 (M.D. Ala. Jan. 12, 2023); *Kohli v. Indep. Recovery Res., Inc.*, 2021 U.S. Dist. LEXIS 260674 (E.D.N.Y. Nov. 29, 2021); *Fultz v. Zirpola*, 2021 U.S. Dist. LEXIS 205590 (N.D. Ohio Oct. 26, 2021). See § 8.04[3].

*Class actions.* While most courts have historically allowed class representatives to receive an "incentive" award in addition to the statutory damages award, some courts have questioned the use of incentive awards in FDCPA cases. *Guyton v. Abrahamsen Gindin, L.L.C.,* 2023 U.S. Dist. LEXIS 10298 (M.D. Fla. Jan. 20, 2023). See § 8.04[6].

*Statute of limitations.* Some courts have found that the CFPB has a three-year statute of limitations under the Consumer Financial Protection Act for its FDCPA claims and that those claims are not subject to the one-year limitations period of the FDCPA. *Consumer Fin. Prot. Bureau v. Manseth*, 2023 U.S. Dist. LEXIS 147335 (W.D.N.Y. Aug. 22, 2023). See § 8.04[10].

*Medical debt.* In 2023, Colorado enacted a law that prohibits the credit reporting of medical debt, or the consideration of medical debt in a consumer's credit score. Connecticut hospitals may not report health care debt to a credit agency for one year after the patient receives their first bill. Delaware passed a medical debt consumer protection law in 2023 that applies to large health care providers as well as debt collectors. Maryland made significant changes to its medical debtor protection laws in 2021 and 2022. New Mexico's Patients' Debt Collection Protection Act applies to both nonprofit and for-profit large health care providers, as well as debt collectors and debt buyers. In 2022, New York enacted a law that prohibits liens on primary residences and wage garnishments. In 2022, Vermont passed law establishing guidelines for financial assistance policies, and adopted consumer pro-

tections applicable to medical debt. See § 8.09[8].

**Chapter 9—Garnishment and Exemptions.** *Health care debt collection.* Connecticut hospitals and affiliated entities may not report health care debt to a credit agency for one year after the patient receives their first bill, initiate an action to foreclose a lien on a patient's primary residence, or seek a court order for an execution to collect or garnish a patient's wages. Conn. Gen. Stat. § 19a-673b(c) (effective Oct. 1, 2022). A new Delaware law provides that a medical creditor or debt collector may not garnish a patient's wages, or garnish or attach a bank account, pension annuity, or retirement fund to collect debts owed for health care services. Del. Code Ann. tit. 6, § 2505J(a)(4) (effective Mar. 11, 2024). Under Kansas law, wage garnishment protection may apply to bank account if it contains only wages. *Stormont-Vail Healthcare, Inc. v. Sievers*, 498 P.3d 1217 (Kan. 2021). See § 9.14.

**Chapter 10—Repossessions.** *Uniform Commercial Code.* In 2022, the Uniform Law Commission adopted a number of UCC amendments, including many to Article 9. The amendments focus on updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), artificial intelligence, and other technological developments. The impact of the 2022 amendments on consumer repossessions should be fairly minor, since such exotic technologies do not typically apply to the relationship of secured party and debtor in consumer transactions. See § 10.01[1][c][i].

*Acceptance of late payments.* Acceptance of two slightly late payments out of a projected thirteen was not enough to establish "a sufficient pattern of acceptance of late payments and forbearance." *Mortellaro v. Caribe Health Ctr., Inc.*, 322 So. 3d 128 (Fla. Ct. Dist. App. 2021). Although regular acceptance of late payments without objection can waive right to declare default, here the late payments were followed by letters from the creditor warning that it had not waived its rights and would declare default if more payments were late. *Siegel v. Galandak*, 2023 IL App (1st) 210837-U. See § 10.03[3][a].

*State rights to cure.* Where a national bank originates a credit transaction, courts are divided as to whether the National Bank Act preempts application of a state right to cure statute to the national bank. *Lako v. Portfolio Recovery Assocs.*, 2021 U.S. Dist. LEXIS 145776 (W.D. Wis. Aug. 4, 2021) (right to cure statute preempted); *Boerner v. LVNV Funding L.L.C.*, 358 F. Supp. 3d 767 (E.D. Wis. 2019) (no preemption). See § 10.03[8][b].

*Replevin.* Court refused lender's request to release bond after it obtained judgment on liability; until plaintiff obtains judgment for more than value of seized collateral, purpose of bond has not been fulfilled. *Ford Motor Credit Co., L.L.C. v.*

*Fincannon Ford, Inc.*, 2021 U.S. Dist. LEXIS 141652 (N.D. Ind. July 29, 2021). Writ of replevin to truck owner whose truck and cargo were being held for garageman's lien, and requiring bond for twice maximum allowable charges for the work. *Crete Carrier Co. v. Sullivan & Sons, Inc.,* 2021 U.S. Dist. LEXIS 122286 (D. Md. June 30, 2021). See § 10.04[5][a].

*Due process considerations.* Repossessor called the police because consumer's teenage daughter was sitting in car with the engine running; the police dragged her out and arrested her for driving without license. *Gray v. City of Chattanooga*, 2021 U.S. Dist. LEXIS 267968 (E.D. Tenn. Aug. 13, 2021). Court declined to dismiss a § 1983 claim alleging Fourth Amendment violation where police entered the attached garage where consumer was sitting after the repossessors reported she had threatened them. Warrantless entry to a home requires either consent or exigent circumstances, neither of which was shown. *Jiles v. Lowery*, 2022 U.S. Dist. LEXIS 182338 (N.D. Ga. Aug. 23, 2022). See § 10.05[3][f].

*Self-help repossession must not breach the peace.* While repossession over the debtor's objection breaches the peace, simply asking the repossessor questions about its right to take the vehicle may not be a sufficient objection. *Steube v. Santander Consumer USA Inc.,* 2020 U.S. Dist. LEXIS 236322 (W.D. Wis. Dec. 16, 2020). See § 10.05[4][c].

*Consumer's right to surplus.* Secured party in a consumer-goods transaction is required to provide a written explanation of the surplus or deficiency; sending a non-compliant explanation of the calculations bars a deficiency judgment. *The Cent. Tr. Bank v. Branch*, 2021 Mo. App. LEXIS 725 (Mo. Ct. App. July 27, 2021). See § 10.09[1][a].

**Chapter 11—Utility Terminations.** *Third party debt.* Ordinance requiring tenants to obtain landlord's written guarantee that landlord would pay any unpaid utility charges for rented property did not violate equal protection. *REO Enters. L.L.C. v. Village of Dorchester*, 947 N.W.2d 480 (Neb. 2020). See § 11.11[3][c][iii].

City's policy and practice of terminating water service to tenants based upon landlord's failure to pay water bill violated rights to equal protection and due process. *Winston v. City of Syracuse*, 887 F.3d 553 (2d Cir. 2018). See § 11.11[3][c][iii].

*Wrongful disconnection.* Unspecified loss of personal and familial property and financial investment "opaquely" claimed as a result of electricity shut-off did not create issue of fact as to whether there was an ascertainable loss resulting from brief power outage; summary judgment for defendant on plaintiff's UDAP claim for damage. *Christiano v. Connecticut Light & Power Co.*, 2022 Conn. Super. LEXIS 2421 (Conn. Super. Ct. Nov. 8, 2022). See § 11.14[1].

*Remedies against landlords and utility providers.* Damages of $28,000 awarded where landlord violated California statute by terminat-

ing tenant's water service and then refused to reconnect it for purpose of ending the tenancy. *In re Tejeda*, 2018 Bankr. LEXIS 2347 (Bankr. C.D. Cal. Aug. 7, 2018). See § 11.16[3].

Tenants constructively evicted where landlord refused to allow electric company to access basement to turn on electricity in tenant's apartment. *Khodeir v. Sayyed*, 348 F. Supp. 3d 330 (S.D.N.Y. 2018). See § 11.16[3].

Landlord violated statute prohibiting self-help during period between issuance and execution of eviction order by telling utility to shut off service because of tenant's arrearage. *Roser v. Hufstedler*, 531 P.3d 615 (N.M. Ct. App. 2023). See § 11.16[4].

Requiring tenants to pay for their own heat and hot water—without a written agreement–in violation of the sanitary code did not breach warranty of habitability. *Youghal, L.L.C. v. Entwistle*, 141 N.E.3d 444 (Mass. 2020). See § 11.16[5].

**Chapter 12—Student Loans and Trade School Abuses.** *Income-based payments.* In July 2023, the Department of Education published new Income-Driven Repayment (IDR) regulations intended to improve and simplify the IDR program for borrowers. The centerpiece of the new regulations are extensive changes to the REPAYE plan—now rebranded as the Saving on a Valuable Education (SAVE) plan—to make it more affordable and the best IDR plan for most borrowers. 88 Fed. Reg. 43,820 (July 10, 2023). See § 12.02A[4][a].

Under REPAYE/SAVE, the aggregate monthly payment amount for all eligible loans in the repayment plan is 10% of discretionary income. Under new rules scheduled to go into effect in July 2024, this monthly payment percentage will be reduced for borrowers with undergraduate loans. See § 12.02A[4][b].

*Public service loan forgiveness.* As part of its effort to address longstanding problems with the PSLF Program, the Department finalized new PSLF rules in November 2022. As of July 1, 2023, the Department will count payments that are made late, in installments, or in a lump sum. The 2022 PSLF rules also create a list of special types of deferments and forbearances that will count towards PSLF. See § 12.02A[5][b].

*Student loan-related collections.* In 2022, the Department published its new borrower defense regulations, which went into effect on July 1, 2023, but they have been subject to legal challenges. Under the rules, when a borrower's application is "materially complete," the Department will put all of the borrower's loans—including those borrowed to attend other schools (including FFEL Program loans in forbearance or stopped collection status while their application is under review). See § 12.04[1].

*Deferments.* The new IDR rules also provide a "hold harmless" or "buy back" option through which borrowers can seek to have other

periods of past deferment count toward IDR. The IDR buy back option will provide borrowers who have periods of deferment or forbearance that are not counted toward forgiveness (other than in-school deferment) after July 1, 2024 up to three years to make back payments based upon their current IDR payment—including a payment of $0—to receive retroactive credit toward forgiveness for those periods. See § 12.05[1][a].

*Closed-school discharge.* New closed-school discharge rules went into effect on July 1, 2023. The Department significantly broadened discharge eligibility in the new regulations, which implement three major changes. The rules have been subject to legal challenges. On August 7, 2023, the Fifth Circuit issued an order granting an opposed emergency motion for injunction pending appeal of "the borrower defense and closed school provisions of a 'Rule' governing student loan discharges." *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 2023 U.S. App. LEXIS 35611 (5th Cir. Aug. 7, 2023). See § 12.06[2][a].

The Department recognizes several bases for a false-certification discharge. Under the Department's new regulations effective July 2023, these bases are retroactively applicable to all FFEL Program loans and Direct Loans issued at least in part on or after January 1, 1986. The Fifth Circuit enjoined the 2022 closed-school discharge rules pending resolution of an appeal. See § 12.06[3][a].

*Student's rights after bankruptcy discharge.* Courts are divided over the question of whether one bankruptcy court has authority to impose civil contempt sanctions against a creditor for violation of discharge orders entered by other bankruptcy courts. This issue arises when a consumer seeks to certify a nationwide class of similarly situated bankruptcy debtors that have been harmed by a large national creditor. For a case collecting decisions approving nationwide class relief for discharge order violations, see *In re Homaidan*, 2023 Bankr. LEXIS 966 (Bankr. E.D.N.Y. Apr. 11, 2023). See § 12.06[4][d].

*Disability discharge.* Rules effective July 1, 2023 eliminated the three-year post-discharge income monitoring requirement and expanded the categories of borrowers who can qualify for a discharge based on their Social Security Disability status. See § 12.06[5].

*Unauthorized loans and payments.* Effective July 1, 2023 borrowers need only state that they did not sign the application, promissory note, or authorization for electronic funds transfer, or did not endorse a loan check for discharges based on unauthorized loans and payments. See § 12.06[7].

*School-related defenses against student loan collection action.* In 2021 the Department announced that it would streamline debt relief determinations for borrowers with approved borrower defense claims. The Department rescinded the formula it

had announced in December 2019 for calculating partial relief, stating that it would instead apply a rebuttable presumption of full relief for borrower defense claims that are granted. See § 12.09[1].

**Chapter 13—Foreclosure Defense.** *Notice requirements.* Sale was invalidated for failure to serve pre-foreclosure notice with a statement that trustee must act impartially. *In re Foreclosure of the Deeds of Trust of Simmons*, 879 S.E.2d 725, 727 (N.C. Ct. App. 2022). See § 13.02[3].

*Workout options.* HUD has suspended FHA-HAMP until October 31, 2024 for the vast majority of FHA borrowers. During this suspension period, servicers should evaluate most borrowers in default under the COVID-19 waterfall. U.S. Dep't of Hous. & Urban Dev., Mortgagee Letter 2023-03 (Feb. 13, 2023). See § 13.03[6][e].

*Mortgage Electronic Registration System.* Because state foreclosure laws are not uniform, MERS has been forced to react to certain state court rulings finding the MERS business model out of sync with state laws. MERS now requires sellers and servicers to use specific deed of trust language when registering newly originated loans in Montana, Oregon, and Washington. See § 13.04[2][a][iv].

*Equitable power to prevent a foreclosure.* Claims were stated against loan owner and servicer for breach of duty of good faith and state UDAP law based on delay in release of insurance proceeds and faulty responses to borrower's communications. *Somarakis v. U.S. Bank, N.A.*, 2022 Wash. App. LEXIS 419 (Wash. Ct. App. Mar. 1, 2022). See § 13.09[2].

*Tax consequences of a foreclosure sale.* The United States Supreme Court held that when a local government takes a home at a property tax foreclosure and keeps the homeowner's equity after the tax debt is paid, it violates the Takings Clause of the Fifth Amendment. *Tyler v. Hennepin County*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023). See § 13.16.

**Chapter 16—Fair Credit Reporting.** *Covered consumer reports.* Plaintiff's personal credit report, which was disclosed to third-party litigant during a dispute concerning plaintiff's business, was not furnished for consumer purpose and therefore was not a consumer report. *SJ Abstract v. Old Republic Nat'l Title Ins. Co.*, 2021 U.S. Dist. LEXIS 197925 (E.D. Pa. Oct. 14, 2021). See § 16.02[2][a].

*Consumer reporting agency.* Plaintiff failed to allege a health insurance company receives compensation for assembling consumer information; the company instead receives premiums for its members for provision of health insurance. *In re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 2021 U.S. Dist. LEXIS 243041 (D.N.J. Dec. 21, 2021). See § 16.02[4].

*"Furnishing" consumer reports.* Because FCRA does not impose liability in passive cases of third-party

theft, plaintiffs could not show willful or negligent violation. *Frechette v. Health Recovery Servs., Inc.,* 2022 U.S. Dist. LEXIS 59386 (S.D. Ohio Mar. 31, 2022). Defendant did not disclose or furnish information in violation of FCRA where information was stolen. *In re Horizon Healthcare Servs. Inc. Data Breach Litig.,* 2021 U.S. Dist. LEXIS 243041 (D.N.J. Dec. 21, 2021). See § 16.02[5].

*Medical debt.* In March 2022, the nationwide CRAs announced significant voluntary changes regarding their treatment of medical debt. These changes are likely the result of CFPB research showing extremely strong evidence that medical debt collection items on credit reports are not an accurate reflection of the creditworthiness of the consumer. See § 16.03[2][h].

*Unreasonable preconditions.* The CFPB has specifically stated that CRAs and furnishers "cannot avoid the obligation to conduct a reasonable investigation of disputes by making consumers satisfy demands other than those specified by statute or regulation." See § 16.03[4][d].

*Permissible purpose.* Debt collector lacked a permissible purpose when it repeatedly pulled a plaintiff's credit reports to coerce her to pay the alleged debt, rather than to gather information for its collection activities. *Pounds v. Tower Loan of Miss., L.L.C.*, 2021 U.S. Dist. LEXIS 233661 (S.D. Ala. Dec. 7, 2021). See § 16.04[2][d][ii].

*Furnisher accuracy and integrity guidelines.* Several lawsuits have alleged that, under FICO's scoring models, multiple charge-offs do harm a credit score more than a single charge-off, but courts have rejected the argument that this makes the reporting inaccurate. *Hayes v. Experian Info. Sols., Inc.*, 2021 U.S. Dist. LEXIS 241347 (D. Or. Dec. 17, 2021). See § 16.05[2][c][i].

*FCRA preemption of state credit reporting statutes.* The CFPB in 2022 issued an interpretive rule clarifying that the FCRA's express preemption provisions have a "narrow and targeted scope," providing support for states to adopt credit reporting legislation protecting consumers. The rule specifically notes that state laws that forbid or restrict CRAs from including information about medical debts, evictions, rental debts, or criminal records generally would not be preempted. Consumer Fin. Prot. Bureau, The Fair Credit Reporting Act's Limited Preemption of State Laws, 87 Fed. Reg. 41,042 (July 11, 2022). See § 16.09[3].

**2024 Consumer Credit Law Manual Primary Source Pamphlet.** The 2024 edition of the Primary Source Pamphlet presents revisions to certain consumer credit regulations and statutes.

**Index.** The index has been comprehensively revised with this release.

**Table of Cases.** The Table of Cases has been comprehensively revised with this release.

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| ☐ | 2023 Consumer Credit Law Primary Source Pamphlet | 2024 Consumer Credit Law Primary Source Pamphlet |

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