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Lessons About Reporting Consumer Credit Data from the CFPB's Recent Santander Consent Order

All banks should note the important guidance covering the consumer reporting data transmissions contained in the recent Consent Order involving Santander Bank. The [Consumer Financial Protection Bureau \(CFPB\) issued a Consent Order](#) (the "Order") on December 22, 2020 regarding consumer credit reporting breakdowns within Santander Consumer USA Inc (the "Bank"). The CFPB determined that violations occurred regarding the Fair Credit Reporting Act (FCRA), Regulation V and the Consumer Financial Protection Act (CFPA). As a consequence, a \$4.75 million civil money penalty has been assessed, along with a remedial action plan to mitigate risks of future violations.

The CFPB's Order discusses the technical details of consumer reporting and focuses helpfully on a few of the approximately 40 data fields submitted by furnishers of credit information to Consumer Reporting Agencies (CRAs). The Order reminds furnishers of credit information about the need to ensure data accuracy at the micro-level.

CRA Error Reports

The Order discusses the CFPB's conclusion that the Bank had received error reports from the CRAs regarding inconsistent data, including inconsistent date of first deficiency and inconsistent balance and payoff information. According to the Order, no or little subsequent action was taken by the Bank to correct the inconsistent data, but that reporting continued in the same manner.

Furnishers of credit information should ensure they monitor their data quality reports from CRAs and whether the information shared is addressed to staff that can effectuate changes as needed. This Order highlights important questions that all financial institutions should be asking. "Does the recipient of the CRA data quality

reports have a responsibility to inform senior management of its receipt?" "Are CRA data quality reports tracked to completion and then monitored going forward for continued compliance?"

Data Integrity

The FCRA prohibits furnishers of credit information from reporting information if the entity knows or has reasonable cause to believe that the information is inaccurate.^[1] The CFPB cites instances within the Order of data, submitted to the CRAs, that was inconsistent within the data itself. For instance, a report on a particular account showing as paid in full yet also showing the account still open or with a balance as an example.

Furnishers of credit information should have a protocol to evaluate submitted credit information for inconsistencies. Simple questions can initiate the process in the form of a reconciliation between characteristics of accounts being managed and characteristics of accounts being reported to the CRAs, such as open, charged off, paid in full, etc.

Policy and Procedures

Regulation V, FCRA's implementing regulations, requires furnishers of credit information to consumer reporting agencies to establish and implement reasonable written policies and procedures regarding the accuracy of the reported information.^[2] These policies and procedures must be appropriate to the nature, size and complexity of the furnisher's activities. The Order concluded the Bank's policies and procedures did not provide the detail necessary to avoid reporting inaccurate information.

As a reminder, all furnishers of credit information are required under Regulation V to consider the guidelines in Appendix E of the Regulation when developing the policies and procedures.^[3] Appendix E of Regulation V contains thirteen components that should be accounted for within the policies and procedures. Of course, each furnisher must evaluate its policies and procedures periodically to ensure their continued effectiveness.^[4] And lastly, documenting for the record that review process, and its findings,

are always best practice.

CRA compliance can sometimes become a forgotten child within your compliance suite of obligations. If you provide CRA information, starting 2021 with the priority of reviewing your policies and procedures would be highly recommended. Consider especially whether CRA error reports, internal audit reports and customer disputes, all cited as red flags in the Order, are addressed effectively within the policies and procedures.

One should never read too much into the early political statements whenever there is a change in the federal government's administration. But if the early comments of Sen. Sherrod Brown (D-Ohio), the incoming head of the Senate Committee on Banking, Housing and Urban Affairs, carry weight, then the upcoming years will see increased focus on consumer finance, credit scoring, CRAs and those who furnish information to the CRAs.

For more information, contact [Nancy Presnell](#), [Bill Repasky](#), or any attorney with Frost Brown Todd's [Consumer Financial Services and Consumer Protection](#) team.

[\[1\]](#) 15 U.S.C. § 1681s-2

[\[2\]](#) 12 C.F.R. § 1022.42(a)

[\[3\]](#) 12 C.F.R. § 1022.42(b)

[\[4\]](#) 12 C.F.R. § 1022.42(c)

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