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News & Insights

CFPB Clarifies Scope of the FCRA Preemption

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By Heidi Wicker, Tom Witherspoon & Marisa Perfetti

On October 28, the Consumer Financial Protection Bureau (CFPB) issued an interpretive rule clarifying that the Fair Credit Reporting Act (FCRA) generally preempts state laws that broadly address consumer credit reporting. This rule replaces the CFPB's July 2022 interpretive rule, which construed FCRA preemption more narrowly, that the CFPB withdrew in May 2025. The CFPB reasons that this rule reflects Congress' intent to create national uniformity in credit reporting standards to avoid a patchwork of state regimes.

HISTORY OF THE FCRA PREEMPTION

The FCRA has preempted state law since Congress enacted the law in 1970, though the scope of its preemption has changed over time. Initially, the FCRA only preempted state laws that were inconsistent with any provision of the FCRA. Then, in 1996, Congress significantly expanded the preemption by adding the FCRA's main preemption provision, 15 U.S.C. § 1681t(b)(1), that identifies several specific areas intended to be governed exclusively by federal law, including, among others:

- Prescreening of consumer reports
- Information contained in consumer reports
- Exchange and use of information to make a solicitation for marketing purposes

The Fair and Accurate Credit Transactions Act of 2003 made the preemption provision under 15 U.S.C. § 1681t(b)(1) permanent to preserve national standards for credit reporting. Subsequently, in the July 2022 interpretive rule, the CFPB asserted a narrow view of preemption by finding that 15 U.S.C. § 1681t(b)(1) does not preempt all state laws relating to content in consumer reports. However, the CFPB withdrew the July 2022 interpretive rule in May 2025 when it withdrew a number of other guidance documents.

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CFPB'S REASONING BEHIND THE RULE

The rule confirms the CFPB's withdrawal of the July 2022 interpretative rule and states that the CFPB's prior interpretation was flawed. In particular, the rule reasons that:

- Use of Plain Text and Broad Language: The FCRA's broad and categorical language means that Congress intended for the preemption provisions to extensively apply everywhere.
- Legislative History Provides Support: The legislative history behind the FCRA's 1996 and 2003 amendments provide further support that Congress intended for the FCRA to create a uniform standard and avoid conflicting state laws.
- State Laws Undermines Function of National Standard: Allowing a state-by-state regulatory structure would create a greater risk that the FCRA's purpose and intended consumer protection benefits would be sacrificed. A national standard helps ensure that consumers can transport their credit histories, and users of credit reports can accurately evaluate all borrowers.
- States Cannot Regulate Certain Categories of Information: 15 U.S.C. § 1681c clearly regulates the presence and timing of certain information on consumer credit reports. States cannot prohibit entire categories (e.g., medical debt, arrest records, rental arrears) from appearing in these reports.

The CFPB reiterated that the rule does not have the force or effect of law and is not legally binding. Businesses should consider the current administration's position on FCRA's preemption of state laws while reviewing their compliance with both federal and state fair credit reporting requirements

For further information regarding the FCRA or the rule, please contact Heidi Wicker, Tom Witherspoon, Marisa Perfetti, or the Stinson contact with whom you regularly work.

CONTACTS

Marisa Perfetti

Heidi S. Wicker

Thomas C. Witherspoon

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