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CFPB Publishes New Interpretive Rule Supporting Broad FCRA Preemption

On October 28, the Consumer Financial Protection Bureau (CFPB) published guidance interpreting the federal Fair Credit Reporting Act (FCRA) to provide for broad preemption of state fair credit reporting laws on the 11 subject matters in 15 U.S.C. § 1681t(b)(1) where the federal FCRA expressly preempts state laws. For other subjects, the FCRA may apply a conflict preemption standard, which does not necessarily eliminate state laws.

The CFPB's new interpretive rule directly counters the July 2022 interpretive rule issued by the CFPB under Director Rohit Chopra. In the July 2022 interpretive rule, the CFPB read the FCRA to have a more limited preemptive scope allowing states to pass fair credit reporting laws on topics such as medical debt, evictions, rental information, and arrest records.

The CFPB withdrew the July 2022 interpretive rule in May 2025 along with an array of other CFPB guidance. Now, the CFPB has chosen to go a step further and publish a new interpretive rule explaining why the 2022 interpretive rule was “manifestly wrong” and a “misguided policy choice.” In the October 28 interpretive rule, the CFPB observes that the use of broad and categorical language in the FCRA's express preemption provision shows that Congress intended Section 1681t(b)(1) to apply expansively and occupy the field of consumer reporting. The CFPB criticizes the case law cited to support the July 2022 interpretive rule commenting that many courts have not read the FCRA express preemption provision as narrowly as the 2022 interpretive rule. The CFPB discusses how the legislative history of the FCRA's preemption provision does not support the July 2022 interpretive rule. Finally, the CFPB explains how detrimental a 50-state patchwork of credit reporting regulations could be to the credit market.

By discussing the flaws of the July 2022 interpretive rule, the CFPB advances a broad reading of the FCRA's express preemption provision. The new interpretive rule states the July 2022 interpretive rule was "wrong to conclude that States can validly regulate the presence of certain categories of information—such as medical debt or arrest records—on a consumer report."

Interpretive rules are only guidance. Ultimately, courts make preemption determinations and will decide the scope of the FCRA's express preemption provision in Section 1681t(b)(1). It remains to be seen whether the CFPB's new interpretive rule will cause states to rethink passing fair credit reporting laws on certain topics because of preemption.

Contact us

If you have questions about the interplay between the federal FCRA and state credit reporting laws or you would like to discuss the CFPB's recent interpretive rule further, please contact Susan Seaman or your Husch Blackwell attorney.