# What We Know

**ARTICLES & INSIGHTS**

**ABOUT THE AUTHOR**

Caren Enloe leads Smith Debnam' s consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: Consumer Financial Services Litigation and Compliance dedicated to consumer

## Furnisher Duties for Collection Agencies- Creating a Good Compliance Management System

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Recent FTC consent orders, as well as the CFPB's continued focus on credit reporting, serve as good reminders for collection agencies and creditors to carefully scrutinize their FCRA policies and procedures to ensure compliance with the FCRA's Furnisher Rule and the guidelines outlined in 12 CFR 1022, Appendix E.

The Furnisher Rule requires data furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information they furnish to a consumer reporting agency. It's not enough to just establish policies and procedures. Furnishers should remain nimble reassessing their policies and procedures to ensure they remain relevant and reasonably tailored to address potential weaknesses and deficiencies.

### HERE ARE THE 9 ESSENTIALS KEYS OF A ROBUST POLICY:

**KEY 1: A robust policy should be tailored to the nature, size and complexity of the furnisher.** Furnishers need to make sure their policies match the nature, size, complexity, and scope of their business practice.  Furnishers should consider the following questions and allow the answers to shape or revise your present policies and procedures:

- What type of information do you provide?
- What is your role – are you an original creditor? A servicer? A debt buyer? Third party debt collector?
- How often do you furnish information?
- How do you provide the information (i.e. what is your technology platform)?

**KEY 2: A robust policy ensures information provided is accurate:**Your policies and procedures should be designed to ensure that any  information you furnish accurately:

- Identifies the consumer;
- Identifies relationships to the account;

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

- Reflects the account terms and liabilities;
- Reflects consumer performance/conduct regarding the account;
- Is validated by your records (or your client's) at the time it is furnished;
- Is reported in a format that minimizes inaccuracies by including consumer identification information, relevant dates, and, if applicable, credit limits for accounts.

**KEY 3: A robust policy promotes reasonable investigative procedures and appropriate actions.** Your procedures and actions should be based on investigation outcomes, including accurately updating information about the current status of the account. Your policy should:

- Provide adequate training to employees who are responsible for investigating and resolving indirect disputes.
- Provide appropriate training to employees regarding direct disputes from the consumer;
- Require documenting the actions taken to process, respond or investigate FCRA disputes;
- To the extent the furnisher is a servicer, or third party vendor, your policy should include procedures and policies concerning communications to the creditor regarding the dispute;
- Provide for document retention for a reasonable period to allow for sufficient training and auditing
- Provide for review of all relevant information provided by the consumer;
- Ensure a timely and adequate response to the consumer; and
- Provide for correction, deleting and updated of all disputed information.

**KEY 4: A robust policy provides for updating information as necessary to accurately reflect the current status of the account or any changes in relationships (i.e., a sale or transfer of the account).**

**KEY 5: A robust policy prevents re-aging, duplicative reporting, or other problems that affect the accuracy or integrity of information furnished.** Your policy should include an appropriate system to communicate with CRAS.

**KEY 6: A robust policy provides for regular and stringent auditing of accounts to help identify and resolve any systemic weaknesses or trends.**

- Furnishers should verify random samples of information furnished; and
- Furnishers should randomly and regularly audit random disputes.

**KEY 7: A robust policy provides for a regular and periodic evaluation of:**

- Policies and practices currently in use
- Enforcement trends
- Consumer reporting agency practices
- Any other factors that may impact the integrity of the information being furnished

**KEY 8: A robust policy requires the use of standard data reporting formats and procedures**

**KEY 9: A robust policy establishes and implements internal controls regarding the accuracy and integrity of furnished information**

The key to any robust compliance management system is to remember that it is similar to an ecosystem. It is imperative never to allow policies to grow stagnant. Instead, furnishers must remain flexible and adjust policies and procedures in a timely fashion so they can address environmental changes as they occur.

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CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541