

## **THE WASHINGTON REPORT**

### **September 2013**

#### **On Capitol Hill**

Congress is back in session, although the debate over Syria, as well as Affordable Care Act implementation, appropriations for the new fiscal year beginning October 1st, and the debt ceiling are expected to drive the debate in Washington in the weeks and months ahead.

On September 12<sup>th</sup>, the Commission on Long Term Care—which was established pursuant to the American Taxpayer Relief Act of 2012—issued its recommendations for improving the Nation’s system for providing longterm care services and supports (LTSS) to an estimated population of over 12 million Americans of all ages with functional impairments that rely on LTSS to perform daily life activities. One of the Commission’s recommendations for the paid LTSS workforce (as opposed to family caregivers) is that “the federal government work with states to enable national criminal background checks for all members of the LTSS workforce.” The summary of recommendations released by the Commission does not further elaborate on the nature of the national background checks being sought or whether they would be fingerprint-based.

#### **At the CFPB**

On September 4<sup>th</sup>, the Consumer Financial Protection Bureau (CFPB) issued a Bulletin (2013-9) regarding FCRA furnisher obligations. The Bulletin stated that the CFPB expects consumer reporting agencies (CRAs) and furnishers to comply fully with their reinvestigation obligations, “thereby promoting the accuracy and completeness of information in the consumer reporting system.” The bulk of the Bulletin focuses on the CFPB’s expectations regarding how furnishers will meet their reinvestigation obligations.

The CFPB indicated that it “expects furnishers to have reasonable systems and technology in place to receive and process notices of disputes and information regarding disputes, including relevant documentation, forwarded to them by CRAs” and that the CFPB “expects every furnisher to review and consider ‘all relevant information’ relating to the dispute, including documents that the CRA includes with the notice of dispute or transmits during the investigation, and the furnisher’s own information with respect to the dispute.”

More specifically, the CFPB expects furnishers to comply by:

- Maintaining a system reasonably capable of receiving from CRAs information regarding disputes, including supporting documentation;
- Conducting an investigation of the disputed information including reviewing:
  - “all relevant information” forwarded by the CRA and;
  - the furnisher’s own information with respect to the dispute;
- Reporting the results of the investigation to the CRA that sent the dispute;

- Providing corrected information to every nationwide CRA that received the information if the information is inaccurate or incomplete; and
- Modifying or deleting the disputed information, or permanently blocking the reporting of the information if the information is incomplete or inaccurate, or cannot be verified.

The Bulletin warns that “[a]ny furnisher not currently maintaining a process that meets these requirements should take immediate steps to comply with the requirements of the law.” The CFPB further warns that it is monitoring consumer complaints on this issue and will use its supervisory and enforcement authority “to address violations and seek all appropriate corrective measures, possibly including remediation of harm to consumers.”

Consumer reporting agencies that have furnishers or act as furnishers themselves should carefully review their practices to ensure compliance. The CFPB Bulletin, particularly when paired with the FTC’s enforcement action last month against Certegy—which included allegations that Certegy both failed to meet its obligations as a consumer reporting agency for the conduct of reinvestigations and also failed to meet obligations under the FCRA Furnisher Rule when Certegy apparently acted as a furnisher to another consumer reporting agency—strongly suggest additional scrutiny of furnisher and reinvestigation issues going forward by both the CFPB and the FTC.

### **At the FTC**

Federal Trade Commission (FTC) Commissioners continue to express concern about the activities of “data brokers” which they often define to include consumer reporting agencies. Commissioner Julie Brill published an op-ed in support of the “Reclaim Your Name” initiative, encouraging the data broker industry to adopt a “user-friendly, one-stop online shop” for individual consumers to discover which data that brokers have amassed and how it is collected and used, as well as enable consumers to correct errors in and prevent the sale of such data. Brill stated, “We ought to demand the same sort of transparency from the commercial data brokers that know much more about us than we do about them.”

FTC Chairwoman Edith Ramirez has struck similar themes in recent weeks. On August 19th, while delivering the keynote address at the Technology Policy Institute’s Aspen Forum, FTC Chairwoman Edith Ramirez stated that addressing privacy challenges for “big data” is “first and foremost the responsibility of those collecting and using consumer information.” Ramirez outlined five major risks associated with big data, including: indiscriminate collection, the need to ensure meaningful consumer choice, data breaches, behind-the-scenes profiling, and data determinism.

The FTC is expected to issue a report on data brokers sometime before the end of the year. The attention that multiple FTC Commissioners are affording the issue underscores importance that the FTC is attaching to “data broker” issues.

**Disclaimer:** The *Washington Report* provides a general summary of recent legal and legislative developments and is for informational purposes only. It is not intended to be, and should not be relied upon as legal advice. For more information, please contact Kevin Coy at 202-677-4034.