



FACTA/FCRA REINVESTIGATIONS:
CONSUMER DISPUTES OF SOCIAL TRACE INFORMATION
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DEFINITIONS:

"CRA" means consumer reporting agency as defined by the amended FCRA.

"CRA/Reseller" means a CRA that is also a reseller as defined by the amended FCRA.

"Credit bureaus" means Trans Union, Experian, Equifax or any affiliate thereof.

"End users" means the clients of a background screening company (e.g., employers).

"FACTA" means the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159.

"FCRA" means the Fair Credit Reporting Act, 15 U.S.C. 1681, as amended by FACTA, Pub. L. no. 108-159 (2003).

"Non-credit-bureaus" means a commercial provider of social traces other than Trans Union, Experian or Equifax.

"Reseller" means reseller as defined by the FCRA, including background screening companies.

"Social traces," means traces, social searches, social security number verifications, credit headers and similar products commonly used in the background screening industry.

BACKGROUND

USE OF SOCIAL TRACES IN THE BACKGROUND SCREENING INDUSTRY:

Social traces are a commonly used tool in the background screening industry. There are two general sources of social trace information – credit bureaus and non-credit-bureau sources.

End users and resellers utilize credit bureau social traces to confirm the identity of a consumer, to confirm the social security number provided by a consumer and to confirm and derive current and former addresses and aliases of a consumer for use in conducting criminal record checks. Non-credit-bureau social traces are commonly used by end users and resellers to confirm and derive current and former addresses and aliases of a consumer for use in conducting criminal record checks.

CREDIT BUREAUS AND NON-CREDIT-BUREAU SOCIAL TRACE PROVIDERS:

The information provided by credit bureaus and non-credit-bureaus is similar, but the treatment of social traces with respect to the legal obligations of the information providers generally differs between credit bureaus and non-credit-bureaus.

Credit bureaus are clearly CRAs with respect to credit reports and credit bureaus generally acknowledge that they are CRAs with respect to the social traces under the FCRA, at least where social traces are sold to background screening companies for FCRA permissible purposes. For the purposes of this article it is assumed that a credit bureau is a CRA with respect to providing a background screening company a social trace.

Most non-credit-bureau sources of social traces, however, do not consider themselves to be CRAs. Therefore, these types of information sources neither acknowledge nor comply with any of the requirements of CRAs under the FCRA, including the CRA reinvestigation requirements.

CRA

CRA'S REQUIREMENTS REGARDING DISPUTED SOCIAL TRACE:

Under the FCRA, a CRA has certain requirements with respect to the reinvestigation of information disputed by a consumer. FACTA now expressly requires a CRA to reinvestigate disputed information upon notice from a reseller that a consumer has disputed the item.

If information is disputed by the consumer directly or through a reseller, the CRA must conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file within 30 days of receiving notice of the dispute. The CRA must notify the furnisher of the disputed item within 5 business-days of a dispute. A CRA must provide written notice to a consumer of the results of a reinvestigation not later than 5 business days after the completion of the reinvestigation, including a statement that the reinvestigation is completed, a revised consumer report, and several additional brief notices.

CRA RESPONSIBILITIES TO RESELLER AND CONSUMER:

A CRA must report the results of any reinvestigation back to the reseller, who must then report the results back to the consumer.

RESELLER

RESELLER'S REQUIREMENTS REGARDING DISPUTED SOCIAL TRACE:

Resellers have new requirements with respect to consumer disputes under FACTA. FACTA requires resellers to investigate a consumer's dispute made to the reseller. If the reseller determines that the information is incomplete or inaccurate as a result of the reseller's own act or omission, the reseller must correct or delete the information within 20 days of receipt of the dispute. If the reseller does not find that the consumer-alleged incompleteness or inaccuracy resulted from the reseller's own act or omission, the reseller must notify the CRA information source and the CRA must reinvestigate the disputed information.

Uncooperative Credit Bureau:

Credit bureaus generally cooperate with a reseller or consumer attempt to have disputed information within a social trace reinvestigated. If, however, a credit bureau is uncooperative the reseller should thoroughly document its attempt to meet its obligations under the FCRA and the credit bureau's lack of cooperation. In addition, a reseller is obligated to delete the disputed item from the file if an adequate response to the request for a reinvestigation is not received from the credit bureau within 30 days of providing notification of the dispute to the credit bureau.

Uncooperative Non-Credit-Bureau:

The claimed non-CRA status of these non-credit-bureau information sources can present a significant issue to a reseller when a consumer disputes information provided by one of these non-credit-bureau information sources. Generally, non-credit-bureaus do not cooperate with a reseller's attempts to reinvestigate a consumer dispute. It is likely that the information from the social trace provided to the end user would be considered a consumer report within the meaning of the FCRA. Therefore, a reseller's obligations to a consumer who disputes the information contained within a social trace is likely the same regardless of whether the source of the social trace information is a credit bureau or non-credit-bureau. Therefore, a reseller should attempt a formal reinvestigation request with the non-

credit-bureau. If the non-credit-bureau is uncooperative the reseller should thoroughly document its attempt to meet its obligations under the FCRA and the non-credit-bureau's lack of cooperation. In addition, a reseller should delete the disputed item from the file if an adequate response to the attempted dispute reinvestigation is not received from the non-credit-bureau within 30 days of providing notification of the dispute to the credit bureau.

CRA/RESELLER

CRA/RESELLER REQUIREMENTS REGARDING DISPUTED CREDIT BUREAU SOCIAL TRACE:

CRA/Resellers have all of the requirements of a reseller and all of the requirements of a CRA under the amended FCRA.

Uncooperative Credit Bureau:

If a credit bureau is uncooperative with respect to a reinvestigation, the CRA/reseller should thoroughly document its attempt to meet its obligations under the FCRA and the credit bureau's lack of cooperation. In addition, a CRA/reseller is obligated to delete the disputed item from the file if an adequate response to the request for a reinvestigation is not received from the credit bureau within 30 days of providing notification of the dispute to the credit bureau.

Uncooperative Non-Credit-Bureau:

A reseller's obligations to a consumer who disputes the information contained within a social trace is the same regardless of whether the source of the social trace information is a credit bureau or non-credit-bureau. Therefore, a reseller should attempt a formal reinvestigation request with the non-credit-bureau. If the non-credit-bureau is uncooperative the reseller should thoroughly document its attempt to meet its obligations under the FCRA and the non-credit-bureau's lack of cooperation. In addition, a reseller should delete the disputed item from the file if an adequate response to the request for a reinvestigation is not received from the non-credit-bureau within 30 days of providing notification of the dispute to the credit bureau.

REINVESTIGATION BY RESELLER NOT PROHIBITED:

FACTA also states that the FCRA does not prohibit a reseller from conducting a reinvestigation of a consumer dispute directly.

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