
The Consumer Finance Podcast: Navigating FCRA and Debt Collection with Special Guest Bridgeforce's Michelle Macartney
Host: Chris Willis and Kim Phan
Guest: Michelle Macartney of Bridgeforce and Stefanie Jackman of Troutman Pepper
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Chris Willis:

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper's consumer financial services regulatory practice. Today we're cross posting an episode from our friends over at the [FCRA Focus](#) podcast. So what you're going to be hearing is an episode in which the host, Kim Phan, is going to have an interesting conversation with our partner Stephanie Jackman and Michelle Macartney from Bridgeforce about a variety of interesting credit reporting topics. I know you're going to find it educational, so please give it a listen and enjoy.

Kim Phan:

Welcome to the Troutman Pepper Podcast, [FCRA Focus](#). I'm Kim Phan, co-host of the podcast, along with my partner Dave Gettings. I'm glad you've joined us because we're going to be talking today about the challenges that many companies face when reporting collections activity to the consumer reporting agencies.

Before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanPepperFinancialServices.com](#), and [ConsumerFinancialServicesLawMonitor.com](#). While you're at it, head on over to [Troutman.com](#) and add yourself to our consumer financial services email list that allow you to get invitations to our webinars and receive our alerts and advisories that we send out from time to time.

While we make lots of free content available to our listeners, if you cannot get enough FCRA, I would encourage you to explore our subscription-based tracker service, which provides information on federal and state regulatory and legislative developments, as well as summaries of FCRA case law on a weekly basis, as well as monthly roundtable discussions. These tracker services can also cover debt collection and privacy and data security.

Now, as I said, today, we're going to be talking about the intersection of the FCRA and debt collection. I'm thrilled to be joined by my partner and friend Stefanie Jackman, as well as a special guest, Michelle Macartney of Bridgeforce.

[EPISODE]

Kim Phan:

Stefanie, Michelle, why don't you tell our audience a little bit about yourself before we dive into today's topic.

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Stefanie Jackman:

Thanks for having me today, Kim. I'm Stefanie Jackman. I'm a partner in the Atlanta office of Troutman Pepper. I focus my practice on helping clients with regulatory, compliance, and litigation issues impacting their servicing and collections operations. That brings in furnishing in the FCRA.

Kim Phan:

Very good. Thanks. Michelle?

Michelle Macartney:

Thank you, Kim, for inviting me to participate in the podcast today. I'm Michelle Macartney. I am a managing partner and Chief Compliance Officer for Bridgeforce, which is a full-service management consulting firm that focuses primarily on consumer lending, payments, and deposits.

Now, within that, we work across the whole lending lifecycle, including collections and servicing, and that's what really brought us into a focus going back over about a dozen years ago on consumer reporting. I jointly oversee our US consulting practice and lead the consumer reporting compliance practice. I personally have been doing something with credit reporting data for several decades now and work with many different types of furnishers in the industry to help them really try to achieve excellence in their furnishing data quality, their disputes handling, and their usage of consumer reports.

Kim Phan:

Well, I'm thrilled to have you both here. When I think of collections and reporting, you are the two experts that come first to my mind, and I'm thrilled to have you here as guests to share your insights with our audience. But the giant elephant in the room is the reality that since our last podcast, the CFPB, has finally released its draft FCRA rulemaking, which when it was first proposed, touched on a broad array of areas under the FCRA. But in this current draft, it focuses exclusively on medical debt, and the refurnishing of that type of information, the reporting of that type of information, the use of that type of information.

So, any thoughts you want to share with our audience? Michelle, I know you are of conflicted minds on how to think about this rulemaking. So, we'd love to hear some more.

Michelle Macartney:

This really is a tough one for me, quite honestly. On the one hand, I can understand the CFPB's motivation, because I have seen a lot of noise and errors in medical billing and debt, and I very recently had to deal with some unexpected medical costs myself. So, I find myself watching the bills like a hawk and tracking and ensure everything's handled correctly through insurance, which quite frankly, feels like a full-time job at times. I'm one who will fight the healthcare providers and insurance companies, whereas a lot of consumers don't know what to do and they just give up.

But on the other hand, there is a lot of legitimate debt that I think shouldn't be recorded to paint the full picture of a consumers' debts for prospective lenders. I think one could also argue that the removal of medical debt, it could be contrary to the CFPB's policy for lenders that they're supposed to conduct an ability to repay analysis before lending to anybody. For those who are collecting, the reality is that for the legitimate debt of the trade line appears in a consumer's file truly is strong motivation for them to pay, of course, then that's the incentive the CFPB wants to eradicate.

But I also agree with those that say, look, if we completely remove medical debt from the consumer reports, I think it will drive down the likelihood of repayment, which I think will create a downward spiral of increasing medical costs and likely increasing credit costs. Unfortunately, none of this is really solving the real root cause, which is a broken healthcare system. But that's a topic for another day.

Kim Phan:

Stefanie, any thoughts from you on the new proposals?

Stefanie Jackman:

Yes. I mean, I share a lot of what Michelle just conveyed. I understand that consumers who experience some significant medical event did not willingly and knowingly intend to encounter the significant financial impacts that can have. But I really do question if this is the way to address it. Michelle, your point about a broken healthcare system, making it more difficult to collect on debts that are owed to medical providers and hospitals and things like that, I fear, is only going to exacerbate the challenges we're already seeing with lack of access to healthcare, especially in more rural or smaller communities, the consolidation of hospitals in larger environments.

I wonder if this is going to cause hospitals to be more cash first, right? I don't know. But we'll see. I mean, the CFPB purports to have data that supports their belief that this won't have those impacts. But I question, it's hard to know if that will be the case when we haven't actually started the proposed removal more broadly than what they agreed with the credit bureaus voluntarily for debts that were under, medical debts that were under \$500.

So, to me, it's perhaps a little too early to assess the validity of those assertions, and that gives me concern in the rulemaking process, because the CFPB wants to be a data-driven agency. But how can we have data to rebut their assertions when this isn't the way it's currently done? I'm also concerned about where does this lead, right? I'll hazard a guess. Right now, as proposed, the CFPB is very clear, this is not covering or proposing to cover non-healthcare companies. So, not hospitals, no providers, that offer financing, right? So, third-party financing options for consumers who are experiencing higher deductibles, higher self-pay portions, and need that in order to smooth and afford over time, the cost of getting whatever they needed to get for their healthcare.

I mean, some of our deductibles are thousands of dollars. For some plans, they're in the tens of thousands of dollars, right? So, CFPB says that that is not their current intent, but welcomes comments on it. Last year, sent out a series of RFIs in conjunction with Health and Human Services, seeking information on how these products are marketed, how hospitals present

them. Then, just today, June 18th, the CFPB published a blog post on this exact topic. I am not holding my breath, that third-party financing products that can be used to finance medical services and products will ultimately remain outside the scope of this role.

Kim Phan:

Your point about data is well taken. That's one of my main concerns, right? The CFPB says they've done a couple of studies, they've had requests for information. They've in-taken a little bit of data, and they have some folks who have looked at this. But the CFPB essentially choosing winners and losers in the consumer reporting game, seems very problematic, right? The reality is even if they conclude that medical debt may not speak to whether or not someone is worthy of credit, because they have intentions to pay back, it certainly has an impact on their capacity to take on additional credit. And by replacing the expertise, replacing the business decisions of consumer reporting agencies, and users, and others in the marketplace as to what is a valuable and useful tool in making those sorts of decisions, rather than staying within the concept of the FCRA which is establishing a framework of consumer protection. They're actually meddling now in the actual business of consumer reporting, which I think has larger implications.

What if they made this decision today about medical debt, but tomorrow they decide that about rental information, or cell phone records payment and other utility information. It just seems very problematic of the CFPB stepping into this lane when really, that's not the way the FCRA's framework has been built.

Stefanie Jackman:

Well, and to your point, Kim, thank about student loans. The CFPB has drawn sort of this almost – they're differentiating between what they think are voluntary debts and involuntary debts. I think we've seen the CFPB make an argument that in this day and age, getting an education is important, and that's why we've seen a lot of attention to the significant loans that you have to often take on in order to go to an institution of secondary institutions after high school, whether it's a traditional college or some sort of other program. Are those voluntary debts or are they more involuntary? We can have some sympathy there. This could be a slippery slope.

Another point on data, because I know you do love data. I was on a webinar the other week, and somebody pointed out, this is not a ban. So, we went back and forth on that. It's not a ban on furnishing information about a medical debt, and they pointed out to me in the proposed rule, that there is at the end, contemplation of credit reporting bureaus, still being able to provide information relating to medical debts in certain limited circumstances.

What I wonder, though, is it, well, maybe not strictly, technically a ban in the legal sense. Is it in the practical sense? For instance, it's very limited when you're going to need medical information to the extent that it still remains relevant in any way. Kim, you're a data privacy and security lawyer. Are you going to advise your clients to keep furnishing it? Then we have, God forbid, another significant data breach or something that results in all this information that probably didn't need to be there in the first place, because it can't be used for purposes of credit reports and credit scoring and determining whether people, what their creditworthiness is, and just all that stolen medical data is some of the most sensitive, right?

To me, it feels like a significant risk, any real risk in today's environment, which is why, yes, I agree with that person, it is not technically a ban. I'm not rushing to encourage clients to continue furnishing information on medical debts within the scope of the proposed rule, which causes it to almost feel like one.

Kim Phan:

I mean, I don't want to take over the entire podcast, even though this very important topic. I wanted to talk about some of the other challenges that companies are facing when thinking about how to furnish information about their collections activity. Stefanie, why don't we start off with you. I know that you work with many clients. They are facing challenges in different respects. For example, consumers conflate and are confused by the intersection between FDCPA disputes and FCRA disputes. Challenges with regard to dates of first delinquency, bankruptcy, suppression, deletion. Any thoughts you want to share with our audience on some of the most prevalent challenges that companies are trying to overcome right now when furnishing on collections activity?

Stefanie Jackman:

Well, I certainly want to hear Michelle's thoughts, too, because we've had occasion to collaborate on behalf of clients in doing assessments over the years. I really can't say enough about how wonderful those experiences have been with you and your team. So, I know that you and I have talked about some of these issues. But Kim, you're right. There continues to be – the CFPB is very focused on furnishing, accuracy and integrity, compliance with Metro 2, and sometimes those can present some challenges, because we all know that while the Metro 2 guide can be very helpful, it doesn't always keep us out of sticky situations in private litigation, right? It doesn't have the force of law, and sometimes we have to take different approaches.

A place we've seen that is bankruptcy. There are ways to report on a bankruptcy. In fact, the CDIA updated those guidelines a couple of years ago, to try to make it easier in different contexts. But the reality is, a lot of furnishers still have challenges in managing ongoing reporting, once a consumer declares bankruptcy, and bring questions in order to try to reduce their potential liability and exposure about can I delete? Can I suppress? Michelle and I talk about with them, those are different things, and they have different things we have to think about. I continue to say that a best practice before you delete anything, as a result of some sort of occurrence on the account that may warrant that for one reason or another, depending on your personal approach. Bankruptcy, debt sale, deceased, is to first report the happening to begin with. That way, for the credit purists that are out there that want the integrity of credit reports to be maintained as much as possible because they are a really critical aspect of our credit system, the credit bureaus are made aware that there was a bankruptcy filing, or they were made aware of some sort of sale, or they were made aware of some sort of adverse impact, and can still factor that into the extent that they do some way or another in their algorithms, and perhaps continue to get information on the run. The credit bureaus can also and do, Michelle, I think you were talking to me about this the other day, do monitor on bankruptcies because they have exposure too.

Michelle Macartney:

That's right. They absolutely do. I know there was some concern expressed about the simplified bankruptcy guidelines, which are going to hopefully make it easier, and I think it has made it easier for furnishers to furnish accurately. But there was some concern like, well, if we're changing some of the things we're furnishing, does that violate that bankruptcy stay?

Very recently, I've had the opportunity to chat with a couple different folks that two of the CRAs who have assured me that even though the data has been simplified, that they're still taking care of how the trade line appears on the consumers report, so that there is no violation of the bankruptcy stay. I intend to follow up on that and get some more details. So, that may be a topic of the future podcast Kim, but I've been assured of it. So, I'll follow back up with you guys when I confirm exactly what they're doing. But they claim that they are handling it, because there are already quite honestly furnishers who have adopted the new guidance. I'm not aware of any litigation in that area. So, I'm going to trust them at the moment, but also follow our mandate of trust but verify and I can report back to you on that.

Stefanie Jackman:

Kim, I think we should hold Michelle to that.

Kim Phan:

I agree. I always appreciate topics for future podcasts. If Michelle would like to join us for that future conversation, I would love to have her back.

Stefanie Jackman:

But going back to, Kim, you made a point about disputes too, and I think that Michelle might be able to give some insights there. So, let me just first tell everybody what we're talking about. Probably, if you're listening to this and are a furnisher in your own right, or your organization is a furnisher, you know about indirect or ACDVs, the disputes that come from the credit bureaus to furnishers. And direct disputes coming directly from consumers to the furnisher, relating to information on a furnisher, or excuse me, a consumer's credit report.

There's those types of disputes, which we have requirements to investigate and respond to under the FCRA, and flag as disputed and things like that. There's codes for that. There are the special condition compliance codes, XB, XC, XH, XR. They're set forth in, I think it's exhibit eight, to the CDIA guidelines. But what we've been seeing is an attack, if you will, on non-compliance with updating trade lines to reflect receipt of a dispute that has caught some clients off guard, here or there, also, which is expanding beyond what we would traditionally think of as a dispute when we're thinking about the FCRA. And that is through the collections lens.

Section 1692(e)(8), as I recall of the FDCPA says that, when a debt collector provides information to a third party about a debt, that the debt collector knows or should know, is disputed. They also have to tell the third party about the dispute. So, we are seeing that be used to create a private right of action, for instance, on direct disputes, which normally don't have a private right of action, through the FDCPA. And for those of you who are saying, "Oh, thank goodness. I'm not subject to that statute." I have some bad news. Ten states incorporate that

exact same provision and apply it to creditors collecting their own debt. Then, that list expands to anywhere from 15 to 20, depending on, for first-party servicers, depending on your licensing, and if you need to, license as a debt collector under state law.

So, this is a real issue and it goes broader than just a direct dispute and whether you put that flag on it in your next monthly Metro 2 push to the credit bureaus, because otherwise credit bureaus wouldn't know about a direct dispute. But also, that it can expand into other types of disputes. Thinking about if a consumer calls in and says they have issues with their account or information being furnished. That's not a dispute under the FCRA. But it certainly can be under the FDCPA in the state analogs of that statute.

We're seeing lawsuits getting filed where the dispute comes from the CFPB's complaint portal, the Better Business Bureau, from a State AG. Those are not disputes under the FCRA, because they didn't come from the consumer. But they can be under the state collection laws. So, this is something that clients are having to real-time deal with if they're in the unfortunate bunch that are facing litigation, dealing with it in that context. But all of us need to be thoughtful about it internally within our own compliance initiatives and risk mitigation efforts. Because right now, there isn't a solution for this, and there's some challenges.

But Michelle, I know that you're on some working groups or task forces that are trying to figure out a way through this, and I don't know if there's any update?

Michelle Macartney:

So yes, Stefanie. The reality is that, in Exhibit A to the Metro 2 guidelines, as you pointed out, contains the compliance condition codes. Today, there's really a gap to address the type of dispute that you're talking about. So, the compliance condition codes, there's very specific codes for a furnisher to indicate that the consumer is disputing the accuracy of how their trade line was furnished under FCRA.

There's also several codes that allow someone to furnish a trade line to indicate the consumer has an FCBA, Fair Credit Billing Act dispute. But there's nothing that indicates they are disputing under FDCPA, or any of the state level, debt collection related loss. Unfortunately, there's a gap. I've worked with furnishers to come up with the next best thing to do, which is essentially, continue to record it as a dispute, though, they can run into challenges by CFPB, who says, hey, you shouldn't leave this dispute code out there. You should investigate the dispute, resolve it, and update the code.

So, I am involved in an industry group that's comprised primarily of third-party collection agencies and debt buyers, and we've had multiple conversations with the CDIA, to say, hey, can we consider modifying the Metro 2 guidelines? While we don't have a resolution yet, I am happy to say that I think they're really listening. I know, there's been multiple discussions with the task force, and I recently saw some communication that indicated there's ongoing discussion within the CDIA. So, we don't have an outcome yet. But I am encouraged that they've heard and they're recognizing that though the Metro 2 guidelines were obviously grounded in FCRA, the reality of today's business for lenders and debt collectors, is we have several other things that have emerged over recent years that we just have to be able to care for.

In the meantime, we can work with furnishers to give them a roadmap for how to use the compliance condition codes, as like I said, the next best thing until we have some, hopefully, in the future, new values that are very specific to debt collection disputes.

Kim Phan:

Yes, I know any change made to Metro 2 is a arduous process that is multiyear undertaking. It can take a long time to resolve ambiguities and impose fixes, especially when there are new and novel situations that arise. So, it can be challenging.

Michelle Macartney:

It is very challenging, because to make the change that I'm suggesting, it will affect everybody. Furnishers and the vendors of systems that furnishers use, lenders use, will have to modify their code to be able to furnish new values if this were to go forward. The CRAs have to be able to then process those. Then, all of the credit scoring vendors who have models that may look at these various dispute codes also have to think about how to use them. So, you're absolutely right, Kim. It's not something that's going to happen overnight. But I think I'm encouraged though, we're at least having the conversation, and hopefully that just creates more awareness for all parties in the ecosystem who look at this data.

Kim Phan:

Well, this has been a great conversation. But rather than hit our poor audience over the head with all of these problems. As part of your closing thoughts, do you have any recommendations you want to offer? Compliance strategies, solutions, things that you would want to make sure our audience is aware of?

Michelle Macartney:

Yes, I'd be happy to jump in here, Kim, because this is where I spend my life, or a good part of it. I think if I were to first give some advice to any company whose furnishing, first and foremost, I would tell them, do your best to employ some FCRA subject matter experts who can focus on this world of furnishing and disputes, because it really doesn't do well. It's just another task on the side of the desk of someone who has like dozens of other responsibilities. So, that's my first piece of advice.

Then yes, there are a number of solutions out there, once somebody has a framework in place to really automate controls around both furnishing and dispute. I'm a huge advocate of implementing multiple controls throughout the journey that a furnisher's data takes to examine it for accuracy, and there's native solutions in the market to look at really take a deep dive into Metro 2 furnishing data whether that's before you furnish or after.

For disputes, same thing. There's automated case management system solutions that help a furnisher, one, enable enforcement for agents to make sure they're always conducting that reasonable investigation. Then, they can evidence it when all the data is captured in the system. These solutions can help pull together multiple disputes, capture all the data known at the time, support root cause analysis. All of these, just help to not only make for a more compliant

approach, but they also can generate a lot of efficiencies in the operation, driving down a furnisher's cost outside of the compliance realm.

Stefanie Jackman:

Yes, I agree with everything Michelle said. The thing I would add, is reminding people that we definitely want to always ensure we have updated policies and procedures that reflect as much as possible what we do as an organization. But inevitably, because there's a million other things we have to do. Sometimes the updates don't get made as quickly as we want, and usually that's okay. Can play catch up. But it is of critical importance to regularly, and I would suggest even more than more frequently than once a year, look at our FCRA related policies and procedures, because there is a specific requirement to maintain reasonable policies and procedures under the FCRA itself. And a failure to do so is an independent violation. And that's where I see a hook, whether it's in a regulatory matter or litigation, a hook that opens the door, right? When the first thing a court sees is a policy or procedure that doesn't fit what you're telling him you do now, especially in the FCRA context, that can give a lot of leverage to the other side being a free-standing violation of the statute to begin with.

So, I just tell clients, I know that keeping up with our compliance challenges, monitoring, oversight responsibilities, that that's a daunting and large task that we have to devote a lot of time and effort to. But in the FCRA context, I think it's a really important piece, in particular with regard to the state of our policies and procedures.

Michelle Macartney:

Stefanie, I couldn't agree more. I was just looking at someone's policies last week for a different reason, and they had not updated their FCRA policies in five years. I just said, they're a target, huge target. But I want to add something too, what you said about the policies and procedures because I've seen this come up and multiple enforcement actions. When it comes to the procedures, it's really important on the furnishing side to document how the Metro 2 file is being produced. I don't mean a computer – we launch a computer program at this time, once a month. I mean, documentation that goes through each of the data elements and a furnisher can really defend, hey, I know we're generating the right account status with the right date of first delinquency, because I've seen it called out in like PARR letters from the CFPB that someone's documentation did not describe that type of information. Plus, it's been just helpful from an ongoing maintenance perspective. But that's something I'd add to the considerations around policies and procedures.

Kim Phan:

Well, Michelle, Stefanie, thank you so much for sharing your insights with us today. Thanks to our audience for tuning into today's episode. If you enjoyed today's podcast, please let us know by leaving a review on your podcast platform of choice. Of course, stay tuned for our next episode of this [FCRA Focus](#) podcast. Thank you all for listening.

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