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Identity Theft, FCRA Disputes, and the Duty to Investigate

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Identity theft and consumer disputes can present difficult questions for furnishers, particularly when information provided by a consumer conflicts with information already in the furnisher's records.

During the July installment of *The Data Edge*, Hudson Cook Partners Megan Nicholls and Webb McArthur discussed Fair Credit Reporting Act ("FCRA") requirements related to disputes and identity theft claims and practical considerations for conducting and documenting reasonable investigations.

A recent federal court decision provided the backdrop for the discussion. The court granted summary judgment to a furnisher after concluding that its investigation of a consumer's identity theft dispute was reasonable as a matter of law. The decision offers several useful reminders for furnishers evaluating their own investigation procedures.

Understand the Dispute Before Investigating.

A reasonable investigation begins with understanding exactly what the consumer is disputing. Investigators should review the consumer's statement, supporting documents, account information, and information provided by a consumer reporting agency ("CRA") to identify the specific issue being challenged.

From there, the investigation can focus on the records and information relevant to that issue.

KEY TAKEAWAY: Clearly defining the dispute helps investigators determine what information should be reviewed and keeps the investigation focused on the consumer's specific claim.

Consider the Complete Record.

When evaluating an identity theft claim or other dispute, investigators should compare the information provided by the consumer with the records available to the furnisher. Depending on the circumstances, those records might include application information, identity documentation, payment history, account records, signatures, or previous communications.

Discrepancies should be considered in context. An inconsistency does not automatically mean the furnished information is inaccurate. Investigators should consider the significance of the discrepancy in light of the complete record.

KEY TAKEAWAY: Avoid evaluating individual discrepancies in isolation. Consider whether the totality of the available information supports or calls into question the accuracy of the information being furnished.

Follow a Consistent Investigation Process.

The webinar outlined a practical framework for dispute investigations built around seven steps: intake, analyze, compare, assess, document, escalate, and resolve.

Using a repeatable process can help investigators consistently evaluate the information provided, identify discrepancies, determine when additional review is warranted, and reach an appropriate resolution.

Checklists can also be valuable. Even experienced investigators can overlook routine steps, and a well-designed checklist can help ensure that important information is considered consistently.

KEY TAKEAWAY: A structured process helps demonstrate that a furnisher conducted a reasonable investigation rather than simply reaching a conclusion.

Document the Investigation.

Documentation is a critical part of a defensible investigation. Investigation records should show what was disputed, what information was reviewed, what discrepancies were identified, whether additional verification or escalation occurred, and why the investigator reached the final decision.

The court decision discussed during the webinar illustrates the importance of these records. The investigator's notes and the materials reviewed helped demonstrate the steps taken to evaluate the consumer's claim.

KEY TAKEAWAY: Document both the work performed and the reasoning behind the decision. Good documentation can be critical if the reasonableness of an investigation is later questioned.

Different Disputes Can Produce Different Results.

Consumers sometimes submit multiple disputes concerning the same account. New information may become available, or circumstances may change.

A different outcome on a subsequent dispute does not necessarily mean an earlier investigation was unreasonable. Each investigation should be evaluated based on the information available at the time and the process followed.

KEY TAKEAWAY: When the outcome of a later investigation differs from an earlier one, documentation can help explain what changed and why the company reached a different conclusion.

Looking Ahead.

The July *Data Edge* discussion offered an important reminder for furnishers: effective dispute handling involves more than reaching the right answer. Organizations should have a consistent process for understanding the dispute, reviewing relevant information, evaluating discrepancies, documenting the investigation, escalating when appropriate, and reaching a supportable resolution.

The recent court decision also provides an opportunity for organizations to review their dispute and reinvestigation procedures, investigator checklists, documentation practices, and escalation protocols.

For questions regarding FCRA disputes, identity theft claims, furnisher investigations, or related compliance requirements, please contact Megan Nicholls or Webb McArthur.

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