One of the potential adverse consequences of criminal justice debt is that both the debt and its nonpayment might be reported to a consumer reporting agency (CRA). The Fair Credit Reporting Act (FCRA) regulates consumer rights in this area (as to the practices of CRAs) and those who furnish or use information from the CRAs. These include both “nationwide” CRAs\textsuperscript{486}—such as Equifax, Experian and TransUnion—and many other specialty CRAs, such as criminal background check agencies.\textsuperscript{487} Private remedies include actual, and in some cases, punitive, damages and also attorney fees.\textsuperscript{488}

Although the Act’s definition of a CRA would seem to apply to governmental agencies,\textsuperscript{489} the Federal Trade Commission\textsuperscript{490} and most courts conclude that neither federal\textsuperscript{491} nor state or local government agencies are CRAs.\textsuperscript{492} More importantly, however, these entities are covered by the Act when they furnish to or use information from CRAs, subject to sovereign immunity considerations.\textsuperscript{493}

A 2015 settlement between the three major nationwide CRAs (Equifax, Experian, and Transunion) and over thirty state attorneys general, and a nearly identical agreement entered into by New York State, substantially alters CRA reporting of court debts. These CRAs must prohibit collection agencies and debt purchasers from “reporting debt that did not arise from any contract or agreement to pay (including, but not limited to, certain fines, tickets, and other assessments).”\textsuperscript{494}

The settlements do not apply to original creditors of court debts (the governmental entities themselves), but only to debt collectors and debt buyers. Unclear is whether the settlement also applies to nominally voluntary court debts, such as parole costs, in lieu of which the consumer could opt for incarceration. In addition, the agreements are only enforceable by the states that are parties to the agreement. Harmed consumers may wish to dispute the reported information and also alert a participating state attorney general’s office and request enforcement.

Subsequently, the three major nationwide CRAs announced that they would no longer report many public records in consumer credit reports, including the vast majority of civil judgments and half of tax liens.\textsuperscript{495} Note, however, that these changes do not apply to specialty CRAs, such as background check agencies.

State law may provide additional protections against the furnishing or reporting of court fine and fee information. For example, Texas state law prohibits a municipality or its contractors from providing information to CRAs about a civil penalty imposed as a result of a traffic violation detected by a photographic signal enforcement system.\textsuperscript{496}

Footnotes

\textsuperscript{487} See National Consumer Law Center, Fair Credit Reporting §§ 2.6.2.2 [2], 2.7.3 [3] (9th ed. 2017), updated at www.nclc.org/library.


\textsuperscript{489} 15 U.S.C. § 1681a(b) (defining “person” for purposes of FCRA to include “government or governmental subdivision or agency”).

\textsuperscript{490} Fed. Trade Comm’n, 40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations, §§ V(A), 603(f), items 5A, 5B. See also 55 Fed. Reg. 18,804–18,806 (May 4, 1990) (see supplementary information published with prior, rescinded Staff Commentary).

\textsuperscript{491} Ricci v. Key Bancshares of Maine, Inc., 768 F.2d 456 (1st Cir. 1985); Ollestad v. Kelley, 573 F.2d 1109 (9th Cir. 1978).


**Source**: National Consumer Law Center, Collection Actions [4th ed.], updated at www.nclc.org/library

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**Links**

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