
**A CONVERSATION WITH FRANCIS CREIGHTON OF THE CONSUMER DATA INDUSTRY ASSOCIATION
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[CHRIS WILLIS]

Welcome to the *Consumer Finance Podcast*. I'm Chris Willis, the co-practice leader of Troutman Pepper's Consumer Financial Services Regulatory Group. And I really want to thank you for tuning in to today's episode where we're going to be talking about some of the most pressing issues in credit reporting with a very special guest. But before we jump into that topic let me remind you to visit and subscribe to our blog, ConsumerFinancialServicesLawMonitor.com where we keep you up to date on everything that's happening in the consumer finance industry. And don't forget to check out our other podcast, *FCRA Focus*, which is dedicated to the Fair Credit Reporting Act, which is released once a month. And if you like our podcast let us know. Leave us a review on your podcast platform of choice.

Now, as I said, we have a very special guest today to talk about some very pressing issues on credit reporting, and our guest is Francis Creighton, who's the president and CEO of the Consumer Data Industry Association. And, if you don't know, the CDIA is the premier trade association dealing with credit reporting issues in this country and represents credit bureaus including the three large national credit reporting agencies. So, Francis, first, thank you very much for being on the podcast today.

[FRANCIS CREIGHTON]

I am happy to be here, and I'm happy to have you and your colleagues as partners in the work we do.

[CHRIS WILLIS]

Well, we really appreciate it. And there are a couple of interesting things that have been going on in credit reporting that I wanted to get your views on today. The first one was, the CFPB came out relatively recently with an announcement on the reporting of medical debts on credit bureau reports. But this is not an issue that the CFPB actually got started, as I understand it. What was the impetus of the treatment of medical debts on credit bureau reports?

[FRANCIS CREIGHTON]

After discussion on this issue for a long time, that the three nationwide credit bureaus had with their customers, with banks and other lenders, they decided that they wanted to make a change in how they accommodated medical debt onto the credit file. Now, look, credit files are always evolving, right? About five years ago, we made a change, and we eliminated some liens and judgments, we made a change in how medical debt was reported to begin with, and we made this last change just a couple of months ago, really in response to what lenders needed. Look, when it came down to it, lenders told us that it's not particularly helpful to them when they're making a mortgage or an auto loan or a credit card loan to know that there was some billing dispute with your insurance company over who is responsible for the copay. Or to put onto a credit report a bill that was eventually going to be paid for by insurance companies. What the lenders told us they did need was current information about debts that were owed that were large, right? So, what's going to stay on credit reports? Medical

collections debt that's older than one year. So, all of the insurance issues, everything should have been taken care of by one year again. Medical insurance that's still outstanding, if it's paid, we don't particularly need to have that reflected on the credit report. But, if it's a collection that's still owed, that's outstanding, lenders want to know about that, and lenders don't want to know about de minimis numbers; they just really need to know about things that are over \$500. So that's the change that's being implemented right now, is, for in the future, medical collections that will only show up on the credit report one year after the date of service, only if they're still outstanding, and only if they're over \$500. That was a voluntary move that the credit bureaus made in consultation with their customers.

[CHRIS WILLIS]

Right, and before the CFPB announcement, right?

[FRANCIS CREIGHTON]

Yeah, that's right. CFPB announcement came out in response to what we had put out. And, you know, their response was, hey, this is great news. They want to go further, but they thought that this was a good first time. Now, look, what we've been saying is, this is as far as we want to go. We think that the information on here is still valuable to lenders. And I think lenders have been very clear, publicly and behind the scenes, that this is information that they need to make smart decisions.

[CHRIS WILLIS]

Let's talk about that for a second because, when I read the CFPB's announcement about this topic, what I saw were basically three assertions being made by the Bureau. One was that there is an accuracy problem with the reporting of medical debt, that it may not reflect amounts that are really owed by the consumer because maybe insurance is going to pay it or something else, and so there's an accuracy problem with it. Second, that it does not provide predictive value for a future credit transaction in terms of the consumer's ability or willingness to pay it. And third, that these problems disproportionately affect members of protected classes, and so therefore it's a bad thing for medical debt to be on credit bureaus. How does the voluntary announcement by the three national CRAs square up with and address those points that the CFPB made in its public announcement?

[FRANCIS CREIGHTON]

Yeah, look, fundamentally, the director of the CFPB, his real problem is with a broken medical billing system that results in a lot of medical collections debt. Look, in a different world, we have a different system where nobody's paying any medical bills at all. But we don't live in a world that we want to live in; we live in the real world. And, in the real world, people get sick, and they're responsible ultimately for the bills. We've heard the criticism, though. And that's why we extended the amount of time from six months to one year. And that will give the medical insurance system time to work itself out so that, by the end of that period, that debt that's still owed, it's very, very likely owed by the consumer. But, if insurance does pay it, it comes off. All right, first of all, it comes off because it's a paid debt, but, second, anything that's paid for by insurance comes off the credit report, and that's been true for years already. For about five years, that's been the case. So that's one. Two, our consumer reporting system doesn't include race; it doesn't include gender; it doesn't include a lot of the indicators that are used in other worlds. Our system is completely race- and gender-neutral. We don't know who is of what protected class or not. Our system reflects true facts as they exist at that moment. Right? And so, we have a society where some people are more likely to have insurance than

others. That's a problem with society. But, for lenders to know, they have to make a decision based on individual people's individual circumstances as they exist at that time. The problem isn't with the credit reporting system; the problem is with the larger societal issue. And look, at the end of the day, is medical collections that predictive of things in the future? Well, look, I'll tell you what's more predictive. Do you pay your bills on time? How much credit do you have? How much credit are you using at any one time? What's your utilization rate? Those are going to be much more predictive, and those things matter much, much more than medical collections debt. But medical collections debt does matter somewhat, and it helps lenders make good decisions about who's a good risk in the future or not. If it wasn't, we wouldn't include it at all. Right? I mean, medical collection debt inherently has a lot of problems, right, because of the major medical collections and all of those issues. If we didn't think that they were valuable, if lenders didn't use them, we wouldn't collect it. It wouldn't be worth our while to collect it. Why do we collect it? We collect it because our customers demand it, because our customers need it to make smart decisions about lending going forward.

[CHRIS WILLIS]

And, from the standpoint of those lenders making decisions, you've noted that the industry has adopted a de minimis exclusion, so small unpaid medical debts won't be on the credit bureau, won't factor into scoring. But, if there's a large one, like, isn't that relevant to a consumer's ability to pay? I mean, isn't that something lenders are supposed to take into account?

[FRANCIS CREIGHTON]

Sure, especially in secured lending cases where your front-end and back-end debt-to-income ratios is very important to the ability to repay calculation. Look, when you think about it, we've spent the last ten or fifteen years in bank regulatory policy and financial services regulatory policy making sure that, one, banks are well capitalized and, two, that consumers have the ability to repay loans. Right? And, so, think about a lot of the regulation we've done. We've really tried to make sure that banks understand the consumer's full financial picture before giving them a loan because, because what we learned in the subprime crisis, probably more than anything else, is we don't do people any favors by giving them loans that they can't afford to pay back. Lenders need this information to make smart decisions. Think of it this way. If you were going to get a \$200,000 loan and you had a \$10,000 medical debt, wouldn't that be relevant to the conversation? Now, how do they get there and everything? That's a different conversation, right? That's a different conversation about a medical system and the issues in our society? To the lender, they care about one thing: is this person going to be a successful consumer or not? And this information's critical to help them decide that.

[CHRIS WILLIS]

Yeah, and I think the point you made is one that we have to keep in mind, which is, the lesson of the subprime mortgage crisis was, it's not good for consumers, and it's not good for society, for credit to be available for people who aren't going to repay it. And it makes complete sense from my standpoint that a large unpaid medical debt a year out must bear on a consumer's ability to pay because they have that obligation, even after a year of letting it work through the medical billing system, so thanks for your comments on that. The other thing I wanted to talk to you today about, Francis, is, like, it's not an issue that's brand new today, but it seems to just be getting worse and worse and worse. And that is the plague of locusts that both the credit reporting and the furnishing side of consumer reporting has been experiencing from credit repair organizations. They seem to generate literally hundreds of

thousands of cookie-cutter credit reporting disputes. They send some to the credit bureaus; they send some to the furnishers as direct disputes. But, like, talk to the audience a little bit about how big of a problem this has become and the impacts that it has on the credit reporting ecosystem.

[FRANCIS CREIGHTON]

Yeah, let's just start by recognizing that, for some people, they need it, right? And they need to understand where their credit report is today and what they can do to fix it. We usually call that credit counseling. But there are, you know, it's legitimate for there to be a fee-based system and for people to get good, actual help with their credit. I don't want to take anything away from that. That's a positive thing. But these are scams. These are credit report scams where they are promising things to people that they can't deliver on, that, if you pay us a hundred dollars a month or even more, that we will then take correct information off of your credit report so that you can qualify for a loan that you otherwise wouldn't qualify for. That is what they are trying to do. That's what these credit repair scams are all about, taking correct information off of people's credit reports so that they can get a loan that they otherwise wouldn't be able to get. Look, to me, first of all, you can't do that, right? This is – they're lying to people. And yet we have regulatory agencies at the CFPB and the FTC that are asleep at the wheel here, and they have done next to nothing to put a stop to this. Now, there's been some enforcement cases. I think just recently there was a case from the CFPB shutting down a credit repair scam that also served as kind of a pyramid scheme, which was really terrible, but you're in the business, I'm in the business, we hear about these scams all the time, and they're ripping people off. Then, you can talk about what they're doing to the consumer reporting system, which is just clogging it up with dispute after dispute. And the worst part of it is, there are people who have mistakes on their credit report, people who are trying to get their credit report fixed because maybe there's a merged file or something was misattributed to them or something else. They want to get help. But all of the resources of the lenders, of the consumer reporting agencies, are being stuck just dealing with all this dreck that's in the system. And it's a real shame because these people know that they are cheating individuals, they know that they're cheating the system, and yet they keep on doing it, seemingly with impunity from our government regulators. Look, if these things aren't unfair, deceptive or abusive acts and practices, I don't know what is.

[CHRIS WILLIS]

Well, I have to definitely agree with that. But you noted the sort of lack of action by the Federal Trade Commission and the CFPB except for these occasional sort of whack-a-mole on the most extreme of these credit repair scams. But it seems to me there's a more fundamental policy choice that's been made by the regulators that's feeding this industry. And that is the pressure on consumer reporting agencies and on furnishers to investigate every dispute as if it is a unique snowflake, even when it is a mass-produced, you know, form letter that gets sent in by the consumer credit repair scams. And, so, like, to me, there is an exception in the Fair Credit Reporting Act that could be utilized to deal with this more effectively. It's the frivolous or irrelevant exception.

[FRANCIS CREIGHTON]

Yeah.

[CHRIS WILLIS]

You don't have to investigate that if you reasonably determine it's from a credit repair organization. But yet my perception is, and I really want to hear what you have to say about this, is that the regulators have pressured furnishers and consumer reporting agencies away from heavy use of the frivolous or irrelevant exception and that, because of that, it has empowered the consumer scams that we're talking about by causing their disputes to have more currency in the market. What's your perspective on that?

[FRANCIS CREIGHTON]

Yeah, look, I think that's exactly right. I think when the CFPB got set up ten years ago, there were a lot of voices that were being raised, saying, "Why are you even making this complaint data public, because we don't know how it will be abused?" And, in fact, that's exactly what's happening here. The credit repair scams are now flooding the complaint portal at the CFPB or the identity theft portal at the Federal Trade Commission, and the result is this massive wave of complaints and identity theft complaints that have no basis in fact. But what's also happening is, is that this fake wave of complaints and disputes are being fed into the system, the CFPB refusing to do anything about that, then says, "Well, we have to do something about regulation of the industry because there are so many complaints and disputes." Even though the CFPB knows that the complaints and disputes are illegitimate on their face, they're still saying, "Well, we have to do something on a regulatory basis to do this because you guys are so much complained about." It's really – it's a really bad feedback loop that the Bureau knows about, but they just keep going down this path of, we have to, quote, unquote, do something about CRAs because of this fake volume of complaints that are coming from scammers that the agencies who have power to stop do nothing or next to nothing about it.

[CHRIS WILLIS]

So, I mean, obviously, we could all imagine a solution to this problem that would require legislation in the form of an amendment to the Fair Credit Reporting Act, but that's probably not going to happen anytime soon.

[FRANCIS CREIGHTON]

Yeah, but, Chris, I mean, the law is clear. These people are ripping people off. The law is the law. The problem is we have two agencies that are doing next to nothing about it.

[CHRIS WILLIS]

And, again, not just not doing anything about it but actually giving currency to the manufactured disputes, the fraudulent disputes and complaints, that are being created by the credit repair organizations. So, it's not just that they're not whacking enough of them down, it's that they're giving value to what they are doing and allowing them to say, "Oh, yeah, sometimes it works. Sometimes the furnisher does miss the deadline, and so it does get off your credit report." And so, it's just like gambling, you know? When someone gambles and they win every once in a while, they keep doing it. And that's the feedback loop that you talked about. And then, as you said also, from a policy standpoint, the Bureau pretends as if this flood of fraudulent disputes that's manufactured for profit in support of a scam is some indicator of a greater problem with the credit reporting ecosystem when really, it's a problem with abuse of that system by the CROs.

[FRANCIS CREIGHTON]

Couldn't have said it better myself.

[CHRIS WILLIS]

So is there any practical solution available to the industry now, absent legislation, to try to deal with this swarm of illegitimate disputes that engulf us every day.

[FRANCIS CREIGHTON]

So, I want to be careful in how I talk about this, Chris, because I think it's an important question. I think it's really important that creditors, lenders, we call them data furnishers, work with their best FCRA lawyers, either at an outside firm like yours or internally, and to establish very clear policies and procedures that are then followed to the letter every time. Because, if you do do something that's proactively in response, where you say, "We're going to have a policy that, if a letter, if a dispute meets these eight of ten conditions, that we're going to treat it as a frivolous dispute," that when the regulator comes knocking on your door that you are ready, you have clear policies and procedures, they're auditable, and they're able to go. And, secondly, that up and down your chain of command, inside your institution, that not only lawyers but executives understand the choices that are being made and the regulatory risks that come with that. So, I think competent outside counsel who are specifically FCRA trained and who have experience working with the FCRA, with the Federal Trade Commission and the Consumer Financial Protection Bureau, on an ongoing basis, that everyone has signed off on this, because there's risk. Now, just because there's risk doesn't mean we don't do it, but the institution has to understand what that risk is because this problem is getting worse every day. It's growing and growing. It's not receding, right? We can see that in particular on the Federal Trade Commission's Sentinel reports of identity theft, where, you know, the long-term trend just continues to go up. Now, there's not identity theft in the economy, right? We would know that if millions of people were being victims of identity theft every day. But we can see it in that it's purely the result of increased reporting that's coming from these credit repair scams.

[CHRIS WILLIS]

Right. And so, what you're pointing out, which I'm in complete agreement with is, the only help for the industry on this, anytime in the near term, looks like it's going to be self-help based on more extensive utilization of the frivolous or irrelevant dispute provisions in the Fair Credit Reporting Act. It's in the statute. We have that to take advantage of, and your point about policies and procedures and having a clear, defensible policy is the way to go, from my standpoint as well. And you talked about regulatory risk, which there definitely is. You know, there has been and is pressure from the regulators to treat each dispute as if it requires a full investigation even when it's an obvious form letter from a CRO. You know, you get a thousand of them on the same day from the same post office box with the same postmark. The letters are all word-for-word identical. They're all signed the same. Like, everyone knows it's from a credit repair organization. But the point is, if you're going to invoke frivolous or irrelevant, I think the weighing that a furnisher has to do is between the regulatory risk of not thoroughly investigating these form letter disputes, which is the risk you mentioned a moment ago, versus the cost and expense and risk of devoting resources to treating every one of them like it is a legitimate dispute. And that is not a zero cost, right? That's a very personnel-intensive process within a furnisher to manually investigate all those disputes. And so, to me, it's a question of weighing that business cost and burden and the distraction of your personnel from being able to see the legitimate credit reporting disputes that are real within the haystack

of the frivolous ones. You know, to me, that's what you weigh against the regulatory risk that you mentioned.

[FRANCIS CREIGHTON]

Yeah, I think that's exactly right. You know, our system, our credit reporting system, is a voluntary system that furnishers and other lenders who are part of the system voluntarily take part in. But, by taking part in it, they have responsibilities that the law puts on them and that regulators put on them, and so they just have to understand what those issues are and then make sure that they're living up to the standards that the regulators have set and that they have set themselves in their policies and procedures. We can't tell you exactly how to do all of these things. Every company has their own risk tolerance, but the law gives people tools. You just have to work with your teams to figure out which ones you want to take advantage of.

[CHRIS WILLIS]

That's right, and I think anybody who doesn't think about using that tool, the frivolous or irrelevant tool, is basically making the decision of, "I want to deal with an ever-increasing pile of frivolous disputes every month," essentially. You know, "I want to spend more money and more time on that." Because, as you said, this problem isn't shrinking; it's growing.

[FRANCIS CREIGHTON]

Well, you know, one thing that sometimes happens is, when we have, on a one-off basis, we can't figure out, so I think we'll just call the consumer, a lot of times, because how these credit repair scams work, the consumer doesn't even know that they've been in contact with the credit reporting agency or the lender. And so, some of this just personal contact can allow you to, okay, we're done and push it aside. But that also is a very resource-intensive process.

[CHRIS WILLIS]

Thank you very much for talking with me about this because I feel like not a week goes by when I don't hear from a client about this plague of locusts that's overcoming us. Well, thank you very much, Francis, for being on the podcast today and talking about these really important issues. I know the audience benefited from and really enjoyed hearing your viewpoints on this, so thank you. And thank you to our audience for tuning in to today's episode. Don't forget to visit our blog, ConsumerFinancialServicesLawMonitor.com. Hit the Subscribe button so that you can get our updates from the blog, and add yourself to our Consumer Financial Services email list at troutman.com so that you can get our alerts and invitations to our webinars. And stay tuned for a great new episode of this podcast every Thursday afternoon. Thank you all for listening.

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