

Press Coverage | February 9, 2024

FCRA Immunity Waiver Ruling Tees Up Compliance Frenzy

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David Anthony, a partner in Troutman Pepper's Consumer Financial Services Practice Group, was quoted in the February 9, 2024 *Law360* article, "[FCRA Immunity Waiver Ruling Tees Up Compliance Frenzy](#)."

Other than the USDA's Rural Housing Service at issue in Kirtz's suit, parts of the federal government that issue loans such as the departments of Education or Veterans Affairs can now be sued if they misreport debts to credit reporting agencies and don't correct them, David N. Anthony of Troutman Pepper said Thursday.

"Kirtz involved the USDA, but many other agencies that administer loans and furnish information to credit bureaus, such as the Department of Education, would also be potentially implicated. The court specifically noted that federal agencies are among the largest furnishers of credit information to [credit reporting agencies]," Anthony said. "The Fourth Circuit previously held that the U.S. Department of Education was immune to suit under the FCRA for this type of claim, but now that protection is removed."

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The ruling could have even bigger implications for the government as the Consumer Financial Protection Bureau weighs new regulations under FCRA, Anthony said. Those proposals include changing the investigative procedures for disputes; expanding which entities are considered credit reporting agencies, or CRAs; expanding what's considered a "consumer report"; and extending FCRA liability to include data breaches.

Although the Ninth Circuit had previously rejected a lawsuit contending that government-sponsored lender Fannie Mae was a CRA, the new definitions and the Kirtz ruling could reopen the door to claims that Fannie Mae and other agencies meet the CRA criteria, or that other information the government uses could give rise to liability under FCRA, he said.

"If those proposals become final rules, the allowance of private suits against the federal government could take on even greater significance," Anthony said. "Even if government agencies are able to avoid being considered CRAs themselves, the proposed expansion of the definitions could nevertheless subject government agencies to permissible purpose claims when they use a wide range of consumer information that have not traditionally been considered consumer reports."

He said the Fair and Accurate Credit Transactions Act amendments to FCRA in 2003 had expanded liability for "other areas of activity within the consumer reporting ecosystem," intended to protect consumers against identity

theft. The Fourth Circuit ruled in 2014 that FACTA covered an attorney's payment information that was accidentally included in public records of his federal court filing fees, while the Ninth Circuit in 2018 had said FACTA didn't apply to the National Park Service.

"Any number of other federal agencies that process consumer payments could also now find themselves subject to FACTA suits," Anthony said.

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