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Why the Consumer Reporting System Is So Important

SPEAKERS

Chris Willis

In this episode of *The Consumer Finance Podcast*, Chris Willis talks with Dan Smith, president and CEO of the Consumer Data Industry Association, about current challenges and changes in the U.S. consumer reporting system. They discuss how reliable credit information supports fair lending decisions and helps lenders understand a borrower's ability to repay. The conversation touches on rising FCRA litigation, new state efforts affecting what can appear on credit reports — especially medical debt — and the growing issue of “credit washing,” where large volumes of questionable disputes can hide accurate information and slow resolution of real errors. The episode also highlights the importance of working with regulators and policymakers to preserve a nationwide credit reporting system that is complete, accurate, and consistent in supporting responsible lending and access to credit.

Transcript

The Consumer Finance Podcast – Why the Consumer Reporting System Is So Important

Host: Chris Willis

Guest: Dan Smith

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Chris Willis (00:05):

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And today we're gonna be talking about a series of issues affecting the consumer reporting industry in the United States, which, of course, is foundational for almost all consumer lending operations in the country. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com) and [TroutmanFinancialServices.com](https://www.TroutmanFinancialServices.com). And don't forget about all of our other great podcasts: *The FCRA Focus*, *The Crypto Exchange*, *Payments Pros*, and *Moving the Metal*. Those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and tell us how we're doing. Now, as I said, today we're gonna be having an in-depth discussion about what's going on in the consumer reporting industry in the United States. And we've got a very special guest that I'm very excited to introduce to you today, and that's Dan Smith. Dan is the president and CEO of the Consumer Data Industry Association, which, of course, is the association for the consumer reporting industry in the United States. Dan, it's really great to have you here today.

Dan Smith (01:11):

Chris, thanks for having me. Really excited. It's such an important topic.

Chris Willis (01:15):

Let's talk about why it's important first. I mean, probably people have some sense of the importance of consumer reporting to the lending industry and the economy, but let's unpack that a little bit. Why is the consumer reporting industry so pivotal to this part of the economy?

Dan Smith (01:31):

Well, if you think about it, it impacts every part of your life and it impacts every consumer in the country. Right now, there are over 250 million active credit report accounts. And so everyone in their day-to-day lives benefits from a robust consumer reporting system. You get a house, a mortgage, you purchase a car to get to work, you rent an apartment, you apply for a job. All of these things embed in their decision-making consumer reports. Either it's on your credit or your character, they're just a critical component to society as a whole.

Chris Willis (02:13):

Well, and not only do they serve a great purpose in allowing companies to make decisions on extending credit and things like that, but consumer reports serve an incredibly important fraud prevention function too, don't they?

Dan Smith (02:28):

Oh, it sure does. I mean, the data in the credit reports helps as another tool for financial institutions to make sure that the person you are interacting with is actually that person. So, enormously beneficial verification system.

Chris Willis (02:45):

Yeah. And so obviously the people who listen to this podcast are generally people from the consumer finance industry, and they, of course, will be probably both users of and furnishers to consumer reporting agencies. But there are a number of things that are going on right now that are somewhat impairing the value of consumer reporting to both the consumer lending industry and society in general. And I'd like to talk about a few of those with you. And the one that I wanted to start with is, everybody can observe, if you look at federal court filing statistics, that lawsuits under the Fair Credit Reporting Act are just proliferating in terms of their number. It seems like they're going up 10%, 20%, 30% year-over-year, and that's a trend that's been going on for some time now. What are your comments about that issue and what we might need to do about it to keep it from interfering with the consumer reporting system?

Dan Smith (03:39):

Last number I heard, there were over 8,000 FCRA lawsuits last year, both individual and class action. The one part that many people, even if you're in the financial services sector, don't fully appreciate is that the credit reporting system is 100% voluntary. A furnisher of data chooses to participate in the ecosystem. They give the information out of choice. When they do that, they take on legal, operational, litigation risk, regulatory oversight in order to use that data to make better, sound decisions.

Dan Smith (04:23): So the fact that it's voluntary creates this balancing act. If the laws are too restrictive, if the operational challenges are too restrictive, a lender will say, "I'm not going to benefit enough from reporting, so I'm going to choose not to." One of the biggest barriers to entry of new data sets is the liability provisions within FCRA. So unlike other consumer financial laws like ECOA and TILA and Electronic Fund Transfer Act and Fair Debt Collection Practices Act, you have caps on the total dollar amount. There is no cap in FCRA. And there's also a fee-shifting mechanism which causes this incentive for trial attorneys. Both the cap and the fee-shifting, it creates an incentive for the trial attorney to file a lawsuit and to demand a large settlement because it costs a lot to defend, even if you haven't violated the law. So these two specific provisions within FCRA have created this enormous push to sue without real benefit to consumer. We often see the consumer sees very little return on the lawsuit.

Chris Willis (05:41): Yes, but I think that's probably not true of the lawyers, is it? They see quite a lot of return, which is why they keep getting filed.

Dan Smith (05:46):

I'm hearing cases where the lawyers are getting 90%, and there are lots of cases where the consumer gets credit monitoring and no financial return.

Chris Willis (05:57):

Yeah. And so you've talked about the negative impact this has on the willingness of furnishers to furnish under the FCRA. What solutions does CDIA advocate with respect to this issue?

Dan Smith (06:09):

So the burdens are not just to those that are currently in the system. It's also the end user of the report. So if you're an employee and you purchase a credit report to evaluate a potential employee, you're taking on the liability. But if you want to furnish new data sets, rental, utility, telecoms, permission-based, cash flow analysis, it's all credit reporting information. And there is that barrier to entry that if I'm a Fintech, I'm a buy-now-pay-later lender, I'm gonna say, "Why am I doing this? Why am I taking on the risk?" So unless we create some change to the statute to take away the incentive to sue everyone on anything, we're gonna stop growing the ecosystem. And the more data that we have in the system, the better sound decision a lender can make on a consumer, which helps every consumer get credit. So the two provisions: one is to place a cap on the total penalties, \$500,000. Right now there's no cap. So you see class action lawsuits in the millions and millions of dollars demanding outrageous things for technical violations. There's punitive damages on top of actual damages. We're trying to allow the consumer to get the redress they deserve.

Dan Smith (07:34):

That is part of the FCRA. They have a list of protections. One is they can dispute errors, they can see their information, they can also sue. We're not trying to take away the consumer's ability to sue or get redress from any harm. But the fact that there's no cap is driving trial attorneys to this statute specifically. And then the other is the fee-shifting where the lawyers can file individual claims and demand thousands and thousands of dollars,

\$30,000, \$40,000, \$50,000 to settle, because they know the institution's gonna have to defend it. And it costs a lot of money to defend a lawsuit no matter what it is, even if it has no merits. So we're trying to say that's not how it should work. And we're proposing changes to address both of these so the consumer actually gets the relief they deserve and the system encourages more participants, not less.

Chris Willis (08:31):

Well, and I think one of the other points that I think the audience needs to remember about making sure that new data sets can come into the consumer reporting system is that it's believed pretty widely that the introduction of those data sets would allow creditors to make better decisions on people for whom a traditional credit file may be thin or maybe non-existent. And so it offers the promise of making credit more accessible. But that promise only comes true if the furnishers are willing to furnish. And as you've said, the liability situation makes that a tough decision to make.

Dan Smith (09:08):

That's right. That's where the balancing act comes in. I testified just last week in a House Financial Services subcommittee, and many of the members were asking about the value of alternative data to consumers that have thin or no file, low-to-moderate income specifically. And it's so true. We should be doing everything in our power to lift up consumers, and the more data we have, the better. But if I'm a small Fintech, I have to balance CFPB oversight, state AG oversight, the complexity of reporting to three credit bureaus, and then you pile on the unknown litigation risk on top of it. It discourages, not encourages, participation.

Chris Willis (09:51):

Yeah, absolutely. Well, let's move on to another issue that I know is very important to you and to me as well, and that is, we've seen in the past few years legislative efforts in a number of states to dictate the types of information that can and can't be included in a consumer report. And a lot of the action so far has been around the reporting of medical debt. Talk to us about the threat that that represents to the value of the consumer reporting system in the United States.

Dan Smith (10:21):

Envision a world where you have 50 different states with 50 different reports with 50 different types of data on it. I'm not sure how a lender could lend nationwide. If anyone other than Congress can decide what can and can't be on a credit report, you're gonna eliminate a nationwide credit system in this country. A lender will not be able to navigate that world. They won't be able to compare lender A to lender B based on the information on the credit report, because it will be different in every state. So states have decided, in their wisdom, that medical debt shouldn't be on a credit report. And there's probably a dozen states now that prohibit furnishing medical debt to the credit reporting agencies. The problem is, other than the matrix issue and the nationwide, the lender can't rely upon the accuracy of the report and its completeness. And so they're all gonna question, does this have an outstanding debt? A medical debt is a debt owed. Even if it doesn't appear on the credit report, it's still owed. A collector can sue to collect on that debt. So if I'm extending a mortgage for \$350,000 and a particular customer has \$50,000 in medical debt and I don't know it, I am gonna have a hard time doing an accurate ability to Repay

Test. And so it really is only the power of Congress to decide what is appropriate to be on a credit report. And the entire statute is based on the premise of complete and accurate information.

Chris Willis (11:58):

And I think CDIA has been taking some significant actions to try to protect the credit reporting ecosystem against the harms you just identified. Do you mind sharing those with the audience?

Dan Smith (12:07):

Sure. So we sued the CFPB immediately after they finalized their medical debt rule. And the court agreed with us that Congress is the only power that can determine what can and can't be on a credit report. And we've also filed multiple state lawsuits challenging state legislation or state laws that prohibit the reporting of medical debt. But Chris, let's take it one step further. We're talking medical debt, but policymakers, they're not gonna stop. Once they have that sort of ability to decide that's not challenged, the next you're gonna see are student loans. They're gonna take student loans off there. So there's an enormous amount of data that becomes not visible to a lender. Then they're gonna take certain mortgages that they don't like. If there's a natural disaster in an area, they're gonna remove that from the credit reporting. And so if you're a lender, you're just now guessing. I have no idea, right? I have no idea if they have an outstanding student loan or a medical debt. And so what will happen is you're gonna see constriction of credit access. Less people are gonna get loans and more people are gonna pay more for it. Those are the only two real mechanisms a lender has: charge more, lend less.

Chris Willis (13:21):

Well, and I think one of the things that I find most ironic about the effort to suppress information off of credit reports is, there's a whole series of regulatory enforcement activity predicated on the theory that it's an unfair practice under state UDAP laws or maybe even federal ones, for creditors to make loans to people where there's not a demonstration of an ability to repay. And of course, Congress legislated examination of ability to repay for credit cards in the CARD Act and for mortgages in Title XIV of Dodd-Frank. But yet the actions of these legislatures are directly interfering with lenders' ability to assess ability to repay.

Dan Smith (14:00):

They sure are. And I don't know what a lender does in this scenario. It's why a lender relies so much on the credit report. It is a critical component to underwriting. And less information is not good. More information the better. It doesn't mean a lender has to weigh certain data points the same. It's up to the lender to decide the kind of risk they wanna take. If they don't wanna look at medical debt, that is their choice. But if they're blind to it, they don't even have that ability to make a decision. And so I would be really concerned that your prudential regulators, if you're a community bank or even a large bank, would say you didn't do a sufficient ability to repay test because you didn't have all the information. Without a full and accurate credit report, they're blind to that information and they're gonna make different assumptions.

Chris Willis (14:53):

Yep. So speaking of completeness of information, that's probably a good segue to talk about the third sort of dark cloud on the horizon for us, and that is the incredibly large-scale effort of consumers and people working with consumers to try to erase accurate information off of credit reports by misuse of the dispute system. We call it credit washing. First of all, just paint the picture for the audience of the scale and magnitude of this issue, if you don't mind.

Dan Smith (15:25):

I'd be happy to. When I think about credit washing, I like to try to define it first. I think there's two types of credit washing, and there's different techniques that are used. But one is, the consumer or the credit repair organization that has convinced them to retain them to remove negative but accurate information from their credit report so that their score goes up. They're lying, right? They're trying to remove accurate information. The second piece is, they're removing trade lines from their credit report to commit fraud. And we've seen that in the auto space through what's called bust out, but also using different components within the FCRA to remove the trade line so the next lender is blind. For example, you go buy a car, you then sell the car, and you try to remove that trade line from your credit report, which means the next lender won't see it, and then you go get another car and get another loan, and you continue this process. So they're committing fraud. Those are the two types of credit washing. When you think of the CFPB, one of the tools credit repair organizations are using is the complaint portal.

Dan Smith (16:41):

The complaint portal has been around for about 15 years, give or take. From the beginning, we have told the CFPB that credit washing and credit repair organizations are a problem. They are trying to sell their service by convincing consumers to remove negative but accurate information. We have seen an enormous uptick in what are obviously, after looking at the actual data, attempts to credit wash through credit repair. They are inundating the system with now millions of complaints using technology, using AI, using bots, they're using social media. I'd encourage the audience to go onto TikTok or YouTube and just put in CFPB complaints and credit repair. It's kind of outstanding what they're telling people to do. That's against the law, what they're doing. It's called a false dispute, and they're encouraging consumers to violate the law. Numbers have gone dramatically from maybe 2017, there were maybe 600,000 total complaints in the CFPB complaint portal to last year there were north of 5.8 million, and almost over 4 million are credit reporting related. And we'd say 95% to 99% of them are credit washing. They are not legitimate consumers with inaccurate information. They're trying to wash negative information out of the credit report.

Chris Willis (18:11):

Well, and if you think about the negative impact of that kind of behavior, which I bet everyone listening to this podcast knows about because furnishers see these disputes and complaints themselves, the negative impact is not just to the removal of accurate information from consumer reports, which again, directly interferes with the accuracy of underwriting decisions, but it also makes it very difficult for a consumer who has a legitimate dispute to have their dispute picked as the needle out of the haystack from all of these meritless ones that are just challenging accurate information.

Dan Smith (18:46):

That's right. We're trying. We're trying using technology ourselves to identify patterns and practices. And it's pretty clear when you look at different complaints what is a consumer with a real problem versus an AI-generated dispute that's just slightly different each time. And I think that is our concern is that they are trying to inundate the system, overload it with lots of noise so that the statutory time frames run out. And so we've been encouraging consumers, go to your lender first. Pull your credit report. If you see something that's not accurate, call the lender. They're the ones that furnish the information. Then call your CRAs and say, "I have something I want to dispute," and walk through the process with them for legitimate inaccurate information. The system's not perfect. We work every day to improve the accuracy. Nobody benefits from an inaccurate credit report. There is this theory that we don't want accurate information. It's completely false. Without accurate information, our product is not valuable. The lender won't purchase it. So we drive every day for accurate information, and the lenders demand as accurate as possible. Maximum possible accuracy is the requirement.

Chris Willis (20:05):

So, Dan, this is a giant problem that's very decentralized because it involves a lot of actors with a lot of motivations. Are there any solutions that are in process or that might hold promise for trying to alleviate the credit washing problem?

Dan Smith (20:21):

So we didn't even touch on the FTC's identity theft report. That's another area where we're seeing enormous amount of abuse, where people are claiming to be a victim of identity theft, but they're not. They're lying in order to get a trade line removed. That in combination with the disputes are serious concern. We have had conversations and continue to have conversations with the FTC and the CFPB and our partner trade associations who are the lenders who are seeing and holding the bag and the results of this, right? And we continue to point to the challenges and make recommendations on how to fix the underlying problem. So more transparency, more oversight, more systems in place to prohibit bots and thousands of duplicate complaints. Let's make sure the consumer that's got an issue gets it addressed.

Chris Willis (21:18):

Right. So we're definitely, I think, will be on the edge of our seat waiting to see if there's some improvement that can be made in that situation. Because again, just like the FCRA litigation, it seems to be increasing in number on a monthly basis. And so I know the furnishers really feel it, as you noted. Dan, any parting thoughts before we close out the episode?

Dan Smith (21:39):

I would just say that when financial institution is talking to their regulator, talking to policymakers, try to remind them how important our credit system is to society. It's the best in the world. Is it perfect? No. Do we work really hard to improve it? Every single day. But people need to understand that it is such an important, vital piece of our economy that it's important that we get it right.

Chris Willis (22:05):

Well, Dan, thanks for your thoughts and thanks for sharing with our audience these issues that are affecting the consumer reporting industry in the United States, which, of course, then obviously affects the consumer lending industry very directly as well. And thanks to our audience as well for listening to today's episode. As I mentioned at the top of the show, don't forget to visit and subscribe to our blogs, [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com). And while you're at it, why not visit us on the web at [Troutman.com](https://www.troutman.com) and add yourself to our Consumer Financial Services email list? That way we can send you copies of the alerts and advisories that we release from time to time, as well as invitations to our occasional industry-only webinars. And of course, watch your podcast feed every Thursday afternoon for a great new episode of this podcast. Thank you all for listening.

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