

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

The Fair Credit Reporting Act's Limited Preemption of State Laws

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: States play an important role in the regulation of consumer reporting. State laws that are not “inconsistent” with the Fair Credit Reporting Act (FCRA) are generally not preempted by that statute. The FCRA also expressly preempts certain categories of State laws. This interpretive rule clarifies that FCRA’s express preemption provisions have a narrow and targeted scope. States therefore retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens. For example, if a State law were to forbid consumer reporting agencies from including information about medical debt, evictions, arrest records, or rental arrears in a consumer report (or from including such information for a certain period of time), such a law would generally not be preempted. Likewise, if a State law were to prohibit furnishers from furnishing such information to consumer reporting agencies, such a law would also not generally be preempted. Similarly, if a State law required that a consumer reporting agency provide information required by the FCRA at the consumer’s requests in languages other than English, such a law would generally not be preempted.

DATES: This interpretive rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

I. Background

The Fair Credit Reporting Act (FCRA)—which was enacted in 1970 and has since been amended several times—was intended by Congress to “ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy.” *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007). The FCRA “imposes a host of requirements concerning the creation and use of consumer reports.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 335 (2016). Among other things, the statute sets forth the permissible uses of consumer reports, establishes limits for information included in consumer reports, and creates a process for consumers to dispute information in their credit files.

In the Consumer Financial Protection Act of 2010, Congress granted the Consumer Financial Protection Bureau general rulemaking authority over the FCRA (except for certain provisions that are administered by other Federal agencies).¹ The Bureau also has authority to enforce the FCRA, along with other Federal regulators.²

States also play an important role in the regulation of consumer reporting. The FCRA itself grants States the authority to enforce the statute.³ Additionally, in the wake of Congress’s enactment of the FCRA, many States passed their own versions of the statute. States have continued to enact legislation regulating the conduct of consumer reporting agencies, furnishers,

¹ The Bureau is generally authorized to issue regulations as “necessary or appropriate to administer and carry out the purposes and objectives of [the FCRA], and to prevent evasions thereof or to facilitate compliance therewith.” 15 U.S.C. 1681s(e)(1).

15 U.S.C. 1681m(e) (“Red Flag Guidelines and Regulations Required”) and 15 U.S.C. 1681w (“Disposal of Records”).

² 15 U.S.C. 1681s(b).

³ 15 U.S.C. 1681(c).

and users of consumer reports. In some cases, State legislation provides protections to consumers that go above and beyond the requirements of the FCRA.

These State statutes exist alongside the FCRA, which says that—subject to certain exceptions—it “does not annul, alter, affect, or exempt any person subject to [the FCRA] from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.”⁴ In other words, State laws that are not “inconsistent” with the FCRA—including State laws that are more protective of consumers than the FCRA—are generally not preempted.

The FCRA also expressly preempts certain categories of State laws. As relevant here, 15 U.S.C. 1681t(b) says:

No requirement or prohibition may be imposed under the laws of any State

- (1) with respect to any subject matter regulated under
 - (A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports;
 - (B) section 1681i of this title, relating to the time by which a consumer reporting agency must take any action, including the provision of notification to a consumer or other person, in any procedure related to the disputed accuracy of information in a consumer's file, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;
 - (C) subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer;
 - (D) section 1681m(d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance;

⁴ 15 U.S.C. 1681t(a); see also *Davenport v. Farmers Ins. Group*, 378 F.3d 839, 842 (8th Cir. 2004) (“The FCRA makes clear that it is not intended to occupy the entire regulatory field with regard to consumer reports.”).

- (E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996;
 - (F) section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies [with exceptions for certain enumerated State laws]
 - (G) section 1681g(e) of this title, relating to information available to victims under section 1681g(e) of this title;
 - (H) section 1681s-3 of this title, relating to the exchange and use of information to make a solicitation for marketing purposes;
 - (I) section 1681m(h) of this title, relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;
 - (J) subsections (i) and (j) of section 1681c-1 of this title relating to security freezes; or
 - (K) subsection (k) of section 1681c-1 of this title, relating to credit monitoring for active duty military consumers, as defined in that subsection.
- (2) with respect to the exchange of information among persons affiliated by common ownership or common corporate control, [subject to certain exceptions];
 - (3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, [subject to certain exceptions];
 - (4) with respect to the frequency of any disclosure under section 1681j(a) of this title, [subject to certain exceptions];
 - (5) with respect to the conduct required by the specific provisions of--
 - (A) section 1681c(g) of this title;
 - (B) section 1681c-1 of this title;
 - (C) section 1681c-2 of this title;
 - (D) section 1681g(a)(1)(A) of this title;
 - (E) section 1681j(a) of this title;

- (F) subsections (e), (f), and (g) of section 1681m of this title;
- (G) section 1681s(f) of this title;
- (H) section 1681s-2(a)(6) of this title; or
- (I) section 1681w of this title.

This interpretive rule clarifies the preemptive scope of 15 U.S.C. 1681t(b), with a particular focus on 15 U.S.C. 1681t(b)(1) and (5), which have been the subject of recent legal challenges to State laws.⁵ As 15 U.S.C. 1681t(b)(1) says, that provision preempts only those State laws “with respect to any subject matter regulated under” certain sections or subsections of the FCRA. Similarly, 15 U.S.C. 1681t(b)(5) preempts only those States law “with respect to the conduct required by the specific provisions of” certain sections or subsections of the FCRA. The term “with respect to” indicates that Congress intended these provisions to have a narrow sweep. As the Supreme Court has held in a similar context, “with respect to” means to “concern.” In other words, section 1681t(b)(1) does not preempt State laws unless they concern a subject matter regulated under the enumerated portions of the FCRA. Similarly, section 1681t(b)(5) does not preempt State laws unless they concern conduct required by the enumerated portions of the FCRA.

II. Analysis

The Supremacy Clause of the United States Constitution says that “the Laws of the United States” shall be “the supreme Law of the Land... any Thing in the Constitution or Laws of

⁵ The CFPB “encourages State Officials to consult with the Bureau whenever interpretation of Federal consumer financial law, as defined in section 1002(14) of the Dodd-Frank Act, ... is relevant to a State regulatory or law enforcement matter, even if it is not the type of action for which notification is required” pursuant to the State Official Notification Rule. 77 Fed. Reg. 39112, 39113 (June 29, 2012). The Office of the New Jersey Attorney General recently notified the CFPB about pending litigation in which the plaintiff alleges that a New Jersey consumer protection statute is preempted by the FCRA.

any state to the Contrary notwithstanding.” Art. VI, cl. 2. When a Federal statute includes a preemption clause—as the FCRA does—“[t]he purpose of Congress is the ultimate touchstone” in interpreting such a clause. *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008). “Congressional intent, of course, primarily is discerned from the language of the pre-emption statute and the ‘statutory framework’ surrounding it.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996). Thus, any preemption analysis must “focus on the plain wording of the clause.” *Puerto Rico v. Franklin California Tax-Free Tr.*, 579 U.S. 115, 125 (2016).

Focusing on the plain text of sections 1681t(b)(1) and 1681t(b)(5), it is apparent that both provisions have a narrow and targeted scope.

A. Under 15 U.S.C. 1681t(b)(1), State laws are not preempted unless they are “with respect to any subject matter regulated under” certain sections or subsections of the FCRA

Section 1681t(b)(1) has eleven subsections, each of which follows the same syntax. Each subsection preempts State laws “with respect to any subject matter regulated under” an enumerated part of the FCRA (e.g., section 1681c). Following the enumerated section of the FCRA comes a parenthetical phrase beginning with “relating to” that describes or further narrows the section that has just been enumerated. For instance, section 1681(b)(1)(E) generally preempts State laws “with respect to any subject matter regulated under section 1681c of this title, relating to information contained in consumer reports.” Preemption under section 1681t(b)(1) thus depends on the meaning of both the “with respect to” and “relating to” clauses.

Foremost, State laws are not preempted unless they are “with respect to any subject matter regulated under” the enumerated sections of the FCRA. In the case of section 1681t(b)(1)(E), State laws would not be preempted unless they are “with respect to any subject matter regulated under section 1681c.”

In addition, a State law is preempted under section 1681t(b)(1) only if it *also* falls within the description in the “relating to” parenthetical. In some cases, the “relating to” parenthetical merely reiterates the enumerated section. For instance, 15 U.S.C. 1681t(b)(1)(C) preempts State laws “with respect to any subject matter regulated under subsections (a) and (b) of section 1681m of this title, relating to the duties of a person who takes any adverse action with respect to a consumer.” Both subsections (a) and (b) of section 1681m lay out certain duties of a person who takes an adverse action with respect to a consumer. Thus, both the “with respect to” clause and the “relating to” clause of section 1681t(b)(1)(C) have the same scope.

But in other cases, the “relating to” clause serves as a further limitation on the “with respect to” clause. For example (and as noted above), section 1681t(b)(1)(E) preempts State laws “with respect to any subject matter regulated under section 1681c of this title, relating to information contained in consumer reports.” Although section 1681c primarily contains limitations on information that can be included in consumer reports, it also includes other miscellaneous provisions. See, e.g., 15 U.S.C. 1681c(g) (requirement for truncating credit card and debit card numbers in receipts provided to cardholder). Thus, the plain text of section 1681t(b)(1)(E) indicates that only those State laws “with respect to” section 1681c that also “relate to” information contained in consumer reports are preempted.

It has been argued by some that the preemptive scope of section 1681t(b)(1) is defined only by the “relating to” clause. For example, in *Consumer Data Indus. Ass’n v. Frey*, 26 F.4th 1 (1st Cir. 2022), the plaintiffs argued that section 1681t(b)(1)(E) preempts any State laws “relating to information contained in consumer reports,” regardless of whether the law is “with respect to any subject matter regulated under” section 1681c. As courts have correctly held, that “is not the most natural reading of the statute’s syntax and structure.” *Frey*, 26 F.4th at 6. That

interpretation would render the “with respect to” clause surplusage. A statute, however, “ought to be construed in a way that ‘no clause, sentence, or word shall be superfluous, void, or insignificant.’ *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Moreover, Congress knows how to broadly preempt State laws that are “related to” fields or topics. For instance, the Employee Retirement Income Security Act “supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.” 29 U.S.C. 1144(a). Congress could have used similar syntax in the FCRA—but it did not. Instead, Congress made clear that a State law is not preempted by section 1681t(b)(1) unless it falls within the “with respect to” clause.

Whether a particular State law is “with respect to any subject matter regulated under” the enumerated sections of the FCRA will depend on the facts and circumstances. But it bears noting that the phrase “with respect to any subject matter regulated under” is an important limiting factor. As the Supreme Court has noted in a case involving a statute that—like the FCRA—included a preemption provision with both “related to” and “with respect to” phrases, the “with respect to” phrase served to “massively limit[] the scope of preemption.” *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013). The “with respect to” phrase “necessarily reaches a subset of laws narrower than those that merely relate to information contained in consumer reports.” *Frey*, 26 F.4th at 8. It narrows the universe of preemption only to those laws that “concern” the subject matter regulated under the enumerated FCRA sections. *Dan's City Used Cars*, 569 U.S. at 261; see also, e.g., *Frey*, 26 F.4th at 7 (section 1681t(b)(1)(E) “preempt[s] those claims that concern subject matter regulated under section 1681c”); *Galper v. JP Morgan Chase Bank, N.A.*, 802 F.3d 437, 446 (2d Cir. 2015) (section 1681t(b)(1)(F) “preempts only those claims that concern a furnisher’s responsibilities”). Thus, if a State law

does not “concern” the subject matters regulated under the FCRA sections specified in section 1681t(b)(1), it is not preempted by that clause.

It bears emphasis that section 1681t(b)(1) does *not* preempt all State laws relating to the content or information contained in consumer reports. Indeed, the legislative history of this provision confirms that it was intended to provide only “limited” preemption on “procedural” issues.⁶

For example, section 1681t(b)(1)(E) preempts State laws “with respect to any subject matter regulated under” section 1681c “relating to information contained in consumer reports.” In turn, section 1681c states requirements relating to four topics relating to information contained in consumer reports: (1) obsolescence, i.e., how long certain specific types of information may continue to appear on a consumer report;⁷ (2) certain information about medical information furnishers;⁸ (3) certain information relating to veterans’ medical debt;⁹ and (4) certain information that must be included in a consumer report (e.g., the fact that the consumer has disputed information provided by a furnisher to the consumer reporting agency issuing the report).¹⁰

The legislative history of the FCRA preemption provision confirms that only subject matter at this level of specificity is subject to preemption. The legislative history expressly references “obsolescence periods” as an example of a subject matter governed by preemption—

⁶ See 141 Cong. Rec. S5450 (daily ed. Apr. 5, 1995) (statement of Sen. Bond) (“This bill also contains limited Federal preemption to ensure that there are uniform Federal standards to govern a number of procedural issues which are part of credit reporting, and which will reduce the burdens on the credit industry from having to comply with a variety of different State requirements. For example, the bill preempts requirements regarding prescreening, information shared among affiliates, reinvestigation timetables, obsolescence time periods and certain disclosure forms.”).

⁷ 15 U.S.C. 1681c(a)(1)-(5).

⁸ 15 U.S.C. 1681c(a)(6).

⁹ 15 U.S.C. 1681c(a)(7)-(8).

¹⁰ 15 U.S.C. 1681c(d), (e), (f).

not the broader subject matter of the content of a consumer report more generally.¹¹ Hence, FCRA 1681t(b)(1)(E) does *not* preempt State laws about subject matter regarding the content of or information on consumer reports beyond these topics.¹²

For instance, although *how long* the specific types of information listed in section 1681c may continue to appear on a consumer report is a subject matter regulated under section 1681c, what or when items generally may be *initially* included on a consumer report is not a subject matter regulated under section 1681c. Indeed, section 1681c(a)(7) provides requirements about when veterans' medical debt, specifically, may be included on a consumer report by a nationwide consumer reporting agency, but nothing in section 15 U.S.C. 1681c addresses what or when information of other types may initially be included on reports.¹³ (For example, section 1681c(a)(5) regulates how long "adverse item[s] of information, other than records of convictions of crimes" may appear on consumer reports, but not whether or when adverse items may initially appear on a consumer report.) Similarly, only 1681c(a)(6) and (8), relating specifically to information about medical information furnishers and veterans' medical debt,

¹¹ See 141 Cong. Rec. S5450 (daily ed. Apr. 5, 1995) (statement of Sen. Bond) (referring to "obsolescence time periods" as an example of a subject matter on which there would be preemption).

¹² To be sure, the title of section 1681c is stated more broadly as "Requirements relating to information contained in consumer reports." But the title of a statutory provision is of only limited significance. *See, e.g., Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 529 (explaining that titles and headings "are but tools available for the resolution of a doubt," "[b]ut they cannot undo or limit that which the text makes plain"). And the actual subject matter regulated by the text of section 1681c is limited to the narrow topics actually addressed. Further, the legislative history confirms that the subject matter intended to be preempted is only the specific topics regulated in section 1681c.

¹³ Section 1681c(a)(1)-(5) regulates when certain types of information that "antedate the report" by "more than" certain periods of time may appear. But only 1681c(a)(7), relating specifically to veterans' medical debt, regulates when a type of information that antedates the report by "less than" a period of time may appear. Hence, only 1681c(a)(7), which is limited to veterans' medical debt, regulates when a type of information that antedates a report by *less than* a certain period of time may appear. Moreover, restrictions on what or when types of information may initially appear on a consumer report do not alter the period of time that information may remain on a report under Section 1681c. The restrictions in Section 1681c(a)(1)-(5) each provide that information may remain on a report for a certain period of time following the date that particular events occurred. A restriction on what or when information may initially appear on a report would not alter the date of those events. Such a restriction therefore does not change the date on which section 1681c(a)(1)-(5) prohibits the information from continuing to appear on the report.

contain restrictions on the content of a consumer report; the other provisions restrictions relate only to how long information may appear. Section 1681c therefore does not provide any general restrictions on the content of a consumer report. Accordingly, State laws relating to what or when items generally may be initially included on a consumer report—or what or when certain types of information may initially be included on a consumer report—would generally not be preempted by section 1681t(b)(1)(E).

States therefore retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens. For instance, medical debt that shows up in a consumer report can be factored into a consumer’s credit score, though whether and how these debts affect their scores varies depending on the score model.¹⁴ Research by the CFPB has found that medical collections are less predictive of future consumer credit performance than nonmedical collections.¹⁵ Additionally, paid medical collections are less predictive of future performance than unpaid medical collections. Individuals with more medical than non-medical collections and individuals with more paid than unpaid medical collections had delinquency rates that were comparable to those of individuals with credit scores of 10 points higher and 20 points higher, respectively. In other words, these individuals were less likely to be delinquent than other individuals with the same credit score. Nonetheless, some widely used models still weight medical and nonmedical collections equally.¹⁶ This means that consumers with medical debt may be negatively affected if creditors use older scoring models that may

¹⁴ CFPB, *Medical Debt Burden in the United States*, at 27 (Feb. 2022), https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

¹⁵ CFPB, *Data point: Medical debt and credit scores* (May 2014), https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debtcredit-scores.pdf.

¹⁶ *Medical Debt Burden in the United States*, at 27-28.

overweight medical debt. To address these concerns and others, States may pass laws addressing the furnishing and reporting of medical debt.

If a State law were to forbid a consumer reporting agency from including medical debt in a consumer report for a certain period of time after the debt was incurred, such a law would generally not be preempted. Section 1681c does not regulate the subject matter of when medical debt (or debt generally) may be first included in a consumer report. As noted above, section 1681t(b)(1) does not preempt all State laws relating to the content or information contained in consumer reports; rather, 1681t(b)(1) preempts only State laws concerning the subject matter regulated under the specified FCRA sections. Hence, as described above, 1681t(b)(1)(E) preempts State laws only with respect to the four specific topics regulated under section 1681c. Section 1681c(a)(7) provides requirements regarding veterans' medical debt, but section 1681c does not regulate the subject matter of medical debt information more generally. Further, although medical debt information may be "adverse information" regulated under 1681c((a)(5), as explained above, that provision regulates only the subject of *how long* such information may appear on a consumer report, not the content of the information or when such information may initially appear.

Likewise, if a State law prohibited a furnisher from furnishing information about medical debt for a certain period of time after the debt was incurred, such a law would not be preempted by section 1681t(b)(1)(F), which voids only State laws "with respect to any subject matter regulated under section 1681s-2 of this title, relating to the responsibilities of persons who furnish information to consumer reporting agencies." Section 1681s-2 sets forth several requirements for furnishers in order to assure the accuracy of information provided to consumer reporting agencies. For instance, "[a] person shall not furnish any information relating to a

consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.”¹⁷ However, section 1681s-2 says nothing about when a furnisher may or must begin furnishing information about a consumer’s account. Consistent with the discussion above about section 1681, the subject matter of section 1681s-2 that is subject to preemption is limited to these topics that are actually addressed in the section. Accordingly, when a furnisher may or must begin furnishing information about a consumer’s account is not a “subject matter regulated under section 1681s-2.” Thus, a State law governing when a furnisher may begin furnishing on a consumer’s account (including medical debt) would not be preempted by section 1681t(b)(1)(F).

Additionally, for example, the CFPB has noted that rental information in consumer reports plays a critical role in consumers’ access to rental housing, credit, and other opportunities.¹⁸ The CFPB has received consumer complaints about receiving collection notices from landlords or debt collectors for rent-related charges and fees they viewed as questionable.¹⁹ These charges may then appear on their consumer reports. Complaints to the CFPB also indicate that tenant screening companies may report inaccurate or misleading criminal and civil information, which led to consumers being denied for housing applications,²⁰ and the Federal Trade Commission has found that certain tenant screening companies have failed to follow

¹⁷ 15 U.S.C. 1681s-2(a)(1)(A).

¹⁸ CFPB, *Bulletin 2021-03: Consumer Reporting of Rental Information*, at 2 (July 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf

¹⁹ CFPB, *Complaint Bulletin: COVID-19 issues described in consumer complaints*, at 14 (July 2021), https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf

²⁰ CFPB, *Complaint Bulletin: COVID-19 issues described in consumer complaints*, at 15, https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf

reasonable procedures to ensure the accuracy of their reports about potential tenants.²¹ CFPB examiners have also found that the oversight of public records providers by one or more consumer reporting agencies was weak and required corrective action.²² Further, research suggests that a significant number of eviction records “contain ambiguous information on how the case was resolved or falsely represent a tenant’s eviction history.”²³ There is little or no empirical research showing that tenant screening report content is reliably predictive of future tenant behavior. For example, the CFPB has expressed concern regarding how reliably predictive pandemic era rental data is on a consumer’s future performance.²⁴ To address these concerns and others, States may pass laws addressing the furnishing and reporting of rental information.

A State law prohibiting a consumer reporting agency from including information (or certain types of information) about a consumer’s eviction, rental arrears, or arrests on a consumer report would generally not be preempted under section 1681t(b)(1). As noted above, section 1681t(b)(1)(E) preempts State laws only “with respect to any subject matter regulated under” section 1681c “relating to information contained in consumer reports.” Again, nothing in section 1681c regulates the content of eviction information, rental arrears, or arrest records or when such information may initially appear on a consumer report. Although such information may be information about “[c]ivil suits, civil judgments, and records of arrest” regulated under section

²¹ See *FTC v. RealPage, Inc.* (Oct. 2018), https://www.ftc.gov/system/files/documents/cases/152_3059_realpage_inc_stipulated_order_10-16-18.pdf; *USA v. AppFolio, Inc.* (Dec. 2020), https://www.ftc.gov/system/files/documents/cases/ecf_1_us_v_appfolio_complaint.pdf.

²² CFPB, *Supervisory Highlights*, at 6 (Summer 2015), https://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf.

²³ Adam Porton, Ashley Gromis, and Matthew Desmond, *Inaccuracies in Eviction Records: Implications for Renters and Researchers*, *Housing Policy Debate* 31:3-5 (Sept. 2021).

²⁴ CFPB, *Bulletin 2021-03: Consumer Reporting of Rental Information*, at 10 (July 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf

1681c((a)(2) or “adverse information” regulated under section 1681c((a)(5), as explained above, those provisions regulate only the subject of *how long* such information may appear on a consumer report, not the content of the information. Section 1681t(b)(1) preempts only State laws concerning the subject matter regulated under the specified FCRA sections, and whether or when information such as eviction information, rental arrears, or arrest records appears on a consumer report is not such a subject matter.

B. Under 15 U.S.C. 1681t(b)(5), only those State laws “with respect to the conduct required by” certain sections or subsections of the FCRA are preempted

Similarly, Congressional purpose in 15 U.S.C. 1681t(b)(5) is evident from its plain text. It has nine subsections, and each follows the same syntax: State laws are preempted to the extent they are “with respect to the conduct required by the specific provisions of [an enumerated FCRA provision].” For example, 15 U.S.C. 1681t(b)(5)(E) preempts State laws “with respect to the conduct required by the specific provisions of section 1681j(a),” which sets forth requirements for nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to provide free annual credit reports to consumers. A State law on this topic—for example, a State law requiring consumer reporting agencies to provide semi-annual credit reports to consumers—would likely be “with respect to the conduct required” by this provision. On the other hand, if a State law does not concern “the conduct required by” the enumerated section—the annual disclosure requirement, in the case of section 1681j(a)—then it is not preempted. For example, section 1681j(a) provides no requirements regarding the language in which disclosures of information are provided. Accordingly, if a State law required that a consumer reporting agency provide information required by the FCRA at the consumer’s requests in languages other than English, such a law would generally not be preempted by section 1681t(b)(5)(E).

III. Regulatory Matters

This is an interpretive rule issued under the Bureau’s authority to interpret the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFPA), including under section 1022(b)(1) of the CFPA, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws, such as the CFPA.²⁵

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.²⁶ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²⁷ The Bureau has also determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.²⁸

Pursuant to the Congressional Review Act,²⁹ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

Rohit Chopra,
Director, Consumer Financial Protection Bureau.

²⁵ 12 U.S.C. 5512(b)(1).

²⁶ 5 U.S.C. 553(b).

²⁷ 5 U.S.C. 603(a), 604(a).

²⁸ 44 U.S.C. 3501-3521.

²⁹ 5 U.S.C. 801 *et seq.*