

January 2009

Federal

Even with the economic crisis, the period from our *November 2008 Legislative Update* to this issue has been relatively quiet from a legislative perspective. Congress returned early, to begin work prior to the January 20 inauguration, but the leadership is still in the process of completing committee assignments and identifying priorities. New bills are just beginning to be filed, but those focused on economic stabilization and recovery are certain to dominate. The outlook for the 111th Congress, from our perspective, remains as we last reported—with the economic issues continuing to predominate, but with the possibility that subcommittee chairmen (in the House Financial Services Committee) may have more latitude to focus on specific issues, such as further restrictions on credit card billing practices even though the federal banking agencies promulgated a new Final Rule on this subject in late December (see below).

Legislative Activity

In the November *Legislative Update*, we reported on the Troubled Asset Relief Program (“TARP”) as contained within the Emergency Economic Stabilization Act of 2008. Since then, certain aspects of the implementation of TARP by the Treasury Department have been criticized by some Members of Congress, notably Financial Services Committee Chairman Barney Frank (D-Massachusetts). Accordingly, Chairman Frank on January 9th introduced a bill, HR 384, the “TARP Reform and Accountability Act of 2009”. According to the Committee’s website summary, “The legislation will strengthen accountability, close loopholes, increase transparency, and require Treasury to take significant steps on foreclosure mitigation.” Defenders of Treasury’s implementation of TARP note that, notwithstanding shortcomings in transparency and foreclosure mitigation, TARP has thus far achieved its primary objective—preventing the collapse of the U.S. banking system.

Rulemaking on Credit Card Billing Practices

As expected, the Federal Reserve, Office of Thrift Supervision and the National Credit Union Administration, on December 18, 2008 published new rules concerning credit card billing practices. The rules were published pursuant to their authority under the Unfair and Deceptive Acts and Practices provision of the Federal Trade Commission Act. According to the Federal Reserve’s Press Release of December 18, the rules will:

- “Protect consumers from unexpected interest charges, including increases in the rate during the first year after account opening and increases in the rate charged on pre-existing credit card balances.
- Forbid banks from imposing interest charges using the “two-cycle” billing method.

- Require that consumers receive a reasonable amount of time to make their credit card payments.
- Prohibit the use of payment allocation methods that unfairly maximize interest charges.
- Address subprime credit cards by limiting the fees that reduce the amount of available credit.”

The new rules become effective July 1, 2010. The “universal default” aspect of the new rules will impact the ability of credit card issuers to change interest rates on existing balances.

GAO Report on Regulatory Reform of Financial Services

On January 9, the U.S. Government Accountability Office announced the release of a new report: “FINANCIAL REGULATION: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System”. The report lists failures of the current system, which as it notes has been in place over the past 150 years. Without making specific recommendations, the report offers certain characteristics of a new regime which policymakers ought to consider in creating a new system. Although Paul Kanjorski (D-Pennsylvania), the Chairman of the Subcommittee for Capital Markets, Insurance, and Government Sponsored Enterprises, has indicated his intention to move forward on this issue, there is no expectation of this moving to a fast track in the near future.

International

Canada

In the spring of 2008, the Nova Scotia government tabled a bill intending to require consumer reporting agencies to allow consumers to access their credit report online at no charge every quarter (four free reports per year). After consultation with representatives of the industry, including TransUnion, the Nova Scotia government decided to set those provisions aside from its bill so that greater research and development could be done, as well as further consultation. TransUnion has worked with the government to find a “win-win” solution for both consumers and industry and proposed a solution which replicates the existing framework everywhere else in Canada for maximum efficiency. We are pleased to say that the Government of Nova Scotia has agreed with this approach and has formally advised TransUnion that it will now allow the sale of credit reports to consumers in Nova Scotia. TransUnion will continue to provide consumers free access to their regulatory disclosures by mail, in person, and by phone.

TransUnion has been working with its partners to ensure that Nova Scotians are able to purchase online credit reports, identity management products and other related services through the existing marketing channels, as other Canadians have been able to do for years, with a view of bringing the consumer products to market in the first quarter of 2009.

India

Government announces measures to stimulate the Indian economy

The Government has been taking steps to combat the impact of the global financial crisis on the Indian economy. Additional measures were announced on January 2, 2009 to cope with the unstable economy and deal with future problems that may arise.

The Government has introduced a powerful economic package thus shifting its focus on countering the impact of the global recession on India's growth now that the financial system has been assured of the stability. The economic package includes a four per cent tax cut that would bring down prices of cars, cement, textiles and other goods. It also has earmarked an additional Rs 20,000 crore (Rs 200 billion) for infrastructure, industry and export sectors.

In a virtual mini-budget that entails a revenue loss of Rs 8,700 crore (Rs 78 billion) in the next four months, the economic package seeks to revive the crucial housing, export, automobile, textiles and small and medium enterprises sector to counter the economic slow down caused by the global financial crisis and the recession in the West.

U.S. - State Level

As we noted in the *November 2008 Legislative Update*, the general elections set the stage to make key changes in the makeup of legislative leadership and committees, and regulatory leaders. With the country in the throws of an economic crisis and many new faces in state legislatures certain to take a fresh look at financial issues, the coming year should see state governments continuing to overcorrect a perceived lack of proper regulation around identity theft/fraud and data security, data transfer, and insurance scoring. While most legislatures are now in session or set to convene in the coming month, right now the primary focus, however, is not on our issues. Rather, many states are still struggling with balancing budgets (California for example has a \$36 billion deficit) and determining their leadership and committee assignments. In New York, after two months of chaotic negotiations, the fractious Senate Democratic caucus reached a deal on last week that will give the party control of the Senate for the first time in four decades, and Malcolm A. Smith, a Queens Democrat, has become the new Senate majority leader.

Identity Theft / Fraud and Data Security

This year we have seen very few identity theft bills, as compared with previous years, however in Texas the introduction of HB 345 focuses attention on the issue of liability and remuneration for data breaches. As we have seen previously in California the credit unions are actively seeking legislation that would codify Payment Card Industry (PCI) standards – private sector standards that apply to every entity that takes credit cards. We continue to feel that such legislation is unnecessary because while purporting to increase “data security,” bills such as these would actually have the unintended consequence of freezing evolving data security measures while imposing onerous and unneeded data management mandates on every entity that accepts payment cards (credit and debit cards). These bills would also create new financial liabilities for small and large businesses, not-for-profit entities and government agencies. The liability created by these bills may jeopardize data security by undermining the spirit of cooperation that currently exists between members of payment networks who work together to identify data breaches immediately and prevent payment card fraud. Furthermore, payment networks

are complex systems involving numerous parties that function under private, negotiated contracts. In most instances there are no less than six parties involved in a credit transaction—each with a contractual balance of rights, responsibilities, and costs. Bills such as these shift a portion of these private contractual components through legislation without addressing other concerns and upset the balance of responsibilities and costs. It is still too early to forecast the Texas bill's outcome, or that of similar state measures.

Security Freezing

Already this year we have seen the introduction of a few security freeze bills aimed at strengthening existing freeze statutes. In Arkansas, Mississippi, Nebraska, North Dakota, and Virginia, bills have been introduced that would either reduce fees consumer reporting agencies can charge for freezing a credit file, reduce the timeframe for lifting a freeze, or increase the liability for non compliance with the law. We continue to be engaged in mitigating any of the negative components of the bills, but like the other issues mentioned in this *Update*, it is still too early to determine their chances.

Insurance Scoring

Despite forty-eight states regulating the use of credit reports by insurance carriers, this year we have already seen numerous bill introductions – for example in Indiana, Minnesota, Missouri, Montana, Nebraska, New Hampshire, and Texas, aimed at eliminating credit use by insurers in underwriting and rating. It is still too early to know how these will fare but TransUnion will be actively engaged to educate legislators and regulators as to the benefits of the use of credit in underwriting decisions to consumers and will work to defeat this type of legislation.

As we noted in the *November 2008 Update*, the Florida Office of Insurance Regulation (OIR) has for some years been actively attempting to curtail the use of credit-based insurance scores through rule making that would force insurance carriers to provide proof to the OIR that the application of scores in their rate filings does not constitute a disproportionate impact against protected classes of individuals. We have seen a succession of promulgated rules by OIR, the latest in 2006, that would require the review and approval of an insurers use of credit reports and credit scores, require submission of specified information and verification that the models, methods, programs and other processes are accurate predictors of risk and are in compliance with the standards that ensure that rates or premiums associated with the use of a credit report or score are not unfairly discriminatory. On October 27, 2008, OIR released a new 12 page draft of their proposed rule regulating the use of consumer credit data in insurance pricing and underwriting. The latest rules do not require insurers to show that there is no disparate impact on minorities and other groups. However, there are several new proposals establishing other requirements, namely dealing primarily with forcing insurers to provide to OIR the data used in building the scoring models. Along with these rules, Florida Insurance Public Advocate Terry Butler proposed an amendment to the proposed rule that would ban consideration of any foreclosures or reductions in credit lines by credit card companies in any underwriting decision that uses credit. We expect further discussion of this proposed rule and amendment in the next few months.

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