



Legislative Update

March 2009

Federal

The Economic Crisis and Threats to Credit Reporting and Credit Scoring

Although the ever-present federal legislative threats to the operation and use of credit reports and credit scores appear to have had a reduced profile of late, circumstances could quickly change as a result of economic conditions and general media reports. For example, there has been widespread media coverage of reductions in credit card credit limits initiated by various credit card issuers and the hardships these reductions may create for small businessmen (who rely on personal credit cards to operate their business) and on individual consumers (who may already be at 70-90% utilization on their cards and who see a decrease in their credit scores as a result). Also, many believe the increase in home foreclosures has negatively impacted the credit scores of many consumers. Finally, the use of credit reports for employment screening is raising new questions amid perceptions that credit scores are declining for many. As policymakers in Congress consider the jumble of official reports, media coverage, and individual anecdotes describing these conditions, it is the task of industry representatives to educate policymakers on these issues.

Legislative Activity

Although the economic crisis continues to dominate the attention of Congress in general and of the Banking and Financial Services Committees in particular, a few bills worth noting here have been introduced since the January 2009 *Legislative Update*:

- The “Credit Cardholders’ Bill of Rights Act of 2009” (HR-627), introduced January 22nd, by Rep. Carolyn Maloney (D, New York) would accelerate the effective date of the recent major credit card practices regulatory rulemaking (described in the last *Update*), from July 1, 2010 to three months after enactment. A companion bill (S-235) was introduced January 14th in the Senate by Senators Charles Schumer (D-New York) and Tom Udall (D-Colorado). These bills contain additional provisions beyond the those included in the rulemaking, including:

- A consumer's right to reject a new credit card before notice of that card is reported to a consumer reporting agency.
- A consumer's choice regarding treatment of over-the-limit transactions.
- A detailed information collection process, from credit card issuing financial institutions to the Board of Governors of the Federal Reserve, which will result in a flow of semiannual reports to the Congress, on interest rates and fees, transactions, and other billing practices.
- A prohibition of the issuance of credit cards or open-end credit agreements to persons under eighteen years of age.
- A Senate bill (S-392), introduced February 6th by Robert Menendez (D, New Jersey), entitled "The Credit Card Reform Act of 2009" bans sending prescreened offers to persons which the credit report indicates are less than 21 years of age, unless the individual is over eighteen years of age and has opted-in to prescreening via a mechanism maintained by each consumer reporting agency.
- Senator Chris Dodd (D-CT), the Chairman of the Senate Banking Committee, has introduced his version of credit card reform legislation, S. 414, the Credit Card Accountability, Responsibility, and Disclosure Act. This is generally the most comprehensive of the credit card reform bills pending in Congress. Senator Dodd has announced his desire to have his Committee consider the legislation in the very near future, although it is not clear when this may happen.
- Legislation creating a "Financial Product Safety Commission" has been introduced in the Senate by three senior Democratic Senators—Durbin (Illinois), Schumer (New York) and Kennedy (Massachusetts). The bill would create this new federal Commission, with several objectives touching on Fair Credit Reporting Act protections. The Commission also would have broad rulemaking authority which would seem certain to trigger jurisdictional questions among the many federal agencies with responsibilities in these areas. Here is the complete list of the Commission's objectives :
 - Minimize unreasonable consumer risk associated with buying and using consumer financial products...;
 - Prevent and eliminate practices that lead consumers to incur unreasonable, inappropriate, or excessive debt, or make it difficult for consumers to repay existing debt, including practices or product features that are abusive, fraudulent, unfair, deceptive, predatory, anticompetitive, or otherwise inconsistent with consumer protection;
 - Promote practices that assist and encourage consumers to use credit and consumer financial products responsibly, avoid excessive debt, and avoid unnecessary or excessive charges derived from or associated with consumer financial products;
 - Ensure that providers of consumer financial products provide credit based on the ability of the consumer to repay the debt incurred;

- Ensure that consumer credit history is maintained, reported, and used fairly and accurately;
 - Maintain strong privacy protections for consumer transactions, credit history, and other personal information associated with the use of consumer financial products;
 - Collect, investigate, resolve, and inform the public about consumer complaints regarding consumer financial products;
 - Ensure a fair resolution of consumer disputes regarding consumer financial products; and
 - Take such other steps as are reasonable to protect users of consumer financial products.
- Representatives Delahunt (D-MA) and Miller (D-NC) have announced their intention to introduce a companion bill in the House of Representatives in the near future.

Rulemaking

Industry still awaits the pending rulemaking from the FACT Act of 2003 on risk-based pricing notices and direct disputes to information furnishers, among other matters. TransUnion expects these rules to be issued in 2009, and perhaps in the next several months.

States

Insurance Scoring

During the first six weeks of the 2009 state legislative sessions, at least thirty-nine bills have been introduced in twenty-two states that would either severely restrict or completely ban the use of credit-based insurance scoring. TransUnion is optimistic that none will pass, but we will continue to have a rough go at it, especially as consumers continue to face increases in foreclosures, bad debt and unemployment.

As the insurance scoring saga in **Michigan** and **Florida** continues, all indications are pointing to a prolonged battle in the courts of each state over the insurance regulators' attempts to effectively ban the use of credit by insurers. In an attempt to freeze insurance rates Michigan, the Department of Insurance has denied any new or revised rate filings by insurance carriers using credit and has used as its basis the notion of credit report inaccuracies spread by Consumer's Union and Consumer Federation of America studies. As TransUnion has long been aware, and as debunked in the 2005 FTC Accuracy Study, these consumer advocate studies are notorious for their poor methodologies. However they continue to be used as fodder in the attack against credit. In Florida, the financial crisis has pushed the state Chief Financial Officer to join the Insurance Commissioner in publically opposing insurance scoring. The Florida Office of Insurance Regulation is putting carriers through hoops. It held a hearing in February and subpoenaed five large insurance carriers, grilling

each on the use of scoring, credit history and scoring models by insurers in the underwriting and setting of rates charged to consumers. And the OIR will soon issue revised rules, which are expected to be as bad as previous rules it has issued.

The **National Conference of Insurance Legislators** last week adopted a proposal to review the use of credit-based insurance scoring. In order to do that review, a public hearing will be conducted, most likely in Washington, D.C., in April to look into: What is a credit-based insurance score, how does the insurance industry use credit-based insurance scores for pricing and underwriting, and what is the impact on policyholder premium from credit-based insurance scores in light of the current economic conditions. Several of the consumer representatives serving on the Consumer Liaison Committee have urged the regulators on the committee over the course of the past year that declining economic conditions warranted a renewed look at credit-based insurance scoring, and it appears that several insurance commissioners were convinced. It is anticipated that parties representing a broad range of interests – regulators, industry, vendors, and consumer representatives – will have an opportunity to be heard, and is set to be concluded by the fall national meeting in September. The final work product may include recommended regulatory actions, if warranted.

Security Freezing

Currently there are forty-eight states with security freeze laws. **Michigan** and **Alabama** are the only exceptions. So far this spring TransUnion has seen thirty security freeze bills in twelve states attempting to either reduce allowable fees, decrease timeframes for freezing, lifting, or removing the freeze, or increasing penalties for noncompliance.

On February 25, **Arkansas** House Bill 1037 was enacted. This bill amends the security freeze law that was passed in 2008 by reducing fees from \$10 to \$5 to place, lift and remove a freeze, with no fees for residents sixty-five years or older. It also removes the certified mail requirement, decreases from five days to three days lift for requests received via mail, and requires a 15-minute lift, subject to standard exemptions, that will apply to requests received via phone or secure electronic transmission. The law is effective May 25, 2009.

Virginia last week enacted House Bill 1884, which amends existing security freeze law by requiring CRAs, on and after July 1, 2009, to place a security freeze on a consumer's credit report no later than one business day after receiving such a request, if such request is made electronically at an address designated by the consumer reporting agency to receive such requests. The previous law did not have the distinction for electronic requests.

TransUnion expects an amended version of the **Kansas** security freeze law to be enacted. Currently, the law limits freezes to victims of identity theft and sets broad

timeframes but the new law would open a freeze to all and allow requests to be made via regular mail, secure website, or by phone. It also will change the time for lifting a freeze to three business days for postal mail, and fifteen minutes, with exemptions, if it's an electronic method chosen by CRA. The bill allows \$5 to place, lift, and remove a freeze, and allows administrative enforcement only for 15-minute lift violations.

In **Nebraska**, LB 177 is currently in final reading and TransUnion expects it to receive favorable attention. The bill defines a minor as less than 19 years old, removes the seven-year expiration of the security freeze, and lowers the fees to place, lift or remove a freeze from \$15 to \$3.

TransUnion also expects favorable attention from **North Dakota** House Bill 1308. This would decrease from three days to two days the time allowed for handling mail requests for placing, lifting and removing a freeze, and also implement a 15-minute lift requirement, subject to exemptions, for lifting a freeze.

Employment Screening

As the financial crisis affects a greater number of consumers in this country, consumer advocates are trying to create a wedge issue against employers who use reports for screening employees.

Although a similar bill was vetoed last year in **California**, AB 943 was introduced by a well-respected Assemblyman. It would require that once every six months, starting in 2011, every employer shall submit to the Department of Fair Employment and Housing (DFEH), a list of each applicant for employment in the preceding six months; their race and gender; whether a consumer credit report was obtained; and a list of all applicants offered employment in the preceding period. It also would require that starting in 2012, the DFEH shall report to the legislature "regarding the use of consumer credit reports by employers and provide an analysis of whether the use of consumer credit reports has a disparate impact on employment with respect to race and gender." And it would, unless based upon a bona fide occupational qualification, forbid an employer from refusing to hire or employ a person because the person does not authorize the employer to obtain a consumer credit report regarding the person. It is still early in the California legislative session to know how this bill will fare.

In **Hawaii**, receiving favorable attention is House Bill 31, which would make it make it a discriminatory practice for any employer to refuse to hire, to employ, to bar or to discharge from employment any individual based on their credit report. What this bill does not recognize is that current law requires notice and written consent for pulling an employment report, and that employers should have the ability to consider a prospective employee's personal financial management if they are liable for the employee's actions. Employee theft accounts for more than \$15 billion annually and the average employee embezzlement totals more than \$125,000. If a position is highly compensated or one which requires the exercise of judgment, control, or

direction of the employer's business, an employment report may be an essential step in ascertaining the qualifications of an individual for the position. TransUnion continues to work with the legislature to mitigate most negative affects of the bill, but it is likely to pass in some form this year.

Connecticut House Bill 5521, which would ban employers from using credit reports in hiring decisions, recently passed out of Labor Committee and is soon to be considered in the General Law Committee. TransUnion testified in opposition of the bill, as did the Retail Association and Human Resource Manager Association, but it is being pushed by Legal Aid and some consumer advocate groups. TransUnion is optimistic that it will not pass this year, but its current status reaffirms that even in a higher income state like Connecticut, bad economic times can help drive bad policy.

Utilities and Scoring

For the third year out of the last five, there is a bill in **Illinois** that would disrupt the landscape for non-traditional reporting of data and collections. House Bill 3965 would prohibit any credit bureau from developing a score using payment information from a utility account, thus in large part hindering scoring to set deposits or collecting on accounts. The bill is truly flawed and misguided. While singling out credit bureaus, it would still allow all other entities to score using utility payment information. It also would hurt the exact population the bill sponsor is trying to help: those living outside the credit mainstream – poorer, less advantaged consumers who make up a large section of Illinois. Like years past, TransUnion expects a contentious fight in the legislature, but we are cautiously optimistic that the proposal can once again be defeated.

Texas legislators are once again tackling the issue of credit and utilities. For background, four years ago, State Rep. Sylvester Turner sponsored a bill that became a law which regulates the use of consumer reports for electric utility and telephone purposes. His current proposal House Bill 2306 would amend that law to add additional restrictions. Generally, the bill deletes the right of utilities to use any type of utility payment data as a basis for denial of service. This amendment does not appear to change the fundamental fact that use of credit histories and credit scores either for application denials or for pricing are already prohibited. Thus this may be a non-issue for TransUnion, but it does open up the dialogue to ban utility payment history in scoring, which may be the ultimate goal. While TransUnion does not expect this bill to pass this year, it nonetheless ignites coals stoked by consumer advocates, who in general have made it part of their agenda to create an opt-in system for sharing consumer financial information with CRAs.

Inquiries and Scoring

Like the issue of utility payments and scoring, attempts to limit inquiries in scoring are based on the false perception that it would actually help consumers by banning inquiries. Although he had a previous bill to ban inquiries in scoring vetoed by the

New York governor, and his attempt to move a similar bill last year stalled in committee, Assemblyman Adam Bradley is back with Assembly Bill 3538, which would force all scoring models to use the same deduping logic when treating inquiries. Although this bill does not yet have a Senate companion bill, which is necessary to move a bill in New York, TransUnion does expect to see one this spring, and we will be engaged on this issue as it warrants.

Social Security Number Restrictions

TransUnion continues to see numerous bills across the States that would limit use of SSN in public records, and the worst is in **New York**. Senate Bill 1696, and its companion Assembly Bill 235, have two provisions: first, when a person requires another person to disclose his/her SSN the party making the request must “inform such individual...whether federal or state law...authorizes the solicitation of the [SSN], whether disclosure of such number is mandatory or voluntary and the principal purpose or purposes for which such information is intended to be used.”, and second, the bill also prohibits the denial of services for a consumer’s refusal to provide an SSN in the absence of a law so requiring. The bill fails to recognize that SSNs play a critical role in the daily lives of most Americans. Widespread use of SSNs, even they do not know it is happening, keeps many Americans safe in their apartments, at their worksites, and on their airplanes. Telling a person that there is no legal need for SSN collection is tantamount to not getting that number at all. In addition, federal law already protects SSNs. Under the federal Fair Credit Reporting Act (FCRA), information can only be provided with a statutorily narrow set of permissible purposes reducing unnecessary data flows from consumer reporting agencies, and under the federal Gramm-Leach-Bliley Act (GLBA), financial institutions are required to safeguard information using a variety of processes and procedures. TransUnion will continue to be engaged on this issue should it receive favorable attention.

International – India

RBI Reduces Repo and Reverse Repo Rates by 50 Bps

The Reserve Bank of India (RBI) has announced cuts in the repo rate and reserve repo rate by 50 basis point each. The repo rate is the rate at which the RBI lends to banks against pledging of government bonds while the reserve repo rate is the rate at which the Central Bank absorbs liquidity from the banks by releasing government bonds. The repo rate has come down from 5.5 percent to 5 percent and the reserve repo rate has dropped from 4 percent to 3.5 percent under the Liquidity Adjustment Facility (LAF).

RBI has urged banks to monitor their loan portfolio and take timely action to prevent asset impairment down the road. They feel that improvement achieved in asset quality should not be squandered away. At the same time, RBI says banks should

price risk appropriately and ensure that creditworthy business continues to get funding.

In a March 4, 2009 press release captioned 'RBI Announces Further Monetary Stimulus', RBI conveyed its decision to reduce the interest rates as explained above, and admitted that global financial and economic conditions have further deteriorated since it released its Third Quarter Review on January 27, 2009. The review showed that GDP has come in lower than market expectations at 5.3 percent.

The economic slow-down has forced RBI to implement key rate cuts since October 2008. Until now, the central bank has reduced the repo rate by a total of 350 basis points and the reverse repo rate by 200 basis points. In order to maintain liquidity and keep the market alive, the Central Bank will continue to take ample initiatives in future. Rapid increases in consumer credit access and utilization in India has led to dynamic changes to consumer credit profiles and behavior resulting in a challenging portfolio management environment for issuers. The Credit Information Bureau (India) Limited also known as CIBIL, powered by TransUnion and Dun and Bradstreet, enables credit grantors to implement effective portfolio management strategies, custom analytics and scoring solutions, thus helping their long term success and sustainability in the market.

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