



Legislative Update

April 2008

United States—Federal

The financial reordering currently underway has not yet produced any enacted legislation, or proposed regulation, that has a significant impact on TransUnion, or on consumer credit reporting in the United States. Yet, as always, there are several developments to watch.

- The search by Congress for legislation addressing the broad and complex range of problems occurring within the **U.S. housing market**—from financial markets to individual foreclosures to insurers of municipal bonds.
- The second, taking place in several forms is a reexamination of **credit scoring practices** and applications, prompted by the assertion that the general economic slowdown may unfairly impact credit scores.
- The third, the question of **restructuring the federal regulatory framework for financial institutions**, does not arise out of the current crisis but instead has been under study for quite some time. Still, recent reports produced by the Administration on this matter are understandably being viewed in the light of the present troubles in the housing and financial markets.
- Finally, there are the related issues of improvements to **financial literacy**, and the expansion of the credit reporting, and credit scoring, infrastructure to capture more “non-traditional” account information such as that which may be reported by energy utilities, telecommunications companies, and apartment rental agents. The current market difficulties lend fresh vigor to arguments for legislation supporting improvements in both of these areas.

In recent months, there has been federal legislative activity in each of these areas. Here is a summary of each:

Housing Market Legislation

In the Senate, Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) agreed to pursue a bipartisan bill, the Foreclosure Prevention Act (HR 3221). On initial review, there are no provisions in it directly impacting credit reporting in mortgages. It does establish a licensing and registration process for mortgage loan originators. Otherwise the bill contains a grab-bag of tax breaks for homebuilders, manufactured housing, and those buying foreclosed properties, among others. The bill passed the Senate on April 10 by an 84-12 vote. The sponsor, Senate Banking Committee Chairman Christopher Dodd (D-CT), noted that more work needed to be done in preventing foreclosures. For example, an amendment offered by Senator Richard Durbin (D-IL) would have allowed courts to lower the value of mortgage loans in bankruptcy proceedings—something strongly opposed by the financial services industry—failed to be adopted.

In the House of Representatives, the Committee on Ways and Means on April 9 passed the *Housing Assistance Tax Act of 2008*, by a bipartisan vote of 35-5. The legislation, introduced by Chairman Charles B. Rangel, would provide tax credits to first-time homebuyers, improve access to low-income housing, allow families to deduct property taxes, and includes other provisions.

Meanwhile, in the Financial Services Committee, Chairman Barney Frank announced another major bill, "The FHA Housing Stabilization and Homeownership Retention Act of 2008". The bill would provide up to \$300 billion in FHA guarantees to refinanced mortgages. The bill would also provide \$10 billion in loans and grants to the states to purchase and rehabilitate foreclosed homes. It is scheduled to be marked up on April 23.

A second major piece of legislation within Financial Services is "The Foreclosure Prevention and Sound Mortgage Servicing Act of 2008". This bill, sponsored by Rep. Maxine Waters (D-CA), the Chairwoman of the Subcommittee on Housing and Community Opportunity (where an April 16th hearing is being conducted), would amend RESPA (the 1974 Real Estate Settlement Procedures Act) to prohibit certain foreclosure proceedings without first conducting "loss mitigation activities" which provide for "the long-term affordability of the loan, and the maximum retention of home equity." In general, loss mitigation activities include various forms of forbearance by the lender, including rewriting the terms of the loan, waiving late fees, and a temporary reduction in, or cessation of, monthly payments to be followed by a re-amortization of the amount due.

While the situation is fluid, the expectation is that the Financial Services Committee will merge the bills by Chairmen Frank and Waters into a single bill, to be referred to the Rules Committee, where it will be combined with the Ways and Means tax package and sent to the Floor of the House for passage. At some point, the leadership of both House and Senate will appoint members to a Conference Committee to iron out a final "stimulus two" package to be sent to the President.

Finally, the House of Representatives, meanwhile, last November had passed and sent to the Senate HR 3915, "The Mortgage Reform and Anti-Predatory Lending Act of 2007". This bill also provides for registration and licensing of mortgage brokers and requires the originator to reach a determination, not only that the borrower has the ability to repay the loan but also that the borrower will receive a net tangible benefit in the case of a refinancing loan. Other provisions of HR 3915 would: 1) prohibit "undisclosed and unfair compensation schemes" among brokers, originators and lenders; 2) expose buyers and packagers of securitized loans to liability if consumers could not repay those loans; and 3) establish national standards for that liability. This bill awaits consideration in the Senate's Banking Committee.

Clearly, all elements of the housing crisis will continue to occupy much of Congress' attention for the remainder of 2008.

Credit Scoring Practices

In the summer of 2007, in compliance with a provision of the 2003 Fair and Accurate Credit Transactions Act (the FACT Act) the Federal Reserve Board and the Federal Trade Commission released separate reports examining the effect of the use of credit scores on the cost and availability of financial services (i.e., credit and insurance) with respect to minorities and ethnic groups. In particular, the FACT Act required the Agencies to examine whether specific factors used within scoring models act as a proxy for race. As reported earlier in the "*Legislative Update*", the reports by each of the Agencies found that scores were predictive, both generally and within each of the racial/ethnic groups, and that no factors were identified which acted as a proxy for race. The report also found that, in general, blacks and Hispanics had average scores lower than non-Hispanic whites, who, in turn, had lower scores than Asians. At the time, TransUnion noted two important strategies for closing this gap 1) increasing financial literacy, and 2) increased reporting of "non-traditional" account payment information from energy utilities and telecommunications companies. TransUnion continues to pursue these objectives (see below).

The fact that these reports confirmed the reality of lower average scores for blacks and Hispanics has driven the debate forward. This is particularly so for the issuance of property and casualty insurance.

In Congress, Rep. Luis Gutierrez (D-IL), on March 13th introduced HR 5633, a bill which would amend the Fair Credit Reporting Act ("FCRA") to require the Federal Trade Commission ("FTC") to identify uses of any information from a consumer report which results in racial or ethnic discrimination or which acts as a proxy for race or ethnicity, regardless of the extent of that effect. The bill is co-sponsored by Financial Services Committee Chairman Barney Frank (D-MA) and by Rep. Mel Watt (D-NC), the Chairman of the Oversight and Investigations Subcommittee. Reports have circulated that the bill may receive a hearing in May, perhaps before Rep. Watt's subcommittee.

TransUnion is supporting our insurance customers' efforts regarding this bill, which we fear could effectively ban the use of credit information for property and casualty insurance purposes.

A second bill which would restrict use of credit scores is HR 5244, "The Credit Cardholders' Bill of Rights Act of 2008". Among this bill's provisions is one which would restrict credit card issuers from certain risk-based pricing practices, namely, increasing interest rates on existing balances based on delinquencies with other, unrelated lenders. TransUnion will oppose this counter-productive provision, which we fear is likely to further diminish access to credit.

Federal Regulatory Framework for Financial Services

On March 31, Treasury Secretary Henry Paulson released a 212-page "Blueprint for a Modernized Financial Regulatory Structure." He noted that the release of the report came a year after the convening of a conference of industry leaders and policy makers to examining capital markets competitiveness. The Blueprint describes as optimal an objectives-based federal regulatory structure with three primary regulators: a market stability regulator, a prudential financial regulator, and a business conduct regulator ("CBRA"). The Blueprint suggests that the CBRA should have broad authority, including over matters covered by the Truth in Lending Act, the Real Estate Standard Procedures Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and consumer privacy laws. The press release, with links to the Blueprint and related documents, is at <http://www.treasury.gov/press/releases/hp896.htm>

From the ensuing press coverage and comments by various Members of Congress, and indeed as clearly recognized by Secretary Paulson himself, this move toward improving the entire federal regulatory structure over financial services is exceedingly complex and will likely take more than one Congress to accomplish, if indeed it ever happens. From TransUnion's perspective, we may be affected by these developments, both positively and negatively. Thus, we'll be engaged as this issue emerges. In general, we support a move toward more rational and streamlined federal regulatory structures, including creation of an optional federal charter for property & casualty insurers. However, both Committee Chairmen (Dodd in the Senate and Frank in the House) have made clear their view that this issue will wait for the next Congress, in 2009.

Financial Literacy & Non-Traditional Data Furnishers

As noted above, several of the bills related to the housing crisis contain provisions to boost the quality of notice provided to individuals seeking mortgages, seeking to refinance their mortgages, or facing foreclosure proceedings. In general, there is widespread recognition in Congress, and in the Administration, that a lack of financial literacy is an issue in the U.S. To this point the JumpStart Coalition for Personal Financial Literacy released on April 9 its biennial survey of graduating high school seniors. There was a decrease, to 48.3% from 53.2% in 2006, of correct responses relating to financial literacy. More information on this is at <http://www.jumpstartcoalition.org/> In general, TransUnion supports robust disclosures, and we are proud of our support, both for JumpStart, and of our national partnership with Operation Hope. For more information on Operation Hope, go to <http://operationhope.org> The House Financial Services Committee has scheduled a hearing on Financial Literacy for April 15, which we will monitor.

Boosting the participation of such “non-traditional” data furnishers such as energy utilities, telecommunications providers, and apartment rental agents is increasingly recognized as another path, along with increased financial literacy, to increasing access to financial services and asset building. Whether a federal solution toward these goals is desirable, or necessary, remains an issue. At present there are various federal bills that in one way or another address this issue, for the most part, ineffectively. One would require the Department of Housing and Urban Development to establish its own credit reporting infrastructure. Another would mandate reporting, upon request, by individual landlords. Another, the most promising of these three, would simply remove impediments to reporting by energy utilities in state laws. Although we are encouraged by the growing recognition of the issue, we will continue to work to support the independent research studying this question, while we lobby as needed to avoid bad federal law.

In the 50 States

Alaska Omnibus Identity Theft Bill Awaiting Transmittal to Governor

Alaska House Bill 65, an omnibus identity theft bill containing security freeze, breach notice and Social Security number provisions, continued to receive favorable attention and passed the legislature this past week. Upon adjournment of the legislative session on April 13, the bill was sent to the Governor for her signature. The Alaska legislature was working on this legislation for the better part of four years, and until now consensus was not reached among concerned parties. While far from a perfect bill, it is much improved from when the bill was introduced in 2007, where there was no allowance for fees for security freezing and a total ban on the sale of SSNs. As it passed the House, Consumer Reporting Agencies may charge up to \$5 to place a freeze. CRAs must provide up to two free temporary lifts per year but may charge up to \$2 for each subsequent lift. Removing the freeze is free but CRAs may charge up to \$5 to replace a PIN, after the initial replacement of the PIN is provided for free. And although there is still a subsection devoted to the prohibition of the sale, lease, loan, trade or rental of an SSN, we were able to get exemptions for consumer reports and transactions authorized by the Gramm-Leach-Bliley Act. HB 65 will be effective 90 days after the governor’s signature.

South Carolina Omnibus Identity Theft Bill Enacted

On April 2, Governor Mark Sanford signed into law Senate Bill 453, an omnibus identity theft bill containing security freeze, breach notice and SSN provisions. While the law contains somewhat innocuous and standard SSN and breach notice language, it makes no allowance for fees associated with security freezing. Despite intensive lobbying by CRAs for reasonable administrative fees to place, lift and remove a freeze, we hit an immovable wall in South Carolina. As a “win” for consumers, the issue of no fees can and surely will be used by incumbents as they face reelection in November. SB 453 is effective December 31, 2008.

Minnesota SSN Bills Keep Moving

The outcome of our attempt to amend the pending Minnesota law that would prohibit the sale of SSNs continues to be uncertain. As you recall, if we do not get an adequate exemption, on July 1 of this year we will be masking the first five digits of the SSN on output for Minnesota consumers. Competing bills SF 2390, sponsored by Senator Don Betzold, and HF 3146, sponsored by Representative Deb Hilstrom, are now moving to Conference Committee where a compromise is expected to be reached. However what that compromise is, and if it will have adequate language to continue business as usual in Minnesota, is unknown, and we may not have closure on the SSN issue until the end of session in mid-May.

Forty-four State Security Freeze Laws, and Counting

Despite our announcement in the fall of 2007 giving all consumers in the states the ability to freeze their credit files, the security freeze bill introductions and enactments keep on rolling in. With the enactment of freeze bills in Idaho, Iowa, South Carolina and Virginia we are now up to forty-four states

and Washington D.C. with freeze laws. In an election year, the topic of freezing is still a hot topic, as witnessed by the eighty-seven bills alive in twenty-two states this year.

- **Idaho Senate Bill 1380** – effective July 1, 2008. Allows CRAs to charge \$6 to place or lift a freeze and \$10 to replace a PIN. Freeze removals are no charge.
- **Iowa SF 2277** – effective August 15, 2008. Allows \$10 to place and remove a freeze, and to replace a PIN, and \$12 to lift a freeze.
- **South Carolina SB 453** – effective December 31, 2008. No fees.
- **Virginia HB 1311** – effective July 1, 2008. Allows up to \$10 to place a freeze but no charge to lift or remove a freeze.

Alaska, Arizona, Georgia Security Freeze Bills Pending Governor's Signature

It is expected that four more security freeze bills will soon be enacted; pushing the total to forty-six states and Washington D.C. with freeze laws. Alaska (previously mentioned) Arizona, Georgia and Iowa bills have passed the legislature and are awaiting their governor's signature.

- **Alaska HB 65** – effective 90 days after governor's signature. Allows \$5 to place a freeze, \$2 to lift (after first two per year no charge), no charge to remove the freeze, and \$5 to replace a PIN (after the first one free).
- **Arizona SB 1185** – will be effective August 31, 2008. Allows \$5 to place, lift, and remove a freeze and \$5 to replace a PIN.
- **Georgia HB 130** – will be effective August 1, 2008. Allows \$3 to place, lift, and remove a freeze, and \$5 to replace a PIN. For consumers sixty-five and older, CRAs may not charge a fee to place a freeze.

Michigan, Missouri, New York, Ohio Security Freeze Bills on the Move

Security Freeze bills in Michigan, Missouri, New York and Ohio continue to be heard in committees and are expected to receive favorable attention this year.

- **Michigan** – competing security freeze bills by Representative Kathy Angerer (HB 4103) and Senator Cameron Brown (SB 340) continue to be vetted, although they are both in a holding pattern right now because of spring recess. We expect the bills to be further discussed in late-April. As they now stand, both make allowances for \$10 fees for placing, removing, and lifting a freeze.
- **Missouri** – eleven security freeze bills are competing for passage, but the only one given a realistic chance for enactment this year is Senate Bill 712, sponsored by Senator Michael Gibbons, who is a candidate for state attorney general. The bill is on hold until Sen. Gibbons returns from medical treatment, and we expect it to move in late-April or early-May. Although the bill is silent on fees for lifting and removing a freeze, and allows the first placement of a freeze at no charge, subsequent placement of freezes are allowed for \$10 and Sen. Gibbons has committed to working with us to get sufficient fees for lifting and removing the freeze.
- **New York** – two security freezing bills in New York would amend the existing freeze laws. SB 7191, sponsored by Chuck Fuschillo, would add the 15-minute lift requirement, and SB 5543, also sponsored by Fuschillo, would add that victims of domestic violence receive placement of a freeze at no charge. Neither bill is moving quickly but we expect movement on them over the summer.
- **Ohio** – competing security freeze bills by H.B. 46 by Representatives Jimmy Stewart and Timothy DeGeeter (HB 46) and Senator Tom Neihaus (SB 6) are on opposite sides of the spectrum. While HB 46 allows \$10 to place a freeze and \$5 to lift and remove a freeze, has no private right action, and also conforms to timeframes of what the majority of states have enacted, SB 6 allows only \$5 to place, lift, or remove a freeze, contains a private right of action, and expedites timeframes. HB 46 is expected to be folded into SB 6, but the issue of fees, enforcement and timeframes are still on the table, and we don't expect resolution until late-spring or early-summer.

New Jersey Security Freeze, SSN Final Rules Issued

The New Jersey legislature enacted its omnibus identity theft bill in 2005 and gave the New Jersey Division of Consumer Affairs until December 31, 2005 to develop rules effectuating the law. However, it was not until this past week that the final rules were issued. Effective immediately, the freeze section contains a troubling provision which makes a CRA wait ten days to send notice to consumers after changing official information in a consumer report and also makes CRAs send notice of the right to freeze to the consumer each time they place, lift or remove a freeze, adding costly mail charges in a state where fees are limited. We expect to receive a delayed effective date and are working on amendatory language to fix these sections.

Insurance Scoring Bills Stall

Attempts to ban insurance scoring in Colorado, Oklahoma, Nebraska, Wisconsin, and Wyoming all failed this year with well-coordinated efforts between the insurance carriers and CRAs. In the end, legislators understood that elimination of insurance scoring in rating and underwriting would mean less competition, increased rate subsidization, and increased premiums for consumers in each state. Currently, bills in Illinois and Michigan are being heard in committee, but are not expected to receive favorable attention.

More Security Breach Notice Laws Enacted

Virginia, West Virginia, and South Carolina are the latest states to pass data breach notification laws, bringing to 42 the total number of states with such laws on the books (including the one state with a law that applies only to public entities, Oklahoma). This comes on the heels of an April 2 out-of-court settlement between TJX Companies Inc. and MasterCard International Inc. that would pay some \$24 million to banks that issued MasterCard credit and debit cards that were compromised when data held by TJX on tens of millions of customer payment cards was breached in 2006.

Retailer Breach Liability Bills Die

Minnesota enacted a retailer breach liability law in 2007, and it remains the only such law in the US. A similar bill was vetoed in California in 2007. Retailer liability provisions were stripped from a breach notice bill that is moving in Iowa, and in Wisconsin, a bill that would have made merchants that breached certain debit and credit card transaction data liable to banks for the costs associated with the breach, such as replacing cards and covering fraudulent purchases, died March 21. Meanwhile, a similar retailer breach liability bill in Washington that had appeared headed for passage died in committee when the Legislature closed its 2008 legislative session in mid-March. Bills that would make retailers liable to banks for breach costs are still under consideration, in committee, in three other states: Alabama, Michigan, and New Jersey. The New Jersey bill is unique because it would go well beyond establishing liability for breaches of payment card data. The proposed law would make every entity covered by the state's existing data breach notification law – not just merchants – liable to banks for breaches of any protected personal information – not just retained payment card transaction data.

Wisconsin Mortgage Trigger Bill Enacted

Wisconsin legislators, recognizing that legislation infringing upon prescreening has federal preemption, enacted AB 502 on March 13. The bill references the preemption of triggers as a prescreened offer of credit under FCRA, and prohibits furnishing or using certain consumer loan information to make solicitations. Provides that it is an unfair and deceptive trade practice to: 1) Fail to state in the initial phase of the solicitation that the person soliciting is not the lender, and is not affiliated with the lender, to which the consumer has applied for an extension of credit; 2) Fail in the initial solicitation to comply with any applicable requirement under FCRA; 3) Knowingly or negligently utilizing information regarding consumers who have opted-out of prescreened consumer reports or who have registered their telephone numbers on the national do-not-call registry; 4) Solicit consumers with offers of certain rates, terms, and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment; and 5) Make false or misleading statements in connection with a credit transaction that is not initiated by the consumer.

Kentucky Omnibus Mortgage Bill Sent to Governor

House Bill 552, an omnibus mortgage practices bill, of which mortgage triggers is a small part, is expected soon to be transmitted to the governor for his signature. Like the Wisconsin triggers bill, it does not affect TransUnion directly but in large part mimics what was enacted in 2007 in Maine and Connecticut, by making it an unfair and deceptive trade practice to use to use prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a mortgage loan with another mortgage loan company or mortgage loan broker, when the person: (a) Fails to state in the initial solicitation that the person is not affiliated with the mortgage loan company or mortgage loan broker with which the consumer initially applied; (b) Fails in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer; (c) Uses information regarding consumers who have opted out of the prescreened offers of credit or who have placed their contact information on the state or federal do-not-call registry; or (d) Solicits a consumer with an offer of certain rates, terms, and costs with the knowledge that the rates, terms, or costs will be subsequently changed to the detriment of the consumer.

NEW: International Section

A note about expanded coverage: TransUnion is a global company—providing services in 25 countries around the world. Beginning with this edition, we add a Canadian section from our colleague in Toronto, Chantal Banfield. In subsequent editions, we intend to add sections from TransUnion colleagues covering Africa, Asia-Pacific, Latin America and the Caribbean.

Canada

“Fraud alert” Legislation Came Into Force January 1, 2008 in Ontario

The portion of Bill 152 dealing with fraud alerts came into effect on January 1, 2008 in Ontario. The legislator in Ontario has essentially codified the voluntary practice of consumer reporting agencies to place fraud alerts on a consumer's file under certain circumstances.

Consumer reporting agencies now have the obligation to place an alert “upon request” by a consumer and to deliver the alert to every person to whom any information from the file is disclosed.

The legislation furthermore imposes a new obligation on most of TransUnion's customers to verify the identity of the consumer where an alert is present for certain types of transactions. As such, any person who receives an alert must take “reasonable steps to verify that the person involved in a transaction is the consumer” before proceeding with the transaction. The legislation is silent on what constitutes “reasonable steps” so each company will be required to interpret its meaning based on their sector of activity and their particular circumstances. The transactions which are covered by the legislation involve most sectors of activities that TransUnion's customers operate in, such as the extension of credit, the purchase, assignment or collection of a debt, tenancy, leasing, employment and insurance.

It is to be noted that Manitoba also passed a similar legislation in December 2006 (Bill 5) which has yet to be proclaimed; the regulations under that bill have not been published to date.

Federal PIPEDA Review Data Breach Notification

Industry Canada has been in consultation with industry in order to propose a data breach notification model. TransUnion has met with officials during the preparation phase of this process. This particular initiative has been part of the national consultative process for the review of *Personal Information Protection and Electronic Documents Act* (PIPEDA). In March 2008, Industry Canada published its proposed model and has invited stakeholders to comment and participate in an industry meeting in April 2008. TransUnion will be part of this consultative process and will be present at these meetings.

According to Industry Canada, the policy objective for this initiative is to encourage safer handling practices on the part of organizations dealing with sensitive personal information. At the same time, the government is seeking to reduce public concern regarding data breaches and increase confidence in the online marketplace. The proposed model is meant to arm consumers with the information they require in order to minimize risks resulting from a breach of their personal information.

The proposed approach would require an organization that has experienced a data breach to notify affected individuals where there is a "high risk of significant harm". In addition, these organizations would have to report any "material" data breach to the Privacy Commissioner of Canada.

Under the proposed regime, in accordance with Principle 1 of PIPEDA (the Accountability Principle), it is the organization responsible for the breach that should provide notification, even where the breach occurred at a third party service provider. The Accountability Principle under PIPEDA requires organizations to be responsible for the actions of their third party vendors and/or service providers.

It is proposed that consumer reporting agencies should be notified of large breaches involving financial information where notification to individuals is required provided however that no personal information about the effected individual should be provided to consumer reporting agencies without the express consent of the affected individuals. The purpose of this notification would be to allow consumer reporting agencies to prepare a timely and appropriate response to any resulting inquiries from consumers.

The proposal does not deal with cost allocation resulting from data breaches. The proposal is also silent on penalties for non compliance.

Legislative Updates are written and distributed by the Government Relations department and appear bi-monthly on TransUnion.com and TransUnion.ca.

Bob Ryan

Vice President of Government Relations
(312) 466-7799
ryan@transunion.com

Eric Rosenberg

Director of State Government Relations
(312) 466-6323
erosenb@transunion.com

Chantal R. Banfield

General Counsel & Chief Privacy Officer
TransUnion of Canada, Inc.
(416) 332-2449
cbanfield@transunion.ca

To view a PDF file, you must have Adobe Acrobat Reader Version 5.0 or higher installed on your computer. To download a free copy of Adobe Acrobat Reader, follow the instructions on this Web site: <http://www.adobe.com/products/acrobat/readstep2.html>