



Legislative Update

October/November 2007

FEDERAL

Social Security Number Restrictions

Policy makers in Congress and various federal agencies continue to examine the issue of Social Security Number (SSN) restrictions. On Oct. 3, the FTC announced that it would host a two-day symposium on the issue on Dec. 10-11 at its conference center (601 New Jersey Avenue, NW)

The conference, dubbed "Security in Numbers—SSNs and ID Theft," will feature panelists from the public and private sectors as well as consumer advocates. A Consumer Data Industry Association (CDIA) representative is expected to be among the panelists. The conference follows a collection of over 300 comments gathered last summer, and is available at <http://www.ftc.gov/os/comments/ssnprivatesector/index.shtml>.

Both the comment gathering and the conference are the outgrowth of the April 2007 report of the President's Identity Theft Task Force, which charged the Federal Trade Commission (FTC) with identifying all private sector uses of the SSN and evaluating the necessity of those uses.

Meanwhile, on the Hill, there is very recent word that the House leadership is taking an interest in reconciling the differences between two equally problematic SSN bills (reported in the August 2007 issue of Legislative Update). The one (HR 3046) by the Ways & Means Committee would give broad rulemaking authority to the Social Security Administration, while the other (HR 948) would give it to the FTC. If House leadership is poised to act on this issue, then there is some chance that Financial Services Committee Chairman Barney Frank (D-MA) will take up the somewhat unlikely role of champion of the banks, other financial institutions and commerce in general, defending the wide array of socially important uses of the SSN. In general, industry seeks exemptions for the collection and use of SSN for purposes related to the FCRA and GLBA. In the Senate, a bill (S 1178) reported out of the Commerce, Science & Transportation Committee earlier this year restricts the sale and public display of SSNs, but allowing use for FCRA, GLBA and other appropriate business applications. However, there is no indication that the other Senate committees with jurisdiction in this matter (Finance and Banking) are weighing in.

Credit Scores and Race

On October 2, Rep. Mel Watt (D-NC), Chairman of the Oversight and Investigations Subcommittee of the House Financial Services Committee, held a hearing entitled "Credit-Based Insurance Scores: Are They Fair." The hearing focused on the report released by the FTC in July 2007, examining the impact of the use of credit scores on the consumers of automobile insurance. That report concluded that scores are effective predictors of risk, including within racial groups. The report also found that African-Americans and Hispanics have lower average scores than non-Hispanic whites and Asians, although they were unable to identify factors within the scoring models that acted as a proxy for race. (A companion report by the Federal Reserve Board issued in August 2007, examining the effects of the

use of credit scores on consumers of credit granting services, contained remarkably similar findings and conclusions.)

The hearing was sparsely attended—in addition to Chairman Watt, only three Republicans were present—Ranking Member Gary Miller (R-CA) and Representatives Tom Price (R-GA) and Peter Roskam (R-IL). The only other Democrat present was Representative Maxine Waters (D-CA). FTC Commissioner J. Thomas Rosch defended the Commission's report to the sometimes pointed questioning of Chairman Watt and Rep. Waters. Insurance Commissioners J. P. Schmidt (Hawaii) and Mike Kreidler (Washington) both testified in support of banning use of credit scores for insurance, as did consumer advocate Birney Birnbaum. Former Illinois Insurance Commissioner Nathaniel Shapo defended the practice. Materials on the hearing can be found at http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr091907.shtml

Both the FTC's and the FRB's studies can be expected to be cited by both sides of this ongoing debate. Because there is presently no optional federal charter available to property and casualty insurers, this issue will continue to be debated, legislated and regulated primarily in the states.

File Freezing & Data Security Breaches

Two years ago, the information security and security breach notice issue was quite active, but jurisdictionally complex—with several Committees in both the House and Senate producing bills. Today, with security breach laws enacted in 39 states, the District of Columbia, Puerto Rico and New York City, the issue would appear to be moot. Without strong federal preemption, a federal bill has little to add. Congress is usually quite disinclined to override the laws of so many states, unless there is some compelling argument to do so – which appears lacking.

The situation regarding file freezing is very similar, and indeed the two issues are related since file freeze provisions have in the past been contained within data security breach notice bills. File freezing is not jurisdictionally complex. It is generally recognized as being within the province of the Senate Banking and House Financial Services Committees. However, as with security breach, the states have already acted and are continuing to do so. At present, 40 states and the District of Columbia have enacted file freeze laws. The preemption argument is the same—it is extremely unlikely that Congress would ever override the laws of so many states. However, without strong federal preemption, a federal law would only add another layer of standards and possible confusion.

In the Senate, the Banking Committee has not produced a bill on either subject. In the House, as reported in the last update, Financial Institutions and Consumer Credit Subcommittee Chair Carolyn Maloney (D-NY) and Ranking Member (the late) Paul Gillmor (R-OH)¹ produced HR 3316, a file freeze bill in August. Rep. Maloney appears to remain very interested in moving her bill, but given what appears to be general recognition that the states are dealing with the issue, there's at least some reason to hope the bill will not move, notwithstanding the Subcommittee Chair's personal interest.

The 2007 Mortgage Crisis

A plethora of bills in both the House and Senate, responsive to the current mortgage crisis, are in the works. Thus far, none of the proposals directly impact TransUnion's credit reporting business. However, because faulty or fraudulent appraisals are identified as a factor contributing to some foreclosure scenarios, several of the bills take aim at appraisal practices. Our concern with these bills is to ensure that no new restrictions are placed on Automated Valuation Models, which studies have shown actually outperform traditional, manual appraisals in declining markets.²

¹ Rep. Gillmor died September 5th

² Systemic Risks in Residential Property Valuations, Collateral Assessment & Technology Committee, Real Estate Information Professionals' Association, June 2005 <http://www.reipa.org/>

Red-Flag Guidelines & Other FACT Act Rulemaking

Latest reports from inside the beltway advisors are that the Final Rule on Red Flag Guidelines and Rules are expected out next week. Section 214 of the FACT Act required interagency rulemaking to be provided to financial institutions and creditors for identifying patterns, practices and specific forms of activity that indicate the possible existence of identity theft. The rules also will include a provision requiring credit and debit card issuers to assess the validity of requests for changes of address. A Proposed Rule issued last year, July 18, 2006, met with a fair amount of industry criticism for being overly prescriptive. For example, in its Sept. 14, 2006, comment letter, the American Bankers' Association wrote: "We fear that unless these shortcomings are addressed, the result will be a diversion of resources from effective detection, investigation, and corrective action and will necessitate wasteful expenditure on burdensome, paperwork-laden compliance exercises."

Also expected before the end of October is the long-awaited interagency Proposed Rule on Accuracy of Information by Data Furnishers, and on Direct Disputes by Consumers to Data Furnishers, issued as required by FACT Act, Sections 312(a) and (c). In the August/September 2007 issue of Legislative Update, TransUnion reported on the June 19th hearing in the Financial Services Committee, in which Chairman Barney Frank (D-MA) and Ranking Member Spencer Bachus (R-AL), as well as many other committee members of both parties, were both highly critical of the banking agencies and the FTC for the amount of time they were taking to issue these rules. The FACT Act was signed into law on Dec. 4, 2003.

STATES

New York Governor Vetoes Bill Banning Inquiries in Scoring

The August/September 2007 issue of Legislative Update mentioned AB 1416, which would have banned inquiries in scoring and was sitting with Governor Elliot Spitzer awaiting his signature. However, due to some hard collaborative lobbying work by TransUnion, other members of CDIA and our customers, the Governor vetoed the bill on August. 25. Spitzer noted that: "although well-intentioned, (the bill) sweeps too broadly, by prohibiting any consideration of automobile or mortgage credit inquiries in determining a consumer's credit score. The elimination of credit inquiries from the calculation of credit scores will take away a predictive tool utilized by the financial services industry in making important decisions about lending money. The unintended consequences of enactment of this bill could be increased costs to consumers for loans, or less availability of loans to consumers with less creditworthiness...The Banking Department, Insurance Department, New York Bankers Association, Consumer Data Industry Association and numerous lenders and credit rating agencies all recommend that this bill be vetoed."

Spitzer also was quick with a warning that foretells more work to come by the industry to educate legislators about the predictiveness of inquiries: "I certainly understand and support the desire of the sponsors of this bill to help protect consumers who are seeking automobile loans or mortgages. Unfortunately, this bill does not further that goal. As a result, I have asked my staff to work with the sponsors of his bill, state agencies and other interested parties to craft legislation that provides appropriate protections without creating the adverse consequences that likely would result from this bill."

Massachusetts Insurance Commissioner Bans Insurance Scoring

Despite the overwhelming evidence that insurance scoring with credit data is objective, improves risk segmentation and pricing, promotes competition and helps a majority of consumers receive lower insurance rates, Commissioner Nonnie Burnes issued a final rule on Oct. 5 that bans insurers from using credit data in underwriting and rating. Massachusetts is likely the least competitive market for insurance, and it has long been the intent of legislators and regulators in that state to create a level playing field with pricing, rather than pricing based on risk.

In the face of the recent *FTC Insurance Scoring Study* showing that “scores have only a small effect as a ‘proxy’ for membership in racial and ethnic groups in the estimating of insurance risk, remaining strong predictors of risk when controls for race, ethnicity and income are included in risk models,” pressure from consumer groups trumped reason. Burnes stated: “There are those who assert that the use of this information is unfair and discriminatory. On the other hand, there are those who view the use of credit information as a valid factor in predicting risk in this market and that the use of this information benefits careful, responsible people wherever they live. I will be reviewing whether this information should continue to be banned after the Transition Period or whether it should be allowed, subject to appropriate regulation.”

California SSN, Data Breach Bills Reach Governor’s Desk

Even with term limits imposed on California legislators forcing many veteran privacy activists out of office, the data privacy torch continues to be carried by many in the California legislature. Assemblyman Dave Jones, who employs key staffers that used to be employed on privacy advocate Senator Jackie Speier’s staff, has mounted the latest challenge to SSNs in public records. AB 1168, which some feel would protect consumers from identity theft by prohibiting local government agencies from releasing to the public records that contain more than the last four digits of a SSN; requiring the Franchise Tax Board to truncate SSNs on lien abstracts that it files as public documents; and allowing the Secretary of State’s office to stop certain financial documents from being filed with the office as public records if they contain any more than the last four digits of an SSN; has now passed the Senate and reached Governor Schwarzenegger’s desk.

Without the full SSN on these documents, the accuracy of matching this information to the correct consumer file is challenged, and thereby potentially reduces the ability to authenticate and identify a consumer. Numerous groups, including the CDIA, are seeking a veto from the governor.

California also is poised to set the data security bar even higher with AB 779, which is based on a Minnesota bill enacted earlier this year and is sitting with the Governor awaiting his signature. The bill would prohibit a business, not-for-profit association or state agency from storing “any value used to verify a transaction when the payment device is not present” and because of the number of undefined terms and the restrictions on data retention, maintaining account numbers for recurring bill payments also may be prohibited. In addition, the bill requires that any business, not-for-profit association or state agency that has to notify a credit card issuer under the breach law also will have to reimburse the issuer for card replacement costs. Couched as a privacy measure that would make retailers and others more responsible with personal information, the bill instead may prohibit many of the commonly accepted practices used by businesses, not-for-profit associations and state agencies everyday, including using a customer’s address to verify a credit card transaction made over the phone or via the Internet.

Further, the bill interjects California into private, business-to-business contractual relationships. Many of the key elements the bill are the subject of private, contractual agreements between financial institutions that issue credit cards, entities that accept credit cards and the card associations (e.g. Visa and Mastercard). These entities already reimburse financial institutions that issue credit cards for breach notification and card reissuance costs when a breach occurs and in cases where the reimbursement is inadequate, they can sue to recoup costs. While there are many that have requested a veto, the outcome is uncertain.

MI Freeze Bill Stalled, OH Freeze Bill Keeps on Moving

TransUnion’s recent announcement that it will have the freeze available in states without a freeze law is gaining traction with legislators. In Michigan, where TransUnion had thought a freeze bill was going to smoothly sail through the legislature, budget and tax issues are keeping the freeze issue quiet and

are polarizing things, making it unlikely a freeze bill will move further this year. The two bills will carry over into next year – an election year – and if they move it will be in the February to April timeframe.

In Ohio, a file freeze bill is still likely to be passed before the end of the year. While Ohio appreciates our making the freeze available to Ohio consumers, Ohio legislators feel the \$10 fee is too high and have settled in on a \$5 fee as the golden number for consumers to place, lift and remove a freeze, and also to replace a PIN. More troublesome though is the intent of legislators to provide immediate relief to victims of identity theft by mandating consumer reporting agencies to have in place an immediate placement of the freeze via the telephone for ID theft victims. In addition, while TransUnion mandated by many states to have a 15-minute temporary lift of the freeze available to consumers by Sept. 1, 2008, the Ohio bills would push this up to June 2008, the same date as the overall effective date of the bill.

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