Federal

**Financial Services Regulatory Reforms**

In June, a Senate-House conference committee completed its reconciliation of the bills passed earlier in those respective chambers. Highlights of the 2,314 page Dodd-Frank Wall Street Reform and Consumer Protection Act that was passed by the Senate July 15, which will be sent to President Obama for his signature are:

1. **Financial Stability**, establishing a financial stability oversight council and an office of financial research, and extending the Federal Reserve's authority over systemically significant non-bank financial companies and bank holding companies.
2. **Resolution Authority**, providing new powers to the FDIC to preside over the liquidation of financial companies, brokers and dealers.
3. **OTS Abolition**, ending the agency but not the savings and loan charter, and transferring authorities to the other federal regulatory agencies.
4. **Hedge Fund Advisor Regulation**, providing for federal regulation of private investment advisors and establishing studies of short selling, private funds and accredited investors.
5. **Insurance**, establishing a federal office of insurance that provides for certain reforms of state-regulated insurance and requires a study as to gaps in regulation created by the state model.
6. **Changes to Regulation of Bank Holding Companies and Depository Institutions**, establishing a moratorium and study of credit card banks and industrial loan companies, providing for regulation and examination of holding companies, and restricting capital market activity by banks and bank holding companies.
7. **Derivatives and Swaps**, providing for the regulation of swap markets and security-based swap markets
8. **Supervision of Payment, Clearing, and Settlement Services**, provides the Federal Reserve an enhanced role in setting standards and liquidity requirements, and supervising these services in order to mitigate systemic risk.
9. **Credit Rating Agencies**, creating a new Office of Credit Ratings within the SEC, ending the ability of issuers of asset-based securities to shop for an agency, requiring disclosure of rating methodologies, use of third parties, and track record, and eliminating many requirements to use rating agencies.

10. **Bureau of Consumer Financial Protection (“BCFP”)**, establishing this office within the Federal Reserve, with broad rulemaking and oversight authorities in many sectors of the financial services industry, including consumer credit reporting.

11. **Federal Reserve**, amending its emergency lending authority, requiring certain reports to Congress, increased transparency, and providing for emergency financial stabilization.

12. ** Improving Access to Mainstream Financial Institutions**, to encourage initiatives to provide financial products and services that are appropriate and accessible to persons “not fully incorporated into the financial mainstream”.

13. **Pay it Back Act**, providing for the repayment or recapture of unobligated funds made available under the 2009 American Recovery and Reinvestment Act (the economic stimulus legislation), and the sale by the Treasury of certain GSE (Fannie and Freddie) obligations.

14. **Mortgage Reform and Anti-Predatory Lending**, providing for enhanced mortgage loan origination standards, prohibiting steering incentives, amending the Truth in Lending Act to provide for liability for mortgage originators, requiring the Federal Reserve to adopt regulations prohibiting practices it finds to be abusive, unfair, deceptive or predatory, and creating minimum standards for mortgages, including consideration of the ability to repay, and prohibiting certain prepayment penalties, among other provisions.

15. **Miscellaneous Provisions**, dealing with issues extraneous to this legislation, such as coal mine safety, payments by extractors of natural resources, “conflict minerals” in the Republic of the Congo, etc.

**Potential Impacts on Consumer Reporting**
With its broad examination, rulemaking and enforcement authority, there are few aspects of consumer reporting that will fall outside the jurisdiction of the BCFP. However, there are provisions within Title 10 that specifically pertain to consumer reporting, including these:

- **New Regulator and Enforcement Agency for Consumer Reporting Agencies**
  Consumer credit reporting agencies are generally within the regulatory ambit of the new BCFP, however the Federal Trade Commission retains much of its oversight authority. Consumer reporting activities relating solely to employment or tenant screening would fall outside the jurisdiction of the BCFP.
• **Fair Credit Reporting Act**  
The bulk of the federal Fair Credit Reporting Act would be administered by the BCFP, including rulemaking, oversight, investigation and enforcement authorities held by the BCFP.

• **New Consumer Right to Obtain Score Disclosures**  
The FCRA is amended to require users of consumer reports to provide disclosure of a score used by the person when providing adverse action or risk based pricing notices. This may remove any option credit card issuers had (provide a notice of a free report instead of a score) under the recently enacted Risked Based Pricing Rules that are to go into effect on January 1, 2011.

• **Study and Report on Credit Scores**  
The BCFP is required to study the nature, range and size of variations of credit scores sold to credit grantors and those sold to consumers by the nationwide consumer reporting agencies, and to provide a report to Congress on this issue within one year of enactment.

• **Reporting Mandates for Small Loan Providers**  
Community development financial institutions are required to report “small dollar loan program” accounts to at least one 603(p) consumer reporting agency.

• **Enhanced Rights to Access Information**  
The BCFP is to prescribe rules by which covered persons must make information on products or services available. However, confidential commercial information, including score algorithms and pertaining to fraud prevention, is excluded.

• **No Adverse Impact from Delayed Posting of Payments**  
Servicers are required to credit payments on the date of receipt, except when no late charge or delinquent reporting to a consumer reporting agency results from the failure to do so.

• **Study of Credit Score Impact of Remittance Transfers**  
Requires the BCFP to submit a report on the potential for using remittance information to improve individual credit scores.

• **Effective Dates**  
There are numerous complex provisions regarding effective dates. However, in general, creation of the BCFP is effective upon enactment (signing by the President). Also, the transfer date for personnel from other agencies to staff the new agency must be not less than 180 days, nor greater than 1 year, after the date of enactment. Changes could be delayed, or could happen quickly. The new director could be nominated by the President and confirmed by the Senate soon after enactment. He or she will assume the office with powers fully in effect.
States

Employer Use of Credit Information

Once again, the issue of credit and employment is being addressed by the California legislature. For the third year running, the California Assembly has passed a bill – this time AB 482 – restricting the use of credit information by employers. As expected, the bill passed Senate Judiciary Committee last week, and it will now be referred to the Senate Appropriations Committee. Although we expect this bill to pass the Senate, we also expect the bill to be vetoed by the Governor for the third time.

In June the Illinois Senate amended HB 4658, which also limits employers’ ability to inquire about and use credit reports in employment situations, sending the bill back to the House for concurrence. The House adopted the Senate amendments and sent the bill to Governor Pat Quinn for his signature. If HB 4658 is enacted, Illinois will be the fourth state to enact this type of law after Washington, Hawaii and Oregon (see below).

Oregon SB 1045, enacted in April and effective July 1, is now the third state law that restricts employers’ ability to inquire about and use credit history in an employment decision regarding an employee or job applicant. Although the law does provide for some exceptions, and also allows rule making by the Bureau of Labor and Industries, it hinges on a subjective position-by-position determination of the use of credit by employers rather than setting level expectations for all jobs.

In New Jersey two bills that would restrict credit and / or financial information from being used in hiring decisions are being heard in the Senate Labor Committee. SB 1922 supplements Title 34 to make it illegal for an employer to use credit/financial status, and also creates a civil cause of action for a violation of the act and provides for penalties between $5,000 and $10,000. SB 1791 amends the Law Against Discrimination (LAD) to make it an unlawful employment practice to use credit/financial status in making employment decisions. Under the LAD, violators are fined between $10,000 and $50,000 in addition to attorney’s fees for the prevailing party. We expect these bills to be fiercely contested by business and industry.

Credit Modeling

In what has become an annual issue in New York, a bill (AB 9383) was introduced to require the de-duplication of inquiries in credit scores used for auto and mortgage loans. Despite having the effects of limiting the ability of lenders to mitigate their risk and of potentially raising the price of credit in the state, the Assembly Committee on Consumer Affairs and Protection passed the bill with little advance notice. TransUnion is engaged with our customers to correct the path of this legislation.
Foster Youth and Identity Theft
In California, AB 2698 would make some more corrections to its foster youth and identity theft law, although a similar bill was vetoed last year because of the burden it would have placed on a budget $30 billion in the red.

Similar to legislation enacted in previous years in Illinois and California, Connecticut SB 5196, which was effective July 1, requires the Department of Children and Families to check the credit reports of youth in foster care who are 16 years old look for evidence of identity theft.

Insurance Scoring
On July 8 the Michigan Supreme Court ruled that Governor Jennifer Granholm and ex-Insurance Commissioner Linda Watters exceeded their authority when they banned the use of credit scoring by insurance companies in the state. The decision means that insurers in Michigan can continue to use credit scoring in determining auto and home insurance premium discounts. The 4-3 decision invalidates rules against credit scoring proposed by the Granholm Administration and permanently blocks their enforcement. The ruling states that while the Commissioner has the authority to insure that insurers' practices comply with the Insurance Code, nothing about the practice of insurance scoring, however, amounts to a violation of the Insurance Code per se, and that the Commissioner exceeded her authority by enacting a total ban on a practice that the Insurance Code permits.

Iowa SB 2075, which was effective July 1, adds the new extraordinary life circumstances NCOIL model language to the state code; requiring an insurer using credit information to underwrite or rate risks for a policy of personal insurance to provide reasonable exceptions to the insurer’s rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer whose credit information has been influenced by certain extraordinary life circumstances set forth within the text of the law.

Kansas HB 2501, also effective July 1, amends the Kansas Insurance Scoring Act to include NCOIL Extraordinary Life Circumstances language, similar to Iowa, and also removes “best rate” language for sending adverse action notices and the mandatory 36 month rescore for insurers using insurance scores.

New Hampshire House Bill 1236 was signed into law on June 6 and is effective January 1, 2011. It adds to state code that “No insurer shall cancel, refuse to write, or refuse to renew a policy under this chapter solely on the basis of credit information obtained from a credit rating, a credit history, or a credit scoring model, without consideration of any other applicable and permitted underwriting factor independent of credit information.” This simple change comports with other state laws.
Declaration of Removal

On June 18, litigation filed by CDIA blocked certain provisions of a new New Mexico law from taking effect. This New Mexico law deviates from the standards laid out in the FCRA. In March, over TransUnion and CDIA’s objections, the New Mexico legislature passed and the governor signed the Fair Credit Reporting and Identity Security Act (FCRISA). This Act was to take effect on June 19. This law required that Consumer Reporting Agencies, within five days of receipt of a “declaration of removal”, “remove from its files and credit reports of the affected consumer the information that is the subject of the declaration of removal...” The Act also allowed CRAs to “restore the information subject to the declaration of removal” in certain circumstances. The FCRA already provides for blocking of information related to identity theft. We expect the Court to find in CDIA’s favor and declare the Act preempted by the FCRA.