August 2015

In the United States Congress

**S. 1234, FIX Credit Reporting Act**
In May, Sen. Amy Klobuchar (D-MN) introduced S. 1234 which would amend Sec. 611 of the Fair Credit Reporting Act (FCRA). Sec. 611 dictates procedures in cases of disputed accuracy in credit reports. Specifically, S. 1234 would require consumer reporting agencies (CRAs) to include any supporting documentation from a consumer when forwarding “relevant information” to a furnisher in the case of a dispute. In September of 2013, the Consumer Financial Protection Bureau (CFPB) issued a bulletin reminding data furnishers of their obligations to consider all relevant information (including documentation) provided by a CRA. S. 1234 was referred to the Senate Banking, Housing and Urban Affairs Committee. No House companion bill has been introduced at this time.

**H.R. 2362, Medical Debt Relief Act**
In May, Rep. John Carney (D-DE) introduced H.R. 2362, the Medical Debt Relief Act. H.R. 2362 would require CRAs to remove any medical debt information on a credit report after 45 days of it being either settled or paid in full. It also would create a 180 day waiting period for any medical debts to be reported to a CRA to allow insurance payments to be applied. Finally, H.R. 2362 would require debt collectors to verify the medical debt before reporting to a CRA. H.R. 2362 was referred to the House Financial Services. A Senate companion has not been introduced, but it is expected.

**S. 1309/H.R. 2363, Federal Adjustment in Reporting of Student Credit Act**
Senate and House legislation was introduced in May that would allow private student loan borrowers the same ability to rehabilitate defaulted loans as federal student loan borrowers. The legislation permits private student loan borrowers to have a default removed from a credit report if they make a series of on-time payments in accordance with a lender’s rehabilitation program. Federal student loan borrowers currently have access to such rehabilitation programs. The Senate and House bills have bi-partisan support.

**S. 1249/H.R. 1514, Military Families Credit Reporting Act**
Senate and House legislation has been introduced in the 114th Congress which would, among other things, require any consumer reporting agency to contact an active duty military member if negative information is reported to his or her file. The notice must also describe the adverse information. No action has taken place on these bills.

**H.R. 2091, Child Support Assistance Act of 2015**
In April, Rep. Bruce Poliquin (R-ME) introduced H.R. 2091 which would amend the FCRA to allow child support enforcement agencies to pull a credit report on delinquent parents without the current 10-day notice requirement. Rep. Poliquin argued the 10-day waiting period may
allow non-custodial parents who are subjects of credit report inquiries to shield assets in order to reduce their child support obligations. H.R. 2091 was referred to the House Financial Services Committee and received bipartisan support.

**H.R. 2205, Data Security Act of 2015**
In May, Rep. Randy Neugebauer (R-TX) introduced H.R. 2205 which would establish a national standard for data breach notification and data security. The bill would enhance Gramm-Leach-Bliley’s Safeguards Rule on data security. Specifically, H.R. 2205 would require a covered entity’s information security program to include the following:

- Designate at least one employee to manage safeguards
- Conduct risk analyses
- Regularly assess the plan in light of risks
- Update the program on a rolling basis as technology evolves.

The House Financial Services Committee held a hearing on protecting sensitive financial information on May 14. H.R. 2205 was also referred to the House Energy & Commerce Committee which has a competing data security/breach notification proposal (H.R 1770).

**S. 1383, Consumer Financial Protection Bureau Accountability Act**
In May, Sen. Sonny Perdue (R-GA) introduced S. 1383 which would make the CFPB subject to annual Congressional appropriations. CFPB currently receives its funding directly from the Federal Reserve.

**Federal Regulatory Agency Activity**

**CFPB Report on “Credit Invisibles”**
In May, CFPB published a study indicated that one in ten Americans is “credit invisible” (i.e., these individuals have no credit history with the nationwide CRAs). The report also found that eight percent of the adult population has a credit file but insufficient data to generate a credit score for a lender. CFPB Director Cordray stated with the report’s release, “A limited credit history can create real barriers for consumers looking to access the credit that is often so essential to meaningful opportunity—to get an education, start a business, or buy a house. Further, some of the most economically vulnerable consumers are more likely to be credit invisible.” The study, however, did not make any policy recommendations to lessen the numbers of credit invisibles.

**Diversity Standards**
On June 9, CFPB joined several other federal banking regulatory agencies in publishing final guidance on assessing diversity standards at institutions they supervise. Section 342 of the Dodd-Frank Act mandated each federal banking agency (Office of the Comptroller of the Currency, The Federal Reserve Board, Federal Deposit Insurance Commission, National Credit Union Administration, CFPB and Securities and Exchange Commission) was required to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for matters related to diversity within the various Agencies and with respect to assessing the diversity policies and practices of entities regulated by the agencies.
The Final Policy Statement did not create a new legal obligation and its use is voluntary by a regulated entity. CFPB will not use it in their in their examination or supervisory process. It established 22 Standards under five categories which were:

1. Organizational Commitment to Diversity and Inclusion
2. Workforce Profile and Employment Practices
3. Procurement and Business Practices – Supplier Diversity
4. Practices to Promote Transparency of Organizational Diversity and Inclusion
5. Entities’ Self-Assessment

The Policy Statement set out a series of best practices (standards) that included establishing policies and procedures, measurements (metrics), internal and public disclosures (publishing diversity policy on website), supplier diversity policies and procedures, and conducting an annual self-assessment against the standards. The disclosure of the self-assessment to any agency was not required. Any information submitted to any agency voluntarily by the organization may be used to monitor progress and adherence to the Standards.

**In the States’ Legislatures**

**License Plate Recognition Bills Continue to See Activity**

In California, Sen. Jerry Hill (D) continues to pursue enactment of SB 34, which requires on an automated license plate recognition operator and end-user to maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure. It also requires an ALPR operator that accesses or provides access to automated license plate recognition information to maintain a record of that access, and requires an ALPR end-user to implement and maintain a usage and privacy policy, while limiting the use of ALPR information collected to the purposes outlined in the usage and privacy policy. The latest version of the bill now contains safe harbors for businesses that also comply with HIPAA and GLB, along with the state data security law. The Assembly Appropriations Committee will accept limited public testimony during the August 19 hearing. A vote on this measure is expected; however, should the Committee determine this measure has a significant fiscal impact, it may place this measure in its suspense file for consideration at a later time. Per Joint Rule 61(a)(11), the Committee has until August 28 to act on this measure.

In Vermont, by Governor Peter Shumlin signed into law SB 18, sponsored by Sen. Timothy Ashe (D). The final version extends the repeal date for the automated license plate reader statute until July 1, 2016.

In Minnesota, Governor Mark Dayton signed into law SF 86, sponsored Sen. Ron Latz (DFL). This states that data collected by an automated license plate reader are confidential data on individuals or protected nonpublic data if the data are or become active criminal investigative data. The new law requires that data collected must be destroyed after 90 days or at the request of the owner of the data, whichever comes first. It also requires that the Bureau of Criminal Apprehension must maintain a list of law enforcement agencies using license plate readers including the location and make that list accessible to the public, while requiring the adoption of a statewide model policy regarding the use and operation of automated license plate readers.
And in **Louisiana**, the House sent Governor Bobby Jindal a bill ([SB 250](https://www.nydailynews.com/politics/louisiana-gov-veto-automatic-license-plate-recognition-system/story?page=1&maxWidth=640&maxHeight=480)) which created the State Motor Vehicle Theft and Uninsured Motorists Identification Program and defined "automatic license plate recognition system" as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of registration plates into computer-readable data. It also authorized the use of automatic license plate recognition systems utilizing individual automatic license plate reader system units for those law enforcement agencies participating in the pilot program, as well as other entities with which those participating law enforcement agencies contract in order to implement and operate the pilot program. However, the governor later vetoed the bill and he issued the following [notice](https://www.senate.state.la.us/senate/files/documents/2015/Senate%20Bill%20250%20Veto%20Statement%20Final%20to%20Sen%20Office%2011.04.15.pdf) on this veto. "Senate Bill No. 250 would authorize the use of automatic license plate reader camera surveillance programs in various parishes throughout the state. The personal information captured by these cameras, which includes a person's vehicle location, would be retained in a central database and accessible to not only participating law enforcement agencies but other specified private entities for a period of time regardless of whether or not the system detects that a person is in violation of vehicle insurance requirements. Camera programs such as these that make private information readily available beyond the scope of law enforcement, pose a fundamental risk to personal privacy and create large pools of information belonging to law abiding citizens that unfortunately can be extremely vulnerable to theft or misuse. For these reasons, I have vetoed Senate Bill No. 250 and hereby return it to the Senate."

**Security Freezing Bills Targeting Minors Continue Towards Enactment**

On Aug. 17, **Illinois** Governor Bruce Rauner (R), signed into law [HB 3425](https://www.ilga.gov/BillStatus/Details.aspx?BNum=3425&Year=2015). This new law specifies that a consumer reporting agency may not charge a fee for a credit freeze to an active duty military service member who has submitted to the consumer reporting agency a copy of their most recent Certificate of Release, Discharge from Active Duty or orders calling the service member to military service and any orders further extending the service member's period of service if currently active. Defines "military service member" as a resident of Illinois who is a member of any component of the U.S. Armed Forces or the National Guard of any state, the District of Columbia, a commonwealth or a territory of the United States who has entered any full-time training or duty for which the service member was ordered to report by the President, the governor of a state, commonwealth or territory of the United States or another appropriate military authority. It is effective Jan. 1, 2016.

On June 19, **Connecticut** Governor Dan Malloy signed into law [HB 6800](https://publicact.cga.ct.gov/2015/acts/HB%206800.pdf), prohibits a credit rating agency from charging the for freezing of their credit file to: (a) A victim of identity theft or the spouse of any victim of identity theft, who has submitted a copy of a police report to the credit rating agency; (b) any person who is covered under the victim of identity theft's individual or group health insurance policy providing coverage of specified types who has submitted a copy of a police report to the credit rating agency; (c) a person 62 years of age or older; (d) a person under 18 years of age; (e) a person for whom a guardian or conservator has been appointed by a court; and (f) a victim of domestic violence who has provided evidence of such domestic violence to the credit rating agency. It is effective Oct. 1, 2015.

In addition, also in **Connecticut**, Governor Malloy also signed into law [HB 6403](https://publicact.cga.ct.gov/2015/acts/HB%206403.pdf), which is allows a parent or legal guardian to place a security freeze on any credit reports or files for their children, and directs the credit rating agency to place the security freeze on the credit report of a minor child not later than five business days after receipt of such a request. Specifies that if the credit rating agency does not have any information in its files pertaining to the minor child at the time the credit rating agency receives a request, the credit rating agency must create a record for the minor child and place a security freeze on such record. It is also effective October 1, 2015.
And in **Maine**, another security freeze bill (**LD 382**) for minors sailed through the state legislature and although it was vetoed by Governor Paul LePage, the House overrode his veto on June 4. Thus, beginning October 1, 2015, a parent or guardian of a minor who is under 16 years of age may request to a consumer reporting agency place a security freeze on the minor’s consumer report by making a request in writing by certified mail to a consumer reporting agency, while prohibiting a consumer reporting agency from charging a fee for creating a file for a minor or for placing a security freeze on a minor’s file.

**Digital Signature Bill Enacted**

California Governor Jerry Brown on June 30 signed into law **AB 432**, which was sponsored by freshman Assemblymember Ling Ling Chang (R). The law now defines “electronic signature” as an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record, and allows all judgments to be signed by electronic signature. In addition, the law specifies that “signature” or “subscription” includes both of the following:

1. An electronic signature, which is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.
2. A mark of a person’s name, if the person cannot write, with his or her name being written near it by a person who writes his or her own name as a witness. Specifies that in order for a mark may to be acknowledged or serve as the signature to any sworn statement, it must be witnessed by two persons who may subscribe their own names as witnesses thereto.

**States Continue to Tweak Data Security / Data Breach Laws**

One of the most hotly watched issues in the Illinois legislature this year is **SB 1833**, a data breach bill backed by Attorney General Lisa Madigan and sponsored by Sen. Daniel Biss (D). The legislation contains several provisions which would expand the definition of personal identifiable information and create new regulations around consumer marketing information and geolocation data, among other substantive legal items. While it passed the House months ago, on Aug. 21 Governor Bruce Rauner placed an amendatory veto on the bill with almost all of the changes that that were requested by the business community. The only distinguishable difference is one in the “shot clock” for reporting a data breach (45 days v. 45 business days). The bill has been sent back to the House, where it is unknown if they have the votes to override the veto.

**Connecticut** Governor Dan Malloy signed into law on June 30 **SB 949**, an omnibus privacy and data breach law, sponsored by President Pro Tempore Martin Looney (D) that requires provide notice of any breach of security following the discovery of the breach to any resident of this state whose personal information was breached or is suspected to have been breached within 90 days of the discovery. In addition, any entity that conducts business in Connecticut must also provide identity theft prevention services at no cost to the customer and for no less than 12 months. Data Breach Services from TransUnion can help companies doing business in Connecticut to prepare for a possible data breach and preserve customer confidence in accordance with Connecticut’s new law. Proactive Data Breach Services help businesses prepare for a breach by having customer communications and credit-monitoring activation codes ready to distribute, and in the event that a data breach has already occurred, Response Data Breach Services provides a fast and efficient means to inform affected customers. For further information on these services, please contact databreach@transunion.com or call 800-
And **Oregon** Governor Kate Brown on June 10 signed into law **SB 601**, which requires notification of a security breach to be provided to the consumer to whom the personal information pertains after a breach of security has been discovered or after the breached entity has received notice of a breach of security and also requires notification of a security breach to be provided to the Attorney General, either in writing or electronically, if the number of consumers to whom the breached entity must send the notice exceeds 250. It does allow notification to be presented to the Attorney General either in writing or through electronic means. This law is effective Jan. 1, 2016.

**Other Credit Reporting Bills Enacted**

In **Nevada**, Governor Brian Sandoval on June 9 signed into law **SB 409**, sponsored by Sen. Mark Lipparelli (R). This law allows a credit reporting agency to conduct an investigation or report information in response to a request from a gaming licensee pursuant to the licensee's internal investigation of a person seeking employment with licensee or employment in a position connected directly with the operations of the licensee. It also allows the report to contain information related to a bankruptcy filing that is over 10 years old and other negative credit information that is over seven years old, and prohibits disclosing a record of conviction of a crime which is more than 7 years old, meaning there is no limitation of time for which a record may be disclosed.

And in **Rhode Island**, the latest mortgage trigger bill was signed into law by Governor Gina Raimondo on July 9. Sponsored by Sen. Frank Lombardi (D), SB 969 comports to a standard set forth in a similar bill enacted previously in Connecticut, which prohibits the following actions that may result from solicitations based upon information contained in a mortgage trigger lead: (1) the failure to clearly and conspicuously state in the initial phase of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied; (2) the failure to clearly and conspicuously state in the initial phase of the solicitation that the solicitation is based on personal information about the consumer that was purchased directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied; (3) the failure in the initial solicitation to comply with the provisions of the federal Fair Credit Reporting Act relating to pre-screening solicitations that use consumer reports, including the requirement to make a firm offer of credit to the consumer or (4) knowingly or negligently using information from a mortgage trigger lead (a) to solicit consumers who have opted out of pre-screened offers of credit under the federal Fair Credit Reporting Act; or (b) to place telephone calls to consumers who have placed their contact information on a federal or state "do not call" list.