

Client Alert

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New York Attorney General and Credit Bureaus Reach Deal Affecting Furnishers of Information to Credit Bureaus

By Jim McCabe, Michael B. Miller, and Daniel Matza-Brown

The New York Attorney General announced a settlement with credit bureaus Equifax, Experian and TransUnion regarding credit reporting policies and practices, including methods of addressing inaccuracies identified by consumers. In addition to changes to the credit bureaus' error resolution practices, the settlement also requires the credit bureaus to analyze and monitor the performance of furnishers, i.e., the third parties, including lenders, that provide consumer data to the credit bureaus in the first instance. The settlement requires the credit bureaus to take certain steps in both data gathering and dispute investigation that will place increased burdens on furnishers. For example, when responding to a dispute, furnishers will be required to affirm that they have reviewed any images of documentation provided to the furnisher by the credit bureau. Under the agreement, credit bureaus must reject data furnished by lenders who have been identified by the Attorney General as "illegal lenders" under New York law. Finally, the agreement provides a grace period before medical debt appears on credit reports.

BACKGROUND

The New York Attorney General investigated the three nationwide credit bureaus operating in the United States, Equifax, Experian, and TransUnion. The investigation focused on (1) the accuracy of consumer credit information maintained by these credit bureaus, (2) the bureaus' practices regarding investigation of consumer disputes of alleged inaccuracies in credit reports, and (3) the reporting of medical debt in credit reports. The result of the investigation was a settlement agreement requiring several potentially significant changes to the manner in which information must be furnished to the bureaus, the correction process when errors are identified, and how the bureaus must monitor furnishers in the ordinary course. The settlement agreement did not contain any findings of violations by the credit bureaus, nor did it impose any monetary penalties or fines.

CHANGES TO DATA COLLECTION FROM FURNISHERS

The first category of changes relates to how data is collected from furnishers. These changes will affect different furnishers in different ways.

For example, a number of furnishers are still reporting using the Metro 1 format of the Consumer Data Industry Association (CDIA). The settlement agreement provides that the credit bureaus will announce the retirement of Metro 1 within 90 days and, thereafter, will assist furnishers in migrating to Metro 2. The credit bureaus have agreed to stop accepting Metro 1 reports by mid-2018.

Similarly, to improve data accuracy, credit bureaus will require additional information from furnishers in several areas. Authorized users will not be reported on new accounts unless the lender furnishes a date of birth (month/year) for the authorized user. The bureaus will also require furnishers to verify documentation indicating a consumer is deceased before reporting consumer as deceased.

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The credit bureaus have agreed to assure that debt collectors' reported debts to the credit bureaus include the name of the original creditor. More frequent identification of a lender as the original creditor could involve that lender in more consumer disputes.

In addition, the agreement requires the credit bureaus to reject data from any furnishers that the Attorney General has identified as "illegal lenders" under New York law. These are non-bank lenders that have exceeded New York's usury limits in loans made to New York borrowers. This term is targeted at payday lenders: the threat to report a defaulted payday loan is a powerful collection tool for such lenders. Taking that tool away may make it harder for payday lenders to collect on their loans.

CHANGES TO ERROR CORRECTION PRACTICES

The credit bureaus agreed to take affirmative steps to improve the process by which consumers contest allegedly inaccurate information in their credit reports. The credit bureaus each agreed to employ specially-trained teams of employees to review all supporting documentation submitted by consumers for any dispute involving fraud, identity theft, or "mixed files" (i.e., situations where the credit information of one person was erroneously assigned to another person's credit file).

In addition, for all disputes, the credit bureaus agreed that they will not automatically reject a consumer's dispute based upon a creditor's verification of the disputed item. Rather, an employee of the credit bureau with discretion to resolve the dispute must first review the supporting documentation.

The settlement reinforces the obligation of a credit bureau that receives a consumer dispute to provide the furnisher of the challenged item with "all relevant information regarding the dispute that the agency has received from the consumer." 15 U.S.C. § 1681i(a)(2)(A). The bureaus have agreed to require furnishers to affirm that they reviewed any images of documentation provided to the furnisher by the bureau in connection with a consumer dispute. One practical impact of the settlement may be an increase in the volume of supporting documentation sent by credit bureaus to furnishers. This, in turn, could require furnisher-side staffing changes to respond to disputes.

MONITORING OF FURNISHERS

The credit bureaus also agreed to take affirmative steps to monitor the quality of data provided to the bureaus by furnishers. To help ensure that furnishers are providing reliable information to the bureaus and are investigating consumers' disputes, the bureaus have agreed to create a National Credit Reporting Working Group, which will develop best practices and policies aimed at enhancing the bureaus' furnisher monitoring and data accuracy; this includes formulating metrics for analyzing furnisher data, such as (1) the number of disputes related to particular furnishers or groups of furnishers, (2) furnishers' rates of response to disputes, and (3) outcome information regarding how disputes are resolved. The credit bureaus will adopt and implement policies to monitor furnishers' performance, and the bureaus will take appropriate corrective action against furnishers that fail to comply with their obligations.

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TREATMENT OF MEDICAL DEBT

Finally, the credit bureaus also agreed to changes in policies and practices with respect to medical debts. With respect to debts arising from medical care, the bureaus will institute a 180-day waiting period before the debt will be reported on a consumer's credit report. The delay is intended to give insurance companies time in which to pay medical bills before those bills are reported as unsatisfied consumer debts.

CONCLUSION

The credit bureaus will no doubt both be working on their own internal changes as well as reaching out to furnishers to help them adapt to the new environment. Furnishers should review and assess the new obligations that will arise from this settlement agreement. Different furnishers will be impacted differently by the settlement, and each will benefit from addressing the new requirements in a manner that fits the particular data-furnishing demands of their business.

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