LEGAL UPDATES

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Credit Reporting Changes Under the CARES Act

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On March 27, 2020, President Trump signed into law an updated version of a congressional response to the COVID-19 pandemic, entitled the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The $2 trillion stimulus bill includes important changes for consumer lenders as they navigate through the current public health crisis.

Modifications under the CARES Act to the Fair Credit Reporting Act

Under Section 4021 of the CARES Act, the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et. seq., is amended to impose new reporting requirements on institutions that furnish credit information to credit reporting agencies. Section 4021 provides that an institution that makes an "accommodation" with respect to one or more payments on a credit obligation or account that is subject to deferrals or forbearance agreements because of the COVID-19 pandemic—and the consumer makes the payments or is not required to make one or more payments pursuant to the accommodation—must report such obligation or account as "current" or as the status reported prior to the accommodation. That is, accounts that were current before accommodations would remain current during the relief period, irrespective of any accommodations, while delinquent accounts before accommodations would remain delinquent, unless brought current by the consumer.

Section 4021 of the CARES Act defines "accommodation" as "an agreement to defer one or more payments, make partial payments, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the coronavirus disease 2019 (COVID-19) pandemic." That means any type of modification of a consumer loan could potentially fit within Section 4021 provided that the furnisher and consumer

come to an "agreement."

This relief period applies starting from January 31, 2020, until the latter of 120 days after the enactment of the CARES Act on March 27, 2020, or 120 days after the end of the national state of emergency; therefore, furnishers that entered into accommodations related to the COVID-19 pandemic on or after January 31, 2020, should consider whether to treat it as applying since January 31, 2020, and change existing reporting to comply with Section 4021.

Operational feasibility

The CARES Act requires furnishers to diligently review accommodations made during the relief period and corresponding credit reporting to ensure they comply with the new standards. Among the questions for furnishers now is whether they must create an entirely new agreement to replace the original loan agreement in order to ensure their systems accurately reflect the proper reporting requirements under the CARES Act or if, instead, they must undertake other actions, such as suppressing reporting or deletion of trade lines. Accordingly, lenders should consider what adjustments they must make to their operational systems, and perhaps policies and procedures, to ensure proper reporting. In assessing these important changes, lenders should evaluate their systems as soon as possible to discuss operational feasibility of compliance with the newfound reporting obligations imposed by the CARES Act.

Any accommodation must be by agreement

The CARES Act definition of "accommodation" indicates that the modification must be made by "an agreement[.]" This requirement contrasts with the efforts by some in Congress prior to the passage of the CARES Act to block negative reporting on all customer accounts during COVID-19—regardless of any accommodation. Although the CARES Act does not indicate that the agreement must be in writing and/or signed by the customer, furnishers should consider whether any relevant state laws provide otherwise. Indeed, some states require a consumer lender to enter into a written agreement with a consumer to extend payments. In light of this, furnishers should determine whether these state law requirements apply in the COVID-19 pandemic.

Changes to industry standards under FCRA

FCRA requires furnishers to accurately report information communicated to consumer reporting agencies; it does not, however, prescribe the specific way in which such reporting is to be accomplished. Rather, furnishers adhere to the industry standards published by the Consumer Data Industry Association (CDIA) in the Metro-2 Credit Reporting Resource Guide (Metro-2). The Metro-2

provides specific reporting codes to be used for the types of accommodations addressed by Section 4021. More recently, the CDIA reminded furnishers they should refer to FAQs 45 and 58 in the Metro-2 as guidance for reporting during COVID-19.

However, with the enactment of the CARES Act, the modifications of furnishers' credit reporting obligations specifically prescribe the way furnishers must report accounts receiving relief under a forbearance-type agreement during the relief period. To align such reporting with Metro-2, we advise furnishers to consult with the CDIA and their legal counsel regarding proper reporting under the CARES Act. Notably, the CDIA and the three major consumer reporting agencies endorsed the passage of the CARES Act.

Contact us

The modification of the way furnishers are obligated to report accounts during the COVID pandemic may create new avenues for consumer litigation. As guidance develops, Husch Blackwell will provide updates and additional information as to how consumer lenders can best proceed during the COVID-19 pandemic. For more information please contact Marci Kawski, Natalia Kruse or your Husch Blackwell attorney.

CARES Act updates

Husch Blackwell's CARES Act resource team has reviewed the Act carefully and is developing content to help clients determine how best to access the available assistance. The team will add new content frequently as the Act is implemented through a number of agency rulemakings over the coming weeks.