

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Paul R. LePage
Governor

William N. Lund
Superintendent

MEMORANDUM

TO: Senator Rodney L. Whittemore, Chair
Representative Wesley E. Richardson, Chair
Committee on Insurance and Financial Services

FROM: William N. Lund, Superintendent
Bureau of Consumer Credit Protection

RE: Required study: Credit Reporting by Debt Collectors

DATE: December 7, 2011

Introduction

Resolve Chapter 34, "To Direct the Bureau of Consumer Credit Protection to Recommend Changes to Credit Reporting Laws Concerning Paid Debts," was enacted by the Legislature in the spring of 2011, and signed by the Governor on May 16th.

The Resolve requires the Bureau of Consumer Credit Protection ("the Bureau") to "review the credit reporting debt collection laws concerning proper notification by debt collectors to credit reporting agencies when debtors have paid off a debt and the information has not been properly reported," and to "clarify the obligations of debt collectors" to report consumer data to credit reporting agencies and to the affected consumers; *see* Resolve Chapter 34, attached to this report as Exhibit 1.

To explore this complex area of state and federal law, the Bureau relied on three primary sources: 1) the Maine Association of Mortgage Professionals ("MAMP"), whose Government Affairs Chair, Tony Armstrong, provided much of the impetus behind the legislative initiative; 2) Vaughn Clark, president and owner of The Thomas Agency, one of Maine's largest collection agencies, specializing in health care debt; and 3) Eric J. Ellman, Vice President of Public Policy and Legal Affairs for the Consumer Data Industry Association (CDIA), a trade association of the nation's largest credit reporting agencies. The Bureau also utilized research conducted by its staff attorney, Eric Wright, focusing on the similarities and differences between state and federal credit reporting laws.



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MAMP's Concerns

The Maine Association of Mortgage Professionals raised several specific concerns at the public hearing and also in response to the Bureau's request for input for this study. MAMP alleged that 1) debt collectors, especially those located out of state, sometimes fail to update consumers' reports when debts are settled or paid in full; 2) when a consumer pays off a debt, the documentation provided to the consumer as proof of payment is sometimes insufficient to satisfy certain lenders' standards; 3) if a single collection agency holds several accounts owed by the same consumer and if the consumer pays off one account, the letter verifying payment sometimes contains references to the other, unpaid accounts; 4) a consumer who pays off a debt with a collector is uncertain about how fast their credit report will reflect information about that payment, and often, that update schedule is not readily made available to the consumer by the collector; 5) credit reporting and credit scoring, and the impact of a collection account, remain mysteries to many consumers, which may be perpetuated by some collectors and credit reporting agencies; 6) if a debt is sold and then re-sold, it may appear twice on a consumer's report, making it difficult to update or delete; and 7) the results of so-called "rapid rescoring," in which a new score is calculated for a fee following updates to the consumer's record, may serve a limited purpose for a pending loan but may not become part of the consumer's permanent credit file.

Input from a Maine collection agency

Information provided by The Thomas Agency presented a much more responsive picture of the process than the one characterized by MAMP, at least from the perspective of a Maine-based collection agency. Company president Vaughn Clark stated that routine, non-time sensitive updates are posted to the three major credit reporting agencies (Trans Union, Equifax and Experian, hereinafter "Big 3") on the 15th of each month. However, Clark also provided information describing a faster system his company uses when prompt changes are required.

This system is known as "e-Oscar," which is an acronym for "**E**lectronic **O**nline **S**olution for **C**omplete and **A**ccurate **R**eporting." E-Oscar is a shared electronic system of online dispute resolution, maintained by the Big 3 credit reporting agencies. Clark stated that the service allows his collection agency "to respond to disputes made by consumers on their personal credit file, remove accounts placed in error, and update accounts to reflect a full or partial payment." He said this is particularly helpful "when consumers need immediate resolution to their credit file for any reason including refinancing or purchasing a home."

Clark said the system administrators promise file updates within 72 hours, but in Clark's experience the turnaround time is faster, often within 24 hours. However, he also mentioned that since some mortgage lenders or loan brokers use resellers or consolidators of credit reports, changes to the underlying credit databases may not be immediately reflected in the combined reports required by mortgage lenders.

Credit Reporting Industry's Response

Eric Ellman of the Consumer Data Industry Association (CDIA) said the industry maintains a very good record of accuracy in consumer's credit reports; and he explained how consumers can prepare for major credit purchases in order to avoid last-minute surprises that affect their credit-worthiness.

Two types of entries on credit reports are at issue here. The first is an entry that is incorrect – either reflecting a debt that was never the responsibility of the consumer; or a paid debt that still shows as owing. The second is a debt that is valid, but which was undiscovered until a credit check undertaken soon before the scheduled date of the credit sale or loan closing.

Ellman cited a recent study (available at <http://perc.net/files/DQreport.pdf>) which determined that less than 1% of consumer's reports contained errors substantive enough to materially affect their credit ratings.

Ellman was of the opinion that the e-Oscar system was primarily designed to deal with errors – items that were incorrectly listed or entered with an inaccurate status – on a consumer's report. He described e-Oscar as “a shared electronic system of dispute resolution” that is monitored by the Big 3 credit reporting agencies. He stated that e-Oscar was subscribed to by more than 10,000 creditors, from the largest mortgage companies to many small retail credit-granters.

The system transmits disputes to the so-called “furnishers” (those creditors that report to the system), and communicates the results of those investigations directly to the credit reporting agencies. The three possible outcomes of the investigation are: “Accurate as reported,” “Incorrect – delete” or “Incorrect – modified to make accurate.”

He described e-Oscar as being a tool designed principally to deal with disputes resulting from errors in a report. With respect to the other type of changes (payment of a valid debt), he stated that most creditors utilize the process called “Rapid Rescore,” which is a calculatory tool designed to produce a new score reflecting the impact of a paid-off collection account.

Ellman then discussed the two most common scoring models, FICO (a product of Fair, Isaac, Co.) and Vantage Score (designed by the Big 3 credit reporting agencies to provide a competitive system to FICO). FICO still enjoys the larger market share of the two systems.

Finally, Ellman stressed that consumers (and those advising consumers as the consumers prepare for a major purchase such as a home or automobile) can avoid many issues by reviewing their credit reports prior to making application. In response to the requirements first implemented by Maine and several states, and then by federal law, the Big 3 agencies and the FTC developed a website, www.AnnualCreditReport.com, that

consumers can use to obtain a copy of their report from each of the Big 3 agencies, free of charge, once each calendar year. For consumers who are without internet access or who prefer a hard copy of their report, free annual reports are also available by telephone at 1-877-322-8228, or by mail from Annual Credit Report Request Service, P.O. Box 105283, Atlanta, GA 30348-5281. While state and federal law require only that credit *reports* be provided without charge, and not credit *scores*, credit scores are reflective of the content of consumers' reports, and issues negatively affecting scores can be identified by reviewing a report's content.

Ellman emphasized that if consumers spot and remedy or dispute collection items early in the process, it will avoid issues that otherwise will need to be addressed under the pressure of a pending credit sale or residential closing.

Federal and state law requirements for correcting or updating credit reports

As previously noted, two sets of circumstances are at issue in cases in which credit report items are interfering with a real estate closing or a credit sale, either by delaying the transaction or by increasing the cost of the transaction to the consumer (under the concept of "risk-based pricing," credit may still be available to a consumer whose credit score is low, but that credit is more expensive to obtain as the result of higher interest rates). The first situation is with errors appearing on the report. This issue involves how long the credit reporting agency and the furnisher of the information can take to investigate and resolve a dispute. The second situation involves a legitimate debt that the consumer chooses to pay in order to qualify for a loan or credit sale (or at least to qualify for the lowest-possible interest rate or terms), and the issue is how long it takes for payment of the debt to be acknowledged in a way that is recognized by the lender or creditor on the pending transaction.

State and federal credit reporting laws contain many similar if not identical provisions. The federal Fair Credit Reporting Act is found at 15 U.S.C. § 1681 *et seq.* and it is enforced by the Federal Trade Commission. Responsibility for enforcement of the federal law will soon shift to the newly-created federal agency known as the Consumer Financial Protection Bureau, or CFPB. Maine's Fair Credit Reporting Act is found at 10 MRS § 1311 *et seq.*, and administered by the Bureau of Consumer Credit Protection – and cooperatively with the Bureau of Financial Institutions when a state-chartered bank or credit union utilizes such reports; 10 MRS § 1328-A.

Both state and federal law address the issue of how long a credit reporting agency may take to conduct and complete an investigation of a disputed item. Under federal law, the credit reporting agency has 30 days from the date of receipt of a written dispute from the consumer, to conduct a "reinvestigation"; *see* 15 U.S.C. §1681i. Both state and federal laws refer to "reinvestigation," but in fact items are not ordinarily investigated before they are first added to a consumer's report, so "investigation" is actually a more accurate description of the process that occurs when a dispute is filed. A credit reporting agency can extend that reinvestigation period by an further 15 days if information is

received from the consumer during the initial 30-day period; *id.* at §1681i(a)(1)(B), and 5 more days to deliver the results to the consumer; *id.* at §1681i(a)(6).

Maine state law provides a greater level of consumer protection by requiring a more expedient process or “reinvestigation.” Title 10 MRS §1317(2) provides that when a consumer disputes an item on the consumer’s report and the dispute is directly conveyed to the credit reporting agency, the credit reporting agency “shall reinvestigate and record the current status of the information within 21 calendar days of notification of the dispute by the consumer.”

Whether the reinvestigation process takes 50 days, 45 days, 30 days or 21 days, the time period until the consumer is advised of the outcome of the dispute is likely considered too lengthy for a purchaser waiting for credit approval for a large credit transaction such as an auto loan or home mortgage. While not providing specific time frames, other federal laws may place additional pressure on all parties to act expeditiously. These include requirements that credit reporting agencies “follow reasonable procedures to assure maximum possible accuracy” of the content of a consumer’s report; 15 U.S.C. §1681e; an ability for consumers to dispute the accuracy of items directly with creditors (“furnishers”) and application of the same time deadlines to dispute resolution, *id.* at § 1681s-2(a)(8); an “expedited dispute resolution” provision relieving a credit reporting agency of some of its duties to report details of its investigation to a consumer if the credit reporting agency completes its investigation and deletes the disputed data within 3 business days of receipt of the dispute, *id.* at §1681i(A)(8); and a duty for furnishers to “promptly” notify credit reporting agencies if they discover inaccuracies in information previously reported to a credit reporting agency; *id.* at §1681s-2(a)(2).

Maine law contains fewer provisions, but does incorporate the requirement that furnishers “promptly” notify a credit reporting agency if they learn that information previously provided is inaccurate or incomplete. 10 MRS §1320-A(2)(A). The word “promptly” is not specifically defined either in state or federal law.

Discussion and recommendations

1) The e-Oscar process, while primarily intended to be utilized to correct errors rather than provide quick updates when valid debts are paid shortly before a scheduled closing, provides a mechanism and a blueprint for the prompt updating of trade lines.

Recommendation: Further exploration, including a survey of users, furnishers and credit reporting agencies, should be undertaken to determine the extent to which this online process is currently utilized, or could be utilized, to ensure that paid accounts are shown on a consumer’s report within the shortest practicable time.

2) Maine law generally contains the substantive provisions found in federal law, but is more readable. In two instances – the 21-day investigative limit, and the

requirement to provide a free annual report in addition to the report required under federal law; *see* the federal law's deference to §1316 of the state law, found at 15 U.S.C. §1681t, "Relation to State Laws," sub-§(a)(4)(C) – state law is more protective than the federal law. However, some provisions in federal law that spell out the requirements placed on furnishers are not found in state law, and adding these provisions to state law could draw attention (and state enforcement ability) to those provisions.

Recommendation: A detailed list of the distinctions between state and federal law should be developed, to determine whether adoption of any federal language would help to address the concerns of some creditors that corrections are not being promptly uploaded to consumers' reports.

3) No party benefits from delays in correcting errors or uploading data concerning payments made just before a scheduled transaction. In other words, if a report contains an error it's in everyone's interest to correct the error, and if a creditor or collector is paid on an overdue account, it's likewise in all parties' interest to operate a system that allows information about the paid account to be promptly reflected in the consumer's report.

Recommendation: An interested parties meeting should be scheduled so that credit sellers, lenders, debt collectors and credit reporting agency representatives can discuss current perceived problems and suggest solutions, which may be as simple as identifying single points of contact within collection agencies for resolution of time-sensitive cases; learning the standards and procedures adopted by the Big 3 credit reporting agencies that will result in fast corrections or updates; or ensuring that resellers or consolidators of credit reports are aware that their involvement and the indirect nature of their information sources may result in delays, and determining how to avoid those delays.

4) The federal law contains many preemptive provisions. For example, since credit reporting is truly a national activity, Congress has prohibited states from requiring that certain items be included, or be excluded, from the content of a report. Credit scores are another area in which states are not permitted, for example, to establish unique standards.

Recommendation: In drafting any proposed legislation, care must be taken to avoid treading on areas that have been preempted by federal law.

Conclusion

The credit reporting system is governed by state law and federal law, as well as contractual policy and procedural requirements imposed by the credit reporting agencies themselves. A smoothly-running and promptly-correcting system benefits consumers, creditors and lenders, debt collectors and the credit reporting agencies. Prompt resolution of errors and fast uploading of information concerning paid accounts are good for the economy and for consumer confidence and goodwill. Changes, some statutory but others procedural, will help this system operate more efficiently. Continuing the discussion

among the parties is the first step to determine what changes can be made through increased communication and through education of consumers and of those who advise consumers.

Exhibit #1

First Regular Session, 125th Maine Legislature

RESOLVE Chapter 34

Signed May 16, 2011

**Resolve, To Direct the Bureau of Consumer Credit Protection to Recommend
Changes to Credit Reporting Laws Concerning Paid Debts**

Sec. 1. Paid debts and debt collectors. Resolved: That the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall review the credit reporting debt collection laws concerning proper notification by debt collectors to credit reporting agencies when debtors have paid off a debt and the information has not been properly reported. The bureau shall clarify the obligations of debt collectors for reporting credit data to credit agencies and to consumers and recommend standards for fair treatment of consumers; and be it further

Sec. 2. Reporting to the Legislature. Resolved: That the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report its findings under section 1, recommendations and suggested legislation to the Joint Standing Committee on Insurance and Financial Services by December 7, 2011. The committee may submit a bill related to the suggested legislation to the Second Regular Session of the 125th Legislature.