

Health Law & Business News

INSIGHT: AGs Turn Focus to Consumer Credit, Mortgages, Stimulus Checks

By Michael Yaghi and Clayton S. Friedman

May 27, 2020, 4:01 AM

State attorneys general are putting companies in the financial services sector on notice that they will bring all their resources and powers to bear to protect consumers during this pandemic. Crowell & Moring attorneys look at credit reporting rules, CARES Act provisions, and mortgage protections and say companies need to keep this heightened focus in mind now and post-pandemic.

As the pandemic continues to ravage our economy, attorneys general are increasing their focus on the financial services industry in an attempt to stave off a national foreclosure crisis and to protect consumers.

In short, they expect the three primary consumer credit reporting agencies, Experian Information Solutions Inc., Equifax Information Services LL, and TransUnion LLC, as well as those sending data to them, to ensure they protect consumer credit.

They are also encouraging mortgage lenders and loan servicers to create plans to protect consumers in their current and post-Covid-19 lending programs. The states are similarly working aggressively to protect payments to consumers made in accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Credit Reporting Agencies

On April 28, 22 attorneys general in a letter to the CRAs cautioning them that the attorneys general will continue to enforce the Fair Credit Reporting Act (FCRA) safeguards to protect consumer credit.

They took this step to respond to the U.S. government's announcement that it will not enforce the FCRA's deadline (30 to 45 days) by which consumer disputes must be investigated. They seek to protect consumers' rights under the CARES Act.

In part, the CARES Act allows economic assistance to protect consumer credit, including amendments to the FCRA to require "furnishers to report a credit obligation as 'current' if the obligation was current prior to the grant of a CARES Act accommodation."

This provision is intended to give consumers more time to pay back their credit obligations and thus protect their credit scores during this time of economic difficulty. According to the attorneys general, it is important that the 30 to 45-day deadline to investigate consumer disputes be honored so that they can ensure companies are not reporting negative credit information in violation of the CARES Act.

The attorneys general also warned that they will actively monitor furnishers “to ensure that they do not improperly report negative credit information” as well as the CRAs to guarantee that they investigate disputes that arise from faulty reporting in a timely manner.

They expect CRAs to comply with all of the FCRA’s provisions, including the deadline for investigations of consumer disputes. The attorneys general will seek to “hold CRAs accountable” if they fail to do so.

Mortgage Lenders

New York Attorney General Letitia James (D) recently sent letters to 35 of the primary mortgage servicers in her state asking them to provide relief to homeowners who are having trouble paying their mortgages during the Covid-19 crisis.

Though mortgage lenders have begun taking steps to help struggling homeowners, the letters set forth additional steps the attorney general expects servicers to take to avoid foreclosure once New York’s mandated mortgage forbearance agreements, which allow consumers to temporarily postpone their mortgage payments, come to an end.

James also asked mortgage servicers to stop charging late fees and automatically place homeowners into a three-month forbearance if they miss payments; allow homeowners to renew their forbearance periods if they cannot make a payment due to the pandemic; describe all post-forbearance options homeowners have; employ sufficient personnel to accommodate high demand from homeowners making inquiries; and work on creating and implementing long-term solutions to help homeowners easily resume making their payments when their forbearance periods expire.

Similarly, a bipartisan coalition of attorneys general recently sent letters to the Federal Housing Finance Administration and the Department of Housing and Urban Development asking them to help protect consumers by revising their forbearance programs to automatically place missed payments at the end of the loan’s term; expanding “eligibility for disaster relief loss mitigation programs;” and making clear that the moratorium on evictions and foreclosures applies to all steps of the eviction and foreclosure process.

The attorneys general are pushing mortgage lenders and related entities to carefully adopt policies that protect consumers who are unable to pay their mortgages.

Twenty-three bipartisan state attorneys general also recently asked the Consumer Financial Protection Bureau to help enforce the CARES Act and mandate that CRAs follow the FCRA during the pandemic. This would allow more consumers to avoid suffering damage to their credit.

This effort was in response to recent pronouncements by the CFPB saying:

1. it would not enforce an amendment to the FCRA requiring lenders to report loans as current that are affected by a Covid-19 accommodation, and
2. that it would not act against consumer reporting agencies that violate the FCRA by failing to investigate consumer disputes within 30 days.

The states are concerned that if the CFPB does not enforce the CARES Act, consumers might not take advantage of accommodations, such as forbearances, offered by lenders. Further, CRAs legally must carefully and accurately report consumer credit, which requires following the FCRA and CARES Act directives.

Thus, the attorneys general made clear they will continue enforcing FCRA deadlines against businesses that fail to follow the law since the CFPB likely declines to do so.

Protecting Stimulus Checks from Garnishment

As payments under the CARES Act are being made to Americans, many state attorneys general have already urged the Treasury Department to shield this money from debt collection efforts.

The states have asked Treasury to “take immediate action to ensure” that the monetary relief allowed by the CARES Act is not subject to garnishment by debt collectors or creditors. The CARES Act allows Treasury to issue regulations or guidance to carry out its purposes, and the letter’s signatories hope Treasury will do so, by, for example, “issuing a regulation or guidance designating CARES Act payments as ‘benefit payments’ exempt from garnishment.”

These recent actions put companies in the financial services sector on notice that attorneys general will bring all of their resources and powers to bear in order to protect consumers during this pandemic. The attorneys general are expecting companies to create plans and take actions that allow consumers to avoid foreclosure and protect their credit.

All companies reporting to CRAs should also keep this heightened focus by the states in mind and carefully review their reporting processes, and any changes to those processes, in order to mitigate their potential exposure to state enforcement actions.

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