



# Bankers Advisory

## COMPLIANCE MONITOR

June 21, 2013

### *Maine Amendments: Fair Credit Reporting Act and SAFE Act*

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#### **Maine Fair Credit Reporting Act**

On April 23, 2013 the Maine Senate enacted an amendment to update the Maine Fair Credit Reporting Act to be consistent with federal law. The new amendment repeals former Fair Credit Reporting Act section 10 MRSA c.210 and replaces it with new section 10 MRSA c.209-B, set to take effect September 18, 2013.

#### **Security Freezes**

The amended Fair Credit Reporting Act largely updates the process and requirements by which a security freeze is placed on a consumer report by a consumer reporting agency. A consumer reporting agency is defined by the Act as "a person that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information of other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to 3<sup>rd</sup> parties".

#### **Requests**

Requests for security freezes must be made in writing by certified mail to a consumer reporting agency. When a consumer has been a victim of identity theft they must include a copy of the police report, investigative report or complaint filed with law enforcement regarding the identity theft.

The freeze must be placed by a consumer reporting agency within 5 business days of receipt of the consumer's written request.

Within 10 business days after receiving a security freeze request, written confirmation must be sent to the consumer by a consumer reporting agency, along with a personal identification number or password.

#### **Fees**

A fee may not be charged by a consumer reporting agency for placing, removing or suspending a security freeze in the case of a victim of identity theft.

When a consumer has not been a victim of identity theft, a fee may be charged not exceeding \$10 for each freeze, removal or temporary suspension of a freeze. Where a temporary suspension is requested for a specific party a fee of no more than \$12 may be charged by the consumer reporting agency.

#### **Removal or Temporary Suspension**

Where a security freeze has been placed on an account a consumer reporting agency may not release the report or any information from the report without express consumer consent, including releasing information to a 3<sup>rd</sup> party.

However, a consumer reporting agency may advise a 3<sup>rd</sup> party that a freeze is in place. If the 3<sup>rd</sup> party is requesting the report in connection with an application of credit, they may treat the application as incomplete due to a security freeze.

If a consumer wishes to access or allow access to their consumer report while the security freeze is in place they may request the freeze be temporarily suspended as long as the proper identification is provided.

In the event of a request for temporary suspension or removal of a security freeze, a consumer reporting agency must comply no later than 3 business days after receipt of a properly made request. A consumer reporting agency may remove a security freeze if the original consumer request was based on a material misrepresentation of fact, however must notify the consumer in writing prior to removal of the freeze.

### **Changes to Official Information**

While a security freeze is in place, a consumer reporting agency may not change the name, date of birth, social security number or address without sending written confirmation to the consumer within 30 days after the change is posted. This requirement does not apply to technical corrections.

### **Unfair or Deceptive Practices relating to use of Prescreened Trigger Lead Information**

The Act defines prescreened trigger lead information as "information in a consumer report provided to a nonaffiliated 3<sup>rd</sup> party by a consumer reporting agency that the agency has reason to believe will be used to solicit a loan or extension of credit."

When using prescreened trigger lead information a lender or loan broker may not:

- Fail to state that they are not affiliated with the lender or loan broker with which the consumer initially applied;

- Fail to conform to state and federal law relating to use of consumer reports in prescreened solicitations;

- Knowingly or negligently use information where the consumer has previously opted out of such offers or are on the do-not-call registry; or

- Offer rates, terms and costs with intent to subsequently raise rates or detrimentally change the terms.

### **Consumer Mortgage Reports and Dissemination of Information**

The amended Act touches upon consumer reports used for a credit transaction relating to a first mortgage secured by an owner occupied dwelling. Where adverse action is taken due to information contained in the report, a copy of the report shall be provided by the user to consumer if the consumer reporting agency did not provide a copy of the report to the consumer.

The Act prohibits any user from disseminating any information contained in their own files regarding a consumer report to any person other than the consumer.

### **Reporting of Child Support Debts and Medical Expenses Debts**

The amended Act includes reporting requirements for child support debt, requiring the Department of Health and Human Services to provide information regarding any parent's overdue payment upon a consumer reporting agency's request. The Department of Health and Human Services may also provide a consumer reporting agency child support debt information voluntarily.

Prior to providing the requested information, the Department of Health and Human Services must notify the parent and allow the parent 20 days to contest the accuracy of the information.

Medical expenses overdue for a minor may be reported by a debt collector in the name of the responsible party only as identified by a court or administrative order of which the debt collector has notice. Prior to reporting such a debt, the collector must notify the responsible party of their obligation to pay the overdue expenses.

### **Consumer Report Requests and Disputes**

A consumer reporting agency may only impose a fee for providing a consumer report to a consumer if there has been more than one request in a 12 month period. For each subsequent report provided the fee charged may not exceed \$5.

If a consumer has directly disputed information contained in their file to a consumer reporting agency, the consumer reporting agency shall investigate and record the current status of the information within 21 calendar days of notification.

### **Fair Credit Reporting Act Enforcement**

The amended Act additionally outlines administrative enforcement and investigatory powers of the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation, in addition to criminal and civil liability for both willful and negligent noncompliance.

### **Maine Secure and Fair Enforcement for Mortgage Licensing Act of 2009**

On March 26, 2013 the Maine Senate enacted an amendment to the Maine Secure and Fair Enforcement for Mortgage Licensing Act of 2009 to add clarification to when an individual is engaging in the business of a mortgage loan originator and therefore must be properly licensed. The amendment is set to take effect September 24, 2013.

The amendment outlines that an individual is engaging the business of a mortgage loan originator if in a commercial context they habitually or repeatedly:

Take a residential mortgage loan application and offers or negotiates mortgage terms for compensation or gain; or

Represents to the public, via advertising or other communications, that they take residential mortgage loan applications and will offer or negotiate mortgage terms.

An individual is exempt from obtaining and maintaining a license if they act as a mortgage loan originator under the following circumstances:

In providing financing for the sale of their own property, as long as they do not habitually or repeatedly engage in this activity;

If the source of the prospective financing does not provide mortgage financing or perform other mortgage loan originator activities habitually or repeatedly;

As an employee of a government entity pursuant to their official duties as an employee.



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