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The CARES Act and Credit Reporting: What Credit Unions Need to Know

Even with direct stimulus payments, increased unemployment benefits, and the Paycheck Protection Program, consumers are facing dire financial circumstances. Still, there are ways your credit union can help your members.


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The Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted on March 27, 2020, to provide emergency relief to consumers and businesses suffering from the economic fallout of the COVID-19 pandemic. The CARES Act contains a section (Sec. 4021) specifically addressing the credit reporting consequences of the pandemic. Even with direct stimulus payments, increased unemployment benefits, and the Paycheck Protection Program, consumers are facing dire financial circumstances. The expiration of relief payments and enhanced unemployment protection on July 31 has only made their situation more precarious.

Above all, REMEMBER THE MISSION...don't use CARES Act weaknesses or ambiguity in credit reporting to make it more difficult for at-risk members to access credit.

Section 4021 does not go nearly far enough. It places the entire burden on consumers. It does not include all forms of debt, including debt collection accounts (which includes 99% of medical debt on credit reports). It does not standardize credit reporting practices. And more.

Still, there are ways your credit union can help your members.

PROBLEM: Protections are not automatic.

Consumers are required to contact creditors to ask for an accommodation. They are also required to do so for all their accounts. Most don't even know where to begin.

What your credit union can do:

- Proactively contact your members to let them know how to ask for an accommodation from their creditors.
- Remind them of the top five most likely creditors they should contact. You can either look for trends in your area or go for the most likely creditors that any member would have. Provide them a checklist: Mortgage; car loan; student loan; credit cards.
- Provide phone numbers or websites to the national credit reporting agencies (NCRAs) so they can obtain their free credit reports.
- Preserve the dignity of your members and don't overrun your call centers! Instead, consider automatic loan deferments or online/mobile solutions for loan deferment requests.

PROBLEM: Only deals with active accounts.

The CARES Act only deals with active credit accounts, not debt collection accounts like medical debt or debt owed to collection agencies employed by former landlords.

What your credit union can do:

- Target small-dollar lending products to utility delinquencies, medical debt, or other debt collection accounts.
- Help members identify court records of evictions and petition the court to have them expunged or sealed. The easiest way is to look at the Public Records section of their credit reports. They can also look up records on line via the National Center on State Courts website or partner with a third-party provider like MyRentalHistoryReport.Com (which charges a $29.95 fee). Or, identify and partner with a local nonprofit legal aid foundation.
- Provide a dated letter of reference to members with eviction records indicating they are a member in good standing of your credit union that they can share with potential landlords when filling out a rental application.

PROBLEM: Consistency using the AW code.

Furnishers are not consistently using the AW code ("natural disaster") in providing data about COVID-related delinquencies.

What your credit union can do:

- Demand from NCRAs that furnishers of credit data use the AW code or CP ("short term forbearance") in any data they provide to NCRAs.
- Lobby Congress for consistent application of Metro 2 ® codes related to natural disasters, including pandemics. Make this an immediate and high priority for our trade groups.

PROBLEM: Student loans.

75% of forbearances are for student loans.

What your credit union can do:

- Reach out to student borrowers and others with student loans to discuss their options. Identify them through your student loan providers/servicers; or, look for student loan payments in ACH files.
- Ask your student loan providers/services to advertise the benefits provided in the CARES Act for student borrowers.

PROBLEM: Poor understanding of credit reports.

Consumers poorly understand their credit reports. The 3 NCRAs are currently providing weekly free reports during the pandemic.

What your credit union can do:

- Make your members aware of the NCRAs free reports.
- Provide educational materials for members on their credit reports, how to read them, the importance of their credit score, and how to improve their credit score. Direct them to the websites of the NCRAs or the CFPB, which has a handy primer on credit scores.

General Guidance

Consider using alternatives to traditional credit scores, like the FICO ® Resilience Index, which measures consumers' sensitivity of economic stress.

Use alternatives to traditional credit scores responsibly, and in particular, be on the lookout for evidence of racial bias.

Make additional allocations to your loan loss reserve to prepare for shocks that will come as relief payments expire and members face even greater financial challenges, but, at the same time:

Above all, REMEMBER THE MISSION. Credit Unions are member-owned, member-serving financial cooperatives. Don't use CARES Act weaknesses or ambiguity in credit reporting to make it more difficult for at-risk members to access credit. Instead, proactively support your members with automatic loan deferments, new small dollar products, and the information they need to help them and your credit union through this crisis.

Further Reading

The FinRegLab has issued two excellent reports on COVID-related credit reporting.

The National Consumer Law Center (NCLC) has been tracking COVID-related credit reporting and other consumer protection issues.

The CFPB has issued guidance to consumers on *protecting your credit during the coronavirus pandemic*.

Important Note

At the time we prepared this guide (August 2020), the second major stimulus and relief act has passed the House of Representatives, but negotiations are stalled between the House, Senate, and Trump administration. The House bill, called the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES) Act, replaces section 4021 of the CARES Act and provides a couple of important additional protections. Most significantly, it bans reporting medical debt related to COVID-19 treatment. This is a step in the right direction, but many individuals will suffer medical debts unrelated to COVID-19 treatment that they will still struggle to repay given the economic fallout from the crisis. It also forbids the use of alternative credit scoring models that "would identify a significant percentage of consumers as being less creditworthy when compared to the previous credit scoring models."

The Fine Print

Coronavirus Aid, Relief, and Economic Security Act[1]

CARES Act

P.L. 116-136 (H.R. 748)

Enacted March 27, 2020

<u>Sections pertaining to consumer credit and credit reporting:</u>

- SEC. 4021 Credit Protections During COVID-19
- Student Loans: SECs 3506, 3507, 3508, 3513
- Foreclosures and Evictions: SECs 4022, 4023, 4024

The main provisions related to consumer credit scoring and reporting are in SEC 4021 ("Credit Protections During COVID-19"). This amends Section 1681s-2(a) of the Fair Credit Reporting Act (FCRA) to stop adverse credit reporting during the COVID-19 pandemic in certain circumstances. **The main provision is that creditors ("furnishers") who have made "accommodations" for consumers due to the crisis must continue to report those accounts as current.**

Accommodations include an agreement to:

- "defer 1 or more payments"
- "make a partial payment"
- "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 during the covered period."

The covered period began on January 31, 2020 and extended either to July 25, 2020, (120 days after the law was enacted) or **120 days from the date the COVID-19 national emergency is declared over**, whichever is later. On June 23 the *Los Angeles TImes* reported that President Trump was considering ending the national emergency for political reasons, but he has not yet done so.

These protections are not automatic; consumers must have communicated with their creditors to create an agreement. If a consumer misses payments without an agreement in place, for instance, they can still be reported as delinquent to credit reporting bureaus. For protections to apply, the consumer must adhere to the terms of the agreement. Charge offs (i.e. debt being sold to a collections agency) can still be reported. If a consumer was already delinquent when the agreement was put in place, they will continue to show as delinquent.

If consumers do not have an agreement in place with creditors, but they are unable to make a payment because of the pandemic crisis, creditors can use a special code for natural disasters in the comments of the report; this commenting could impact how creditors read the full report when making future lending decisions (and although the information will be included in FICO, it won't be included in VantageScore).[2] However, some servicers are using comments to flag accounts that are protected. For instance, some servicers are reporting home loans as current, but also adding comments about home loan forbearance. And FICO has already responded by developing a product it calls the "Resilience Index" to try to assess consumers whose creditworthiness is being obscured by CARES protections. The Resilience Index score is on a scale of 1-99, with a lower score indicating greater resilience.

Credit bureaus are required to add statements from consumers if they are disputing the accuracy or completeness of a report. Consumers can add clear, concise explanatory statements about the impacts of COVID-19 to reports if they identify negative comments. However, they should be cautious not to include information that may later be interpreted as signaling that they are "risky".

[1]https://www.govinfo.gov/content/pkg/BILLS-116hr748enr/pdf/BILLS-116hr748enr.pdf

[2]https://www.nolo.com/legal-encyclopedia/credit-protections-under-the-coronavirus-cares-act.html