New Credit Reporting Rules Will Effect Lending and Workout

According to the Consumer Data Industry Association (CDIA), the three major credit reporting agencies (Experian, Equifax, and TransUnion) will soon stop reporting civil judgments and tax liens unless the record data includes sufficient personal identification information. Beginning July 1, 2017, a judgment or lien will not be included on an individual's credit report unless the record includes the debtor's (1) name, (2) address, and (3) social security number or date of birth. The CDIA estimates that the majority of civil judgments and approximately one-half of tax liens will no longer be reported, because not all of this information is included in the record.

This change is significant for lenders, who rely on credit reports in underwriting new loans. Lenders may no longer rely on credit reports to disclose liens and judgments filed against a prospective borrower or guarantor, even though such filings may be an accurate predictor of creditworthiness or future default. As a result, lenders may want to consider obtaining lien and judgment information by searching the public records or by subscribing to other reporting services.

This change is also important for workout officers, who often collect debts from judgment debtors seeking to clear their credit history. Judgment debtors may not feel compelled to pay an old judgment that does not appear on their credit report. Although most civil judgment records should include the debtor's name and address, most do not include a social security number or date of birth, and at this time, it is unclear exactly how this information must be incorporated into the record for the judgment to be included on an individual's credit report.

Further changes to credit reporting are planned, including removing certain kinds of medical debts and non-loan related items (unpaid traffic tickets, fines, etc.). All of these changes are expected to increase credit scores.

Right Names/Right Fields Matter for UCC Perfection

Some recent court cases have addressed the unique and sometimes tricky rules that a creditor must follow when identifying an individual debtor on a financing statement.

First, as enacted in most states, UCC Section 9-503 requires a financing statement to state an individual debtor's name exactly as it appears on the person's driver's license. In In re Nay, a creditor had filed financing statements identifying the debtor as "Ronald Mark Nay," which was the debtor's actual name. However, the debtor's name on his driver's license was incorrectly stated as "Ronald Markt Nay."

The court held that since the debtor's name on the financing statements was not exactly as it appeared on his driver's license and because a search of the correct debtor name using the search logic promulgated by the filing office would not disclose the financing statements filed against the debtor, the creditor was unperfected. Although this decision seems harsh and perhaps counter-intuitive, it serves as a reminder that an individual's name as it appears on their driver's license is the debtor name for purposes of the financing statement, even if it contains misspellings or other deviations from their actual name.

Another court decision reinforces the importance of using the correct fields when completing a financing statement. In In re Voboril, a bank lent money to Stephen R. Voboril and filed a financing statement to perfect its security interest. However, the bank had inserted the debtor's name, "Stephen R. Voboril" in the "Organization's Name" field on the financing statement instead of in the individual debtor name fields.

The court held that the bank was unperfected, because a search of the debtor's name (an individual) would not reveal the bank's financing statement that had the debtor identified in the organization name fields. This case also shows the importance of properly identifying the debtor in accordance with UCC requirements.

Filing of Time-Barred Chapter 13 Claim not an FDCPA Violation

The U.S. Supreme Court recently ruled that a creditor does not violate the Fair Debt Collection Practices Act (FDCPA) by filing an obviously time-barred claim in a Chapter 13 case. In Midland Funding, LLC v. Aleida Johnson, Midland had filed a proof of claim for an obligation that was over 10 years old. The applicable statute of limitations was only 6 years.

Although Midland's claim was disallowed, the debtor subsequently sued Midland, claiming that its conduct in filing an obviously time-barred proof of claim was "false," "deceptive," "misleading," "unconscionable," or "unfair" under the FDCPA and seeking damages and attorneys' fees and costs. The debtor argued that a bankruptcy proof of claim can only be filed for an "enforceable claim," and since the statute of limitations had expired, the creditor violated the FDCPA.

The Supreme Court disagreed, finding that the Bankruptcy Code broadly defines a "claim" as a "right to payment" that is subject to disallowance. The Court noted that the presence of a "knowledgeable trustee" and the bankruptcy claims process protects against the payment of such stale claims.

However, the Supreme Court explicitly stated that it had not decided whether a creditor would violate the FDCPA by asserting a time-barred debt in an ordinary civil lawsuit. Thus, it is possible that a creditor could run afoul of the FDCPA by asserting an obviously time-barred debt in a state court proceeding. The statute of limitations under Pennsylvania law for collecting a debt is typically 4 years, but several exceptions apply, such as if the instrument was executed under seal or if the debtor subsequently admits that it owes the debt.