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STEPHEN RICHARD LEVINE

30827 Janlor Drive • Westlake Village, CA 91362
voice **818.707.9959** • fax **818.707.9948** • steve@aminext.com

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Re: Fair and Accurate Credit Transactions Act of 2003
Fair Credit Reporting Medical Information Regulations

Department of the Treasury
Office of the Comptroller of the Currency
OCC 12 CFR Part 41
Docket No. 04-09
RIN 1557-AC85

Board of Governors of the Federal Reserve System
12 CFR Part 222
Regulation V; Docket No. R-1188

Federal Deposit Insurance Corporation
12 CFR Part 334
RIN 3064-AC81

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 571
No. 2004-16
RIN 1550-AB88

National Credit Union Administration
12 CFR Part 717

To all Agencies:

With all due respect for the agencies involved, it is requested that each agency, to the extent practicable, enjoin and further restrict consumer credit agencies from collecting, aggregating, classifying and disseminating any and all medical information, in any form, within a consumer credit report.

While there is a compelling commercial reason for using centralized credit repositories to manage risk related to financial products, there is no such claim that can be made for the

collection, aggregation, classification and dissemination of medical information by any third-party consumer reporting agency for secondary use by their paid subscribers.

The claim that medical information provided by a centralized repository is necessary for risk management and improved underwriting decisions is false. Since underwriting and risk management decisions are made at specific points of time, the information maintained by any credit repository is almost always out-of-date and inaccurate unless this medical information is continually collected and updated. And, since underwriting and risk management criteria vary greatly among financial service providers, there is no uniform methodology of recording and using medical information which would be of such benefit to the financial community, as a whole, as to permit this further incursion into the privacy of individuals.

If past history is to serve as an example, there should be a complete prohibition of the collection, aggregation, classification and dissemination of medical information by any commercial credit reporting repository, based on the potential security risks arising from both compromised technology and employed personnel. Volumes of legislation have resulted from consumer demands to police these so-called repositories. Horror stories abound and the cost to correct errors is an onerous burden on a damaged party.

With respect to the use of medical information in a commercial environment, specifically the granting of credit, issuance of insurance or the forgiveness and/or forbearance of existing obligations, any underlying medical information should reside only in the original transaction file and not be provided to any third-party credit repository for any reason whatsoever.

If transactional reporting is desirable, any proposed reporting should be limited to the following activities: memorialize the creation, transfer or satisfaction of the reported liability and report the satisfactory progress of any structured payment stream. When an individual seeks forgiveness or forbearance due to medical reasons, there is absolutely no value in entering the diagnosis, prognosis, and course of treatment or any other underlying medical conditions. In fact, insurance specialists can testify to the fact that even expert medical coders often make serious mistake in condition coding or, in many cases, use alternative coding which will maximize payments to the healthcare provider.

Law enforcement purposes should be precluded from consideration in this regulation since any medical information necessary for a legitimate investigation may be acquired through traditional safeguarded sources.

If any further legislation is enacted with regards to medical information being made available by commercial credit repositories, consideration should be given to the imposition of specific criminal penalties should any accidental or intentional breach result in a release of medical information into the public domain; with civil remedies more easily available to cure any damages caused by such a breach.

There are several concerns which arise from legislation that considers the collection, aggregation, classification and dissemination of medical information by commercial credit repositories. Among these are:

- (1) **Preemption** – where one set of regulations takes precedence over those of another agency based upon their regulatory functions or superior legal (i.e. Federal v. State) position. To allow one agency to preempt rules and regulations promulgated under the authority of another agency or to allow one jurisdiction such as a State to have their regulations preempted by Federal regulations is to invite mass confusion and chaos to the detriment of the consumer.
- (2) **Innocent Party** – where the medical information required for loan forgiveness or forbearance may be based on spousal or familial conditions requiring the identification of a party that may not be a party to the underlying transaction and who may not have a separate reporting account. A prime example would be a medical loan covering the treatment of a child. To create an account for the child is ludicrous and to report the medical details on the parent's account is unproductive.
- (3) **Expiration** – provisions necessary to purge information from a file in the same manner as the time prohibitions for reporting bankruptcies or adverse credit events must be enacted. Special procedures for the handling of "terminal" events and diseases should be developed before allowing any medical reporting function to be implemented.
- (4) **Outsourcing** – commercial reporting repositories may be owned and operated by offshore entities which may circumvent procedural safeguards inherent in the United States. Having medical data entered by foreign parties, some of which are sworn enemies of our government, may give rise to providing compromising information on Americans which can be used in a detrimental manner against the sovereign safety and security of the United States.
- (5) **Unintended Consequences** – legislation subject to sentence parsing and various interpretive theories by various agencies is notorious for producing unintended consequences. The best way to combat undesirable consequences is to allow no exceptions to the proposed rule.

It is to be noted that insurance companies have, thus far, managed to underwrite policies and credit grantors have made loans without referring to medical information provided by commercial consumer credit repositories.

Even with statutory safeguards, there is a tremendous amount of misinformation contained in commercial credit repositories and there continues to be a steady stream of information misuse.

Should Congress desire to allow some form of medical records reporting by commercial credit repositories, legislation should be enacted which would create a new class of reporting entity with strict licensing and demanding strict personnel and technology safeguards. All backed with severe criminal and civil penalties for breach of these procedures.

Therefore, it is urged that the agencies involved, to the extent practicable, prohibit the collection, aggregation, classification and dissemination of medical information by commercial credit repositories without exception while preserving those legitimate uses of medical information by individual organizations.

Respectfully submitted,

Stephen Richard Levine

Stephen Richard Levine
Chief Technologist
Franzel Mortgage Consultants