

July 15, 2020

Attorney General Karl Racine
Office of the Attorney General
441 4th Street, NW
Washington, DC 20001

Re: District of Columbia B23-0776/Act A23-0332– Credit Reporting

Dear Attorney General Racine:

The American Financial Services Association (AFSA)¹ appreciates your efforts to protect Washington, D.C. residents in numerous ways throughout the COVID-19 crisis. We appreciate the D.C. Council’s and Mayor’s intentions and efforts as well. Our members share the goal of providing relief to borrowers facing financial hardship and have taken tremendous unprecedented steps to help borrowers during the coronavirus emergency.

We write today regarding the COVID-19 emergency credit alert provisions of B23-0776 / Act A23-0332 which, among other provisions, prohibits users of consumer reports from using or considering “any adverse information in a report that was the result of an action or inaction by a consumer” that occurred during, and was directly or indirectly the result of, a public health emergency. Because developing a credit model that disregards certain adverse information in compliance with the law’s requirements is not feasible given the constraints of existing credit reporting systems, creditors cannot comply with this provision while still offering credit in the District. With that in mind, we respectfully request that you take a position of non-enforcement on this requirement and issue a no-action letter. Part (e) of § 28–3871 provides you with the sole authority to enforce the emergency credit alert provisions, making your office uniquely suited to take such a position.

The credit underwriting process assesses a prospective borrower based on a number of different factors, including their overall credit profile, income, and ability to repay the loan. Credit decisions are not made solely based on the status of any single credit account, making it impossible to isolate the specific effect of coronavirus-related adverse information at the consumer report user level. Moreover, a credit profile is a snapshot in current time, so consumer report users cannot just assess based on the consumer’s pre-emergency profile and ignore information from the emergency, because we only have current information when we pull a report.

Further, the lack of a clear standard for what qualifies as “adverse information” creates additional challenges. For example, if a consumer who typically pays his or her monthly credit card in full were to pay only the minimum payment and carry a balance during the emergency, the higher balance may adversely affect the consumer’s credit score, because the balance would

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice.

signify more credit utilization. Would this qualify as “adverse information” based on consumer action or inaction, and thus exempt the account from consideration? If so, how would a consumer report user know that this account balance is atypically high versus the consumer’s norm?

The information required to be disregarded could affect individual tradelines, delinquencies, or other information that is provided as part of a consumer report obtained by a user. Because creditors do not have the ability to remove or dissect information from a consumer report, or to identify how that information included in a consumer report may have affected an individual’s credit score, thus this provision could limit the ability of creditors to use consumer reports overall and affect the availability of credit for District of Columbia consumers.

Given the complexity of the credit underwriting process and constraints of the credit reporting system, financial institutions cannot feasibly comply with the emergency credit alert provisions of B23-0776 / Act A23-0332. We reiterate our request for a no-action letter from you. If you do not believe a no-action position is appropriate and that consumer report users can comply with the act’s restrictions, we respectfully request that your office provide clear guidance on how financial institutions can comply with the Act.

We thank you for your attention to this matter. If you have any questions, or if AFSA can be of assistance to you in any way, please do not hesitate to contact me at 952-922-6500 or dfagre@afsamail.org.

Sincerely,



Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517