

## Releasing Private Member Information in Bankruptcy Court

September 22, 2008

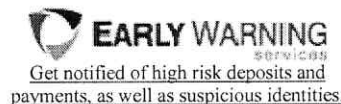
### Summary

Credit unions are urged to use caution when submitting Proofs of Claim to Bankruptcy Court. Recent lawsuits have been made against credit unions for improperly submitting confidential member information to bankruptcy court, which led to public release of private information. Federal and state laws address member privacy rights and prescribe information that should be included when submitting proofs in bankruptcy.

State(s): All  
Type of Alert: Lending

<b>2008 CUNA Mutual Risk Management Webinar Series</b>
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### Loss Prevention Recommendations



CUNA Mutual alerts credit unions of this risk. Please pass this information on to all appropriate employees. If your credit union has experienced a loss, contact our Credit Union Protection Response Center at 800.637.2676.

### **Details:**

Lawsuits against credit unions for failing to protect personal information of their members in the bankruptcy filing process are on the rise. Suits have resulted when Proofs of Claim and related attachments are filed with bankruptcy courts and confidential information has not been redacted (or edited) as required under law. This leads to a public release of private member information and lawsuits stating (or claiming) that credit unions have violated various federal and state laws. These suits have alleged violations of Gramm-Leach Bliley (privacy), state and federal bankruptcy laws, credit union breach of duty to protect private customer information, as well as that members suffer from an invasion of privacy and an increased likelihood of identity theft and further damage to their credit.

Bankruptcy laws and related state laws prescribe personal information to be redacted. With the increasing use of e-claims and e-filing, the process of revising member information is not as easy. Further, the fact that information will be accessible electronically (e.g., over the internet)

increases your risk of exposure for failing to address privacy issues. In at least one situation, a credit union was ordered by the court to go back approximately five years and fix all claims where they filed proofs with confidential personal information. According to the attorney in that case, this would involve identifying all the claims and filing motions on each case to have the records sealed – a huge undertaking and cost to the credit union.

We urge credit unions to review procedures and work with legal counsel to ensure compliance when it comes to protecting confidential member information when filing Proofs of Claim in the bankruptcy process. With an increased concern for identity theft by regulators and the courts, credit unions must be proactive to minimize potential liability.

### **Loss Prevention Recommendations:**

- Work with legal counsel to verify you are properly submitting documentation to Bankruptcy Courts. Confirm any special actions necessary to protect personal information. Corrective action required when failing to edit personal information as required under laws addressing member privacy could result in a lot of work and legal expenses for credit unions.
- Procedures must be established to ensure filings do not include personal information as prescribed under federal or state bankruptcy laws (ex: state orders and federal law such as Bankruptcy Rule 9037(a)). Personal information includes, but is not limited to: social security numbers, dates of birth, account numbers, driver's license numbers, and personal information of other individuals that may be present in the documentation.
- Be aware of content of attachments that may accompany Proofs of Claim. It may be difficult to redact the text of electronically filed attachments that include member information such as social security numbers, birth dates and financial account numbers. Determine if attachments including confidential member information (e.g., contracts, loan applications) may be supplied subsequently upon request of the Court, or alternatives are available under existing rules, such as the use of a reference list using identifiers that refer to a separate form containing redacted information.
- Bankruptcy courts (state and federal level) may have information posted on their Web sites relating to privacy rules.

If you are aware of a risk in your area, whether it has struck your credit union or not, please complete the [Report a RISK Alert](#) form.

The information contained in this RISK Alert is intended for the sole use of our Credit Union Bond policyholders to prevent fraud losses. Any further distribution of this information could subject you to liability under common law and various statutes including the Fair Credit Reporting Act.

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## Be Proactive In Verifying Accuracy In Credit Bureau Reporting

July 7, 2008

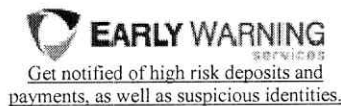
### Summary

Lawsuits in several states target credit unions for improperly reporting member information to credit bureaus. In addition to any contractual requirements between the credit union and consumer reporting agencies (credit bureaus), federal and state laws regulate credit reporting.

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### **Details:**

Lawsuits filed in several states target credit unions for improperly reporting to credit bureaus after debts have been discharged in bankruptcy. Federal and state laws regulate credit reporting; these rules are in addition to any contractual requirements between the credit union and consumer reporting agencies (credit bureaus).

Under federal law, the Fair Credit Reporting Act (FCRA), credit unions as furnishers of information to consumer reporting agencies have an obligation to report accurate information, conduct prompt investigations in the event of a dispute, and to correct any errors.

Credit unions have recently been sued, alleging that they violated FCRA and related state laws by inaccurately reporting accounts for members with debts that have been discharged in bankruptcy. The cases involved credit unions reporting credit balances that were discharged in bankruptcy as being due (allegation stating charged-off debt was reflected as still being owed) sometimes for years after being discharged. The resulting negative impact to members could include lower credit scores (i.e., higher interest rates), higher costs in various in other types of consumer transactions (i.e., insurance), and denied credit. Other damages alleged have included such things as embarrassment, defamation, mental anguish, emotional distress, and inconvenience.

The potential for lawsuits and resulting liability as a result of inaccuracies in credit reporting is a serious concern. It is critical that credit unions review policies, procedures, and actual practices to confirm accurate reporting of information to bureaus, including charge offs and bankruptcies. Based on the importance of a member's credit score and impact of accurate reporting on consumers, a

proactive approach to addressing this risk is warranted.

### **Loss Prevention Recommendations:**

- Who at your credit union is responsible for making sure that correct information is reported to credit bureaus? Detailed procedures should be in place for handling credit reporting, bankruptcy credit reporting, disputes, and potential identity theft issues. Knowledge of proper terminology and coding for applicable data fields is essential.
- Be familiar with, and understand, the various codes used by the credit bureau(s) you work with. Ensure proper codes are provided for each consumer. Does the credit union adhere to industry standards for the reporting of accurate, complete, and timely credit information (i.e., Metro 2 format)? The Credit Reporting Resource Guide and credit bureaus themselves are good resources to assist in ensuring accurate credit histories are reported and maintained.
- Credit union staff should work with credit bureau staff to ensure you are reporting bankruptcies correctly (i.e., zero balance, appropriate bankruptcy account status/codes, and reflecting the account as closed). The bureaus may also have resources available that can audit and provide summaries to verify how information is being reported.
- Check with the credit bureaus on reporting procedures if you have an unusual situation or you are not sure how to report. They are generally very willing to work with credit unions they serve because it keeps both parties out of regulatory trouble.
- What happens when you are notified that information you reported is incorrect? Are follow-up procedures in place to ensure changes have been made on your in-house system so misreporting does not resume the month after the manual change is made?

**If you have additional questions about this alert, please contact Credit Union Protection Risk Management or the Credit Union Protection Response Center at 800-637-2676.**

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