ADDRESSING CREDIT REPORTING ISSUES FOR SURVIVORS OF DOMESTIC VIOLENCE

January 16, 2010
Author: Saima Akhtar

Once immediate safety concerns are addressed, long-term independence and security for survivors of domestic violence require reliable financial resources to sustain daily living and future planning. Because an abusive partner may have unfettered access to the victim's personal information and resources, building or re-building a sound credit profile can be extremely difficult. Economic abuse in the relationship may result in fraudulent charges to a credit card, or having entirely fraudulent loans taken out or accounts created by the abuser in the victim's name. Economic abuse can also result in the inability to make valid payments because of lost income to the victim when the abuser steals or forces the victim to turn over paychecks. Many of these abuses have profound effects on a survivor who has left the abusive relationship because of the damage done to that survivor's credit report.

Though credit reporting issues may be far from the mind of a survivor fleeing an abusive relationship, knowing what information is on a credit report and taking steps to resolve improper charges can be crucial to achieving economic security and justice. Typically, credit reports contain the biographical and financial history of a consumer reporting on bankruptcies, tax liens, information on credit card accounts— including credit limits, balances, payment histories, other people who have requested the consumer's credit report, the consumer's address, phone number, social security number, present and past employers, and any statements of dispute. These reports are generated by consumer credit reporting agencies. A good credit report is a vital part of establishing financial independence because credit reports serve as gatekeepers for obtaining checking accounts, housing, insurance, and even employment.

In New York, the use of credit reports is regulated by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA") and the New York Fair Credit Reporting Act, Gen. Bus. Law § 380 et seq. ("NY FCRA"). Both FCRAs govern the uses of credit reports and provide consumers with rights to protect their credit and their identity. The NY FCRA specifically authorizes credit reports to be used for tenant screening purposes, underwriting insurance policies, and any employment screening for jobs where the salary is expected to be more than $25,000 a year. Additionally, under both FCRA's, anyone can access another's credit report for any "legitimate business purpose." Based upon this last provision, credit reports are used for a wide range of activities beyond the issuance of credit. For these reasons, a victim who has experienced economic abuse might have difficulty obtaining housing and employment without taking steps to resolve some of the credit reporting issues.

How to Obtain a Credit Report and Contact the Primary Credit Reporting Agencies

There are three major credit reporting agencies ("CRAs") in the United States - Experian, TransUnion, and Equifax. To get a copy of an individual credit report from any of these CRAs, consumers may go to http://www.annualcreditreport.com, a site authorized by the Federal Trade Commission.

The primary credit reporting agencies can be contacted as follows:
- Equifax (800) 685-1111, www.equifax.com
- Experian (888) EXPERIAN (888-397-3742), www.experian.com
- TransUnion (800) 888-4213, www.transunion.com

These agencies often do not report the same accounts and charges. When checking credit history, it is important to review all three because of the differences and inconsistencies between companies.

It is important to keep in mind that many smaller local consumer credit reporting agencies exist. Some of the local credit reporting agencies are operated by the major three credit reporting agencies. Others are independent agencies that search local court houses and sheriff's departments to find public records. Employers and landlords are more likely to use these consumer credit reporting agencies than one of the three primary CRAs. Many of these smaller CRAs can be located in the local yellow pages or online. Though the smaller CRAs are more difficult to locate, a consumer's right to see his or her credit report and dispute any inaccurate information is the same under FCRA and NY FCRA as the major CRAs.

What Should Survivors Watch for on a Credit Report?

Credit reports are notorious for their inaccuracies. Multiple studies have found serious errors in 25 percent of credit reports. Generally, when checking a credit report, it is important to look for: 1) information that might belong to
other people; 2) accounts with inaccurate statuses (i.e. a closed account listed as open or visa versa); and 3) accounts listed twice. Additionally, most negative information older than seven years is considered out of date and should not appear on a credit report. 5

Domestic violence survivors face a unique challenge in monitoring their credit reports. Because abusers exert financial control over victims and may have access to almost unlimited personal information from the victim, such as social security numbers, bank records, and personal history, survivors of domestic violence may be victims of identity theft by the abusive partner. For this reason, survivors should be especially aware of accounts opened in their names that were not expressly authorized, charges made at times when a particular card or account was not in use, and watch to be certain that accounts are closed promptly when requested.

**How to Dispute Information on a Credit Report:**
Under both state and federal law, consumers have a right to dispute the information on their credit report. 6 To dispute information on the credit report, 7 the survivor should send a letter to the credit reporting agency producing the report upon which the disputed information appears. The dispute letter should include information sufficient to identify the consumer and the disputed facts. Generally, such information would include the consumer's name and social security number, a detailed description of the inaccuracy on the report, and any documentation to support the dispute.

After receiving notice of a dispute, CRAs are required to complete a reasonable reinvestigation within 30 days, unless more time is needed, to determine whether the information properly belongs on the credit report. 8 Typically in a reinvestigation, the CRAs will simply verify the accuracy of information with the original furnisher of the information. However, a CRA may legally be required to go beyond the initial source of the information if the consumer has "alerted the reporting agency to the possibility that the source may be unreliable," or if the possible harm the inaccurate information would cause the consumer is greater than the cost of verifying the accuracy of the source. 9 If the CRA determines that the disputed information is inaccurate or can no longer be verified, the CRA shall promptly delete such information. 10 Though it can be helpful to send this information to the account furnisher as well, it is not legally necessary to do so in order to protect a consumer's rights under FCRA.

In addition, when applying for credit, a consumer has the right to present additional information "that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness." 11 Although a consumer cannot directly alter accounts or credit history to their credit reports, a consumer has the right to submit a one-hundred word statement to the CRA which will be sent out to everyone that sees the report. 12

**Some Concerns Specific to Disputing Credit History That Resulted From Identity Theft:**
Victims of identity theft should be especially vigilant both because of the implications identity theft has for both their credit worthiness and for their safety. A survivor should be sure to close any accounts that the abuser opened in the survivor's name, even if the accounts are in good standing, 13 to prevent further potential abuse. 14 Under New York law, identity theft occurs when a person: knowingly and with the intent to defraud, obtain, possess, transfer, use, or attempt to obtain, possess, transfer, or use credit, goods, services or anything else of value in the name of another person without their consent. 15

Additionally, in New York, identity theft is a crime and can be prosecuted under NY Penal Law §§ 190.77-190.84. If the identity theft has caused more than $500 in financial harm, it is considered a felony. 16

Providing documentation of identity theft in order to dispute credit reporting can be particularly challenging. Ideally, victims of identity theft should file a police report and obtain an Identity Theft Report at that time. Identity Theft Reports are more detailed and contain more information than a general police report. Filing the Identity Theft Report with the major credit reporting agencies can ensure that fraudulent information stays off the credit report and prevent it from reappearing in the future. 17 It can also prevent future collection of fraudulent charges.

In a situation where there has been domestic violence, filing a police report may not be the most appropriate choice because of safety or other non-credit concerns. Under these circumstances, there are some alternatives to filing a police report. A consumer can file a complaint with the Federal Trade Commission, or fill out an Identity Theft Affidavit. 17 The Identity Theft Affidavit will need to be signed by a law enforcement agent, but does not need to be filed. It should be noted, however, that these secondary alternatives do not provide the same legal protection as an Identity Theft Report obtained from the police. Ultimately, how the status of an account is reported on a credit report is left to the discretion of the credit reporting agency to determine if there was sufficient information to find that identity theft occurred.

**What if a Survivor Was Denied Credit or Adversely Affected Due to Bad Credit?**
The broad disclosure requirements contained in New York's FCRA promote the protection of domestic violence survivors to a greater extent than the federal FCRA. In New York, no one can request a credit report "for credit, employment, insurance, or rental or lease of residences, unless the applicant is first informed in writing or in the same manner in which the application is made that (i) a consumer report may be requested in connection with such application, and (ii) the applicant upon request will be informed whether or not a consumer report was requested, and if such report was requested, informed of the name and address of the consumer reporting agency that furnished the report." 18 Because of this statute, a New York consumer has the right to know before the credit report is obtained that a report may be obtained in connection with that particular application and has the choice to
Declining to provide a credit history may have consequences for the consumer, but he or she should be able to make that decision based on the circumstances.

Furthermore, if a credit report is obtained and the consumer is adversely affected by information on the credit report, the consumer has the right to receive notice of the adverse action and a free copy of the consumer credit report that was used in making the decision. Once information is provided about the reason for the denial of opportunity based on the contents of the credit report, the consumer may opt to dispute the charge and/or file a letter with the credit reporting agency in order to supplement the information in the report. Private actions for violations of the FCRA may be available in some circumstance, but are beyond the scope of this article.

Credit Reports and Employment
By definition, credit reports include more than just reports from the big three CRAs. Consumer credit reports are defined as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living."20 Almost all background checks meet the statutory definition of a credit report and would be governed by both the FCRA and the NY FCRA.

When a credit report is used for employment purposes, the employer must provide a notice before an adverse action is taken with respect to an existing employee. The employee then has a right to explain or correct the information on the credit report before the employer may take an adverse employment action based on the contents of a credit report.21

Moreover, in New York, it is illegal for employers to discriminate against an employee or potential employee based upon their status as a domestic violence victim.22 Though most credit reports should not include information which would indicate domestic violence status, some local credit reporting agencies obtain their information from old court records. Use of small local credit reporting agencies is especially prevalent in tenant and employment screening. Therefore, if adverse action is taken based upon information found a credit report, it is important to get a copy of the credit report used and respond appropriately with either a dispute letter or a letter to the file explaining the negative information at issue.

Other Credit Reporting Concerns:

Disputing a Credit Card Charge Before it is Reported to a CRA
It is possible in some situations that a survivor might be able to take steps that would preemptively prevent improper credit card charges by the abuser from ever reaching the survivor's credit report. First, it is important for survivors to seriously consider if their safety needs would best be served by closing the existing account that the abuser had access to and opening a new account. If the survivor has an open credit card account and is firmly invested in keeping that specific account open, it is important to ensure that the abuser is removed from the account as an authorized user. It is also important to clear all saved credit card account information from the internet history of a computer to which the abuser has access. It is important when clearing electronic records of account information to delete the "cookies" on a web-browsing program such as Internet Explorer, FireFox or Safari. Taking these steps should help prevent unauthorized use of the survivor's credit card account electronically or with an existing card. If the preventive steps are not successful and the batterer is able to use the credit account without the survivor's consent, the survivor should immediately contact the credit card issuer to report the unauthorized use of the card. The credit card holder's liability for unauthorized use of the card is limited to a maximum of $50, regardless of how much was charged.23 However, these charges can only be disputed as unauthorized use charges if the abusive partner was not listed as an authorized user of the card at the time the charges were incurred. Once the improper use of the card by the batterer has been reported, the credit card issuer should take steps to cancel the card, freeze the existing account and issue a new card to the holder of the account before anything is reported to a CRA.

Building a Credit History for a Survivor Without One
In some situations, where an abuser had complete control over the finances, a survivor may be completely void of a credit history. This can profoundly hinder her ability to obtain financial independence. Under the Equal Credit Opportunity Act ("ECOA"), a statute which generally prohibits discrimination in the extension of credit, the survivor may be entitled to have some of the abuser's accounts reported on her credit report as well. Regulation B of the ECOA requires that when furnishers provide information to the credit reporting agencies, that information must "reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account."24 Thus, if the spouse had a credit card and the survivor was an authorized user on the account, that account should be listed on the survivor's credit report as well. A survivor may contact the three primary credit reporting agencies to make sure that each agency has a file that includes any relevant information, including any accounts on which the survivor was an authorized user or any accounts from which the survivor benefited.

For survivors with no access to credit history or those looking to establish a new identity, there are other ways to build a credit. One option is to open a credit card, store account, or other small line of credit, and charge a small amount to it each month and be sure to pay it off in full. Other options include requesting creditors that do not traditionally report, such as landlords or utility companies, to report their payment history. Finally, as stated above, when applying for credit, under ECOA, survivors can bring documents (such as proof of rental payments) to show that their credit history (or lack thereof) does not accurately reflect their creditworthiness.25
Security Concerns:
Because a credit report contains a significant amount of personal information, including a current address and possibly a place of employment, it can potentially place a domestic violence survivor at risk of further victimization. Although the FCRA and NY FCRA purport to control who has access to a credit report, it remains possible for a batterer to obtain information in the credit report through dubious means. A credit report that was improperly obtained by or given to an abusive partner could seriously jeopardize the safety of a domestic violence survivor who has worked hard to set up a new and independent life.

There are several steps that can be taken to ensure that survivors of domestic violence are able to have and repair their credit safely. First, a survivor is permitted to set up a post office box and have all creditors send mail there. The address listed on the accounts need not be the survivor's actual home address. Using a post office box address rather than the actual home address will prevent the individual creditors from reporting the actual home address to the CRAs. Also, the survivor has the option to place either a security freeze or a fraud alert on the credit report if one of these options seems appropriate. While both of these options can have drawbacks, they provide a greater level of control over the credit report than would otherwise be available.

Security Freeze
Since 2006, all consumers in New York have been permitted to place a security freeze on their credit reports by submitting a written request to the CRAs via overnight or certified mail. A security freeze completely blocks access to a consumer's credit report unless the consumer calls the credit reporting agency and authorizes a temporary lift of the freeze. This security measure has been available for free to victims of identity theft, although other consumers could be asked to pay up to $5.00 for the freeze. Once the written request and proper identification of the consumer are received by the CRA, the CRA is mandated to freeze the report within three business days.

Amendments to the NY FCRA enacted in 2009 allow victims of domestic violence to put a security freeze on their credit reports at no cost. Consumer who experienced domestic violence and provide documentation of the domestic violence to the CRA along with the required written request may have their credit reports frozen at no charge. Documentation of domestic violence allowed under the statute includes a domestic incident report, police report, order of protection, or a signed affidavit from a medical provider, mental health provider, social worker, rape crisis counselor, or domestic violence advocate. The statute also prevents the CRA from disclosing to any third party who tries to access the report while the freeze is in place that domestic violence or identity theft is the reason for the security freeze on the credit report, unless the consumer gives consent to this disclosure in writing.

Fraud Alert
Another option is for survivors to place a fraud alert on their credit report. With a fraud alert in place, creditors can still access a consumer's credit report. However, creditors must show that they used "reasonable policies and procedures" to verify the consumer's identity. This is an option that provides somewhat less control to the survivor than the security freeze does, but provides more convenience.

The decision as to whether survivors should place a freeze or fraud alert on their report should take into consideration their goals. Both security options cause a delay or denial of credit, but this risk is greater with a credit freeze than a fraud alert. Survivors with an immediate need for access to credit should work with creditors to explain that the freeze or fraud alert is in place, and attempt to work with the creditor to find solution. Some businesses relying on credit reports, such as employers and landlords, are willing to accept a copy of a credit report under special circumstances. To place the fraud alert on the credit report, the consumer only needs to contact one of the major credit reporting agencies, which will then contact the other major CRAs. A fraud alert will last for only 90 days unless a valid police report is submitted. Once a police report is submitted to verify the consumer's allegation of the fraud, the alert can remain in place up to 7 years.

Finally, it is important for survivors who have established new identities to close down all of their old bank and credit card accounts in order to keep these accounts off their new credit report. Any reliance on a credit history from a prior identity could jeopardize the safety of the new identity. If the credit reporting agencies are able to identify that the reports belong to the same person, the CRAs will merge the two reports together and tie the new identity to the prior one.

For more information, contact Saima Akhtar, sakhtar@empirejustice.org

Footnotes
1 McKinney Gen. Bus. Law § 380-b. The federal FCRA only authorizes credit reports to be used for employment purposes if the annual salary is expected to be above $75,000 a year.
3 Many other websites and companies purport to provide free credit reports. These services and websites, such as freecreditreport.com, are not actually free. They generally require subscription to a credit monitoring service to obtain the credit report.
4 For a review of studies, see National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports, 5-6, January 2009
Bankruptcies may stay on a credit report up to 10 years and information may also stay on longer than 7 years if the statute of limitations to collect the debt has not expired. 15 U.S.C. §1681c, see also McKinney Gen. Bus. Law § 380-j.


15 U.S.C. § 1681i The FRC outlines the procedures for disputing inaccurate information on a credit report.

Id.

15 U.S.C. § 1681i

The FRC outlines the procedures for disputing inaccurate information on a credit report.

15 U.S.C. § 1681i

Closing an account can reduce the card holder's credit score overall. Whether or not to close an account is a choice that should be weighed carefully against the safety risk that may be posed by keeping an existing account open.

15 McKinney Gen. Bus. Law § 380-s

16 NY Penal Law §§ 190.79 & 190.80


19 Although the statute is clear, consumers should be aware that this practice is not always followed.


21 15 U.S.C. § 1681b(b)

22 Executive Law § 296

23 Truth in Lending Act, Reg. Z, 12 C.F.R. §226.12(b)

24 Reg. B, 12 CFR § 202.10(a)(1)

25 Equal Credit Opportunity Act, Regulation B, 12 CFR § 202.6


28 Under McKinney Gen. Bus. Law § 380-t(b), the period of time allowed for the credit reporting agency to implement the freeze was reduced to three days as of January 1, 2009.


30 Id.