FAIR CREDIT REPORTING ACT: HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JUNE 4, 2003

Printed for the use of the Committee on Financial Services

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WITNESSES

WEDNESDAY, JUNE 4, 2003

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

FAIR CREDIT REPORTING ACT: HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY

Wednesday, June 4, 2003

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:08 a.m., in Room 2128, Rayburn House Office Building, Hon. Spencer Bachus [Chairman of the subcommittee] presiding.

Present: Representatives Bachus, Castle, Royce, Kelly, Gillmor, Ryun, Biggert, Hart, Capito, Tiberi, Kennedy, Hensarling, Murphy, Brown-Waite, Barrett, Renzi, Sanders, Maloney, Watt, Ackerman, Sherman, Meeks, Gutierrez, Moore, Gonzalez, Waters, Hooley, Carson, Lucas of Kentucky, Crowley, Israel, Ross, McCarthy, and Davis. Also attending was Representative Lee.

Chairman BACHUS. [Presiding.] Good morning. The subcommittee will come to order.

Our hearing today is about the Fair Credit Reporting Act, FCRA, and how it functions for consumers and the economy. It is another in a series of hearings the subcommittee is holding with respect to FCRA, and how secure consumers feel with respect to their personal information. At our last hearing, we had a representative of the Treasury Department and others who discussed the FCRA's importance to consumers and the economy. We also heard a number of views on the importance of the provisions in the FCRA that ensure national uniformity for certain core issues regulated by the FCRA.

Today, we will learn why and how the FCRA is important to consumers and the economy and how the national standards established by the FCRA relate to the law's importance in these respects. I believe that the diverse group of witnesses testifying today will assist us to better understand how and why the FCRA benefits consumers and the economy.

The FCRA is a comprehensive and complex law. Those who are familiar with the FCRA know that it governs the credit reporting process. For example, the FCRA governs those who furnish information to consumer reporting agencies or credit bureaus. It governs the credit bureaus themselves, and it governs those who use credit reports obtained from credit bureaus. However, it is important for us as a subcommittee to examine exactly how each of these entities is governed by FCRA and how the end result benefits consumers and the economy.

It is my hope that we will also have a thorough discussion with respect to provisions in FCRA that establish a uniform national standard such as those governing furnisher obligations, the content of a credit report, reinvestigation time frames, adverse action responsibilities, affiliate sharing, and pre-screening. The witness panels have been divided into four general groups. Our first panel consists of federal and state regulators, with experience in enforcing FCRA, or regulating institutions governed by FCRA. Our second panel consists of users of credit reports and furnishers of information to credit bureaus. The diversity of this panel reflects the diversity of interests in and application of FCRA.

Our third panel is intended to provide the perspective of individuals, i.e. consumers, as represented by some of the national organizations representing various groups of people. This panel should provide a lively debate and include the full spectrum of viewpoints. Finally, we will hear from those who work behind the scenes in the credit reporting process.

We must hear from all these witnesses if we are to evaluate the impact of FCRA. For example, we will hear from a state banking supervisor who may in this rare instance agree on the need for national uniformity with respect to FCRA. We will hear how the pre-screening process has resulted in lower costs to consumers. Also, we will hear the perspective of the Hispanic Chamber of Commerce, of senior citizens, and of consumer attorneys in the FCRA debate.

As I have mentioned in the past, Congress will have a choice to make in the very near future. The provisions of FCRA that guarantee a single national standard with respect to many of the FCRA's provisions are set to expire on January 1, 2004. My focus throughout this debate will remain on providing consumers and the economy with strong benefits and protections. I believe this can and should be done at the federal level in order to avoid a patchwork of state laws that may affect the cost and availability of credit, and therefore the economy as a whole.

I look forward to our witnesses testimony on this important topic. In closing, I would again thank Chairman Oxley and Ranking Member Frank for working together on this important issue and making it a priority for the committee. I would also like to thank the Ranking Member of the subcommittee, Mr. Sanders. Before I recognize him for an opening statement, I will say that the minority requested 11 witnesses, and because of the number, we have eight of those witnesses here today. So this by far reflects a bipartisan selection of panels.

The chair now recognizes Mr. Sanders for his opening statement.

[The prepared statement of Hon. Spencer Bachus can be found on page 108 in the appendix.]

Mr. SANDERS. Thank you, Mr. Chairman. In fact, I thank you and your staff very much for helping us bring our witnesses here today.

Mr. Chairman, I am particularly delighted that you agreed to my request to have our Assistant Attorney General Julie Brill here with us this morning, and I look forward to her testimony, as well as the testimony of all the other guests.

Let me very briefly mention, Mr. Chairman, my three top concerns as we debate this issue. First, I believe that every consumer in this country should have the right to a free credit report at least once a year from all three major credit bureaus. Currently, consumers in six states enjoy this right: Colorado, Georgia, Massachusetts, Maryland, New Jersey and Vermont. In Georgia, in fact, consumers are entitled to two free credit reports a year. Mr. Chairman, as you recall during our first FCRA hearing, I asked Assistant Treasury Secretary Wayne Abernathy about his views on the subject. He told me that he believed, "there is a lot of merit to providing free credit reports," and I would hope that both sides could agree to that.

But we should not stop at the credit report. Since a consumer's credit score is the basis that credit is used in determining whether you qualify for a mortgage, car loan or a credit card and what interest you will be paying, I believe we must also allow each consumer in this country to receive a free credit score from all three major credit bureaus, and a description of the key factors that may have adversely affected the consumer's credit score similar to California State law.

Currently, many consumers have to pay a fee of $9 for a copy of their credit report and a fee of $13 to get their credit score from each of the three major credit bureaus. Since these credit bureaus can vary, it is important for many consumers to purchase all three credit reports and all three credit scores. This can add up to $66. Some Internet outfits charge fees that are even higher. Allowing consumers to receive free credit reports and free credit scores would be a win-win situation for both consumers and the industry. For consumers, they would be able to quickly identify errors in their credit reports and resolve them before they become a major problem.

Most consumers do not even know they have errors in their credit reports until they are turned down for a loan. Correcting these errors would benefit the industry as well. For example, Financial Insights, an industry research firm, estimates that losses related to identity theft among U.S. financial institutions could reach close to $9 billion in 2006. Allowing consumers free access to their credit reports could substantially improve the accuracy of credit reports and cut down on identity theft. The current situation is bad for both consumers and the industry. We can begin to correct this problem through free credit reports and free credit scores.

Secondly, I would like to focus on what the credit card industry refers to as risk-based pricing. Some of you may have seen a front page story in the New York Times and last week ABC News also carried this. To my mind, if you look at this issue, it is an absolute outrage. When consumers pay their credit card debts on time, they can still see up to a tripling, up to 30 percent interest on what they are paying despite the fact that they have paid the company on time. The reason for that is that the company has determined that they may have paid their car loan late, or two years ago they may have paid their rent late, and suddenly they have seen a doubling or tripling of their interest rates. It is a rip-off of the worst kind and this committee I hope will deal with it. It is fraud. It is a bait-and-switch practice by some of the largest credit card companies in America.

Finally, the third issue we must focus on is the ability for States to pass stronger consumer protection laws on FCRA. It is my understanding that there will be several witnesses today who will testify in support of reauthorizing the seven FCRA state preemptions because they believe that preempting the states from passing stronger consumer protection laws somehow benefits consumers and the industry. Well, if the 1996 state preemptions have benefited consumers, I would like to know why identity theft complaints nearly doubled in 2002.

The issue here is a fundamental philosophical issue. Those of us who are conservatives believe in states's rights and the rights of states to be the laboratories of change. Our big government friends over here think that the big federal government has all of the answers, and they want to tell every state in the union what they should do. So some of us who believe in Newt Gingrich's victims, we want to see the states continue to have the power to protect consumers.

I thank you very much, Mr. Chairman.

Chairman BACHUS. With that, I guess we will introduce our witnesses.

Mrs. KELLY. Mr. Chairman?

Chairman BACHUS. Any other opening statements?

Ms. Kelly?

Mrs. KELLY. Thank you, Mr. Chairman. I thank you for holding the hearing today. This is an issue that is of great importance to this committee and Americans across the country.

Last month, we heard testimony from the Treasury Department and a diverse panel of witnesses endorsing the extension of FCRA's uniform standards. Several witnesses testified that the failure to reauthorize FCRA will have a negative impact on the flow of credit and our economy. I share these concerns and believe that we must reauthorize FCRA to ensure that we continue to offer millions of Americans greater access to low-cost credit. I would also like to stress the importance of reauthorizing FCRA in our efforts to combat identity theft and help law enforcement officials track down illicit money under the Patriot Act. In numerous hearings, including several in my Subcommittee on Oversight, we have found that criminals and terrorists use complex and sophisticated schemes to manipulate our laws and financial systems. This law is essential to protecting the American people by detecting this activity and helping us weed out the wrongdoers.

Today, we continue this work and will hear testimony from another diverse group of witnesses. I am honored to have the opportunity to introduce one special witness from the great State of New York, Superintendent of Insurance Greg Serio. As the committee continues to examine FCRA reauthorization, there are many important issues we must address, but none more important than protecting consumers. This is an endeavor that Mr. Serio has been very effectively focusing on while carrying out his duties as the New York Superintendent of Insurance.

This is one place where our Ranking Member should be aware our State has been in the forefront, continues to be in the forefront, and we are one of those laboratories without any authorization from the federal government. Mr. Serio has gone ahead on his own and done a lot of these very interesting and very, very specific things that are helping our consumers in New York State.

So Superintendent Serio, it is a great pleasure to see you. This committee is going to undoubtedly benefit from your expertise. I look forward to hearing your testimony, and I thank you very much, Mr. Chairman, for holding the hearing.

Chairman BACHUS. Thank you.

Mr. WATT. Mr. Chairman?

Chairman BACHUS. Yes, sir, Mr. Watt?

Mr. WATT. I know we have four panels, and I do not want to prolong this. I just wanted to thank our State Banking Commissioner, Mr. Joe Smith, for being here and welcome him

I yield back the balance of my time.

Chairman BACHUS. Thank you, Mr. Watt.

Ms. Hooley?

Ms. HOOLEY. Yes, thank you, Mr. Chairman. Hopefully I can get a couple of concerns out on the table now so that people can try to answer as we go along.

I am glad that we are doing this series of hearings. I think we have one of the best credit reporting systems in the world, and I hope to keep it that way. There are some areas, however, where I think we need some improvements. One is identity theft, which is the fastest growing crime. But the two issues I hope that our panelists would think about today is inaccurate credit reports. When you have people depending on getting a job and having an accurate credit report, or getting insurance and maybe on that report they have the father's name who has defaulted on a loan, and all of a sudden that father's defaulted loan is on the son's, and the son now cannot get insurance for his home; or the person who has been out of work and finally gets a job only to find out for some reason or another that some bad loans are still on his credit report, I think those are issues that we need to deal with.

The other issue is, how does a person that has had an issue with identity theft, how do they get through the process without taking a year and a half or up to 4 years, which I have heard about in many stories, where it takes forever and it is so frustrating to get through that process of cleaning up their credit report and getting their identity back.

So the issue is inaccurate reports, and I know we have a lot of accuracy in our reports, but if you are on the other end of an inaccurate report, then how do you get through the process?

With that, I yield back the remainder of my time.

Chairman BACHUS. Thank you.

Are there other members that wish to make an opening statement? If not, we will proceed to the first panel.

Ms. Kelly, did you want to introduce Mr. Serio, or are you through with your introduction?

Mr. Sanders?

Mr. SANDERS. I will be very brief in introducing Julie Brill, who has been an Assistant Attorney General for the State of Vermont since 1988. She is co-chair of the National Association of Attorneys General Privacy Working Group. Julie has spearheaded Vermont's litigation and legislative efforts in a wide variety of areas affecting consumers, including privacy, fair credit reporting, tobacco and antitrust. We are delighted to have her with us today.

Chairman BACHUS. Thank you.

Our other three witnesses on the first panel are Howard Beales, Director of the Bureau of Consumer Affairs at the Federal Trade Commission. We welcome you, Mr. Beales; Dolores Smith, Director of the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, who has testified before us on other occasions. We welcome you back.

Ms. Kelly has introduced Superintendent Serio. Assistant Attorney General Brill, Mr. Sanders has introduced you. And our fifth panelist is Joseph A. Smith, Commissioner of Banks, State of North Carolina, on behalf of the Conference of State Bank Supervisors. Mr. Watt welcomed you. We want to welcome you again.

At this time, we will proceed to opening statements. We will start with you, Mr. Beales.

STATEMENT OF HOWARD BEALES, DIRECTOR, BUREAU OF CONSUMER AFFAIRS, FEDERAL TRADE COMMISSION

Mr. BEALES. Thank you, Mr. Chairman and members of the committee. My name is Howard Beales and I am the Director of the Bureau of Consumer Protection at the Federal Trade Commission.

I am pleased to have this opportunity to provide background on the Fair Credit Reporting Act. Although the views expressed in the written statement represent the views of the commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the commission or any individual Commissioner.

Since World War II, the American population has become vastly more mobile, and consumer credit outstanding has grown exponentially. Indeed, consumer spending accounts for over two-thirds of U.S. gross domestic product, and consumer credit markets drive U.S. economic growth. Early on, credit reporting was local or regional. The amount of information collected was limited and not standardized. Credit bureaus, also known as consumer reporting agencies, manually recorded consumer information on index cards, updated the information irregularly, and often retained it indefinitely.

Over time, however, small credit bureaus grew to become larger repositories of consumer information, relying on sophisticated computer systems to store, process and transmit large amounts of data. Today, the credit reporting system consists primarily of three nationwide credit bureau repositories, containing data on as many as 1.5 billion credit accounts held by approximately 190 million individuals. Creditors and other so-called furnishers provide information to credit bureaus voluntarily. There is no direct payment to furnishers for providing this data, but the cooperative database enables credit grantors to make more expeditious and accurate credit decisions. Quick credit decisions are important for many consumers who are in the market for new credit. A recent Federal Reserve

Board study found that one in five active credit accounts were opened within the last year.

Because of the national credit reporting system, the credit application process has evolved from a relatively time consuming individualized procedure that relied on loan officers's case-by-case judgment, to a more sophisticated and impartial system that relies on consistent assessments of credit history information. Because of the prevalence of credit reports, consumers today can use the Internet to comparison shop for a wide array of credit products and get virtually instantaneous offers, or they can get a five-figure loan from a car dealer they have never been to before, and drive a car out of the showroom the same day.

The FCRA provides consumer protections in two vital areas: privacy and accuracy. The FCRA protects consumer privacy by limiting distribution of credit reports to those with specific permissible purposes. Congress also has given consumers the right to opt out of the use of their credit information for pre-screening, and to opt out of the sharing of certain information, including credit reports among affiliated companies. In addition to privacy, credit report accuracy is a core goal of the FCRA. The FCRA seeks to achieve optimal accuracy in part by providing that consumer reporting agencies must follow reasonable procedures to assure the maximum possible accuracy of the information they report. The FCRA also gives consumers the right to know what information the credit bureau maintains on them, and the right to dispute errors, facilitated by the FCRA's adverse action notice requirements. The self-help mechanism embodied in the scheme of adverse action notices and the right to dispute is a critical component in the effort to maximize the accuracy of consumer reports. The commission has given high priority to assuring compliance with these provisions.

I would like to briefly discuss the commission's efforts to administer the statute since 1970. The law provides that the commission would be the principal agency to enforce it. A number of formal actions have been brought to enforce the law, including cases to ensure compliance by creditors with the adverse action notice requirement, compliance by credit bureaus with privacy and accuracy requirements, and compliance by so-called furnishers with accuracy requirements.

Most recently, the commission settled an action against an Internet mortgage lender that failed to give adverse action notices to consumers who did not qualify for online pre-approval because of information in their credit reports. The commission is also engaged in extensive consumer and business education, including the commission's 1990 commentary on the FCRA, and we are working on a revision of that as well.

The 33 years since passage of the Act has fully demonstrated the wisdom of Congress in enacting the FCRA. The FCRA helps make possible the vitality of modern consumer credit markets. The consumer reporting industry, furnishers and users can all rely on the uniform framework of the FCRA in what has become a complex nationwide business of making consumer credit available to a diverse and mobile American public. The Act, along with the amendments, provides a carefully balanced framework, making possible the benefits that result from the free, fair and accurate flow of consumer data.

All of these benefits depend on the consumer reporting system functioning as intended. That is why the FTC continues to emphasize the importance of educating consumers and businesses, and of enforcing the law to assure compliance by all those who have a role in making the system work.

Thank you, and I look forward to your questions.

[The prepared statement of Howard Beales can be found on page 122 in the appendix.]

Chairman BACHUS. Thank you.

Ms. Smith?

STATEMENT OF DOLORES SMITH, DIRECTOR OF THE DIVISION OF CONSUMER AND COMMUNITY AFFAIRS, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Ms. DOLORES SMITH. Thank you.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify about the role of federal regulators under the Fair Credit Reporting Act, and on how the Act promotes the national operations of entities under the Federal Reserve Board's jurisdiction. Today, the three national consumer reporting agencies each receives more than two billion items of information per month and issues roughly two million credit reports each day. The agencies gather the information from financial institutions and other creditors, from collection agencies, and from public records. Participation in the U.S. credit reporting system is voluntary. Creditors need not obtain consumer reports before they extend credit, although most creditors do so to manage risk. There is no requirement that creditors furnish information to consumer reporting agencies, but if they do they must ensure that the information is accurate.

The FCRA contains important consumer rights and protections to promote accuracy and to protect privacy. For example, consumers have the right to dispute the accuracy or completeness of information in their credit reports and to have inaccurate information deleted or corrected, and to include a statement of dispute in the report if the dispute is not resolved. With respect to privacy, the FCRA restricts the sharing of information among affiliates, unless the consumer is given the opportunity to opt out.

The Federal Reserve Board and the other banking agencies play an important role in interpreting and enforcing the FCRA as it relates to credit. Banks are primarily users of consumer reports and furnishers of information. The banking agencies have the statutory authority to jointly prescribe regulations that carry out the FCRA with respect to financial institutions. The Federal Reserve enforces compliance through the examination of state member banks and other entities subject to the Board's jurisdiction.

In amendments to the FCRA adopted in 1996, the Congress preempted states from enacting laws dealing with seven key areas, including pre-screened solicitations, the duties of furnishers of information, and information-sharing among affiliates. Chairman Greenspan has testified that he supports making permanent these preemption provisions which are set to sunset on January 1, 2004.

The FCRA promotes interstate and nationwide operations in important ways. Most significantly, the availability of consumer reports containing nationally uniform data allows banks and other financial institutions to make prudent credit decisions quickly and inexpensively wherever they do business and wherever their customers live and work. The Act's national standards, including those governing data furnishers and data users, enable banks to comply with a single set of rules for all domestic operations, thus promoting efficiency.

The ability to engage in pre-screened solicitations enables banks to effectively market their products to consumers who are most likely to want them, which minimizes the cost of acquiring new customers. Sharing information among affiliates enables large financial enterprises to efficiently manage and use consumer information across multiple account relationships.

A key consideration in an examination of federal preemption is the impact that different state laws on credit reporting could have on the availability and cost of consumer credit. Maintaining a reliable national reporting system is essential to the continued availability of consumer credit at reasonable cost. Credit information from consumer reporting agencies that is accurate and up-to-date benefits both creditors and consumers. Creditors can make decisions quickly and in a fair, safe and sound, and cost-effective manner. Consumers benefits from access to credit offered by competing sources, quick decisions on credit applications, and again, reasonable cost.

State restrictions in areas such as the furnishing of information to consumer reporting agencies or the content of consumer reports could affect consumers by decreasing the availability of credit or increasing its cost. Additionally, credit scoring is an important tool in credit granting, and the predictive power of credit scores depends heavily on the content and quality of the credit bureau data that are used to construct the models.

State laws that lead to a lack of uniformity in credit bureau data could undermine the utility of the data for assessing credit worthiness. This, in turn, could compromise the effectiveness of the scoring models that creditors rely on for risk-based underwriting and for portfolio management. As a consequence, creditors might have greater difficulty assessing risk, which could lead to higher credit costs and could reduce credit availability for some consumers.

Thank you.

[The prepared statement of Dolores Smith can be found on page 423 in the appendix.]

Chairman BACHUS. Thank you.

Superintendent Serio?

STATEMENT OF GREGORY V. SERIO, SUPERINTENDENT OF INSURANCE, STATE OF NEW YORK, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Mr. SERIO. Good morning, Mr. Chairman, members of the subcommittee, and thank you to Mrs. Kelly for that kind introduction.

I am Greg Serio, the Superintendent of Insurance for the State of New York. I come before you today representing the 50 states and the District of Columbia, comprising the National Association of Insurance Commissioners. It is our privilege to provide you with our views on the Fair Credit Reporting Act and the use of credit information in insurance transactions.

The States, the District, and other members of the NAIC, as well as the NAIC itself and other groups representing state insurance policymakers, have been hotbeds of activity in the areas of evaluating and regulating the use and the protection of consumer credit information. From Kansas and Texas and a dozen other states where new laws governing credit scoring are expected to be enacted this year; to Ohio and Washington where regulatory action has already been taken; to Alabama where your new insurance Commissioner, Walter Bell, has already made credit scoring a top regulatory issue, there has been a near-universal interest in and engagement on the matter of credit scoring and safeguarding of consumer information.

The common thread running through the actions of the NAIC and its members, and the state legislatures, of course, is the Fair Credit Reporting Act, with its articulated goals of preserving fairness and equity for consumers in the ways that business utilizes consumer credit information, and its objective of maintaining uniformity for ease for both business and consumers alike. The Fair Credit Reporting Act has been the core of all regulatory and enforcement activities undertaken in recent years.

The subcommittee has been provided with a compendium of the various state laws, regulations and legislative initiatives relating to credit scoring, credit reporting and other uses by insurers of this information in the underwriting and rating of insurance policies. Our focus, it can be said, has been on managing the use of consumer information or credit score models, limiting or prohibiting them as sole determinants in making insurance underwriting or rating decisions.

In those cases where credit data, either individual credit information or scores are utilized, the states are routinely requiring adequate disclosure of the source, format or application of that data to the underwriting rating or renewal processes, so that insureds may reasonably understand the basis for an insurer's actions and act accordingly. While some states such as California have not allowed the use of credit data in underwriting or rating on some lines, including automobile insurance, there is strong support for the notion that credit history, that is the economic behavior of an insured, plays some role and has some correlation to the procurement and price of that economic commodity that we call insurance.

Actuarial reviews initiated by the NAIC lend support to that notion. However, moderation in the use of such data, with maximum practical transparency, is the goal and has allowed insurers to utilize this data without running afoul of either the Fair Credit Reporting Act or the state laws addressing the use of credit information and the pursuit of fair and equitable treatment for consumers, and the federal law's specific requirements that adverse actions based on credit data analysis be communicated to those against whom such actions are taken.

It should be remembered also that most states have either their own fair credit reporting standards, such as New York, or general insurance statutes prohibiting unfairly discriminatory practices by insurers that also serve to protect the public from unwarranted intrusions into or use of personal credit data.

The work of the NAIC on the issue of credit scoring continues under the leadership of our President, Mike Pickens, the Arkansas Commissioner; of our credit scoring working group, Joel Ario, our Commissioner from Oregon; and former Congressman Mike Kreidler, the Washington State Commissioner. The NAIC will also be giving final approval to our regulatory options analysis in credit scoring to be used as a policy guidance document for regulators, and also to a consumer education brochure entitled "Understanding How Insurers Use Credit Scoring," both of which have been provided to the subcommittee. The working group will also continue to consult with the Federal Trade Commission on fair credit reporting and enforcement issues.

Indeed, it has been the union of federal and state regulators, together with members of this House, the Senate and state legislators from across the country that should give consumers, our shared constituencies, confidence that fair credit safeguards will be continued. Thank you.

[The prepared statement of Gregory V. Serio can be found on page 340 in the appendix.]

Chairman BACHUS. Attorney General Brill?

STATEMENT OF JULIE BRILL, ASSISTANT ATTORNEY GENERAL, STATE OF VERMONT

Ms. BRILL. Thank you. Good morning. Thank you so much for inviting me here today, Chairman Bachus, and thank you Ranking Member Sanders for that kind introduction.

My name is Julie Brill and I am an Assistant Attorney General from the State of Vermont.

I would like to make three points today. First, we do not have a uniform national law for credit reporting. Rather, we have a dual regulatory system which encompasses federal and state laws. Second, the states that have more protective consumer protection laws in the credit reporting area have not been harmed. Their economies are thriving. Third, in light of our dual regulatory system, Congress should sunset the very limited preemption that currently exists in federal law as was contemplated in 1996.

With respect to my first point, states have enacted a wide variety of state credit reporting laws to address enormous problems that have existed in this industry. In Vermont in the early 1990s, entire towns were listed as tax deadbeats because subcontractors for the credit reporting agencies were unable to read our town records. This debacle affected the lives of literally hundreds of Vermonters. As a result, our State legislature enacted a very strong fair credit reporting law that provided for protections that do not exist in federal law and that go beyond the protections that are in federal law.

California faces enormous problems, like the rest of the nation, in the area of identity theft. California, responding to this enormous problem, has also enacted provisions in their fair credit reporting law that go well beyond the provisions of federal law. Other states have enacted laws that go beyond the provisions of federal law. My written testimony outlines the wide variety of laws that exist in the states to better protect consumers in this critically important area of identity theft.

Congress has authorized this dual system of regulation. The preemption that exists as a result of the 1996 amendments is only in seven limited areas. But even with respect to those seven limited areas, four of them allow state laws that were already on the books in 1996. So with respect to preemption, only three limited areas are truly preemptive as of 1996. Otherwise, states are authorized to enact laws that are not inconsistent with federal law.

With respect to my second point, the economies of the states with more protective laws have not been harmed. Professor Reidenberg provided some information to this committee last month with respect to important data points relating to mortgage rates and relating to bankruptcy filings for the three states that are specifically exempted or "grandfathered" in the seven preemption areas. In my testimony both written and here this morning, I am here to tell you that there are other data points that demonstrate that the economies of these states have not been harmed. We looked at auto loan rates, and found that Vermont is next to lowest in the nation with respect to auto loan rates. That is, we rank 50th out of 51 jurisdictions that are measured with respect to our auto loan rates. You don't get much better than that.

In addition, we wanted to determine whether or not credit was readily available in Vermont. We examined our three major newspapers over a 10-day period and came up with these advertisements which you see on the poster boards to my left. They are also attached to my written testimony as an exhibit. You will see if you look at these advertisements that zero percent financing is readily available in Vermont; instant credit is readily available in Vermont. So our more protective laws have not harmed consumers.

With respect to my third point, the National Association of Attorneys General urges Congress to allow the limited preemption provision to sunset as originally contemplated. The States should serve as laboratories of democracy in this incredibly important area, to innovate with respect to fair credit reporting laws, and to assist Congress in the ongoing debate with respect to what works and what does not work for consumers. The States are more agile and better able to address local issues.

Finally, I know my time is just out, I just want to make one closing remark. I will not be able to be here as you hear further testimony today, and with respect to other hearings in the future. Our office does not have people who can be here in Washington to monitor the debate. I would just ask that this committee on a going-forward basis ensure that the debate is intellectually honest. With respect to Vermont's economy and with respect to the economies in other places where more protective laws are in place, please remember the poster boards; please remember the auto loan rates; please remember our bankruptcy rates and our mortgage loan rates; and remember that our economies have not been harmed.

Thank you.

[The prepared statement of Julie Brill can be found on page 161 in the appendix.]

Chairman BACHUS. Commissioner Smith?

STATEMENT OF JOSEPH SMITH, COMMISSIONER OF BANKS, STATE OF NORTH CAROLINA, ON BEHALF OF THE CONFERENCE OF STATE BANK SUPERVISORS

Mr. JOSEPH SMITH. Good morning, Chairman Bachus, Representative Sanders, Representative Watt and other distinguished members of this subcommittee.

I am Joe Smith, North Carolina Commissioner of Banks, and Chairman of the Legislative Committee of the Conference of State Bank Supervisors. Thank you for asking us to be here today to share our views on the Fair Credit Reporting Act.

States's rights was a keystone of CSBS's founding charter. The organization has a long history of supporting states's abilities to charter and determine the powers of financial institutions. Nearly every innovation in banking services, powers, structures, and consumer protections has come out of the state system. Consolidation and centralization of authority and rulemaking are not always the best answer for bank customers and borrowers. State bank supervisors see the benefits of allowing state innovations not only in bank powers and structures, but also in the area of consumer protections. CSBS does, however, recognize the benefit of a dual system that serves national interests and national needs, as well as local interests and local needs.

Since consumer needs can vary considerably among regions, consumer protection is often best addressed at the state level. Uniform nationwide standards, however, developed and enacted by the Congress, by you, may be appropriate and desirable in some specific areas. Technology has changed the world since the original enactment of the Fair Credit Reporting Act in 1970. This revolution has benefited both our financial institutions and the consumers they serve. It has also changed the needs, demands and expectations of both the industry and its customers.

Congress's 1996 revision of FCRA included experimental preemptions of state authority to enact laws in several areas related to information sharing with, as has been previously noted, some exceptions. These preemptions passed with little debate at the time, and we welcome the opportunity to discuss them today.

Bank supervisors have always demanded that institutions make decisions based on solid data. Technology now allows financial institutions to extend credit to individuals with whom they have never before had relationships. Much of this revolution has occurred since the 1996 FCRA amendments. Theoretically, this revolution, supercharged by the Internet, should benefit the prudent consumer of financial products as institutions can compete for their business based on their credit records. Underlying this $6 trillion market is a credit information system supported by the FCRA.

CSBS holds federal preemption of state laws and authorities to a very high standard. Recognizing that our rapidly developing technology-based credit system has benefited consumers and our economy, and that it depends on reliable information and a consistent environment, CSBS adopted a policy earlier this year to support the permanent extension of the 1996 FCRA preemptions, retaining the exemptions acknowledged at that time. While we generally oppose federal preemption, we believe that the benefits of uniformity to our credit-granting system and the value of this system to consumers and our economy outweigh our objections in this case.

The credit-granting system is so important to the health of our financial institutions and their ability to serve their customers that we believe Congress should take action before the current FCRA preemptions expire. CSBS's support for preemption in this area does not imply support for the growing preemption of other state consumer protection laws. The Office of Comptroller of the Currency and the Office of Thrift Supervision continue to preempt state consumer protection laws without the kind of public debate we are having today.

The States are increasingly concerned about the growing pervasiveness and boldness of OCC and OTS preemption, which they now claim extends to traditionally state licensed and regulated operating subsidiaries of federally chartered institutions. It is one thing for Congress to debate policy openly and publicly, and then establish federal standards. It is quite another when a regulator proposes quarterly-ordered interpretations that a clear reading of the law would not support. We hope that the Congress might extend its interest in the legislative preemption of FCRA to other areas of consumer law preemption by the Office of Comptroller of the Currency and the Office of Thrift Supervision. CSBS is committed to working with the Congress to address the needs of an evolving nationwide financial services system in a way that respects the interests of all our nation's financial services providers and minimizes regulatory burdens, while also protecting our nation's consumers.

I would be pleased to answer any questions members of the subcommittee might have. I thank you for this opportunity.

[The prepared statement of Joseph Smith can be found on page 436 in the appendix.]

Chairman BACHUS. Thank you, Commissioner. Commissioner, were you appointed this June, like three days ago?

Mr. JOSEPH SMITH. No. Well, I was appointed to this position three days ago. This is my first assignment, and I thank the staff very much for this opportunity.

[LAUGHTER]

Chairman BACHUS. Thank you.

Mr. Castle?

Mr. CASTLE. Thank you, Mr. Chairman. You have put together a heck of a panel here, with people in similar positions disagreeing with one another and covering the entire spectrum.

What I would like to do, and I only have 5 minutes, and I know we want to enforce it today because there are so many panels, so I am going to need very brief answers, if we can get it. But I am very interested in what your recommendations are about what we in Congress should do before January 1, 2004. I understand the dual system. I understand the preemptions we have now. My interest basically is establishing a credit reporting system that will maximize the benefit to the consumers.

I am interested in your specific recommendations on what we can do. I doubt if I am going to be able to get through all of you, but if you can briefly tell me, not just where you are, because I think I understand where each of you are from your testimony, but what you would specifically recommend that we do with respect to the legislation that we have to take up, which could be just continue the preemptions you have, expand the preemptions you have, do something different, don't do it at all, whatever it may be.

We will start with you, Mr. Beales, and we will try to go down in order.

Mr. BEALES. The commission has not made recommendations at this time.

Mr. CASTLE. Do you have any specific recommendations?

Mr. BEALES. No, we do not at this time.

Mr. CASTLE. Do you have a very brief statement, then, about it so we can keep moving?

Mr. BEALES. We do not have any specific recommendations.

Mr. CASTLE. Thank you.

Ms. Smith?

Ms. DOLORES SMITH. The Board itself has not taken a position on the preemption issue. The Chairman has expressed his strong support, and the Division of Consumer and Community Affairs basically is taking that position here today, and would make that recommendation to the Board.

Mr. CASTLE. Which is, in essence?

Ms. DOLORES SMITH. Which is, in essence, to make permanent the preemption provisions that exist in the seven key areas that were identified in 1996.

Mr. CASTLE. Any discussion of expansion by the Chairman?

Ms. DOLORES SMITH. No, nothing at this point.

Mr. CASTLE. Thank you.

Mr. Serio?

Mr. SERIO. While the NAIC has not made a final decision on this, personally speaking——

Mr. CASTLE. That is good enough.

Mr. SERIO. If we are in a position where you look at this as a whole, and there are enough safeguards down in the state system, particularly with respect to insurance laws, it actually creates a protective silo at both levels, so that the preemptions as they are probably are providing enough security in concert with the state laws where continuing the preemptions as they are probably would be sufficient.

Mr. CASTLE. So they probably would be sufficient. Is there a better answer than "probably would be sufficient"? Something else we should do?

Mr. SERIO. No. I think it would be sufficient. It would be adequate, and it would be good to continue that because you do have these other laws that may not fit under the consumer credit banner specifically, but under the state insurance regulatory powers, at least in the insurance realm, we have adequate protections around that.

Mr. CASTLE. Thank you.

Ms. Brill? Somehow I think you are going to have a little different answer here.

Ms. BRILL. Yes. In addition to sunsetting the preemption provisions, we think that Congress should improve the national baseline by requiring free reports, requiring disclosure of scores, improve the pre-screening process, and allow for notice and choice with respect to affiliate sharing, among the other things we think Congress should do, but that will suffice for this morning.

Mr. CASTLE. I may come back to you.

Ms. BRILL. Sure.

Mr. CASTLE. Mr. Smith?

Mr. JOSEPH SMITH. The CSBS has no additional recommendation other than continuation. We would prayerfully suggest that you could, in looking to additional——

Mr. CASTLE. You said that at the end of your testimony. Do you have specifics on those different areas?

Mr. JOSEPH SMITH. We would only suggest that if you are looking for examples of other places you might act, that the experiments in the states, the activities of states in this area would be a good place to look for other policy recommendations, but we have no formal position.

Mr. CASTLE. Ms. Brill, going back to you for a moment, because I don't know if I agree with your position, but I don't yet have enough knowledge to disagree, but I am concerned. It seems to me that the preemptions work reasonably well. There are problems. Obviously, individual consumers have had problems, and there are things we should probably do to fine-tune it. But it seems to me we have struck a fairly decent balance with the dual system we have now. I am from a small state, too. I am from Delaware, a little bigger than Vermont, though, in population. But I am concerned about the ability of our States to be able to do all of these things; that the federal umbrella has perhaps been helpful.

In my judgment, consumer credit information is a lot more accessible today and more easily obtained. There are huge bits of information out there, and I worry about each individual state doing this, and somehow discombobulating the system altogether, and perhaps the dual system is the way to go. I say it as a matter of debate, but I would be interested in your views. I am surprised that you want to eliminate the preemptions altogether.

Ms. BRILL. Thank you for asking me to clarify that. The problem is that in many respects, the national law is so poor in so many of these areas and provides so few consumer protections. For instance in pre-screening, supposedly there is a notice that goes to consumers, but no consumers ever see that. They do not understand how they can opt out of pre-screening. Looking at affiliate sharing, Vermont does have a law that requires consent before affiliates can share credit reporting information, and we are the only state in the nation that has that. That is because we believe consumers ought to have some kind of notice and choice in that area; that it should not be completely without any option.

So part of the debate over preemption is wrapped up in what is the national standard. I do not think states are going to jump in willy-nilly to seek to enact laws in every area just because they are empowered to do so. States will closely examine what the federal law is. They will look at local problems, as we did with respect to Norwich, Vermont, and they will ask, do the federal laws adequately protect? And if the federal laws are not adequate, the states will jump in.

So I do not think there is a reason to fear that once the limited preemption is eliminated—and again it is very limited—once it is lifted that the states are going to start enacting all sorts of laws. They are going to look at what the federal government, what you here in Congress have established.

Mr. CASTLE. Thank you.

I yield back, Mr. Chairman.

Chairman BACHUS. Mr. Sanders?

Mr. SANDERS. Thank you, Mr. Chairman.

Sometimes this discussion sounds a little bit Orwellian to me. As I mentioned earlier, I find it strange that folks who every other day tell us how much they respect the rights of states and those governments which are closest to the people to do the best job for the people. That is every other day. But then when the big corporations say, well, we want to crush the ability of consumers to get protection, suddenly it is the big bad federal government that has to run the show.

Then I hear people say, well, we are for the consumers; we really love the consumers. I have never heard a member of Congress say they dislike consumers. So let's be straight on this. All of the consumer organizations do not believe that the federal government has the right or should preempt state governments's ability to protect consumers. U.S. PIRG agrees with us. Consumer Federation of America agrees with us. Consumers Union agrees with us. The National Consumer Law Center agrees with us. So those groups who protect consumers want strong consumer protection because they understand that in 50 states with good attorneys general and so forth, they can get that action.

Those organizations, like the credit bureaus, like the credit card companies, like the large banks, they want preemption. Now, maybe some of you will now announce to the world that the large credit card companies are really pro-consumer. But if that is the case, then we are in an Orwellian world.

I would ask Ms. Brill, give us some experience about what it means for a state to have the flexibility to go forward to protect consumers in a way that a federal government might not be able to do.

Ms. BRILL. Yes, thank you. I would be happy to.

What states need to be able to do is to address problems as they arise. What happened in our State with respect to credit reports was just something that the federal government, that Congress was unable to deal with.

Mr. SANDERS. That happened in Norwich. I remember that quite well. How long do you think it would have taken for the federal government, if ever, to address that problem which really impacted hundreds of lives?

Ms. BRILL. Well, they did not act for another five years. We enacted our law that very next session, and it took Congress another four years to enact its law. Frankly, one of the very most important protections that consumers have with respect to accuracy in their report is the ability to review their report by having access to a free copy of their credit report at least once a year. Congress did not give consumers that right. That provision is one of the most important in our law.

Mr. SANDERS. Am I correct in recalling that you just said a moment ago that the Association of U.S. Attorneys General is opposed to preemption?

Ms. BRILL. Correct. The National Association of Attorneys General urges Congress to allow the preemption to sunset.

Mr. SANDERS. Okay. Just changing gears, a very brief answer, if you could, I would like all of you very briefly to tell us if you believe that Congress should pass legislation allowing every consumer in this country to receive a free credit report and free credit score from all three credit bureaus.

Mr. Beales? Yes? No?

Mr. BEALES. We do not have any position at this time. I think it is an interesting idea, and one that is worthy of careful consideration.

Mr. SANDERS. Okay. Thank you. I have got to move. I am sorry. We just do not have a lot of time.

Ms. Smith?

Ms. DOLORES SMITH. I would say no.

Mr. SANDERS. Mr. Serio?

Mr. SERIO. I do not think the NAIC has even addressed that question, so I would not be able to weigh in on it.

Mr. SANDERS. Ms. Brill?

Ms. BRILL. Yes.

Mr. SANDERS. Mr. Smith?

Mr. JOSEPH SMITH. My association has not spoken. My personal opinion is yes.

Mr. SANDERS. Okay. Thank you very much.

Thank you, Mr. Chairman.

Chairman BACHUS. Thank you.

Mr. Murphy? Ms. Kelly?

Mrs. KELLY. Mr. Chairman, I have no questions of this panel. It is going to be a long day, so I reserve my right to question at a later time.

Chairman BACHUS. Mr. Renzi?

Mr. RENZI. Pass.

Chairman BACHUS. Mr. Kennedy is not here.

Mr. Barrett?

Mr. Hensarling?

Ms. Hart?

Ms. HART. Thank you, Mr. Chairman.

I did not hear everything in great detail, but I guess I have a quick question. It is basically regarding the credit report procedure. This is probably something that some of you might not be particularly interested in answering, but any member of the panel.

One of the concerns that has been expressed by constituents of mine, and it is a little outside some of your testimony, is that they have serious concerns about what appears on their reports. They have much difficulty in removing inaccuracies from those reports. I am just interested in hearing a quick perspective, especially out of the regulatory agencies, about what you think we ought to do in this reauthorization of the law to change that, or is there anything in it that can help change the situation that is faced by the general public as a result of some of the things that happened to them on those reports.

Mr. Beales, you look like you are ready to answer.

Mr. BEALES. Yes, ma'am. We think accuracy is really a key goal of the statute, and it has been a key focus of our enforcement activities. The provision that is probably most important in the existing statute is the adverse action notice to consumers because it is consumers that are the ones who know whether or not there is a mistake. That has got to be the starting point. I would add, when you get an adverse action report, you can get a credit report for free under the existing statute.

That said, we are constantly on the alert for ways that the mechanism might be changed in order to improve accuracy, simplify the process, or facilitate corrections when corrections are appropriate. We do not have any recommendations at this time, but I think that is an important thing to look at.

Ms. HART. Thank you.

Anybody else on the panel?

Thank you, Mr. Chairman.

Chairman BACHUS. Thank you.

Mr. Ackerman?

Mr. ACKERMAN. Thank you.

On the adverse action report, just going down the line, many consumers do not know an adverse action has been taken unless they apply for credit and then receive an adverse action report. In an attempt to get consumers to either straighten out a problem or erroneous reporting, or to pay their bill, would it be a good idea in your opinion to inform consumers that a negatively impacting statement concerning their credit is going to be placed in the report, other than an increase in their credit, which most people do not consider negative?

Mr. BEALES. I think that would result in an enormous flow of information to consumers.

Mr. ACKERMAN. Is that bad?

Mr. BEALES. Well, I think a lot of it would be information that they already knew; that they missed the payment on the mortgage or whatever.

Mr. ACKERMAN. Yes, but a lot of institutions do not report them. It is a yes or no question. If your credit card company or bank is going to at that point report you to the credit bureau, or has reported you, should the consumer be notified or not?

Mr. BEALES. I don't think there is any significant benefit in doing that.

Mr. ACKERMAN. Ms. Smith?

Ms. DOLORES SMITH. I agree that there is not a significant benefit.

Mr. ACKERMAN. Mr. Serio?

Mr. SERIO. We actually did that on the insurance side. In the one case of credit scoring that we did allow in the rating process, we required that Metropolitan Life consider it to be an adverse action and then take the appropriate action in terms of notifying the consumer of that.

Ms. BRILL. Yes, we think that would be good information to go to consumers, and I will note that Utah has such a law.

Mr. JOSEPH SMITH. The association I don't think has a position on this, and neither do I.

Mr. ACKERMAN. Could each of you, going down the line, tell me if you can tell us what is in the FICO score, what the components are? Would you tell us?

Mr. BEALES. The FICO score is based on almost everything that is in the credit report.

Mr. ACKERMAN. What is the formula? I am asking what the formula is.

Mr. BEALES. We do not know the formula.

Mr. ACKERMAN. You do not know the formula.

Ms. Smith?

Ms. DOLORES SMITH. Fair Isaac does not make that formula available.

Mr. ACKERMAN. Mr. Serio?

Mr. SERIO. I can only speak for New York, but that is why we have not allowed black box statistical models to be used in New York, because of the inability to get that information.

Mr. ACKERMAN. Thank you.

Ms. Brill?

Ms. BRILL. None of the attorneys general knows that.

Mr. ACKERMAN. Mr. Smith?

Mr. JOSEPH SMITH. I do not know it either.

Mr. ACKERMAN. We don't know it either.

Could you tell me if race is included in the FICO score? Just speak out. Anybody know?

Ms. DOLORES SMITH. I would be surprised.

Mr. ACKERMAN. We all would.

Could you tell me if ethnicity or national origin is in there?

Ms. BRILL. I don't know.

Mr. BEALES. To my knowledge, that information is not in credit reports and therefore is not in FICO reports.

Mr. ACKERMAN. Disruptive behavior, is that in the credit report? Prone to violence, is that in the credit report?

Mr. SERIO. If I could address that from the insurance viewpoint.

Mr. ACKERMAN. Arrest record, is that in the FICO score?

Mr. SERIO. The reason why we have not allowed the black box language is because it could be contrary to the state unfair discrimination statutes, which is why we can allow it to be used without having that information.

Mr. ACKERMAN. Okay. Now explain to me why the FICO score is going to be important to the TSA to tell them whether or not I can get on a plane.

Mr. Beales?

Mr. BEALES. I think that would be better directed to the TSA. I do not know.

Mr. ACKERMAN. Are you going to tell the TSA what is in the FICO score?

Mr. BEALES. We do not know what is in the FICO score. We know how the FICO score was developed. We know what the FICO score does. We do not know what is in it.

Mr. ACKERMAN. Ms. Smith? Is the FICO score going to help the TSA keep me off the plane?

Ms. DOLORES SMITH. I don't think so.

Mr. ACKERMAN. You don't think so, that it is going to help them?

Ms. DOLORES SMITH. That it would help them.

Mr. ACKERMAN. Mr. Serio?

Mr. SERIO. I am not sure how it would work.

Mr. ACKERMAN. Ms. Brill?

Ms. BRILL. I will leave that to the wisdom of the federal agency.

Mr. ACKERMAN. Mr. Smith?

Mr. JOSEPH SMITH. I have no idea, sir.

Mr. ACKERMAN. Does anybody know why the TSA thinks the FICO score is going to help them? What is in there that would indicate to them why a person should not be allowed on a plane if their FICO score is high or low? Does a person with a low FICO score have a greater proclivity for blowing up a plane or committing an act of terrorism? Anybody?

I yield back my time.

Chairman BACHUS. Mr. Baker, do you have any questions?

Ms. Carson?

Ms. CARSON. Thank you very much, Mr. Chairman.

I just have a quick question. What happens if an individual who has superb credit, but their credit lays dormant for a long time and they do not use it at all? And then suddenly there is a major activity underway in a person's account, which may imply identity theft; a person not being able to use their credit because they are disabled, and somebody is going out and doing something. Is there any mechanism in place now that would trigger some alert to somebody's credit report in that matter?

Mr. BEALES. There are monitoring services that are available that people can buy that will report any activity on their credit report. But unless they chose to do it, it is not something that would happen automatically. At the point at which there was some denial or some adverse action affecting the consumer, then there should be a notice.

Ms. CARSON. Are you saying that the credit agencies do not find any reason to be more sensitive to the activity on an account if it has in fact been dormant for a long period of time?

Ms. DOLORES SMITH. It would not be the credit agency, but it very likely would be the creditor that is monitoring the pattern of usage and would note that this is unusual relative to the customer's behavior up to that point. In the same way that currently even if an account is not dormant, if there is an unusual pattern. For example, if the customer has been using it for relatively small purchases and all of a sudden there is a several thousand dollar usage, the creditor would get in touch with the customer, typically to say, "Is this a valid transaction." That is something in which the creditor has an interest because under the truth-in-lending laws, the consumer's liability for usage is limited to $50, so the balance would be on the creditor, and it is in the creditor's interest to make sure that that transaction is valid.

Ms. CARSON. So the creditor would know that this customer has had very dormant credit for a long period of time?

Ms. DOLORES SMITH. The creditor should recognize that, yes.

Ms. CARSON. But isn't it to the creditor's benefit to go ahead and allow the transaction to occur?

Ms. DOLORES SMITH. It is not in the creditor's interest to allow the transaction to occur if it is not a valid transaction by the customer, because the creditor will basically have to eat the loss.

Ms. CARSON. Do you know of anything underway now that catches identity theft more quickly than we have historically? I know we went through a period where everybody was honest; everybody had a high level of integrity, and then, boom, here comes a lot of people who want to beat the system, if you will. So do any of you have any mechanism in place that would identify or quickly alert you to some possible misuse of a person's identity?

Mr. BEALES. We are very active on three fronts in attacking identity theft. One front is working with law enforcement to try to use our database of complaints from consumers who have been victims, to try to locate perpetrators as quickly as possible. A second front is consumer education to tell consumers about what they can do to notify and recognize the risk and to try to keep it as small as possible. A third front is business education to encourage businesses to protect the personal information that may form the foundation for an identity theft, because that is often the source of information that leads to the problem.

There are fraud alerts that consumers can place on their credit reports if they have been a victim of identity theft, in order to flag for the financial institution that this person's name has been used in fraudulent transactions, and the financial institution should take extra care to make sure that it really is a valid transaction.

Ms. BRILL. May I respond to that from the state's perspective? Thank you.

With respect to fraud alerts, we have a consumer in Vermont who attempted to have a fraud alert placed on his credit report, but was unsuccessful. The fraud alert never appeared. We think the voluntary nature of the credit reporting agencies offering to do fraud alerts when contacted by consumers is problematic. In other words, they do not have a requirement, going back to your earlier question, to automatically do that. They wait to be contacted either by the consumer or the credit grantor. We think that that voluntary system needs to be made mandatory.

I will also point out that the State of California has gone way beyond what is happening both at the federal level and with respect to many other states. They require a freeze. They require the credit reporting agencies to place a freeze on the consumer's credit report in the event that the consumer requests that. With respect to the freeze, the consumer is in complete control of their credit report and is able to determine who will look at it and who won't. We think that is one of the innovative solutions that this body should be looking at with respect to identity theft.

Ms. CARSON. But you indicated that you had a consumer in your State that attempted to——

Ms. BRILL. Yes, to have an alert placed on their credit report and the alert did not appear, despite his request to have it placed on his credit report. Correct.

Ms. CARSON. Once the consumer did what the consumer should have done, then who was responsible for ascertaining its placement?

Ms. BRILL. Because there is no law, either federally or in our State, requiring the credit reporting agencies to act when the consumer seeks to have the alert placed on their report, there was no legal responsibility on the part of the credit reporting agencies to follow up on that request. They claim that they do it. My guess is it was an oversight or a slip-up, but the point is if there was a law that required them to place those alerts on reports when requested, then that slip-up probably would not have happened.

Ms. CARSON. Thank you.

Chairman BACHUS. Is there anyone on the majority side that wishes to ask questions?

Mr. GONZALEZ. Mr. Chairman?

Chairman BACHUS. Okay. I am going to swap back and forth.

Mr. GONZALEZ. Thank you.

Chairman BACHUS. Mr. Gonzalez, go ahead.

Mr. GONZALEZ. Yes, sir.

I had an interesting question, but actually Mr. Ackerman has something that is of greater interest, so I would yield to Mr. Ackerman.

Mr. ACKERMAN. Thank you.

Just one brief issue, Mr. Beales and Ms. Smith. How long does it take when a credit grantor wants to put an adverse piece of information on somebody's credit report for that to appear on the credit report?

Mr. BEALES. It would depend on their reporting cycle. I think once the information is received by the credit agency, it would appear on the credit report within a matter of a day or two.

Mr. ACKERMAN. Twenty-four hours, correct?

Mr. BEALES. After the report was sent. Typically, creditors would report on a particular cycle. They would report all their accounts at a certain time of the month. So maybe it is 30 days.

Mr. ACKERMAN. Most do monthly.

Mr. BEALES. Most probably do monthly, but it may be 30 days before the next batch of reports goes.

Mr. ACKERMAN. The second question, how long does it take to remove something from the credit report that is negative, that the credit grantor even agrees has been erroneously placed there, possibly as an error in identifying who the true consumer was, or in the matter of a case of identity fraud? How long does it take the agencies to remove that?

Mr. BEALES. If the creditor agrees, it would be removed automatically the next time the creditor reported it, because they would not report it anymore.

Mr. ACKERMAN. Once it is reported, I beg to differ with you, it stays on your credit report until somebody asks that it be taken off. Nothing is removed until specific legal time frames. If you report something and you are late three times within the year, that stays on. That does not go off the second month afterwards.

Mr. BEALES. Yes, sir, that kind of information would remain, and that is actually one of the reasons that for many consumers there is inaccurate information.

Mr. ACKERMAN. And if the agency reports it, are you aware of how long it takes the credit agencies to remove it?

Mr. BEALES. If the information is disputed to the credit reporting agency, it must be removed within 30 days.

Mr. ACKERMAN. That is not correct. Logic would tell you that, because that is the cycle that is needed to take to put it on. That depends on the cycle that the credit bureaus choose to remove negative information.

Mr. BEALES. That is the statutory requirement for the period to reinvestigate. If they cannot verify within 30 days, they must remove it.

Mr. ACKERMAN. I am the consumer that I am referring to in New York. When Gary Ackerman was reported, not me, but it wound up on my report, either as a case of mistaken identity for $200 that went to collection, that was abandoned, reported to the attorneys, et cetera. When that appeared not on whoever the other Gary Ackerman or the make-believe Gary Ackerman was, but on this Gary Ackerman's report, and I asked that it be removed and spoke to the credit grantor, and they recognized that they had made a mistake, or someone or the lawyers had made a mistake, they could not get that removed for six months because the credit bureau said that was their cycle.

If you think that was the law, would you be supportive of a law that would require them to move it as expeditiously as they are required to put it on?

Mr. BEALES. I think what you are describing was a violation of the law.

Mr. ACKERMAN. If it is not the law, would you be in favor of a law making it the law?

Mr. BEALES. Yes, sir.

Mr. ACKERMAN. Ms. Smith?

Ms. DOLORES SMITH. I really do not have that familiarity with how credit bureaus act.

Mr. ACKERMAN. I am not that familiar with computers, but I know if you can put it on within 30 days, you can get it off within 30 days. The question is, what is sauce for the goose is sauce for the gander?

Ms. DOLORES SMITH. The answer is that it certainly would be reasonable to require them.

Mr. ACKERMAN. Thank you.

Mr. Serio?

Mr. SERIO. Yes, I think we would be supportive of that.

Mr. ACKERMAN. Ms. Brill?

Ms. BRILL. Yes.

Mr. ACKERMAN. And the new Mr. Smith?

Mr. JOSEPH SMITH. Yes, sir.

Mr. ACKERMAN. Thank you.

I yield back the gentleman his time.

Chairman BACHUS. I thank you, Mr. Ackerman.

Let me ask this question, and I guess I will ask Mr. Beales because you would be in the best position to answer the question. I notice the Assistant Attorney General from Vermont said that almost no one uses this 1-800 line. I think that was your testimony.

Ms. BRILL. Yes. It is difficult to find. Correct.

Chairman BACHUS. I had heard that over five million people had used it. Obviously, there is a big difference in almost no one and almost five million. What is the true story?

Mr. BEALES. As I understand it, there are several million people who have opted out. I do not know what the precise number is. I think that that is something that the credit reporting agencies should be able to tell you as to how many people are on the database. I think the notices that people get in the pre-screened offer, there are certainly ways that they could be clearer and more conspicuous to identify that number and let people figure it out, but a great many people have found it.

Chairman BACHUS. I would agree that it is hard to find. Most people are not aware of the number. But even with that a given, it is my understanding we have had five million opt-outs, so it would be interesting to find that figure.

We talked about credit scoring and disclosure of credit scoring by credit reporting agencies. California is moving a law right now to do just that. If you require a credit bureau to do that, now, the credit score, if a lender or bank or mortgage company or insurance company, any of them are doing a credit score, that is their credit score, isn't it? Isn't that the insurance company who would formulate their own score? The bank, if they are going to lend money, it would be their score? It is not the credit bureau's score, is it?

Mr. SERIO. That is not necessarily true.

Chairman BACHUS. Okay.

Mr. SERIO. It might be. In fact, that is one of the things in the case we had in New York with Metropolitan Life, they actually came in and said that by taking the different factors they get from the credit bureaus, and then creating their own credit model, and basically limiting it to data from their population of insured, they did create a MetLife credit score. That is what gave us the confidence that it was a finite data pool; that it was their own folks; that it was directly related to their financial risk; and that is why we did allow it, together with the safeguards of reporting adverse actions if they were to deny the discount for the insurance if they did not reach whatever the credit score standard was.

Chairman BACHUS. Yes, because if First National Bank loans money, they come up with their own internal credit score, which is their property.

Ms. Smith, does the credit bureau even keep that score?

Ms. DOLORES SMITH. First of all, my understanding is that each of the credit bureaus is basically developing their own credit scores for credit bureau customers, so it may have some utility for some creditors. For banks, what we expect is that they will be doing their own underwriting based on the risk factors that they consider. They would be looking at the credit report and pulling data. If the bank, as you suggest, uses a credit scoring model, it would be one that has been developed for the bank, because the idea is to evaluate credit worthiness in terms of the bank's clientele, not who may be in the population of customers at the credit bureau.

Chairman BACHUS. Ms. Brill, in Vermont, you have testified they pretty much lead the nation. I am just going to assume that. Is there a problem with telling a credit bureau to release a credit score that may be a lender's credit score? Have you tried to do that?

Ms. BRILL. We do not now have a law requiring disclosure of scores. There are about four States that do.

Chairman BACHUS. Have you ever attempted to do that?

Ms. BRILL. Yes, we did. We originally had a law that would require disclosure of scores. It was back in 1992 when our law was first enacted. At that time, I believe no other state had a law requiring disclosures of scores. The industry came into our legislature the next year, or it was right around the time that the FTC developed its guidance which basically did not require disclosure of scores. The industry came in and said it is way too expensive to do for Vermont; we are going to pull out of your State, et cetera, et cetera. So our legislature devolved down to the federal standard and did not require disclosure of scores.

Chairman BACHUS. So you actually backed off requiring it, or repealed a law that did that?

Ms. BRILL. Correct, although our office would like to see disclosure of scores now, and we do support legislation that is pending in our State legislature to require disclosure of scores.

Chairman BACHUS. Okay.

Mr. Beales, what was the problem with requiring those scores?

Mr. BEALES. The difficulty with requiring disclosures is which score, because there are many different credit scoring models in use. There are some fairly standard ones that are very widely used, but there are also customized ones for individual companies or individual creditors. It is not so much a conceptual problem as a which score problem, because whatever score was disclosed may or may not be the score that was actually used in making a particular decision.

Chairman BACHUS. Okay, thank you.

Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman. Good afternoon to the panel.

From listening to the discussion, it seems that there are two questions. One of them Mr. Ackerman I think very skillfully pursued with you, and it is the question of what would the content of a national standard be if we have one; and the second one Mr. Sanders I think pursued with you, and it is the question of what is the utility of having a national standard.

Ms. Brill, I want to take advantage of your expertise as someone who is actually out there practicing in this area and litigating in it to educate me a little bit. Let's say hypothetically a credit card company is headquartered in Florida. And let's say they send out a solicitation to someone in my State of Alabama, and someone in Alabama obtains credit from them. Whose laws control in that situation? Is it the Florida law that is the law of the headquarters state, or is it the Alabama law as the law of the consumer?

Ms. BRILL. We would say the Alabama law.

Mr. DAVIS. So essentially it is a rule that the law of the state where the consumer seeks credit would govern?

Ms. BRILL. If there were a fight over the jurisdictional issue, one would need to show that the company purposefully entered the economy of Alabama. Assuming there was sufficient advertising, sufficient telemarketing and other forms of outreach to that state, then I believe the law of Alabama would probably apply.

Mr. DAVIS. And in the modern day and age with solicitations and sending these things in the mail, you would almost always have that voluntary entry into the stream of commerce, wouldn't you?

Ms. BRILL. Almost always, yes, as long as it was not solely over the Internet.

Mr. DAVIS. So if someone for example in my State of Alabama wanted to raise some kind of a legal claim against a credit card company in Florida, obviously Alabama law would govern that claim. Is that right?

Ms. BRILL. Yes. I should say that it really depends on the nature of the law, and if the law is focusing on a consumer right with respect to that offer, then yes, I believe the consumer would be able to assert that Alabama law applies.

Mr. DAVIS. So if a credit card company, say, had headquarters in Florida and was primed to be a national company and sent solicitations to all 50 states, that would mean in effect that consumers in 50 different states would be able to invoke 50 different sets of laws if they filed suit. Correct?

Ms. BRILL. To the extent that the different states have different laws, that is currently the case. That is right.

Mr. DAVIS. All right. Now, have you done or can you shed any empirical light for me on whether or not any research has been done on the degree to which the 50 states do have different sets of laws and the degree to which there is an amount of uniformity? Obviously, I do not expect you to give me a 50-state answer, but as a general rule are the laws more uniform than not, or is there significant variation between the laws?

Ms. BRILL. My written testimony sets out the various state laws that exist in the credit reporting area. You were asking a question with respect to a credit card solicitation, and I was understanding that the law that may apply might not necessarily be credit reporting, but might have to do with fair credit billing or something else, another area where the states are not preempted and have various laws. But with respect to credit reporting, my written testimony does set out the different types of state laws that exist.

I believe that there are a wide variety of state laws now in the credit reporting area, and that is why I say we have what I would call a dynamic dual regulatory system dealing with credit reporting.

Mr. DAVIS. All right. Given the dynamic duality, if you will, of that system, one of the concerns that people on the other side of this debate raise is that absent a national standard, a credit card company has to make do with the patchwork of laws from different states. I think you acknowledge that is kind of the reality. So what kind of guidance would you give a company, let's say for whatever reason we do not reauthorize the preemptive standard and say the states are given a broad leeway to formulate their laws, what kind of practical guidance would you give to a credit card company in Florida that is running a national business, to help them get through this maze of laws?

Ms. BRILL. Contact a lawyer who can research all the laws, or contact the National Association of Attorneys General which can provide a compendium of the different state laws. I am sorry, but that is currently the situation. That is what they have to do right now.

Mr. DAVIS. I guess what I am getting it is the more nationalized the system obviously creates one set of incentives, and the more the system is driven by state law, it creates another set. I am trying to focus on the very narrow policy issue, because people on the other side of this debate raise the argument that credit may be less freely extended, for example, if there is a wide patchwork of state laws, and that if there was one national uniform standard, that if it is robust enough and fair enough, that that would give some practical guidance and better practical guidance to the credit companies. Do you agree with that as a general matter?

Ms. BRILL. It is a hypothetical question because we do not have a uniform set of standards right now. We have a wide variety of state laws. So hypothetically, I would like to see the data, the regression analysis that would show that credit would be more freely available. I have never seen an economic analysis to show that. As I tried to point out in my opening statement, the economy of Vermont has not been harmed in any way by our more protective laws. We have quite a number of more protective laws, not only in fair credit reporting, but also in the privacy area. So I would like to see the regression analysis showing that.

Mr. DAVIS. Okay. I think my time has expired, Mr. Chairman.

Chairman BACHUS. Our last member, Mr. Hensarling.

Mr. HENSARLING. Thank you, Mr. Chairman.

Obviously our discussion today has a lot to do with consumer protection. It appears to me that there is no greater consumer protection than a competitive marketplace. Given that each week back in my home in Dallas, Texas I receive a dizzying array of credit offers, it gives the appearance that we do indeed have a healthy, robust, competitive marketplace in the extension of credit.

When we look at consumer protection, it seems like it divides up into four areas: access to credit, affordability of credit, privacy, and accuracy. I am convinced from my study of economics, my observation of what is going on in the real world, and the preponderance of testimony that this committee has received, that indeed we do enjoy the greatest access and affordability as to credit to be found in the world.

I guess the relevant question might be: Do we pay too high a price in the category of privacy and accuracy? I have heard occasional anecdotes here and anecdotes there, serious ones, concerning consumers that have been wronged by this process. But my question to the panel is, can you quantify this problem for me? Can you give me a metric? Can you put it in some kind of context? Out of the millions or tens of millions or hundreds of millions of credit transactions each year, how often do we have consumers who legitimately complain about privacy concerns or accuracy concerns? What is the scope of the problem? Perhaps each one of you could very briefly address that.

Mr. BEALES. We do not have a reliable quantitative measure of the problem. We do not know of any measures of accuracy that we think are reliable as to the extent of inaccuracies. There is no question that it happens. Our focus on accuracy and privacy is to focus on the process of notices to consumers and their ability to correct and reinvestigations, and furnishers providing accurate information.

Mr. HENSARLING. Thank you, if I could interrupt. I do have a limited amount of time.

Ms. Smith?

Ms. DOLORES SMITH. We do not have data that would quantify that for you.

Mr. HENSARLING. Okay, thank you.

Mr. Serio?

Mr. SERIO. We have not seen any significant breakdown. In fact, it has been more of a balance between the need to run in a competitive marketplace and the protections that the consumers have been looking for.

Mr. HENSARLING. Thank you.

Ms. Brill?

Ms. BRILL. I have not seen the data. It is an excellent question. One of the problems is, of course, consumers do not have broad access to their credit report, and as a result, they might not know that there are inaccuracies in the reports.

Mr. HENSARLING. Mr. Smith?

Mr. JOSEPH SMITH. We do not have any quantified data. With my colleague the attorney general, we work them one at a time.

Mr. HENSARLING. Okay. Thank you.

Mr. Chairman, I would like to yield the balance of my time to you for a follow-up question.

Chairman BACHUS. I appreciate the gentleman from Texas.

I keep hearing things today, and we have a panel of magna cum laude graduates, so I am a little bit intimidated by that. But I did hear testimony that said that credit bureaus do not update their files for six months after a consumer disputes something on the report, and that is a real problem. What is the basis for that? It is my understanding that current law requires the credit bureau to update their file within 30 days, and that is a uniform standard. So doesn't the present law take care of that?

Mr. BEALES. Mr. Chairman, that is my understanding. It should be corrected within 30 days or deleted.

Chairman BACHUS. So what can we do that we are not doing now, when we say after 30 days you can sue them for not doing it?

Mr. BEALES. Right. Ultimately, it is an enforcement question of making sure that the law is complied with.

Chairman BACHUS. But what I am saying is that another law is not going to do anything more. I mean, it is not a problem with the law.

Ms. BRILL. May I respond on that issue, Mr. Chairman? I think one of the problems may be with respect to the duties of the furnishers of that information. I am not sure, I think it was Representative Ackerman who brought up that issue. The issue may be that the information gets deleted once, but then becomes reinserted into the credit report in a subsequent cycle. So it might take a longer time to get the information permanently deleted.

I think that that is a problem in the credit reporting industry now, and I think that one way to address that is to improve the duties upon furnishers and also to improve the ability of consumers to bring a private right of action with respect to a furnisher's failure to permanently delete inaccurate information.

Chairman BACHUS. Okay. Let me ask you this, Chairman Greenspan testified before our committee, and I think Ms. Smith in your testimony today you also mentioned this, that the national credit reporting system has resulted in a democratization of credit availability, allowing more Americans in low-and moderate-income categories to enter the financial mainstream and own their own homes. Does the Federal Reserve have statistics, or do you compile statistics on consumer credit patterns, and do they bear out that statement?

Ms. DOLORES SMITH. We do study consumer patterns through surveys that are carried out by the Michigan Survey Research Center. So we will generally have some idea of consumer patterns. We do not have, so far as I know, data that would spell out exactly in the economy how much can be attributed to any particular cause.

Chairman BACHUS. Okay. If you have uniform standards, one thing that people have testified, and I think there is pretty much agreement that they do allow banks to make quicker, less expensive credit decisions. Does everybody agree on that?

Ms. BRILL. I am sorry, what is the question?

Chairman BACHUS. That a uniform standard would allow banks to make less expensive or it reduces the cost of the banks of making decisions and they can make them quicker.

Ms. BRILL. I do not agree.

Chairman BACHUS. You do not agree.

Ms. BRILL. No. I do not believe we now have uniform standards, and I think that in Vermont we have more protective standards and our credit decisions are very quick and credit is readily available at very low rates.

Chairman BACHUS. So Chairman Greenspan's saying that they allow banks to make prudent credit decisions quickly and inexpensively, you dispute that?

Ms. BRILL. I do.

Mr. SANDERS. Mr. Chairman, in Vermont some of us on occasion do disagree with Chairman Greenspan.

[LAUGHTER]

Chairman BACHUS. How about Ms. Smith?

Ms. DOLORES SMITH. Ms. Smith believes that the Chairman is correct.

[LAUGHTER]

That the availability of the data from the credit bureaus on a uniform basis does enable banks to make credit decisions more quickly, and that they are prudent credit decisions.

Chairman BACHUS. So it does increase the cost of credit underwriting when you do not have uniform standards.

Ms. DOLORES SMITH. It would make it more difficult and it would cut down on the efficiency generally. I think it is hard to say what it would be for a particular institution, but if you are looking at the industry as a whole I think that it is a given that having a uniform system does facilitate operational efficiency.

Chairman BACHUS. Mr. Serio, do you agree?

Mr. SERIO. Yes, Mr. Chairman, thank you.

We agree with that entirely in terms of not just the speed with which decisions are made, but actually making better underwriting decisions in the insurance realm, which would benefit all the policyholders of a typical company. The safeguards come in from the other side of the process, from the state side. That is why together, as our testimony indicates, that really works well with the best of both worlds, from both the federal and the state realms because you have, particularly for banks and insurance, if I can add banks in for a moment, they are both regulated industries and they both have a certain amount of skin in the game, if you will, to make sure that the information they are getting is good. They are using these things to maximum efficiency and effectiveness. That is why, to now look at it in the abstract of whether it works or does not work, but rather how does it work as a whole, and we think it does.

Chairman BACHUS. Right. We are not saying that that makes the case that you should have uniformity. I am simply saying that all our testimony to date, and on the other panels, there has been pretty wide agreement that uniformity allows quicker, more cost-efficient decisions. Now, whether it is worth paying more costs, which are passed onto consumers, or whether it is worth it is another debate.

Ms. BRILL. Mr. Chairman, very respectfully, I would urge this committee to look at the data. In Vermont, our credit decisions are obviously extremely prudent because our bankruptcy rates are the lowest in the nation.

Chairman BACHUS. But it would be lenders outside Vermont lending to Vermonters that would have to comply with your law, and so the cost would be incurred by them. I am not sure you would have that data.

Ms. BRILL. What the cost is? You are correct that I do not know what the incremental cost is to the industry of complying with Vermont's law. I do not have that data.

Chairman BACHUS. Obviously the cost of that is going to be to those 49 other states, institutions there or insurance companies there trying to comply with your law. The cost of complying with the Vermont law is going to be spread out over 50 states.

Ms. BRILL. I am not certain that that is true. It may very well be.

Chairman BACHUS. But do Vermonters borrow money from out-of-state institutions or get insurance from out-of-state institutions?

Ms. BRILL. Absolutely. All I am saying is that I am not sure that the institutions would spread the costs across the nation, or whether they would impose a premium on Vermonters. I was merely responding to the point about the prudence of the decisions and the accuracy of the information, and their ability to evaluate the credit worthiness of Vermonters. It would appear to be high, given that our consumer bankruptcy rates are the lowest in the nation.

Chairman BACHUS. In fact, Mr. Sanders actually said that in Alabama they are one of the highest in the nation, and in Vermont they are one of the lowest, and he says that the Fair Credit Reporting Act has a lot to do with that. But I went back and saw where ours were in the south, and they have always been historically the highest, and New England has historically always been at the lowest, and that was 50 years ago, and this law is not that old. But that is a good argument if you can make it and get away with it.

Mr. Sanders?

Mr. SANDERS. Just a couple of points, and I did not suggest that people's interest rates were directly 100 percent impacted by the Fair Credit Reporting Act. Obviously, there are a thousand factors that determine that. But just a general statement in terms of the state of credit in America, we should not forget that since the year 2000, bankruptcy rates are up by 23 percent, and they are currently the highest in the country.

Mr. Beales, I did want to address a question to you. You are the Director of consumer affairs for the FTC, and in that position presumably you are one of the key consumer representatives in this country, the person that millions of people presumably look to for help. I am sure that you will agree with me that a consumer's credit score is of enormous consequence to that individual in terms of purchasing a home or a car or the overall interest rates that that person pays. I don't think anyone disputes that.

Picking up on Mr. Ackerman's line of questioning, what we have learned today, and you will correct me if I am wrong here, is that you, whose job it is to represent millions of consumers, do not know how a credit score is calculated. You do not know it. I do not know it. Nobody up here knows it. We do not know why one credit bureau may develop a higher or lower score than another. We do not know that one's score may be higher or lower because one is black or white or Hispanic; because one may live in a bad part of town or a fancy part of town; because one is a woman or a man; or because one may have lost the job three years ago for no fault of one's own.

Given that reality, that you have told us that you do not know the methodology by which these scores are determined, do you believe that you, me, this committee and the American people should receive a description of the key factors that may adversely affect a consumer's credit score? Do we have a right to know how these scores are determined?

Mr. BEALES. Congressman, I believe, with all due respect, that we do understand the methodology by which these scores are developed. We understand it in some detail. We do not know the particular mathematical formula for any particular score, but we do understand how they are developed. They are developed in a way to predict as well as it is possible to statistically predict the different characteristics that are correlated with the risk that somebody will not repay.

Mr. SANDERS. One second, I am not quite sure, but we do not know. Mr. Bachus is from Alabama, I am from Vermont, what criteria? Is he a better risk because he is from Alabama? We have members here who are black or white, women or men, you do not know. You do not know how much weight. If somebody was laid off from a job three years ago, how much weight does that have in terms of their ability to get decent credit? You do not know the answer to that. I am asking you a simple question, as presumably a representative of consumers in this country, do you think the people have a right to know?

Mr. BEALES. What people do have a right to know, and what they get now under the Equal Credit Opportunity Act, is the four most important factors that influence their score; if it was based on a credit scoring decision, then the four most important factors that influenced that are identified. Now, everything matters in a credit score. It is the nature of the beast. The cut that was made in the ECOA is to identify the four most important ones; these are the things you, the consumer, ought to focus on.

Mr. SANDERS. I would simply say that my understanding is that the Equal Credit Opportunity Act requires that credit scoring models be statistically sound and empirically derived. That is fine. But serious concerns have been raised that the use of credit scoring models may have a disproportionate impact on minorities and women, among other factors. Do you want to comment on that?

Mr. BEALES. The origin of these models was to comply with the ECOA, to replace subjective judgments that may well have been correlated with race or gender, with objective characteristics where the creditor could say, and you could about any particular model, here are the things that go into it; here is the business basis for this decision, which the law allows. It is not discriminatory. Now, whether the current models are in fact or not, I have not heard that allegation previously, but that is the history of these models. They were developed to avoid charges of law violations.

Mr. SANDERS. But you do not know.

Mr. BEALES. We have not investigated the particular models.

Chairman BACHUS. Would the gentleman yield for just a second?

Mr. SANDERS. Yes.

Chairman BACHUS. I think the Federal Reserve maintains some of those models. You could maybe ask Ms. Smith.

Mr. SANDERS. Mr. Beales can comment on that, but I cannot imagine for the life of me, Mr. Chairman or Mr. Beales or any member of this committee, why this is not public information. If women are not getting the same type of credit ratings because they are a woman, why don't we know about that? And why don't you demand that we know about it and why isn't that made public?

Ms. DOLORES SMITH. I will address that with respect to women. I think that we don't know about what kind of factors may have an impact on the basis of race and ethnicity, but initially, 25 years ago, there was a problem with credit scoring systems and the impact that they had on the availability of credit to women, largely because the credit bureau reports were based strictly on information about the husband, in the case of a couple, or just basically information about men, rather than men and women. So over time, that remedied itself as women received credit and as information about them entered into the database at the credit bureaus, and into the development of these credit scoring models.

With respect to race and ethnicity, there are, I suspect, factors that do affect the availability of credit to them. They are likely, though, to be based on related factors and correlations having to do with minorities having lower incomes and having less in the way of assets.

Mr. SANDERS. But Ms. Smith, you are presuming these things, because we don't really know.

Ms. DOLORES SMITH. We can only presume.

Mr. SANDERS. But don't you think that on an issue of this magnitude we should not have to presume? That this information should be made public? Why shouldn't we know exactly how they come up with their scoring methodology?

Ms. DOLORES SMITH. First of all, I will say that on the credit scoring methodology and on credit scoring systems in general, this was a decision that basically the Congress made back in 1974 or 1975, when it amended the ECOA.

Mr. SANDERS. Right, I know that. But shouldn't we change it right now? Tell me why you think it is wrong to make this information public to the people.

Ms. DOLORES SMITH. But what information is it that you are talking about? How the systems are developed?

Mr. SANDERS. Precisely.

Ms. DOLORES SMITH. The problem with telling people how the systems are developed is, and you have testimony from Fair Isaac that I think will lay that out more clearly than I can, but it has to do with this being information that the creditors are using to make their underwriting decisions. So the concern is that under the ECOA, as Mr. Beales noted, the consumer does have the right when they are turned down for credit to know the principal reasons, but not necessarily the score, with the expectation that the score is not going to be very helpful to them.

Mr. SANDERS. We are going around the bush here a little bit. I cannot imagine any reason why people not know how the score is derived.

Ms. Brill, did you want to comment on that?

Ms. BRILL. We agree.

Mr. SANDERS. That is a Vermont response; very brief and to the point.

Any other comments on that?

Mr. BEALES. Congressman, I think we do understand how the reports are developed. I think the reason that the algorithm itself is not and should not be made public is that it is expensive to develop these models. It is a piece of intellectual property, and if you make it public, anybody can use it.

Mr. SANDERS. Expensive? Let's see. I would just comment that if one looks at the compensation packages that the heads of these companies make and the profits these banks make, whenever we ask them to do something that is going to drive up consumers's costs, but somehow or another it never affects the compensation packages or the profits or the dividends that are paid out. I think the public does have a right to have this information.

Thank you very much, Mr. Chairman.

Chairman BACHUS. Any other members who wish to ask questions?

Ms. Maloney?

Mrs. MALONEY. Thank you, Mr. Chairman, for holding this committee meeting. I am very appreciative to all the panelists. In particular, I would like to welcome Superintendent Serio from the great State of New York, and thank him for once again joining the committee to offer the views of state insurance regulators. This is his second appearance before our committee. He testified earlier on the need for antiterrorism insurance in the aftermath of 9-11 and how the availability of insurance was affecting the recovery of our city.

Superintendent Serio, in your testimony you extensively describe the approaches different states have taken on the use of credit reports in rating and underwriting insurance. I certainly agree with you that this is a critically important issue that magnifies the importance of the accuracy of the credit reports and the need for consumers to be educated as to how they are used.

Insurers argue that credit information is a good predictor of potential losses when used for insurance underwriting. Mistakes or inaccuracies on credit reports have the potential of significantly raising the cost of insurance for consumers. Given your experience in New York and with the state laws across the country, do you see any role for federal intervention in this area beyond extension of the FCRA provisions allowing consumers the ability to correct mistakes in their credit reports?

Mr. SERIO. Mrs. Maloney, we have as a body at the NAIC taken the approach first that disclosure is paramount, maximum, practical, transparent, if you will, at least to the regulatory bodies. Some of the points made by my fellow panelists about the need for confidentiality on some of those models, we would at least think that it needs to be disclosed to the regulators so that we can make decisions about whether they are being unfairly discriminatory or not under existing state insurance laws.

I think that has worked. In the matter that I mentioned a little while ago with respect to one filing that we do have in New York that we have allowed where there has been a discrete data set from Metropolitan Life put together so that they can use a credit scoring mechanism, but where it is readily identifiable, where that data came from, that the information is then related to the consumer. There is not necessarily a need to tinker with the FCRA because we do have these other laws that are already providing a lot of that detail work, if you will, specifically in those regulatory environments, to achieve that maximum protection.

Mrs. MALONEY. Thank you.

One of my colleagues has a piece of legislation before our body that says that credit reports cannot be used by insurers. Would you comment on that piece of legislation or that idea, whether you agree with it or disagree with it, and why?

Mr. SERIO. I think on behalf of the NAIC, we have found actuarial support for credit reporting data and credit scoring mechanisms to some degree. I think you will find in the compendium of the laws and the regulations that we have provided to you that the focus has been that it is a worthwhile and useful tool, but not to be taken alone. I think a lot of the action in the states is moving towards that it is some determinant of risk, but it should not be the sole determinant. I think that is where a lot of the legal enactments have been going.

For it to be a sole determinant would be problematic for the Commissioners, and that is why this is one of several or a series of factors or indicators to go into underwriting. But as a set of indicators, it is a legitimate risk factor.

Mrs. MALONEY. I would like to follow up on my colleague's questioning on how systems are available. As I understood it, you believe that how they are developed should be available to regulators, but not the public. Are they available to regulators now or not?

Mr. SERIO. In a lot of ways, from the insurance side, a lot of the regulators do have the right to ask for that material. But like many other pieces of information that regulatory bodies get, these are what you might call proprietary data. I think Mr. Beales was alluding to that, that in the hands of the regulators to evaluate, it does provide requisite consumer protection without losing that counterbalance, which is the competitive marketplace, proprietary data; things that have been constructed at great cost. I do not think we are approaching this from the perspective of not to evaluate it, but I think there has got to be a question of in whose hands do you get the best and highest use of that information.

Mrs. MALONEY. Thank you very much. My time is up, and I thank you very much for traveling down from New York. We appreciate it.

Mr. HENSARLING. [Presiding.] On behalf of the Chairman and all the members of the subcommittee, we thank you for your enlightening and patient testimony. Panel one is now dismissed, and we would at this time call panel two.

I would like to welcome our second panel. We appreciate your agreeing to testify before this subcommittee today. At this time, to introduce our panelists, I would first like to yield to Mr. Castle.

Mr. CASTLE. Thank you, Mr. Chairman.

I would like to introduce my friend Clint Walker, who is on this end of the panel, who hails from my home state of Delaware. There are not a whole lot of us, so we appreciate him being here. He is the general counsel and Chief Administrative Officer of Juniper Bank in Wilmington. He is also very active in the community in Delaware and serves on the Board of the Wilmington Renaissance Development Corporation and the Delaware Community Investment Corporation. As a matter of fact, Juniper is an enterprise zone on the Christiana River which you go by on your Amtrak train. If you are going from here to New York, you will see it on the right-hand side there where the ballpark is. The state has been very appreciative of all the contributions by Juniper in terms of jobs and community involvement.

For today's purposes, he has plenty of experience in consumer credit issues and FCRA. Not only has he been general counsel of the First USA Bank and Citibank, but he was recently appointed to the Consumer Advisory Council of the Board of Governors of the Federal Reserve. In addition, Clint is former Chairman of the American Bar Association's Subcommittee on Privacy, so there is a heck of a lot we can learn from his background and his experience, and we appreciate Clint being here today.

I may not be here all the time because I have to do some voting in the Education Committee, but we appreciate your being here, as well as the other panelists.

I yield back, Mr. Chairman.

Mr. HENSARLING. Thank you.

At this time, I would like to yield to Ms. Biggert for our second introduction.

Mrs. BIGGERT. Thank you very much, Mr. Chairman.

It is my pleasure to introduce Kevin Sullivan from the great State of Illinois, a little bit larger state, but which also has many of the model insurance laws. Mr. Sullivan is Vice President and Deputy General Counsel for Government Relations at the Allstate Insurance Company. He is responsible for development and advocacy of State and Federal public policy positions. This is actually a new position as of January 2003. He has been very active in the company since 1984. Prior to going to Allstate, he served as the Commissioner of insurance for the State of Nevada, as well as Regional Counsel for the National Association of Independent Insurers. He then had several legal positions in the insurance departments in the states of Nevada and Nebraska. So he is well informed on these issues as well.

He is a graduate of the University of Nebraska. He and his wife and children now reside in Libertyville, Illinois. I would like to welcome him to this panel.

Thank you, Mr. Chairman.

Mr. HENSARLING. Thank you.

I have the pleasure of introducing our other panelists, Mr. Ramon Rodriguez, the Chief Operating Officer of the United States Hispanic Chamber of Commerce; Mr. Leonard Bennett, member of the National Association of Consumer Advocates; Ms. Julie Smith, President of Buzzuto Management Company, on behalf of the National Multi Housing Counsel and the National Apartment Association joint legislative program.

Mr. Rodriguez, we would like to call upon you at this time to receive your testimony. Please, if you can, press the button on the microphone so that we can hear you. If you are unacquainted, we have a light system here. We would ask our panelists to try to stick to the five minutes, and you will get a yellow light when there is one minute to go in your testimony.

Mr. Rodriguez?

STATEMENT OF RAMON RODRIGUEZ, CHIEF OPERATING OFFICER, UNITED STATES HISPANIC CHAMBER OF COMMERCE

Mr. RAMON RODRIGUEZ. Thank you, Mr. Chairman.

Good afternoon, Mr. Chairman and members of the committee. Thank you for the opportunity to testify before this committee relevant to an issue that is of vital interest to the consumer in particular, to financial institutions in general, to small business owners, and in particular to Hispanic-owned businesses.

My name is Ramon Rodriguez and I am the Chief Operating Officer of the United States Hispanic Chamber of Commerce, commonly referred to as the USHCC. Since its founding in 1979 in the state of New Mexico, the USHCC has been at the forefront of advocating for and on behalf of Hispanic business owners, both on a national and international level. As the leading Hispanic business organization in the United States, we represent the interests of more than 1.5 million Hispanic-owned businesses in the United States and Puerto Rico.

Our primary mission is to promote and enhance business opportunities with corporate America and the public sector for the constituency we represent. One of the challenges that confronts our constituency continuously is access to capital. The entrepreneurial spirit of the Hispanic community is unequaled within the minority business community. It has twice as many businesses as the next largest minority business sector, and growing at an exponential rate, generating over $200 billion in annual gross receipts.

With an increase in the number and profits of Hispanic businesses in this country, the community has become a central figure with the country's financial markets. For Hispanic businesses, access to capital means the ability to grow and expand their enterprises to become more competitive in the business world. Part of that access to capital is shaving access to credit and having a mechanism in place that will not impede the free flow of that credit, that in some instances can mean the difference between taking advantage of an opportunity or not.

Mr. Chairman, now that you know who we are, allow me to focus on the Fair Credit Reporting Act and the importance of uniform national standards to our members. Because others have and will testify about the intricate inner workings of the Act and what will happen if any aspect is materially disrupted, I will not do so today. Suffice it to say that all of the economic benefits being described apply equally to our businesses and our members, and more importantly, all of the consequences of disrupting or balkanizing the current system falls on us as well.

Having said that, let me make some important points uniquely from our perspective. Let me begin with some statistics I have seen. Seven out of ten businesses are started with less than $20,000 of capitalization. Small businesses represent 99 percent of all U.S. employers and they account for 80 percent of all new jobs. Over 45 percent of small businesses rely upon personal credit cards as a major source of financing, and since the 1996 amendments, those in the lower half of the income spectrum have enjoyed by far the largest increase in access to competitively priced credit. Minority homeownership and minority ownership of businesses have increased steadily since 1996, due largely to competitively available credit. Unlike any time in our history, those in the lowest one-fifth income bracket have, by far, seen the greatest increase in homeownership as a result.

These phenomena have occurred because Congress enacted laws that allowed a truly national market for credit to develop, and gave businesses both large and small the ability to accurately assess credit risks like never before. Not surprising then that recent studies also show that those who achieved the most gains since 1996 will, should the current system become balkanized, suffer disproportionately. One study indicated 1.8 million fewer jobs and 19,000 fewer home purchases a year if FCRA is not renewed. Because our members are among those who have benefited the most from what the 1996 amendments made possible, we will suffer disproportionately should the current law be permitted to lapse. We urge you not to let that happen.

Let me share with you a letter our President, George Herrera, recently sent to the White House on this topic. I share this because I know this administration shares our concern. The letter reads as follows: “This administration has always been attentive to issues of importance to the Hispanic business community, particularly issues that impact upon our ability to enjoy the same economic opportunities as others. On behalf of the United States Hispanic Chamber of Commerce, allow me to focus on two economic issues important to both our members and to our community.

“There is increasing discussion within the chamber of the potentially severe economic consequences should the expiring provisions of the Fair Credit Reporting Act be permitted to lapse. Equally of concern is having states like California continue efforts to restrict our companies from knowing their customers and acting upon information now available to them to better their business potential.

I urge the White House to actively work to obtain the legislation necessary to prevent these things from happening.

Throughout the years, but more so recently, the Hispanic business community has contributed greatly to the growth of our nation's economy. The economic success of our members and of individuals within the community is due, in substantial part, to credit becoming widely and fairly available at competitive rates. These laws have extended the reach of credit markets in ways that have largely abolished artificial restrictions prevalent only a few short years ago. We must not retreat and we must not allow a patchwork of laws that ultimately will unfairly hurt our members and our communities."

George concluded by saying, "One recent study I saw predicated a severe economic impact should Congress not act. It came as no surprise that the findings also indicated that we would suffer disproportionately. That is why this is important to our members and that is why I am asking for your help."

George makes the point well. With the current law, a credit system that is the envy of the world has developed. Our members can both extend and receive credit at a speed and cost never before dreamed possible. The days when most small businesses only sold their wares to customers in their neighborhood are long gone. Our members need and rely upon a credit reporting system that reflects national consistency. Only then can our members accurately judge the credit worthiness of their customers regardless of where they are, and only then can our members benefit from intense competition to fulfill their credit needs, regardless of what street or neighborhood where they live or do business.

Allow me please to make three final points. First, many of our Hispanic business members succeed because they are able to market aggressively and successfully. Those of us who have succeeded in business know that customers do not come to us.

Mr. HENSARLING. Mr. Rodriguez, unfortunately I do need you to sum up so that we can go to our other panelists.

Mr. RAMON RODRIGUEZ. Yes, I am just about there, sir. Thank you very much, Mr. Chairman.

Let me then address the one point that I think is very, very important as well, and something that was mentioned in the first meeting.

Secondly, the letter explained that we are very concerned about the efforts in some states to restrict our companies from knowing their customers and acting upon the information now available to better their business potential.

In summing up, Mr. Chairman, I would simply like to say that one of the things that our organization also supports as it would benefit our consumers and our constituency is the opt-out options that would be available to those consumers as it relates to their respective credit. It is a critical element of the FCRA and I certainly urge that.

I urge the Congress and the Administration to resolve these issues quickly. Otherwise, we believe this country risks a significant economic retreat, and if the economists are correct, it will fall hardest on those whose gains are only recent, that is minority business communities.

Thank you, Mr. Chairman.

[The prepared statement of Ramon Rodriguez can be found on page 332 in the appendix.]

Mr. HENSARLING. Thank you, Mr. Rodriguez.

Mr. Sullivan, we would like to receive your testimony now.

STATEMENT OF KEVIN T. SULLIVAN, VICE PRESIDENT AND DEPUTY GENERAL COUNSEL, GOVERNMENT RELATIONS, ALLSTATE INSURANCE COMPANY

Mr. SULLIVAN. Mr. Chairman, members of the committee, thank you for allowing me to be here today to testify on the importance of the access to credit reports for insurance company purposes. I would like to especially thank Mrs. Biggert for the generous introduction.

I am in fact, Deputy General Counsel for Government Relations to the Allstate Insurance Company. Allstate Insurance Company is the second largest writer of personal lines insurance in the United States, primarily automobile and homeowners insurance. I will direct my comments to those particular lines of insurance.

You have heard a lot about the Fair Credit Reporting Act and its importance for the lending industry. It is also of growing significance in helping the insurance industry make automobile and homeowners insurance more affordable and available to millions of Americans. I would like to take this opportunity to provide you with some indication of why the continued use and access to credit management information is important to insurance companies if they are going to be able to charge consumer prices which match the risk of loss that those consumers present.

Finally, I would like to take a moment or two to highlight some of the concerns we have with the recent activities at the state level, which have threatened the continued viability of the full use of the information contained in consumer credit reports.

Insurance underwriting has in fact been recognized since 1970 as a permissible purpose under the FCRA and it is used in a very rudimentary fashion to underwrite homeowners insurance, where companies look at credit records to determine precarious financial positions and concerns for potential arson and fraud. But in the last 10 years or so, the insurance industry and Allstate in particular began to recognize a strong correlation between major public record items on credit reports and future loss potential.

We began to look at things like bankruptcies, collections, repossessions, and realized that people who had those things on their record were 40 percent more likely to incur losses than people with out them, a very, very significant indicator of future loss potential. We could not ignore that significant difference if we were to price in a manner matching risk. We called that financial stability, and we used it as an additional factor in helping us to underwrite insurance, not in lieu of all the other underwriting factors. Throughout the 1990s, we developed better information and more sophisticated models for both automobile and homeowners insurance by taking a look at our own book of business, literally hundreds of thousands, millions of customers. We built pricing models which allowed us to develop better, and what we consider more accurate prices. To this day, we now have the ability to give people with the best credit records lower premiums than those with the worst credit records, a very significant differential. We think that that is a reasonable way to provide our customers with the best value.

What is credit scoring and how is it used? Very quickly and simply, insurance scores are derived from a review of credit reports. The Allstate model is a proprietary model, but like others it evaluates how people handle the acquisition of credit and how they handle and meet the obligations that they incur. We look at the presence of public records, things like bankruptcies, collections, delinquencies, the number and types of accounts an individual has and their account payment history. We look at credit inquiries and credit utilization, which is the relativity between the balance they carry and the limits they have available to them. The resulting score, again, is used in addition to other rating and underwriting factors to arrive at a price that we offer to an applicant.

It is important to point out that our goal is to help improve our ability to predict and to properly distribute the premiums to those individuals who are most likely to incur loss. It is in fact the best predictor of future loss we have yet discovered. Again, the differential between homeowners insurance is even greater than that for automobile insurance, where there is a 60 percent difference. In homeowners a person with a bad credit record is twice as likely to incur losses as an individual without that.

So we are concerned that the states, almost 40 of them as Commissioner Serio acknowledged, are developing their own particular regulations to limit the ability of us to use credit records. We are concerned about that, that it will basically regulate the use of credit information right out of the acceptable factors, and that will result in worse prices for some and less availability of insurance coverage for others.

So we are very supportive of the FCRA. As Congress continues to examine the preemptions, we are looking forward to working with the subcommittee in an effort not only to extend the preemptions, but also to find solutions to the problems caused by inconsistent and anticompetitive restrictions on the use of insurance scoring at the state level.

Thank you, Mr. Chairman.

[The prepared statement of Kevin T. Sullivan can be found on page 473 in the appendix.]

Mr. HENSARLING. Thank you, Mr. Sullivan.

Mr. Bennett, we would like to receive your testimony now.

STATEMENT OF LEONARD BENNETT, MEMBER, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES

Mr. BENNETT. Good morning, distinguished members of the committee and subcommittee. My name is Leonard Bennett. I am here on behalf of and as a member of the National Association of Consumer Advocates, the organization that includes among other things 850 members, many of whom, as myself, are consumer protection attorneys. I litigate these cases. This is the first time I have appeared before Congress. I am not sure if I will appear again.

I come from a conservative background. I went to the George Mason University School of Law and Economics, and had as one of my teachers Justice Ginsburg. I have a finance degree and have what I believe to be the only frontline experience other than the Vermont Assistant Attorney General that you heard from today, and I might be one of the few speakers that you hear from that has that experience.

You pass laws. We can talk about the policy, and you can talk and debate about the statistics analyzed by government analysts, government relations, and spokespersons for trade groups. But I am the individual who goes into court, in my case the Richmond federal court, not known for its liberal views, and attempt to enforce these laws. As a conservative by ideology, I do not want the Federal Trade Commission to have an army of regulators patrolling the streets in my community to enforce these laws. So I am supportive of the efforts of NACA, the efforts of Congress in providing us tools to enforce the law by private cause of action.

I have heard a lot today about the importance of credit and information. There is an important concept I learned, one of the few things I may recall from my finance undergraduate degree, called the efficient market hypothesis. That concept is that business actors can only make within a stock market context rational decisions when they have accurate information. It is true that Hispanic businesses need accurate information to make decisions and that Allstate, if it knows whether or not an individual has positive credit and is a good credit risk, may want to consider that in its decisions. It is true that Juniper Bank may want to know and may want access to information about whose credit is acceptable. But without accurate information, all of those systems, all of those decisions fail.

Our economy has a problem. The problem is, our credit system is failing. I am a proud American and I would put our system up against anyone's system in the world, but we can do better. The Fair Credit Reporting Act has failed. Bankruptcies are skyrocketing. That means Juniper Bank and State Farm and other businesses that use credit reports are not able to make rational decisions and predict who is going to file bankruptcy. Identity theft is up. Identity theft is a symptom. It is not a cause; it is not an isolated problem. It is a symptom of a broken system.

I have in my written remarks provided details of the mechanics of the system. For those that were here for the last panel, and a number of questions that the distinguished representative from New York asked, or the ranking member asked, these questions are answered.

I have about a minute and 28 seconds. I want to point to just one of those, and that is the failure of the reinvestigation system, and let you know how it works. Whenever you have a credit problem, you contact me or you write a letter to the credit bureaus. Eighty percent of the disputes come in by writing; 20 percent by phone call. They have minimum wage employees that have to process one consumer every four minutes or less. In the case of Equifax, and as a proud America this particularly offends me, Equifax contracts out their dispute work to a foreign company in Jamaica, that uses Jamaican employees. I assume it is not a jobs program for lesser-developed nations, but rather to save money.

Your dispute, in my case the letter, may attach documents, paid-in-full notes, a letter from the creditor, whatever, if you are an identity theft victim, or otherwise it is reduced to a two-digit code for identity theft or a mixed identity. For the representative from New York's problem, that code will come out to the furnisher, not his/her. That is all they get.

I am glad that Representative Castle is not here, because I litigated the only case, the only one since 1997, since the 1996 amendments took effect in 1997, against a furnisher that has ever been able to go to trial. We won in Richmond. The defendant was MBNA. MBNA said, and this is the last thing I will read, that there are no national standards. I quote that, and I will not read it again. It is in my written testimony. MBNA's position on appeal in their appellate brief is, dear judge, dear court of appeals, there are no national standards that regulate furnishers. Read the position of the largest credit card company in America.

Please review my written testimony, and I will certainly answer any questions that the committee has.

[The prepared statement of Leonard Bennett can be found on page 150 in the appendix.]

Mr. HENSARLING. Thank you, Mr. Bennett.

At this time, we would like to receive your testimony, Ms. Smith.

STATEMENT OF JULIE A. SMITH, PRESIDENT, BUZZUTO MANAGEMENT COMPANY, ON BEHALF OF THE NATIONAL MULTI HOUSING COUNCIL AND THE NATIONAL APARTMENT ASSOCIATION JOINT LEGISLATIVE PROGRAM

Ms. JULIE SMITH. Thank you.

Good afternoon, Mr. Chairman and distinguished members of the subcommittee. I am Julia Smith, President of Buzzuto Management Company, an owner, developer and manager of apartments in the mid-Atlantic region. It is my pleasure to appear today on behalf of the National Multi Housing Council and the National Apartment Association joint legislative program to discuss the experience of apartment providers and the rental housing industry with the Fair Credit Reporting Act.

The National Multi Housing Council and the National Apartment Association represent the nation's leading firms participating in the multi-family rental housing industry. The NMHC and the NAA believe that eliminating the current uniform federal treatment of adverse action notices, consumer report contacts, and furnisher obligations can be expected to impose new operational costs on rental housing firms and increase uncertainty about the credit and legal history of our residents. These increased operating costs and risks will have a material impact on the cost and availability of rental housing.

Recent state legislative proposals addressing consumer data demonstrate the benefits of FCRA's system of functional regulation. These state proposals suggest that states may opt to regulate in a patchwork fashion, varying coverage of their consumer data laws by industry, rather than by function as the FCRA does. While we support the continuation of the national preemptions now found in FCRA, we support efforts by Congress and the Administration to develop new measures to address identity theft problems that have gained wider national attention since the enactment of major changes to the FCRA in 1996. The uniform national standards that

FCRA now provides have increased the usefulness of consumer report information, enabling rental housing providers to make more informed decisions about resident and employee applicants.

The January 1, 2004 expiration of current state law preemptions under Section 624 of the FCRA, however, raises concerns for rental housing providers in three specific areas: one, adverse action notices; two, permissible consumer report information and the obsolescence of that information; and three, consumer data furnisher statutory obligations.

The expiration of Section 624 preemptions could raise operating costs and risks for rental housing in three areas. Adverse action notices, without additional congressional action, the expiration of Section 624's preemption of state laws addressing Section 615 A and B beginning next year could mean that rental housing firms operating in multiple states would be required to provide many more versions of the adverse action notices under circumstances that would vary with each jurisdiction.

Today, rental housing providers are typically providing standard form adverse action notices in the vast majority of states under uniform conditions. Adverse action notices provided by rental housing owners are promoting wider awareness of consumer history that, in turn, can be used to improve the accuracy of file data where the consumers access and review their report and dispute inaccurate data.

The NMHC and NAA are concerned about the higher operating costs that could result from a legal regime where the content of the adverse action notice and the circumstances under which it is provided varies with each jurisdiction. Permitting states to vary the content of what information may be included in consumer reports as the expiration of Section 624 preemption of the obsolescent limitations and other provisions in Section 605 would do, could substantially expand crime and credit risk for rental housing owners and residents.

The NMHC and NAA believe that creating new opportunities for States to delete information for consumer reports based on varying policy rationales compromises the national consumer data system.

On a national basis, rental housing residents and providers could bear hardships of states that decided to use this new authority to restrict the availability of negative criminal and credit history. For example, a resident or employee applicant from a state that had decided to restrict disclosure of prior sexual offender history, as some states already do following Megan's Law, could very well be obligated to document that he or she was not a sex offender, where the applicant's application to rent or work included a reference to time spent in a non-disclosing state.

The NMHC and the NAA are concerned that a rental housing provider's ability to reduce crime risks in the community it owns by screening out applicants with criminal history profiles could be significantly compromised by the ability of states to restrict the sharing of criminal history data through consumer reports. Naturally, a state law or municipal ordinance enacted under a state enabling law that restricted the disclosure in consumer reports of prior criminal history would make it easier for criminals to opt not to disclose prior crimes and more difficult for rental housing providers to detect a failure to disclose.

Section 624's existing preemption of state laws outside of Massachusetts and California governing a furnisher's duties provides benefits that should also be preserved. Expiration of the preemption on furnishers' duties would likely create varied new state-imposed furnishers' duties that might not track the realities of reasonable business practices, particularly in industries such as rental housing where small businesses predominate. For example, a state may choose to specify a short amount of time for a furnisher to conduct an investigation upon notice of a dispute under FCRA section 623 B. This mandate may appear to provide additional consumer benefit, but in practice the state standard may promote hurried and inaccurate investigations as the state deadline does not provide adequate time for small companies, as well as large companies, to undertake a full and fair investigation.

FCRA currently provides businesses with standards of care and deadlines that are capable of being implemented. These provisions and the experience of NMHA and NAA members have worked well to balance customer and user desire for file accuracy with a furnisher's business practices. Where the duties of furnishers are left to the states to define, the operation and practices of rental housing providers furnishing consumer data would have to be adapted and updated with the advent of each new statutory change.

In closing, we share the concerns voiced by members of this committee and witnesses before it about the crime of identity theft, which has received increased public attention since the passage of the last major changes to the FCRA in 1996. The Act imposes duties on rental housing providers furnishing consumer information to verify disputes. Thus, where identity theft has compromised, a person's rental, credit, or criminal history, the FCRA provides a resolution mechanism for victims to work with rental housing providers and other furnishers to correct records that have been compromised.

We look forward to working with this Congress and the Administration to address identity theft concerns in the context of the extension of the state law preemptions now found in the FCRA. The expiration of the existing preemptions presents an opportunity to maintain uniform national standards, while providing new tools to address crimes such as identity theft that have gained greater prominence since 1996.

Thank you very much.

[The prepared statement of Julie A. Smith can be found on page 443 in the appendix.]

Mr. HENSARLING. Thank you, Ms. Smith.

Mr. Walker, your turn.

STATEMENT OF CLINT WALKER, CHIEF ADMINISTRATIVE OFFICER AND GENERAL COUNSEL, JUNIPER BANK

Mr. WALKER. Good afternoon, Mr. Chairman, members of the committee. First, I would like to thank Congressman Castle for his generous introduction. As he stated, my name is Clint Walker. I am the Chief Administrative Officer and General Counsel of Juniper Bank. Juniper is a young and growing bank focused on issuing credit cards to U.S. consumers. I appreciate the invitation to appear before you today to discuss how the FCRA affects our bank, consumers and the economy as a whole.

The FCRA has provided the legal framework that has been instrumental in the shaping of an extremely efficient credit reporting system that supports millions of credit decisions each year. Consumers receive direct benefits from the system in the form of lower credit costs, more choices for credit, and greater convenience. For example, FCRA governs the important underwriting marketing tool known as pre-screening. Pre-screening is used to provide firm offers of credit to consumers who meet certain established criteria. If a consumer responds by requesting credit, the bank must honor the offer, so long as the consumer continues to meet the credit criteria initially established. Under FCRA, these pre-screened offers must notify consumers they can opt out of pre-screening in the future by simply calling a toll-free number.

Because the pre-screening rules established under FCRA are the same across the country, lenders are able to develop and market products on a nationwide basis. It is these uniform rules that enable a new bank like Juniper to enter the market and compete nationwide with the giants of our industry. The competition enabled by pre-screening provides tremendous benefits to consumers in the form of lower rates, no annual fees, and wider credit availability.

In addition, there are other significant benefits related to pre-screening that have attracted less attention, but are just as important. For example, Juniper has found that accounts obtained through pre-screening have a loss rate of approximately one-fourth to one-half of those associated with accounts obtained through other means. Moreover, the fraud rate on accounts acquired through pre-screening is about one-seventh the fraud rate associated with accounts obtained through other means. This is in part because pre-screening allows banks to more carefully and efficiently target offers through the use of their underwriting criteria.

The contents of the consumer report are also largely standardized under FCRA, because FCRA establishes time frames for determining when the information becomes obsolete and it preempts state laws. This is critically important because if we know that the contents of a credit report are uniform across the country, we can accurately evaluate the credit risk posed by each consumer regardless of where that consumer resides. This enables us to offer lower rates and make credit more widely available.

On the other hand, if states were allowed to restrict the contents of credit reports, those reports would be less reliable and we would have to increase our prices or reduce availability to compensate for the increased risk. Consumers with less than perfect credit histories would suffer the most. For example, today a bank may decide to extend credit to an individual with one or two delinquencies in an otherwise positive credit report. However, if the bank is aware of those delinquencies, but doesn't know if additional information is being shielded under state law, the bank might not be able to extend credit to that consumer or may only do so at increased costs to offset the additional risk.

In addition to being a user of credit reports, Juniper is also a furnisher of information to credit bureaus. In fact, it is card issuers like Juniper that supply much of the information in credit reports, and when we at Juniper look at a credit report, we typically find that the most useful and up to date information has come from other credit card issuers. Under FCRA, furnishers have certain obligations and these obligations are uniform across the country. They include certain obligations to reinvestigate. We take these obligations very seriously, and we assign a person to every inquiry we get from a credit bureau about our information.

These obligations were carefully crafted in 1996 to balance the need for accuracy and concerns about impeding the supply of information. In particular, Congress recognized that imposing unreasonable burdens on furnishers could have a chilling effect on the flow of information that is the lifeblood of the credit reporting system. As part of the delicate balance struck on this issue, FCRA precludes states from imposing different standards. It is important that this delicate balance be preserved. If a state were free to impose stricter standards, furnishers would be forced to reevaluate the practice of furnishing information to credit bureaus or respective consumers in that state. Indeed, some furnishers may feel they have no choice but to stop or restrict furnishing information about consumers in that state.

In conclusion, the benefits to consumers associated with uniform standards under FCRA are clear. These national standards enable consumers to access a multitude of credit choices at lower costs than ever before, and have produced significant benefits to the economy as a whole.

Thank you again for the opportunity to appear before the subcommittee. I would be happy to answer any questions you may have.

[The prepared statement of Clint Walker can be found on page 484 in the appendix.]

Chairman BACHUS. [Presiding.] Thank you.

I will convene the questioning. Mr. Rodriguez, how can an efficient credit reporting system allow entrepreneurs who must rely on their personal credit histories to obtain financing to start new businesses?

Mr. RAMON RODRIGUEZ. Mr. Chairman, it is our belief that the more proactive that accurate and liberal reporting can be shared with that consumer, the more proactive in turn that consumer can be in terms of addressing issues of concern that might appear on his or her respective credit report.

As a result, we firmly believe that with that opportunity made available to that consumer, he or she can turn a business opportunity into an opportunity to be gained as opposed to an opportunity that was lost because of other tactics, dilatory or otherwise, that may be exercised by the respective reporting agency or the respective creditor.

Chairman BACHUS. Can you discuss how credit reports have given those who maybe historically have been unable to get access to credit, the ability to do so now?

Mr. RAMON RODRIGUEZ. I do not have any tangible, specific knowledge of that, Mr. Chairman, but again just referring to my previous response, I believe that the greater sharing of information that occurs, the more liberality of that sharing of information, it would assist those who in the past may have experienced some negative credit history of some kind, to be able to provide the necessary explanations, as Mr. Ackerman indicated that he had to his respective agency, and be able to preclude some negative event from occurring that would prevent that individual from taking advantage of other credit opportunities or business opportunities.

Chairman BACHUS. Thank you.

Ms. Smith, your written statement discusses the need for uniformity with respect to adverse action notices that must be provided under the Act. Can you explain how these notices are helpful to consumers?

Ms. JULIE SMITH. They are very helpful. If an applicant applies for an apartment and the application is not accepted or rejected, all apartment operators are required to send that applicant written notification letting them know what the circumstances were in rejecting that application, and then giving them the resources that they need to contact, to find out what they need to do in order to take care of whatever issue it was that caused the rejection of the application.

So that is in these standard notices that are being used in the industry, and have made it much easier for so many of the apartment companies, many who are so small, to comply with that requirement.

Chairman BACHUS. There has been speculation that if we had several different state laws and these adverse notices had to comply with all those laws, that it could make the adverse notices several pages long. Would consumers be less likely to read that adverse notice if you were talking about a several page long document?

Ms. JULIE SMITH. It could be very intimidating to them. The notices that are being issued now are very clear and I think are very consumer-friendly in that they do give very clear direction on what they need to do and what their next step is. I would be a little concerned about something that was lengthy and potentially intimidating to the consumer.

Chairman BACHUS. Okay, all right.

Mr. Walker, your written statement indicates that fraud losses on accounts acquired through pre-screening are significantly lower than fraud losses on accounts acquired through other means.

Mr. WALKER. That is correct.

Chairman BACHUS. Does this suggest that pre-screening is less likely to result in identity theft than other types of credit card applications?

Mr. WALKER. I would not say, Congressman, that it is less likely to result in identity theft, because people cannot really use prescreen solicitation for identity theft. All the information that is in that, frankly, is name and address, which a crook could get from a telephone book. I don't think it is any different from a regular solicitation that is sent in the mail.

Chairman BACHUS. Okay. How are pre-screened offers different from general solicitations?

Mr. WALKER. They enable us to do several things. First of all, we find that an individual who makes that extra effort to come to you to seek a loan is a riskier applicant. It is basically adverse selection; why are they going to that effort, and some people, not by any means all, but some people are doing that because they know something about themselves and they want the credit.

Second of all, pre-screening enables you to get information about the consumer at two different points in time: one, at the time when you basically make the pre-screened offer; and two, when the individual responds, and you can see what has happened to the individual during that period of time. The migration of credit information is very, very important in determining risk incident, and it is a great opportunity for us to mitigate risk.

Chairman BACHUS. All right, thank you.

Ms. Maloney?

Mrs. MALONEY. Thank you, Mr. Chairman.

I would like to thank all of the panelists. Mr. Bennett, you seem very fed up. In your testimony you really leveled some rather scathing charges against the investigative provisions in the FCRA. I would like to ask you, have you contacted the FTC or other governmental agencies to talk about the system's shortcomings? If you have, what has been their response?

Mr. BENNETT. Congresswoman, understand that speaking here is a strange experience for me because I am asking you to help put me out of business by solving these problems. I am the litigator, but I can say that NACA itself, as well as our allies, particularly the U.S. PIRG have been in touch with the Federal Trade Commission. But as you would expect and as I would hope as an advocate of small government, the Federal Trade Commission is not funded in the capacity that would be necessary in order to monitor a number of the provisions of the FCRA. The most important one, the one that has not been discussed but a bit here, is Section 1681 S(2)(a). That is the requirement that says that a furnisher must maintain complete and accurate records. It would be a wonderful national standard if it were enforceable, but because of the (c) and (d) subsections of that statute, it is only enforceable through the Federal Trade Commission.

I would gather, and I would believe, and I would bet some of my limited reputation on it, that the Federal Trade Commission has not prosecuted a furnisher for violating Section 1681S(2)(a). The Federal Trade Commission has done some admirable work on monitoring the violations of the statute by the credit reporting agencies, but it is impossible to monitor that. It is impossible. Think of all the collection agencies in the world out there that can just fold up shop and move on to the next town. It is impossible because think of the volume for these large institutional investors who report and monitor, for the Federal Trade Commission to be expected to keep up with that.

You provided us an incentive, congresswoman, as has this committee, and as I hope it will do with any amendments that are made, for private individuals, conservative, liberal, southerners like myself, or you have an excellent attorney in New York that prosecute these claims; a number of states, and Alabama, Mr. Chairman, you have some of the best Fair Credit Reporting Act brains in the country. If you give us the tools, we can help make it right; eliminating preemption, not putting any more pressure on the furnishers is not the way to make it right.

Mrs. MALONEY. I know from my own experiences, and Congressman Ackerman pointed out, that identity theft is really on the rise. It is a huge problem in New York and probably across the country. But I would like to specifically ask you, what should we do to change the system? Do you have any specific recommendations? I would like to invite you to submit it to the panel in writing if you would like more time to think about it. But do you have specific ways that it would work better for consumers and for people who are trying to help the consumers?

Mr. BENNETT. Let me formally say, as you might expect, that we fully endorse the legislative recommendations in U.S. PIRG's written testimony. Representative Sanders, the ranking member, has some, and Chairman Bachus, with your skills in the privacy area, I am sure can come up with many. We certainly would like the opportunity to submit that in writing.

I will answer this as Leonard A. Bennett. The biggest problem out there right now is that the statute has too many loopholes with respect to the investigation process. Credit reporting agencies believe that they do not need to do anything independent in the investigation process under Section 1681 I. The agencies do not believe they need to evaluate information independent of the furnishers. I have deposition excerpts I provided in my written testimony, for example, where Trans Union's designated spokesperson says, we just mimic what the furnisher says. In that particular case, they even say, we ignore third party documents.

I have a case that is in litigation now in which a Bank of America customer refinanced his second mortgage in early 2002, and Bank of America, apparently by mistake, reported it as a foreclosure and charge-off in late 2002. He sent a copy of the paid-in-full note, the released deed of trust, the letter from the closing attorney and the letter from Bank of America. The credit reporting agency ignores it because only communication directly from the furnisher can result in a change or removal of the credit report.

On the flip side, the furnisher's liability, and you will see an excerpt from Capital One, the furnishers are not entirely innocent either. The furnisher represented in the Capital One deposition taken last month in my home state explains an episode in which the reporting agencies, all three, independently came in to the furnisher and said, this is the response that we want you to make to our investigation demands. We want you just to parrot or mirror what we say. The employee in the deposition said, well, I asked the reporting agency, should we look at original documents; should we review our account statements; should we actually do something more than just look at the computer screen? They were told no.

Identity theft, for example is a symptom. The problem from identity theft is not so much that it happens. In a world of automation, mixed identities and inaccuracies may happen. We would like to see less emphasis on Social Security numbers. In the case of the Capital One case, the one that I talked about, the consumer had a pre-screen, pre-offer sent to the thief, who knew that her Social Security number was one digit off from our client's because of some other mistake that had been made by furnishers. So she crossed out that digit and wrote in handwriting the new Social Security number of our client, and submitted it with the same name.

Because of the automated system, when Capital One got that, they changed their records to add the thief's name as our client's alias, and then that got sent to the bureaus, who now after multiple disputes keep re-reporting it. Carol Fleischer is her name. She is unable now to convince the world, "I am not Ms. King," I believe her name is, "but I am not the thief; I am Carol Fleischer and I have good credit." So the reliance on Social Security numbers, and not even full matches, is a problem.

MBNA, the case in which I was able to prosecute a case in Richmond's federal court against MBNA, and it is now on appeal, in MBNA's case, their employees reported that when they get an investigation request in, all they have to do is match up two of the following: name, Social Security number, date of birth and address, two of the following, and if they match them up, bingo. I cannot do much about that because Section 1681S(2)(a) which requires accurate information, and would be a wonderful national standard, I would take that over what California, Vermont and Massachusetts have. That standard is not enforceable unless you, this committee, wants to fund an army of regulators out there knocking on every door, going to Juniper and the like, instead of allowing the free market system that you have set up through private causes of action to work.

S(2)(b) does not have a standard itself. The quote I used from MBNA is fantastic. It says, thus Congress did not intend to impose upon any furnisher the duty to defend its investigation or records qualitatively under Section 1681S(2)(b). Indeed, the requirements of accuracy as they relate to mere furnishers of information are contained in Section 1681S(2)(a), a section which is expressly made not actionable by consumers like Johnson under Section 1681S(2)(c) and (d). If Congress had wanted to subject furnishers to a qualitative standard, it easily could have done so.

So the debate about a national standard, even though I am normally for States' rights, if you want to give me a national standard by allowing us to sue under Section 1681S(2)(a) or an even better legislative idea, make it a safe harbor. In the rules of civil procedure in federal court, if someone files a bad faith notion, we cannot sue them until we have first given them a notice. So we first have to say, hey, your pleading is in bad faith. The Congress could say, you still cannot sue under S(2)(a) until you have written the furnisher and given them an opportunity to correct the problem. That is a fair, reasonable and free market solution.

Mrs. MALONEY. Thank you. My time is up.

Chairman BACHUS. Mr. Hensarling?

Mr. HENSARLING. Thank you, Mr. Chairman.

One of the advantages of coming to these hearings is occasionally you actually learn something. Mr. Rodriguez, I was very interested in aspects of your testimony that seven out of ten businesses are started with less than $20,000 of capital. I was aware that small businesses, the job engine of America, create the preponderance of new jobs, but I did not realize how many of them started with as little capital. I think you went on in your written testimony to say over 45 percent of small businesses rely on personal credit cards as a major source of financing.

I really previously had not thought about the extension of FCRA as a jobs issue, but given that we just passed a Jobs and Growth Act in Congress and we are all very concerned about the state of our economy, I guess I am curious whether or not the Hispanic Chamber has developed any kind of model if Congress fails to reauthorize and get us closer to a national standard, as opposed to a 50-state atomistic standard? What would the impact be on jobs, and if you have not developed a model, what are your personal thoughts?

Mr. RAMON RODRIGUEZ. We have not developed a model per se, but to the extent of our recognition of how important the creditworthiness and the availability of credit is to the Hispanic business owners throughout this country, to that extent we had entered into an agreement with a financial institution that would make available to those business owners credit cards, both from a MasterCard and Visa perspective, that would provide for them up to a $35,000 line of credit with a very nominal rate of interest as they went into that plan.

That amount of money, that $35,000 limit, would, as I indicated in my previous comments, allow in many instances a small business owner, and most of the 1.5 million Hispanic-owned businesses are small to the extent that they are mom-and-pop operations, to take advantage of a business opportunity by using that credit card line of credit to embrace that business opportunity, that but for that line, they would not have been able to, and perhaps may have caused them to shut their operations or, indeed, not be able to grow as they had intended to.

So that we will certainly look at and are looking at aggressively at developing a model that we can present to this body or some other body at an appropriate time, that would reflect the kind of job loss impact that not extending the FCRA as it currently exists would impose on small businesses.

Mr. HENSARLING. But it is a fair assessment to say, then, that in the opinion of the U.S. Hispanic Chamber that but for the extension of FCRA there could be a significant job loss due to the unavailability or unaffordability of credit to small businessmen and entrepreneurs.

Mr. RAMON RODRIGUEZ. We firmly believe that.

Mr. HENSARLING. Thank you.

Mr. Sullivan, you said in your testimony that the use of credit-based insurance scoring is the most significant advancement in cost-based pricing in at least the past 30 years, so that is a rather significant and bold statement. I understood in your testimony you alluded to a couple of different studies, but I am curious if you could explain to me why there is a correlation?

Mr. SULLIVAN. There have been a number of studies that very directly highlight the correlation. The explanation of why is one that is open to speculation. There are various theories and hypotheses. Early on in the process, we began to wrestle with how you would even conduct a study, put together a study that would be able to explain why something happens. Generally in the insurance business, we feel we have a responsibility under the laws of unfair discrimination to statistically justify the differences, and we do not generally get into the whys those statistics seem to bear out.

But because we got that question a lot, we began to explore it. We ran across about 30 different studies which speculate that there are issues of risk-taking behavior related, and other issues like stress that result in distracted driving and other sorts of things. We can only speculate as to the reasons why. The critical factor as far as we are concerned in our responsibility to provide coverage at premiums that match the risk of future loss that somebody presents, is that somebody who is 60 percent more likely to have an automobile accident or two-times as likely to have a loss on a homeowners insurance policy should pay more for their insurance than somebody who is less likely to have losses should pay.

Mr. HENSARLING. Thank you. I am out of time.

Chairman BACHUS. Thank you.

The gentleman from North Carolina?

Mr. WATT. Thank you, Mr. Chairman.

Mr. Bennett, I have to say at the outset that I have instinctive identification and admiration for you for being here, and thank you for being here. I guess it is based on the fact that you practice like I did in the Fourth Circuit. That is burden enough, given the persuasion of most of the judges in the Fourth Circuit.

[LAUGHTER]

But to come here and suggest to my colleagues, many of whom give lip service to states's rights, but seldom really vote that way, that the right of the private cause of action is the bedrock of conservatism, which all of them have forgotten about. It requires me to just express my admiration for you and I hope they were listening. There has been a concerted assault on private causes of action, not so much necessarily in this committee as much as in the Judiciary Committee, on which I also serve.

I, like you, believe that without those individual causes of action and the prospect of class actions that are effective, you will have a bureaucracy at the FCC and the FTC and all of the other agencies that is so big, trying to enforce these things, that they will be absolutely unmanageable. So I have a lot of identification and agreement with you on that issue in particular.

The question I have is to you and the other panelists about one concern that you raised, which is the over-reliance on Social Security numbers. What would replace that, but for the use of Social Security numbers? I mean, names seem to change regularly; addresses seem to change regularly; and about the only consistent identifier that most people have is the Social Security number. So the question I am raising with you first, and I will let you address it and get the ideas of the other members of the panel also, is, without that consistent identifier, wouldn't matters actually be worse, rather than better?

Mr. BENNETT. I have read the U.S. PIRG testimony and it goes into great detail about this question. Let me say that I would not advocate personally, and I have not spoken to our Director of NACA who is here, but I would not necessarily advocate eliminating the use of Social Security numbers. The problem is total reliance on it. For example in the Carol Fleischer case I talked about, the mere existence of the same Social Security number was all you needed to get a credit card. Now, I assume that Juniper Bank and Allstate do much better in that regard, but a lot of the credit reporting agencies, all three of them, and many of the furnishers, rely almost entirely on either the Social Security number or, even worse, a partial Social Security number.

Mr. WATT. Okay. Let me hear from the other panelists about their experiences in this area, and whether they have any positions on undue reliance on Social Security numbers. I guess we are not advocating no reliance on Social Security numbers, but maybe less reliance on it, or reliance on it in conjunction with other things.

Mr. Walker, you look like you might have an opinion on this issue.

Mr. WALKER. I do, Congressman. I think the use of the Social Security number obviously is incredibly important, just for the reasons you said. It is the one unique identifier. I am Clint Walker; there is a Clint Walker, Jr.

I also agree with Mr. Bennett that it should not be used as the sole piece of information identifying a customer or employee. You should look at a variety of things. That frankly depends on the situation that arises, and how many other pieces of information you look at, but we never look at solely just the Social Security number, but it is very, very important. Frankly, we would love to see if we could have the use of the full Social Security number when we get pre-screened lists. That would make our ability to predict fraud even greater.

Mr. WATT. It looks like my time is up, unless there is somebody else who has a burning desire to get into this debate. If not, I will yield back. We have a long day here with two more panels and I do not want to abuse the privilege. Anybody else have any burning desire to address this issue?

Mr. RAMON RODRIGUEZ. Mr. Congressman, I guess my wanting to respond would indicate a burning desire, although that is not necessarily so. I will say that any system that relies on human input, if you will, mechanical, automated or otherwise, I would think would not at all ever become full proof, unless of course creditors wanted to consider optic identification or establish DNA banks of some sort or something. But it is a challenging situation.

Mr. WATT. I do not think the FCRA is ready to go there quite yet.

Mr. RAMON RODRIGUEZ. Nor do I.

Mr. WATT. We will keep going. I yield back, Mr. Chairman, in the interests of time.

Chairman BACHUS. You are not speaking for Mr. Sanders are you?

[LAUGHTER]

Mr. WATT. Yes, I think I am even speaking for Mr. Sanders on that issue.

[LAUGHTER]

Chairman BACHUS. All right, thank you.

Mr. Tiberi?

Mr. TIBERI. Thank you, Mr. Chairman.

Mr. Rodriguez, I did not get to hear your testimony today, but I looked at your written testimony that you have submitted, and I want to follow up on Congressman Hensarling's questioning a bit. You write in your written testimony that the Fair Credit Reporting Act and the importance of uniform national standards to your members. Would you believe that in addition to extending FCRA as a benefit to your members, that having some sort of uniform privacy standard for consumers would be to the benefit for consumers to understand? Some simplified way for consumers across the country, would that be a benefit to your members as well?

Mr. RAMON RODRIGUEZ. Without a doubt, Mr. Congressman. Quite frankly, generally speaking, it would be to consumers across the Board, not only to the constituency specifically that we represent. One of the panelists indicated before in terms of the simplicity of the language that could be used, and that is certainly something that we advocate also very aggressively in terms of being able to present to those consumers plain English as opposed to any language that is couched in legal jargon that would tend to either dissuade them or otherwise confuse them as to what it is that they might be reading. So in direct answer to your question, yes.

Mr. TIBERI. Expanding on what you said in your testimony and expanding on what Congressman Hensarling said, clearly you testify that the Fair Credit Reporting Act that was passed before I got here, the amendments in 1996, have clearly helped small business owners, consumers, minority homeownership. If we do not extend FCRA at the end of this year, those amendments, do you think that it will have a reverse effect on what has been a positive outcome thus far?

Mr. RAMON RODRIGUEZ. Again in direct answer to your question, Mr. Congressman, yes we do. And just to elaborate on that for a moment, one of the reasons is because of the patchwork legal effect that would result by individual states then being able to control and mandate certain credit reporting requirements et cetera, et cetera, it might preclude a business owner from being able to cross those borders and do business in another state where that credit may not exist or may not be readily available. That would certainly have a domino effect across the nation for our constituency, and that is something that we certainly are very concerned about.

Mr. TIBERI. Mr. Sullivan, being in the financial services arena as well in more than one state, what effect would it have to you as a company, and then on to consumers, what sort of cost do you believe would be entailed in having at minimum maybe 50 different standards, if not more, if localities went into that business as well?

Mr. SULLIVAN. Yes, the cost to comply with the various different notice requirements and other things would be staggering. I suspect with each additional state, we would be talking about just reprogramming expenses in excess of $100,000 per state. But we also see an expense to the consumer in the limitation of the ability to use the information in consumer reports to make offers of lower prices to individuals with good credit performance.

As a result of not having the information as readily available to us, we would be likely to write less insurance coverage because we are taking on greater risk of loss. We found in states where we have implemented credit-based insurance scoring, we have written approximately 20 percent more business than we otherwise would have. That is just one of the benefits that have inured to consumers through good access to credit information.

Mr. TIBERI. Thank you.

Mr. Bennett, I came in partly at the end of your testimony so I heard a little bit about it. I want to follow up on the issue of the credit bureaus, the issue of liability. I think you and I would both agree that information provided to credit bureaus today is voluntary. Do you believe that if we tightened up the issue of liability for information going in, that that would possibly be a disincentive for those who are reporting information to credit bureaus, and thus they would have less information?

Mr. BENNETT. I do not believe so.

Mr. TIBERI. Why not?

Mr. BENNETT. I disagree, representative, with your premise, which is that it is voluntary. Under Section 1681S(2)(a) of the statute, furnishers are required to, at least aspirationally if the Federal Trade Commission does anything, provide accurate and complete information. Right now, and if you recall the New York Times article on this very issue, a number of large institutional creditors do not submit information under the current regime for the very reason that it is unenforceable under Section 1681S(2)(a) its aspirational standard is unenforceable by private cause of action, and they have an incentive to keep their customers locked in. The way credit scores work, among other things, the more positive your payment history, then the higher your credit score, to simplify it. By not reporting positive credit information, which is what a large number of institutional creditors may do, then they maintain control of those customers, who do not maintain the score, to leave that sub-prime lender and then now have that zero percent interest or the 2.9 percent credit card.

Mr. TIBERI. Unfortunately, Mr. Chairman, I ran out of time. I was going to ask a follow up, but I appreciate the opportunity.

Chairman BACHUS. Thank you.

We will conclude this panel. I would say this, Mr. Bennett, the Federal Reserve and some of the bank regulators do put out guidance to the banks that they are under an affirmative duty to report positive credit information. I do not know how that fits in, but I would make that statement.

This concludes our second panel. We very much appreciate your testimony. It has been very helpful. You are dismissed.

The Chair notes that some members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to those witnesses and the responses will be put in the record.

This panel is discharged.

At this time, we are going to take a recess to either 2 o'clock or to 10 minutes after the close of a vote on the House floor, if such a vote intervenes between now and two o'clock. We are going to recess until 2 o'clock. If there is a vote on the House floor between now and two o'clock, then we will reconvene 10 minutes after the conclusion of that vote.

[RECESS]

Mr. TIBERI. [Presiding.] Back in order. I will ask the panelists for the third panel to be seated. I will call on my colleague, Mr. Royce, to introduce one of our panelists.

Mr. Royce?

Mr. ROYCE. Thank you, Mr. Chairman. I thank you for chairing this hearing and I greatly appreciate this opportunity to introduce one of our witnesses today, and that is David Lizarraga. He is Chairman and CEO of the East Los Angeles Community Union, which is also known as TELACU. David and his organization is not only a great friend of my district and to Los Angeles, but to all of Southern California. TELACU is a nonprofit community development corporation that is based in Los Angeles. Since 1968, TELACU has worked to bring economic opportunity to East Los Angeles and other areas of California that are in need of creative entrepreneurial economic growth.

Almost 30 years ago, TELACU chartered Community Commerce Bank, which is an industrial loan company based in Los Angeles. Through Community Commerce, TELACU has provided access to credit to thousands and thousands of customers. A significant number of these customers had difficulty obtaining mortgages and obtaining other loans before Community Commerce's creation.

David, I look forward to your testimony today. I am interested in your views as to the potential impact on your mission and the customers you serve if Congress were to fail to reauthorize provisions of FCRA that are set to expire at the end of the year. Again, I thank you for being here.

Mr. Chairman, I am supposed to chair a markup of legislation in my subcommittee at two o'clock, so I am a little late for that markup, and I appreciate very much the opportunity to introduce David here.

Mr. TIBERI. Thank you, Mr. Royce.

I will go ahead and quickly introduce the remainder of our panelists. First, I would like to introduce Mrs. Flora "Grandma" Green, who is the lead spokeswoman for the Seniors Coalition; also Mr. Ed Mierzwinski, Consumer Program Director for the U.S. Public Interest Research Group; Ms. Shanna Smith, Executive Director for the National Fair Housing Alliance; and finally, last but not least, Dr. Wayne Brough, Chief Economist, Citizens for a Sound Economy.

I would like to remind our panelists that each of you will have five minutes to give us a statement, and would remind you that we have a fourth panel after you, and we will have questions from hopefully not just me after all of you are finished with your Statements.

With that, I would like to welcome Ms. Grandma Green to begin the proceeding.

STATEMENT OF FLORA GREEN, LEAD SPOKESWOMAN, THE SENIORS COALITION

Mrs. GREEN. Thank you.

I am certainly happy to be here. My name is Flora Green, but most everyone knows me, affectionately I hope, as Grandma Green. I am the national spokesperson for The Seniors Coalition. I enjoyed working in the private sector for over 40 years in credit granting and debt collection, so this gives me an added insight on the issue at hand.

I commend you for your leadership in convening this hearing. On behalf of The Seniors Coalition, I appreciate the opportunity to present seniors' views on the national credit reporting system that has evolved under the Fair Credit Reporting Act and how it serves consumers and strengthens our economy. The Seniors Coalition is the nation's leading free-market senior education and advocacy organization. We are four million strong and are growing stronger every day. Our mission is to empower seniors to speak with a united voice and significantly impact policies and decisions at the federal and state level that affect their healthcare, financial, and retirement security. By leveraging the combined strengths of grassroots organization, education, action and communication, our members are driving positive policy changes at every level of government that improves their lives and benefit the nation as well. Our national credit reporting system serves consumers and strengthens the economy.

It is no coincidence that we have the strongest economy in the world, even though it is not performing as well as we would all like. There are two reasons for this. One is our entrepreneurial spirit. We Americans are a bunch of practical dreamers and optimists who are willing to invest, take risks, and work hard to create something of value. My father was a farmer and a businessman, so I understand how important this spirit is.

The other reason for our strong economy is access to affordable credit. This includes the ability to obtain credit quickly at affordable rates to invest in and grow a business. But it also means ensuring that consumers can get the credit they need instantly and at a reasonable cost to buy the goods and services they want. Together, business creation and credit access have helped build an economy that is still the envy of the world. We all want to keep it that way, and renewing the expiring national standards under FCRA will help ensure that we do.

There is no question that the strong, efficient national credit reporting system we have today is the direct result of the Fair Credit Reporting Act which Congress enacted in 1970 and strengthened in 1996. This law strikes a balance between the interests of consumers and business. Since it helps ensure the orderly and efficient functioning of our national credit reporting system, it is essential to the health and growth of our economy and provides other benefits as well.

The experts tell us that all the available evidence points to the fact that our system is working as intended. As a result, seniors and other consumers have convenient access to affordable credit to buy appliances, clothes, cars, homes, and countless other items they need and want. When you consider that consumer spending last year accounted for two-thirds of our gross domestic product and most purchases were made on credit, it is clear just how important our national credit reporting system truly is. The Fair Credit Reporting Act protects seniors and other consumers.

The Fair Credit Reporting Act is not just vital because it has helped create a national credit reporting system that underpins our economy and ensures that it functions with maximum efficiency. It is also vital because it ensures that all Americans, regardless of their age, income, ethnicity and gender, can obtain access to the same opportunities that credit makes possible. What is more, it provides consumers with some of the most important protections. I want to focus on a very few of these protections and why it is so critical that Congress preserve them as part of the FCRA reauthorization.

Furnisher Responsibility. The current credit reporting system protects consumers because it requires credit furnishers to adhere to uniform standards. Only when credit providers voluntarily report information that allows credit reporting agencies to create an accurate financial picture of consumers do consumers benefit. When this happens, consumers can obtain the best deal on credit at the most favorable rates.

That is why it is crucial that credit providers continue to report information, but some have suggested removing the current limits on credit providers' liability and creating new private rights of action that they believe will help protect consumers. The truth is, this would have the opposite effect. It would cause many credit furnishers to stop voluntarily reporting the information they have collected because they fear legal action based on negative information reported.

Without adequate or complete information to assess the risks of extending credit to a consumer, many credit providers would simply not approve credit in borderline cases or charge more to cover the higher risk. In either case, many seniors and other consumers would simply lose out by not obtaining the credit they need or at the rates they could afford. The Seniors Coalition favors renewal of the furnisher responsibility provision without changes.

Reinvestigation time frames. Errors in consumer credit reports can result in diminished or lost access to credit or higher costs to borrowers. While the reported error rate is well under 0.5 percent, errors do creep into credit reports. The FCRA requires that errors in reports be corrected at the consumer's request within 30 days. This ensures that errors are erased in a timely manner.

Some have suggested that states reduce this mandatory error correction time to 20, 15, or even 10 days. But this could result in consumers being treated differently by credit providers in different states.

Mr. TIBERI. Grandma, could you kind of try to sum up?

Mrs. GREEN. I will. I will.

Mr. TIBERI. Sorry to interrupt.

Mrs. GREEN. Much of this you have already heard, so I am just going to skip a few pages and I am going to tell you one of the things that seems so important to me.

The Seniors Coalition favors renewing this provision to ensure the availability of credit for consumers with less than perfect credit and to protect seniors, consumers, and companies from losses due to identity theft. The Congress' failure to renew the FCRA's expiring national standards would hurt seniors and other consumers.

Let me sum up. There is an old saying, and it is not grammatically correct, let's don't fix what ain't broke.

Thank you.

[The prepared statement of Flora Green can be found on page 264 in the appendix.]

Mr. TIBERI. Thank you, Grandma Green.

I would like to introduce Mr. Ed Mierzwinski. Thank you for being here today.

STATEMENT OF ED MIERZWINSKI, CONSUMER PROGRAM DIRECTOR, US PIRG

Mr. MIERZWINSKI. Thank you, Representative Tiberi, Chairman Bachus. It is a privilege to testify before the subcommittee once again on the important issue of Fair Credit Reporting Act reforms.

U.S. PIRG and the state PIRGs have been active on this issue around the country and here in Washington, in fact since 1989 when Congress first began its efforts to review and renew the original 1970 Act.

I want to say at the outset that consumer groups think that the Fair Credit Reporting Act is an important privacy law and an important consumer protection law. The Fair Credit Reporting Act is based on the fair information practices. It gives consumers a number of substantive rights to dispute, to review, to look at and audit their information, and to seek redress when their information is inaccurate. As Mr. Bennett and Assistant Attorney General Brill have testified, however, it is sometimes difficult to enforce those rights. That is why we believe that Congress should strengthen the Fair Credit Reporting Act.

We believe that one aspect of the strengthening of the Fair Credit Reporting Act is to fully restore states' rights to protect their consumers better. We fundamentally believe that our credit system in this country is not based on the preemption that was temporarily inserted by the Congress in 1996, but is based on a number of other factors. We fundamentally believe that the credit system that has served us well, but could serve us better, will not be jeopardized by expiration of preemption.

As Justice Brandeis said in his dissent in New State Ice vs. Liebmann, "It is a happy incident in our federal system that a single courageous state may engage in novel social and economic experiments." We believe, as Assistant Attorney General Brill testified and as I outlined in great detail in my testimony, that we do not have a uniform standard around the country, that the Fair Credit Reporting Act did not create a uniform standard. In fact, the states, where they are allowed to, have experimented and have gone far ahead of the Congress in matters of credit report protection.

In fact, the states have moved more quickly. Vermont passed its law in 1992; California, 1994; Massachusetts, 1995; while Congress fumbled until 1996. Since then, Congress has only enacted one law to deal with the tremendous epidemic of identity theft. All Congress has done about identity theft is in 1998 enacted legislation to criminalize identity theft. Meanwhile, the crime has gotten worse. As the FTC has stated in its annual reports, the identity theft complaints lead all others for the year 2000, 2001 and 2002, and doubled in 2002. Congress, though, has not done anything to rein in the sloppy credit granting practices that consumer groups believe are the root cause of identity theft.

It does not matter if a thief goes to jail for 5 years or 10 years if no one goes to jail and no one is caught, and it does not matter if you only catch one or two of the people that are doing it, if hundreds of thousands of people are doing it, because the credit card companies are aiding and abetting the identity thieves.

Meanwhile, to fill the gap, as again Assistant Attorney General Brill testified, the states have stepped in and enacted a number of laws. California has a list bullet by bullet of five pages of identity theft-related reform laws that have already been enacted. Six states have free credit report laws.

One example I want to leave you with is that California and Ohio have both enacted legislation that is being implemented over this year and the next couple of years to require the truncation of credit card numbers on receipts. Earlier this year, Visa trumpeted in a press conference that it would voluntarily truncate credit card numbers on receipts. I suspect that had two states not done this, and had not a dozen states been considering this, Visa would not have enacted that so-called voluntary provision.

I am concerned that the debate in this committee is over the question of whether we should preserve the status quo. I do not think the status quo is good enough. I think that in our testimony we outline a number of problems with the Fair Credit Reporting Act, as other witnesses have discussed today; the abusive use of account reviews to deny or raise the price that consumers pay. The uniformity issue, many people have argued that we have a free flow of credit; that the voluntary system has served us well. Yet no witness has talked about the serious problem that has been identified in several agency guidances and in a recent Federal Reserve Bulletin article.

Because of the lack of enforcement by the agencies, a number of the largest banks in the country are not fully reporting complete information about their customers. I think that is a serious problem that prevents consumers from shopping around. The accuracy of information should include the completeness of information, yet the Federal Reserve, in a study of 248,000 credit reports, found that 70 percent of credit reports contained at least one trade line where information was not being completely reported.

My testimony also outlines the problems posed by the preemption provisions in the Act, how the confusion over the affiliate sharing provision has chilled efforts in states to enact stronger financial privacy laws under the Gramm-Leach-Bliley Act's positive provision. I have outlined how difficult it is to deal with opting out under the pre-screening rules. Mr. Bennett has outlined the difficulties in reinvestigation procedures.

Finally, my testimony goes into tremendous detail summarizing the Consumer Federation of America report that finds that 29 percent of consumers have a disparity of at least 50 points on their credit scores from each of the three credit reporting agencies, which would suggest in our view that there are significant problems in this system and that the status quo just is not good enough.

I know I have run out of time, but I would be happy to take your questions. Thank you.

[The prepared statement of Ed Mierzwinski can be found on page 302 in the appendix.]

Mr. TIBERI. Ms. Smith?

STATEMENT OF SHANNA SMITH, EXECUTIVE DIRECTOR, NATIONAL FAIR HOUSING ALLIANCE

Ms. SHANNA SMITH. Thank you.

My name is Shanna Smith and I am the President and CEO of the National Fair Housing Alliance. I want to thank the committee for the invitation to testify about the access to fair credit and the use of credit scoring in mortgage loans and homeowners insurance.

The National Fair Housing Alliance represents virtually all of the private fair housing centers in the United States. One of our charges is to examine and challenge discriminatory barriers to homeownership. Many of you know that the Administration this month has announced that it is homeownership month.

I want to deal first with fair access to credit. As many people know, studies and lawsuits continue to demonstrate that African Americans, Hispanics and women and elderly women in particular are not treated the same when they are applying for credit as similarly situated white males. As a result, these groups of people end up paying higher interest rates or paying more for a product.

When you pay higher interest rates, you pay more for a product. The money you have in your pocket at the end of the month is less. Some scholars refer to this as the Black tax. White people who are similarly situated as people of color have the opportunity to have more disposable income, more money for savings. Some people have said, African Americans, Latinos and women ought to be better negotiators when they are purchasing products or trying to get a home loan, or to get homeowners insurance. Yet we have conducted testing, and in our testing we send in people who are equally qualified, African Americans, Latinos, and whites, and none of them are negotiating. They are all asking for the same terms and conditions for a loan. They are asking for homeowners insurance. They are asking to purchase a product. No one is instructed to negotiate harder than someone else. Yet invariably, we find that the African American and Latino applicants are charged higher rates for mortgage loans, higher fees, and when it comes to homeowners insurance, they are paying a higher premium and oftentimes getting inferior coverage.

That has been demonstrated with settlements that we have had through the HUD administrative procedure with State Farm and Allstate insurance companies in 1996 and 1997. Since that time, those two insurers drastically changed their underwriting policies and procedures to make sure that people living in integrated and predominantly African American and Latino neighborhoods have access to the good products that white consumers in white neighborhoods have always had access to.

If you listen to the earlier testimony, there are a lot of problems with the accuracy of the information that the credit bureaus maintain. I am telling you that access to credit is fraught with racial and ethnic and gender discrimination. The reporting of that information to those credit bureaus reflects that. If these credit reporting repositories do not keep accurate information and if sub-prime lenders and predatory lenders and conventional lenders fail to report good credit-paying habits of their customers, then those people who are creating credit scoring models are building their models on a foundation that is fraught with discrimination. How can you build something that is supposed to determine equity, when what you are building it upon is full of discrimination? So any of these credit scoring models that are being purported to be able to predict people's behaviors are not accurate.

When I first looked at the mortgage lending credit scoring model years ago when it was coming out, our concern was, what is it predicting? Is it predicting a default or foreclosure? Default means I did not make a payment this month. Does that also predict, then, who will cure that default? I think that if somebody is late in payments, it is reasonable to say that they have to pay a higher interest rate or a different fee. But to charge them an extraordinary rate when they are not actually going to go into foreclosure is unconscionable and unreasonable.

With homeowners insurance issues, one of my biggest concerns is, right when this whole credit scoring issue started with homeowners insurance, we asked them what does this predict. They initially said to us, it predicts who will commit a fraud. I said, well, my goodness; if it can do that, then why don't we have all the police chiefs in the country run our credit reports and arrest us now? If you can predict that, then let's get rid of that. They said, oh, no, no. It can predict who is going to file a claim. Talking with the insurance companies, I meet with them regularly, they say to me that weather is a major reason for claims, and the other predictor they say is that people who filed claims before will file them again.

So what would my credit score have to do with that? And then you have to ask yourself as a committee, and I will wrap up, if you use a credit score for getting a mortgage loan and that same credit history file is used by the insurance company to deny me homeowners insurance, what is going on? If I am good enough to get a mortgage loan and my credit is good enough for that, why isn't my credit good enough to get homeowners insurance, because without that I cannot close on my mortgage loan. My testimony has many recommendations.

Finally, I would say that if credit scoring is going to continue to be used by the homeowners insurance companies, then they should be held to the same standards that the lenders are, and there should be some type of reporting by these insurance companies so that we in the civil rights movement can monitor the types of policies, the cost of policies that are made available at the census tract level.

Thank you.

[The prepared statement of Shanna L. Smith can be found on page 450 in the appendix.]

Mr. TIBERI. Thank you.

I would like to reintroduce Mr. Lizarraga.

STATEMENT OF DAVID LIZARRAGA, PRESIDENT AND CEO, TELACU

Mr. LIZARRAGA. Good afternoon, Mr. Chairman, representatives and members of the subcommittee, Representative Waters and Representative Royce.

I am David Lizarraga, Chairman and CEO of The East Los Angeles Community Union, TELACU, a Los Angeles-based nonprofit community economic development corporation that has become one of the nation's largest CDCs, with more than $350 million in assets. We are the fourth largest Hispanic company in California and 22nd in the nation.

In the 1960s, East Los Angeles was abandoned by the major companies that had for generations been the lifeblood of the community. We fell into a devastating economic decline. When our country went into a deep economic recession, our communities went into an economic depression. TELACU came together to provide self-sufficiency and with the opportunities to use tools that would create dynamic opportunities to rebuild and enhance the communities it serves. TELACU's mission of providing greater opportunities continues to be realized in the creation of new jobs, responsive financial institutions, expanding businesses, quality affordable housing, and educational opportunities for young people and veterans alike.

The refusal of credit to those in traditionally underserved communities locked the neighborhoods in our communities into financial stagnation. In 1976 to begin reversing this trend, and before the Community Reinvestment Act was enacted, TELACU combated redlining by creating a bank of its own. It was called Community Commerce Bank, a community development financial institution designed for the express purpose of serving the credit needs of people in our neighborhoods and communities. I am honored to be Chairman of the Board of Directors of this bank.

We make loans to families and small business owners, and our bank has now extended its services to under-banked communities throughout California. The success of our bank is a testament to the viability of inter-city lending. Since 1976, our small bank has loaned $1.5 billion to previously un-banked customers. For example, in 1996 we took a chance on a local Hispanic realtor with limited credit and assets, and made him a loan to purchase a single home from HUD and rehabilitate it. It was boarded up, full of weeds, a hangout for gangs and drug dealers.

This businessman restored the property which was located in a low-income neighborhood in the barrio. We sold it to a first-time homebuyer, brought stability to a neighborhood, and preserved positive quality of life for that block. We now fund 20 small business developers that month after month and year after year make a good living reclaiming neighborhoods just like this one.

The communities we serve often require that our loan underwriting be nontraditional, but we are highly profitable. We have an enviable delinquency rate. We are highly rated by our State and Federal bank regulators. We have been recognized year after year by the U.S. Small Business Administration as one of the best small business lenders in the region. The services of our bank are available to all our customers, but our focus is on the low-income and minority neighborhoods in our community. The great majority of our current minority customer-base is Hispanic.

All financial institutions will soon have to recognize that credit programs reaching the fast-growing Hispanic population in this country will be necessary to sustain profitability. The U.S. Hispanic population is expected to reach 53 million by 2020. The annual purchasing power of Hispanics in the United States, including Puerto Rico, is already estimated to be $630 billion. In the not so distant future, it is projected to reach $1 trillion.

The service that the consumer credit reporting industry provides is essential to our bank, to the entire financial services industry, and to most businesses and nearly all consumers. Accurate data and information are essential for robust competition in the marketplace. That is one reason that community development financial institutions like ours argue on behalf of accurate information in credit reporting. It is also the reason why we work so hard to educate consumers, so that they can take advantage of their right to ensure accuracy in what is collected and reported about them, and to limit with whom this information is shared.

This is particularly important to low-income and minority consumers. Accurate credit data collection and reporting can help nontraditional borrowers overcome barriers that have artificially constrained economic growth in minority neighborhoods. If a nontraditional borrower retains a satisfactory credit record that is properly reported, it will be much more difficult for a lender or business to defend a decision not to provide credit.

One of the major goals of the Fair Credit Reporting Act, including the 1996 amendments, has been to promote accuracy in credit reporting by credit reporting agencies. However, the Federal Trade Commission reported in 2002 that complaints about credit reports are still one of the most common consumer complaints the agency receives, with the largest number of complaints still relating to accuracy.

I believe the Congress should take appropriate measures to ensure greater accuracy in credit reports, including vigorous oversight and regulatory enforcement. Additionally, public and private support for consumer education can help ensure increased accuracy. But problems are not always related to accuracy. It is sometimes how reports are used, not the credit reports themselves, which is the problem.

Finally, Mr. Chairman, let me say a word about common national standards for credit reporting. The provisions of FCRA that makes the federal standard preeminent expires on January 1 of next year. I support a common national standard, Mr. Chairman, but by that I do not mean a standard pegged to the lowest common denominator. I know from our own experience in California that a hodge-podge of local standards could interfere with the good lending that we do at TELACU and Community Commerce Bank.

Under Gramm-Leach-Bliley, we have had a number of attempts at local privacy standards in jurisdictions we serve across California. A proliferation of such local fair credit reporting standards could create difficulties for our highly regarded lending to low-income and minority borrowers.

So I would argue for a vigorously enforced federal standard with appropriate oversight for this committee and the Congress. I believe that such a federal credit standard serves our bank well, but more importantly serves our consumers well. I believe that the FCRA has helped advance the kind of lending and credit opportunities that we have worked so hard to make available in our communities, and I strongly urge its reauthorization.

[The prepared statement of David Lizarraga can be found on page 297 in the appendix.]

Mr. TIBERI. Thank you.

Mr. Brough?

STATEMENT OF WAYNE T. BROUGH, CHIEF ECONOMIST, CITIZENS FOR A SOUND ECONOMY

Mr. BROUGH. Thank you, Mr. Chairman and members of the committee.

My name is Wayne Brough and I am the chief economist at Citizens for a Sound Economy, which is a 280,000-member grassroots organization that promotes market-based solutions to public policy questions.

The Fair Credit Reporting Act has allowed the United States to develop an integrated and highly efficient system of information sharing, and allows businesses to provide consumers a wider array of financial services and products at competitive prices. On behalf of the members of Citizens for a Sound Economy, I urge you not to ignore the importance of establishing uniform standards and the need to extend the 1996 amendments to the Fair Credit Reporting Act.

The Fair Credit Reporting Act has generated tremendous benefits for businesses and consumers by establishing these standards. At the same time, this information sharing has raised serious concerns about privacy. The advances in technology and the commercialization of data have magnified both the benefits and concerns about information sharing. It is the role of the Fair Credit Reporting Act to balance these concerns.

It is important to remember that the Fair Credit Reporting Act was created to facilitate the exchange of this information. This information does provide benefits to consumers and the economy as a whole, and FCRA sets up the guidelines to do this. Prior to 1970, the market for credit was localized, ad hoc, and limited. The Fair Credit Reporting Act made this a nationwide market with new standards that allow consumers access to a wider array of financial services and products, while increasing competition among providers. Today, with new technologies, the market has become very efficient. The 1996 amendments to the Fair Credit Reporting Act acknowledged these benefits of sharing information, while establishing some new safeguards.

If you look at the private sector, information sharing has become integral to many. To be successful, businesses must compete and provide better services for consumers, and better information is one source of competition. It allows more customized marketing in products, reduces fraud, and lowers costs. At the same time, consumers in the private sector can exercise choice. Consumers value privacy and businesses are realizing this, and they are beginning to compete based on privacy policies. Privacy policies in the future must consider the benefits of these information-sharing practices.

Laws that restrict the flow of information can have detrimental impacts on consumers. The Fair Credit Reporting Act establishes guidelines for the use of credit information. This has allowed the United States to develop one of the most efficient and sophisticated financial services markets in the world. Seventy-five percent of all households are participants in the market for consumer credit or mortgages, and consumer access to credit has increased and so has competition among providers.

With respect to insurance, I just wanted to go into some things. The insurance companies have used the information in credit scores as a risk characteristic to help predict future losses. This allows companies to price products more efficiently, while covering their costs. Risk classification allows insurers to divide individuals into groups with similar claims and set prices based on the probability of future loss. Driving history, age and gender are common variables to classify risk, but increasingly insurance scores with credit have been found to be more reliable predictors of future risk.

Why there is the strong correlation between credit history and the risk of future loss is unclear. One theory says that a good credit score predicts risk-averse behavior, which means safer driving habits and better consumer practices. But there are many other theories and none of them are very conclusive. But that does not betray the fact that there is a very strong statistically significant correlation between risk and credit scores. That is enough to make this a useful rating variable. When insurers ignore or are prohibited from using effective rating variables, consumers are harmed because the cost of insurance will be higher than it should be. More accurate information allows insurers to offer a wider array of products to customers they would otherwise not be able to cover.

There has been some criticism of the use of these credit scores. The first is that the correlation has not been established. But there are a number of studies that demonstrate this. If there was not an established link, I do not think the insurance industry would be very interested in pursuing this as a risk factor.

Another criticism is that the information comprising the credit report is inaccurate. There are problems with the accuracy, and I think FCRA was set up to address some of those. But if this was true on a broad scale, then the correlation would not hold true over time. The third criticism is that the use of credit reports has a disparate impact on protected classes. Again, if you look at the studies on this, there are none that have conclusively demonstrated this effect.

Restricting the use of classifications such as credit history reduces the efficiency of the market. It limits the ability to accurately predict future loss. Making transactions less efficient does not help consumers or producers. The result is higher prices, subsidies, and fewer choices in the market. To be competitive, loss ratios must be predicted as accurately as possible. Otherwise, consumers bear the costs. Concerns over insurance pricing are solved by injecting more competition, not reducing the flow of information.

The Fair Credit Reporting Act has established important uniform standards and safeguards for credit markets and information-sharing. The consumer benefits through lower costs, increased availability and expanded choices for financial services and products. This information is useful in the insurance market as well. Information about credit provides more accurate risk classification. Restrictions on the use of such tools create inefficiencies that generate higher costs for consumers and higher premiums. To increase availability and affordability of insurance, increase competition. This means using more accurate models of risk and credit histories provide such a role.

The Fair Credit Reporting Act has acknowledged such uses and should continue to facilitate this use, especially at a time when state-level privacy and credit scoring legislation may be impeding market activity.

Thank you.

[The prepared statement of Wayne T. Brough can be found on page 229 in the appendix.]

Mr. TIBERI. Thank you, Mr. Brough.

Thank you all for your testimony. I have a couple of questions here.

Mr. Mierzwinski, right?

Mr. MIERZWINSKI. You get it right every single time.

Mr. TIBERI. Okay. I just look at it and it is tough. So is my name.

You said the status quo is not good enough. You and I would agree on that. I would like to make the national uniform standards stronger and I think you would like to eliminate them. You touched upon the fact that a single state or a single courageous state could do something I would assume you met stronger than what the national standard is.

Let me take that example and have you answer this question. Let's assume that California, which is probably a good example, passed a credit standard that was far more restrictive than the current national standard. Wouldn't that mean that the California standard would become the national standard?

Mr. MIERZWINSKI. I think that that is entirely possible, that a standard adopted by one state could eventually become adopted federally. I think your inference is that because California happens to be bigger than Vermont, for example, that the federal government might, or industry might just decide to adopt California's rule voluntarily on a national basis.

We would look at that as a good outcome, because we believe in adequate uniform standards. Our view is that one or two states might pass such a law, but that 50 states would not pass 50 different laws. The theory being that you would have balkanization I believe is the term that the industry uses in its advertising. So I think that if a state comes up with a good idea, other states would copy it.

I presume that you might have a follow up which is: Is it right for California to make national law?

Mr. TIBERI. Correct.

Mr. MIERZWINSKI. I think that if the Congress has failed to come up with an adequate standard, that is the circumstance under which California would act. Secondly, if the Congress comes up with a national standard, the states have demonstrated an ability to move more quickly if there are local circumstances such as Norwich, Vermont or other problems.

One additional issue that has already occurred and will possibly be a subject of the next panel, I am guessing that the Fair Isaac witness may trumpet the fact that they have made credit scores available nationally. In fact, they opposed vehemently California legislation that actually is the real reason credit scores are now available nationally is because of California.

Mr. TIBERI. Let me get your thoughts on this issue. Mr. Lizarraga's testimony pretty much applauded what has happened in his community with respect to opportunities that his constituents have benefited from because of FCRA. What would your thoughts be on that issue and the issue of what Mr. Rodriguez talked about, if you were here for the previous panel, with respect to homeownership increase and all the other litany of items that he mentioned that his members have had an opportunity to grow under the FCRA?

Mr. MIERZWINSKI. Again, the second paragraph of my testimony says this is a very important law that provides tremendous credit opportunity for consumers. But when it does not work, it does not work well enough. Our view would be that the preemption in 1996 is not the reason that all those opportunities are taking effect. We would say that since the industry is the one trying to extend the preemption, that they have a burden of proof to provide, as Assistant Attorney General Brill suggested, regression analysis and detailed studies. All I have seen are white papers mentioning the word "uniformity" over and over again like a mantra.

Mr. TIBERI. Thank you.

Mr. Lizarraga, you testified that a strong national system would be preferable to a state system, or maybe even worse in my mind, maybe your mind, allowing even local governments to set standards. Talk about that issue and what it would mean to you in California.

Mr. LIZARRAGA. I also said that I do not mean a standard pegged to the lowest common denominator.

Mr. TIBERI. Right, a strong standard.

Mr. LIZARRAGA. A very, very strong standard. It is very, very difficult to extend credit to individuals when you have this patchwork of rules and regulations that, yes, we would all adopt a uniform state standard that would be a level playing field for everybody and a rule we can probably all follow. On the other hand, when that does not preempt even local municipal standards and you have counties and cities coming up with their own rules and regulations, it makes it almost impossible to extend credit or for credit to be applied for in any meaningful way.

The people that are really affected in our community are folks that really have the least access to credit facilities. The only other facilities that are available to them if they do not participate would be bank cashing, check-cashing types or hard-money lenders in the community. That makes it very difficult. We do have individuals that come to our bank to establish credit almost for the first time. This uniformity would be very, very helpful if it would preempt local municipalities, in addition to providing a standard that states would adopt.

Mr. TIBERI. Thank you.

I am going to defer to the ranking member of the committee, Mr. Sanders.

Mr. SANDERS. Thank you, Mr. Chairman.

My own view is in fact that we should have very strong federal standards, but that should be the floor. On top of that we should give in our democratic society where a lot of people give lip service to states' rights, we should give those states that want to go further the right to do so. Because my experience in government has been is that lo and behold in Colorado or in Utah, somebody comes up with an idea. And you know what? It works. And then in Massachusetts, they say look what they did in Colorado; that is a good idea; we can do that. And you will find that many advances that have been made in our society do take place not because the federal government has deemed them, but because somebody in some place has an idea, other states adopt the idea, and eventually it filters on up to the federal government.

So I think we want strong national standards, among other things making sure that every citizens in our country can get a free credit report. But in addition to that, we certainly do want to give states the options to go further.

I would like to ask Mr. Mierzwinski his view on the impact if some are successful here of limiting those states who want to go beyond federal standards in protecting consumers' rights.

Mr. MIERZWINSKI. I think that the limitations on states's rights means that we are stuck with whatever standard Congress comes up with. I am convinced, after working here for 12 years, that it is very difficult to move the inertia of Congress and that it is easier for the states to respond. They respond more quickly when local problems occur. So the issue would be that Congress would pass a law and then think that that was the be all and end all law. Then when a problem came up, we would not be able to convince Congress to fix it.

Mr. SANDERS. And large states like California or small states like Vermont will come up with different problems that have different needs. If we are letting the federal government make all of the decisions, then states are not going to be able to respond to the particular needs of their own consumers.

Mr. MIERZWINSKI. That is exactly right.

Mr. SANDERS. I would like you, again, Mr. Mierzwinski, and others can jump in; let's not be naive about the nature of this debate. On one side, we have virtually all of the consumer organizations who do not believe that the federal government should preempt. On the other side, we have very powerful multi-billion dollar interests. What are the dynamics of what is going on here?

Mr. MIERZWINSKI. I think there is a lot of money on the table, and there is a lot of interest in preserving the status quo by the vested interests. I think they believe that the system is accurate enough for their purposes. That is an important point, accurate enough. It tends to lean towards false-negative information and there are enough people out there with risk-based pricing paying at risk-based prices. People are not just being denied anymore, the way they used to be. People are simply paying more. The industry is happy with that system. It is just not good enough.

Mr. SANDERS. Let me just jump in and ask anybody. I did not mean just to focus on Mr. Mierzwinski. One of the scandals that has upset me very much, and we will see if it happens or not that this Congress will move. We are going to introduce legislation. You may have seen on the front page of the New York Times last week this outrage by which credit card companies tell an individual you are going to be paying 5 percent, and then lo and behold three years before you were late making an auto loan or late on your rent, and suddenly your interest rates go from 6 percent to 30 percent.

I think the federal government, the Congress, should deal with it. My guess is that because of moneyed interests, we will not deal with it. My guess is there are some states that may want to deal with that issue. What do you think? How should the people get protection from the rip-offs of the credit card companies who are tripling, quadrupling their interest rates? Mr. Brough, do you have a thought on that?

Mr. BROUGH. In my opinion, I think the best protection is a very competitive market. Having access to a wider array of credit and a wider number of providers in a larger market is the best way.

Mr. SANDERS. But all of the credit card companies are doing that. MasterCard is. Citibank is doing it. They send out five billion credit card applications a year, five billion. Do you think that unless government acts to protect consumers, consumers will get protection?

Mr. BROUGH. I think under the existing framework and in a competitive market, there will be entrepreneurs in the credit markets, as well as in other markets, and they will respond to this void.

Mr. SANDERS. Okay.

Mr. BROUGH. If there is an opportunity to make money, they will do it.

Mr. SANDERS. Yes, Ms. Smith?

Ms. SHANNA SMITH. He mentions a competitive market, but if you open and close accounts in order to get better deals, your credit score can be lowered because of that activity. So you are caught one way or the other. You are either paying a higher interest rate, stuck in that situation so that you do not open and close accounts, or you open and close accounts for a better interest rate and you do not get it when you go someplace else to buy a car because your credit score is lowered.

Mr. SANDERS. Mr. Mierzwinski?

Mr. MIERZWINSKI. I think that, Congressman Sanders, this New York Times story on account review abuse is a very important story that the committee should look into further. Very quickly, first of all, what if you were a victim of identity theft or mistakes on your credit report and your credit score declines because of that? Second, what if you are a victim of your bank intentionally gaming the credit scoring system by failing to completely report on you, to deflate your credit score so that you cannot shop around? Should you pay higher rates because of that?

Mr. SANDERS. Or what happens if you have an emergency in your family and you need to borrow money? Your credit goes up because somebody was sick in your family.

I want to thank you. I have gone on beyond my five minutes.

Thank you, Mr. Chairman.

Mr. GILLMOR. [Presiding.] Thank you very much, Mr. Sanders.

The gentlelady from California, Ms. Waters?

Ms. WATERS. Mr. Chairman, I want to thank you for holding this hearing. I am sorry that I could not be here the entire day. There are just so many other activities going on in this building that we all have to spread ourselves pretty thin. But I think this is a very, very important hearing.

I am very pleased at this particular consumer panel and wanted to be here for this panel more than any other because it is from this panel that we can really learn what is wrong with the credit reporting system. I am very pleased that Mr. David Lizarraga is here from TELACU because I have worked with him for many, many years. His description of what he and his organization have been able to do is not as generous as it should be. They have done a phenomenal job starting out in East L.A., but spreading out across the state in many communities. So I know that he understands what it takes to be able to empower citizens who have been redlined; who have been dropped out of the system; who have not had credit opportunities, and what it means to be able to not only counsel, but devise systems that will include, rather than exclude.

To that end, Mr. Chairman, with all of the information that you are hearing today, one area that is of particular interest to me is, of course, credit scoring. I dislike credit scoring, period. I don't like it. I wish we could eliminate it, get rid of it once and for all. It is absolutely ridiculous for those who are in the position to extend credit to simply look at numbers and make a decision about whether or not someone is credit-worthy.

I believe that the numbers oftentimes are not accurate, and we do not have any way of knowing what has gone into that information. I believe that through credit scoring, we are denying our credit-worthy people the opportunity to own a home, to make purchases that are needed by their family for a decent quality of life. I believe that this is the one area that this Congress should put some time and attention into. Again, my preference would be to get rid of it.

You know, credit scoring to me is like mandatory minimum sentencing, which I have been fighting for many, many years. Mandatory minimum sentencing in the criminal justice system takes away the ability of the judge to use his good sense and discretion to determine what a person is all about, and to be able to review their history and their record, and come up with some decision about their intent, et cetera, et cetera. The same thing with credit scoring.

You have heard Mr. David Lizarraga refer to the kind of individual that he is attempting to serve. I know so many people who have worked hard all of their lives. Some of them made a mistake, got laid off from a job, could not take care of their responsibilities. But the minute they got a job, not only did they pay their bills, but they paid them faster and they speeded up the amount of time to pay those bills. I know some folks who do not know how to give all of the information that is needed to make the assessment, and so they have been good bill-payers, for instance, with electric bills and utility bills, and that should be taken into consideration and this credit scoring does not usually take that into consideration.

But the person who is there using that credit score to extend credit does not see a person. They don't see a human being, an individual. They don't get to understand something about this individual and what makes them a good credit risk, despite the fact this, that or some other may be missing or has not happened.

So if there is anything that I could say today, it is that African Americans, Latinos, people of color, immigrants who work very hard are hurt by this system, and that should not be. I will close by saying, and you are very generous with your time, that consumers are at the mercy of public policymakers. I am astounded by the amount of power that we have to determine the quality of life for our consumers, and we have failed in too many instances because we have not cared enough or we have gotten too many campaign contributions. We like to party with the very people who are the enemies of the consumers that we are sent here to protect.

I would just hope that we would see this whole area of credit reporting as one area that we could use our power to work on behalf of the consumers of this country. I am pleased and proud that our panelists are here today, and I would just ask this committee to take this information seriously and not only have national standards remain that we can judge the credit reporting by, but get rid of some of the problems in the system, credit scoring being the first one.

Thank you very much.

Mr. GILLMOR. The gentlelady's time has expired.

The chair will recognize himself for a couple of questions. One question, and this responds to what you brought up, Mr. Mierzwinski. You made the statement that banks intentionally falsely report on people's credit to prevent them from going somewhere else. What evidence do you have of that? It would appear to me that that would expose any financial institution to a significant amount of liability if they did that. So I am asking you, where is your proof?

Mr. MIERZWINSKI. My proof, Representative Gillmor, is actually a speech by OCC Comptroller Hawke, an advisory from the FFIEC, and a recent bulletin article in the Federal Reserve Bulletin. The regulators recognize this important problem, but I do not think it is a problem as you have surmised it is. The reason is that under the Fair Credit Reporting Act, there is an accuracy standard, but there is no completeness standard. Also, there is no requirement that you report.

So I believe the regulators, if you read the FFIEC guidance which I cite in my testimony, the regulators have said, some of you are not reporting completely; apparently, this is because of competition; you don't want others to catch your customers. So what we recommend to all of you is that when you are calculating your own risk analysis, you take into account that other banks are not reporting completely.

It is bizarre and it is twisted, but it actually gets at one point that was discussed earlier this morning, which is that very few of us know what goes on inside the black box at Fair Isaac, but the banks know, and that is the reason the banks are not reporting. They are not reporting because they know it deflates credit scores.

Mr. GILLMOR. Let me ask Mrs. Green, the FCRA has established the framework under which consumers can obtain credit from lenders remotely, such as over the phone, through the Internet or by use of mail. Would you comment on how that might benefit senior citizens, especially those that might have difficulty leaving their homes?

Mrs. GREEN. I think there is some benefit to that. I know the seniors that I have talked to in the past few weeks concerning the issue of the Fair Credit Reporting Act are concerned. They feel that Congress needs to act to reestablish the standards that have been in effect, ones that they are comfortable with. There is great concern over a crazy-quilt type of action that might result.

I agree also that this is where ideas come from. I understand that, as well as many of my counterparts. But the senior population as a whole has grown up, let's say that, with the kind of issues that the Fair Credit Reporting Act has been of help to them. They are concerned that they are going to lose that. Getting back to the original question, you know, people of my age are usually pretty conservative and we are a lot more astute than sometimes our children think we are, and are able to make decisions for ourselves. I am seeing this and I am hearing it. But their greatest concern with this issue is that Congress will not act and that they will be left at sea.

Thank you.

Mr. GILLMOR. Thank you, Mrs. Green.

Mr. Brough, what impact will limitations on the use of insurance scoring have on consumers?

Mr. BROUGH. I think you are in a position where you are going to see the size and scope of the providers in the market start to dwindle a bit. Obviously, that puts upward pressure on rates. Basically, I think it restricts choice, and you are going to see some increases in prices as a result.

Mr. GILLMOR. One final question, this is for Mr. Lizarraga. I hope I have pronounced that correctly. What would be the impact on low-to moderate-income consumers if the FCRA is not reauthorized?

Mr. LIZARRAGA. I believe that it would have a negative impact in that we really need a national oversight; a national agenda, if you want to call it that way, that addresses the needs of consumers. I really believe that what Ms. Waters indicated a little bit earlier, that we can step up to the plate. Our bank does not use credit scoring. We do not use Fair Isaac. We believe that we can evaluate a person by the person's character, their capability to pay, their credit and their collateral. We use all kinds of different types of methods of assuring ourselves that they can pay that loan. I have to tell you, we have 0.01 percent delinquency, and out consumer is a low-and moderate-income borrower.

We also are very pleased to tell you that this last month, we did not have one single REO. So I just want to tell you that it can be done, but we do need some help and assistance and a strong national legislation in this regard that would be very, very helpful. We are plagued by the ability of local municipalities wanting to be of assistance, trying to step up to the plate to assist communities, coming up with rules and regulations that make it so difficult for us to really advance credit to our communities.

Mr. GILLMOR. Thank you.

Before I go to the next questioner, just a comment to Mrs. Green, who mentioned about how seniors know more than what their children think they do. I have six-year-old twins and they already think they know more than their father does.

[LAUGHTER]

Mrs. McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman.

Ms. Smith, there was something that you had said earlier, that if you take the credit cards and you close them out, that when you got for another possible loan or anything, your interest rate is going to be higher?

Ms. SHANNA SMITH. Your credit score can be lower. The more you use credit, if you open and close accounts because you are trying to get better rates, it can have a negative impact on your credit score. Housing counselors will tell when they are working with people, they will say, okay, you have too many open lines of credit; close those lines. We have learned that if you close your oldest lines of credit, which might have the highest interest rates, and you open a new line of credit with a lower interest rate, which is to my benefit if I do that, it is going to have a negative impact on my credit score. It is going to push my credit score down because the credit scoring companies look at the length of time I have had the credit, not the terms and conditions of the credit, but how long I have had that account open. While I am doing something good for myself, I am being punished through a credit scoring model.

Mrs. MCCARTHY. Following that through, though, because I just found this out as I was going through the testimony in the last two days, I probably have a drawer full of credit cards that I do not use, nor have I used them for probably a long time. They have been sitting there. There used to be a day when people actually sent you a credit card.

Ms. SHANNA SMITH. Yes.

Mrs. MCCARTHY. I have found out that when I went for a refinancing of my home, on my credit report came out all these credit cards that I have.

Ms. SHANNA SMITH. Right.

Mrs. MCCARTHY. Now, the question is, obviously I have not used them. I know I have not used them probably for five or six years. So, what do you do? If I cancel them all, am I going to go into that other racket? Or to be honest with you, I used to just cut them up. Now, I found out that they are still active, even though I cut them up.

I consider myself a fairly smart consumer. I guess if I was getting charged every month, which the credit cards do not do anymore because they are looking for your business, but wouldn't it be reasonable for the credit agencies to think, well, if you have not used them, and yes I know they can be an open end of credit, but if you have not used them, because how many of us go to Bob Stevens, it is an electronics place, hey, open up a credit card, he will give you 20 percent off. Well of course, I want an extra 20 percent off so I open it up. I have not used that card since.

I can probably go down a whole bunch of things. Wouldn't it be fair to say if you have not used your card for, say, three to five years, that if it is going to be on the report, it should say "inactive"?

Ms. SHANNA SMITH. I agree. When I did my own credit score, I found I forgot that I had this old credit card that I had not used for 8 years. It still showed up. I had an R-1 credit rating on it because I had never used it, but there they will say, well, those are open lines of credit. Theoretically, you could charge all the way up to the maximum on that open line of credit, so I understand why they might be worried if once they closed the loan, we are going to run out and use that credit card.

But at some point, we ought to be able to cure that without being penalized for curing that. Right now, I don't know for sure because no one knows what is in the black box of all the credit scoring agencies. I worked with a reporter in Cleveland, and she was doing that with her credit versus her husband's credit. She closed out his old accounts and his credit score went down. She is white and lives in a white neighborhood, so it was just about how the system works.

Mrs. MCCARTHY. Now, to follow through with that, I am also curious about this, because when I go home this weekend, I am going to have to go through all my credit cards. To tell you the truth, I don't have the time to call up the credit company. I will tell you why, because one credit card that I did have when I was going to use it because I wanted to use it to fly, I saw it was 21 percent interest. Now, obviously that is a credit card that has been there for a long time. You know what? I am going to call them up and I am going to renegotiate the rate.

Well, I tried calling at 5 o'clock in the morning. I tried calling at 11 o'clock at night. I tried calling whenever I could and never got through. To be honest with you, I gave up and I opened up a new account, same card, but they were sending you so many in the mail, so I just opened up a new account at 7.8 percent. I still have that card. That really ticked me off that I just couldn't get rid of it, but now I dropped that card, too, because if I cannot call them and talk to them, why do I want to do business with them?

Ms. SHANNA SMITH. Imagine if you are a consumer who had a real complaint and you were trying to correct that complaint for your credit report.

Mrs. MCCARTHY. They tell you to write them.

Ms. SHANNA SMITH. Yes.

[LAUGHTER]

Mrs. MCCARTHY. Thank you.

Thank you, Mr. Chairman.

Mrs. GREEN. Could I add something to that?

Mrs. MCCARTHY. Absolutely.

Mrs. GREEN. I spent my years in debt collection. That was the old bill collector in me that knew the answer to what you are saying. When I ran into people with this situation, I instructed them, if the account had a zero balance, particularly one that they did not use, to request it be cancelled and request that the credit grantor notify the credit bureau it was being closed at the consumer's request. And that helped.

Mrs. MCCARTHY. Thank you.

By the way, I will echo what the Chairman said. I have a 36-year-old son who questions everything I do financially.

Mrs. GREEN. I have four sons and I don't know how they can know it all when I do.

[LAUGHTER]

Mrs. MCCARTHY. That is all right. We still have some good time left in us.

I yield back the balance of my time.

Mr. GILLMOR. The gentlelady yields back.

The gentleman from California, Mr. Royce.

Mr. ROYCE. The difference is, if you knew Paul's kids, they really do know more than we do. They are geniuses.

[LAUGHTER]

I wanted to thank David Lizarraga for answering my question earlier, and for his views on a strong national standard for fair credit reporting.

I wanted to ask Mr. Brough a question. Mr. Brough's testimony pointed out the importance of consumers' access to credit to our overall economy. To hone in on that point, I wondered if you would elaborate on how FCRA and in particular the 1996 amendments have lowered the cost and access to credit for consumers.

Mr. BROUGH. There, I think what you are looking at is again the importance of a uniform standard. Having something that actually sets a nationwide standard allows the providers of credit to produce a wider array of products and serve a wider array of customers because now they are not dealing with small localized markets. At the same time, I think there is some value in looking at how these credit scores work. If you look at what we had previously, it was sort of these individual decisions, and I think, if you have these statistically valid models, what they find holds over time. So there are benefits to these things.

But I think it is the notion that providers have to compete among each other, and the wider the market of providers, the more competition you are going to have on the provider side. What gets that market large is the fact that you have consumers out there demanding this. And the wider market of consumers you are serving, it means all of these producers are going to have to be competing for that business. In the end, I think that is where we see the gains in the economy.

Mr. ROYCE. That goes to the issue of a wider market, but how about safety and soundness and the economy? In your view, has the FCRA and the 1996 amendments helped to improve that safety and soundness of the financial system through better information? In other words, you can manage risk better if you have that information?

Mr. BROUGH. Exactly. I think, and there are sort of two sides to that. One, you can manage risk better, so the businesses are being more prudent. At the same time, you have different tools to serve different customer bases. Given that, you see some people getting credit that may not have been able to get credit before.

Mr. ROYCE. So you have more access to credit, but can you quantify at all the safety and soundness issue, the argument that companies are better able to manage risk and therefore you have a sounder system?

Mr. BROUGH. Personally, I have not done that, and I do not have a good answer for you on that, because I have never really tried to do that, but I think if you did look at the risk management tools out there.

Mr. ROYCE. You are saying it is intuitive that that would happen?

Mr. BROUGH. It is intuitive, and I do think that the risk management tools that are available to people today are better than the risk management tool that were previously available. Logically, that would mean that we are in a better position.

Mr. ROYCE. Thank you, Mr. Brough.

Thank you, Mr. Chairman.

Mr. GILLMOR. Thank you, Mr. Royce.

Next is Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman, and thank you for all of you here today. I am sorry, like my other colleagues, we have been torn back and forth from different committees today, back and forth and mostly within this building for me.

I want to congratulate the chair, as well as the ranking member, for the number of panelists who have come before us today, as well as the balance that has been brought to these hearings. I especially want to welcome my friends from PIRG who when I was in the state legislature I got to know them a great deal, and I see a few in the audience here today.

Maybe you can, Mr. Mierzwinski, and maybe any of the panelists please respond. In your Statement, I was not here for it, but I have some notes on it from my staff, you mentioned concern about the status quo that exists right now with the seven provisions that are set to sunset later this year. If that were to happen, and I am assuming that is what you would prefer to see happen, and go back to the state legislature and have each state then theoretically develop its own set of laws concerning fair credit reporting.

California and New York, well, let's be more specific, New York, New Jersey, Connecticut, Massachusetts, Vermont, New Hampshire, Pennsylvania, all kind of bordering states around New York, for instance, would all theoretically have different standards. It could be anywhere from grace periods which could be different depending on the state. Does that not create somewhat of a bureaucratic nightmare for institutions that are evaluating whether one should have or should be denied or be given credit? If so, if it does create that bureaucracy, does it not potentially raise the costs of interest in terms of what is charged to the individuals receiving that loan?

Mr. MIERZWINSKI. Congressman, that is the industry's position, and they have argued very forcefully that that would occur. Earlier today, Assistant Attorney General Brill from one of the states with a stronger existing law under the grandfather provisions, Vermont, said that their citizens do not pay higher rates. They studied zero percent and instant loans, and found that bankruptcy rates are low, car loan rates are low, mortgage rates are low, and consumers are well-off.

I just do not see the states balkanizing the system like that. If we have a high enough, strong enough federal standard, the states will only act if a new problem arises. The idea of different grace periods is one of the examples you suggested. I believe that those might be construed as inconsistent under the federal law. And the federal law, we have never disagreed, should prohibit inconsistent state laws. We have only supported the notion that states should have stronger laws provided they are not inconsistent.

So I do not think that the industry's nightmare will come to pass. The States are rational actors.

Mr. CROWLEY. Unless, of course, you are from Vermont.

[LAUGHTER]

Mr. MIERZWINSKI. Yes, he is not here anymore, but 5 or 6 years ago, the realtors joined with the consumer groups in California because the realtors were having trouble getting consumers locked in mortgage loans. They were saying, “Oh, your credit score is too low.” The consumer was saying, “What is my credit score?” And the realtor would say, “I can tell you, but then I have to kill you.” They were not allowed to tell consumers their credit scores, and Fair Isaac vehemently opposed disclosing credit scores. It was in their contract with the credit bureaus that the ultimate consumer could not look at credit scores. They did not know why they were being turned down or paying too much for mortgages.

Fortunately, we got the realtors on our side. As a former state legislator, you know they have a lot of juice. The realtors and the consumer groups got California to pass that law. Now it has been adopted virtually nationally by Fair Isaac. We think it should become mandatory. That is the way the state-federal system should work.

Mr. CROWLEY. Would anyone else like to comment on that question? No one else wants to comment? How balanced is this?

Ms. SHANNA SMITH. I would like to say that we look at this like the Fair Housing Act. When the Fair Housing Act was passed in 1968, it was the federal standard. That federal law did not preempt any state or local fair housing laws. So states like Mississippi and Alabama, who still have not passed a Fair Housing Act for their state, the people who live there are protected under the federal law. But states like California and Ohio looked at the 1968 law and said, well, we really need to protect families with children and people with disabilities because the federal law didn’t. So they added those protections.

If you think that the Apartment Association, who testified here today, has to follow those various laws that are different from the federal fair housing law, the mortgage lenders, the homeowners insurance companies, the real estate industry, they all have to follow these different fair housing laws that are not only at the state level, but at local levels as well. It has not wreaked havoc in those industries.

Mr. CROWLEY. I would just comment. I am having trouble with this. I am sure many members are as well. The idea is we have 50 different states, and if they were to have 50 different standards, it would be complicating to industry in some way. I would hope that at least someone would admit to that. Would that not be the case? It would not be complicating these institutions? If so, does that complication, what does that do? That is what I am asking.

Mr. BROUGH. I think it does a couple of things. One, it changes the demand for some of these products within the state. I think the other thing that you are going to see, it is going to be very difficult for large-scale providers to go into a number of markets. In that sense, you will have people specializing in different states. When you start doing that, you lose some of the fluidity in the markets.

So I think if you are a company and you were going up, say for instance in the insurance market, you have 50 insurance Commissioners. Obviously, if you have to re-tool to operate in every single state, you are adding costs to the process. So clearly there are costs involved. I would be very leery to think about over-stepping the bounds and then having this system.

On the other side of that is when you start to pull things apart, it is not just the regulators or the legislators that are innovating. The market is trying to innovate, too. As you start throwing up these little barriers around the country, it gets more difficult for the people in the marketplace to come up with new products and serve consumers. So in that sense, I do think you have to be careful about the balance between the federal and the state regulations.

Mr. CROWLEY. My time has expired.

Mr. TIBERI. [Presiding.] The gentleman's time has expired. Thank you.

Ms. Maloney?

Mrs. MALONEY. Thank you very much, Mr. Chairman. Mr. Mierzwinski, I agree with many of the comments that you raised in your testimony about the need to address identity theft; also your comments earlier with Ranking Member Sanders on default pricing. That particular issue is particularly important.

I would like to ask you, Mr. Mierzwinski, and Mr. Brough, if you would comment on the statements that were made earlier by Mr. Bennett when he said that the FCRA, and to quote from his testimony, he says, "Disputes are up, identity theft is rampant, and consumer complaints to the FTC and FCRA in the identity theft areas are overwhelming all other matters." I would like to ask, do you agree with his interpretation? If you do agree, what specific changes would you recommend to improve the system to make it work better?

Secondly, following up on Mr. Brough's comments, I represent a retail hub, New York City. People come from all over the world and all over the U.S. to shop there. Every single store has their own credit card. You walk into any store and they will issue a credit card on the spot. They don't care where you are from. I don't know how they do it, but they just do it really fast. My question is, if you do not have a federal system, what would the impact be on what is financially important to New York City, which is that people shop there; they spend money; and they can get access to credit? I would like to begin with Mr. Mierzwinski on the first question, if you would respond to that; and Mr. Brough, to the first question on how it can be improved.

Secondly, the question of a financial hub like New York City, or it could be any city where you can get access to credit quickly, if you did not have a federal system, would that be an undue financial burden on the ability for New York stores to issue credit? This is an issue that retailers have raised to me, that they believe it is important to their ability to be in the marketplace.

Mr. Mierzwinski?

Mr. MIERZWINSKI. Thank you, Congresswoman. The second question first, very briefly, and this responds also to Mr. Crowley's question to me. If the federal standard is high enough, the states are not going to enact 50 different laws. But if the federal standard is not high enough, you should leave the states with the opportunity to react to changing local conditions. It is not in their interests as rational actors to hurt their economies by passing laws that become barriers.

The banks put up this straw man that there are going to be barriers. They have said there would be walls around North Dakota if they strengthened their affiliate sharing law. That is not true. They said there would be walls around Vermont. That is not true. So the federal law should be strong enough that you do not have to worry about the states, but leave them there just in case as a fail-safe.

Getting back to your first question, I totally agree with Mr. Bennett when he said that the FCRA reinvestigation system and consumer redress mechanism is broken. The consumers who complain to the credit bureaus are put in voicemail jail. They are given to people who are supposed to handle their complaint within four minutes, and they have great difficulty getting through. If you have your congressman or congresswoman call, they have a concierge service for those people, but the average citizen gets terrible service. Then if you do get a lawyer and go to court, there is a circular problem with the law that Mr. Bennett explains in great detail in his testimony, where no one is responsible, no one is ultimately liable.

It is very difficult to prove actual damages. It is very difficult to prove a violation. The companies rely on how difficult it is to sue them, so that they have calculated that their litigation costs are so modest that they do not have to improve their reinvestigation quality. So they sue the few consumers and they drive them nuts in court who sue them. They leave the rest of us hanging out, complaining, stuck in voicemail jail, not improving our credit reports. The answer, the solution in my view is, make it easier to sue the companies. That will force them to feel it in their pockets. If they feel it in their pockets, they will improve the system.

Mr. BROUGH. With respect to that question, that is an area that I have not looked a lot at, but I think these problems do pop up. I have seen the numbers that do not suggest that it is as rampant as some people say. Again, this is not my area of expertise, but whether it is just an issue of enforcing what is already on the books versus adding something new, I think that is what I would look at. Like I say, that is not my area of expertise.

On the other issue of New York stores, I think those kinds of questions are real questions. One of the things to look at and remember is that we have gone through this period of financial services deregulation. That entire market is a lot different than it was five or ten years ago. So when you look at that market, I think the competition has occurred since then is heating up, and the ability to move within the states is something that has to be looked at. So I would definitely say that you do have to be careful about throwing up state barriers against stores.

Mrs. MALONEY. Thank you.

Mr. TIBERI. Thank you.

The gentlelady's time has expired.

Mr. Meeks?

Mr. MEEKS. Thank you. I want to say exactly what Mr. Crowley said, in that I apologize, with committee hearings bouncing back and forth. So I apologize for not being here, but I will digest all of the testimony and information I heard in the period of time that I was here. It was very important, particularly on the dialogue with the gentlelady from Long Island, Ms. McCarthy, on this whole scoring piece and making sure that it is equitable.

What I am hearing is that a national standard would probably be best if it was a high standard. The question is whether or not the standard is high enough with what we do nationally. So I would implore all of you to work with us so that if we do a national standard, that it is a good one, and high enough. Because it seems to me, I know for example I do not want, going back to the interests of consumers, consumers to be determined in different ways based upon the state that they are in, to determine whether they will or will not get credit. We have this debate among ourselves also. For me, the whole issue of predatory lending, some states have good laws, other states don't, so it means that some people are victimized depending upon which state they live in.

From my viewpoint, I would rather make sure that there is a high standard across the nation so that no one would be victimized by predatory lending. Likewise, the same thing with reference to credit and the credit history. I tailed in on Ms. Waters's comments, and I know that in the African American community and the minority community, they are victimized more by bad credit and the credit ratings than anybody else I know, and it stops them from doing a lot of opportunities that his nation has, as a result of having a bad credit rating.

In fact, I know of individuals now where they cannot get insurance, and are considered a high insurance risk because they have bad credit. And then it gets all involved in their insurance being denied, yet the reverse is not happening if you have a good insurance rate, you cannot get credit. So it seems as though you are having both ways.

But that being said, here is my question, and I guess for anybody on the panel. With these pre-screening processes which allow consumers to receive credit card offers for which they have already been screened to be qualified for, as a result many people receive numerous credit cards every week. Often we do not want them, but sometimes we do use them.

Here is my question, the credit bureaus have said that they are concerned about sending negative credit reporting notices because they will be lost as junk mail. My question simply is: Do you believe that sending negative credit reporting notices would be beneficial or detrimental for consumers? I will ask one on each side.

Mr. BROUGH. Beneficial.

Mr. MEEKS. Beneficial.

Mr. BROUGH. Beneficial.

Mr. MIERZWINSKI. Congressman, that would be beneficial, if I understand your question correctly. I could point out that Colorado requires that any consumer who is credit-active, that is he either has two inquiries or two negative items. I believe the law may have been recently changed, but they wanted to make sure that people didn't just have no credit. But everybody who has inquiries on their credit report or a negative item put on their credit report annually is required to receive a notice from the credit bureaus of all of their credit reporting rights. That notice then triggers them to consider asking for their free credit report, which is also allowed in Colorado. So then they find out more about their rights.

In terms of the use of credit scores, by the way, our organization opposes their use and does not believe there is a causation relationship between credit scores and insurance risk.

Mr. MEEKS. Thank you.

I am not sure, going back to again Mr. Crowley's piece, and what you were talking about, I just want to have one question, with reference to if there was a consumer or a person who was in transit. Say, for example, if we did not have this high national standard or it was still where it was in one state, in Vermont, and you move from Vermont and you move into New York, and there are two different standards. How would that affect the individual consumer? Would they have to change their status at all? Would the original contract be what governs? Would the state that they moved to govern? How is that now? Because, you know, we have some states with a higher standard than others.

Do you understand the question?

Mr. MIERZWINSKI. If I understand, are you saying that if the consumer wants to sue, under which laws does he sue under?

Mr. MEEKS. No. I got my credit card in Vermont, which had a high standard for notifications, et cetera, et cetera.

Mr. MIERZWINSKI. Right. Okay.

Mr. MEEKS. And I moved from Vermont to New York, and they have a lower standard. What happens?

Mr. MIERZWINSKI. I do not see that anything would happen. The difference in the credit cards in the two different states, I do not know what would happen. Could you explain in more detail?

Mr. MEEKS. I yield to Mr. Crowley.

Mr. CROWLEY. If you issued the credit card in Vermont, you have a 90-day grace period. And then you moved. You made a purchase in Vermont and you moved to New York and they have a 60-day. Which would apply? Which grace period would apply?

Mr. MIERZWINSKI. I don't know the answer to that, but I don't think that is a Fair Credit Reporting Act issue. I think that is a truth-in-lending issue. The Truth in Lending Act is completely different than what we are discussing here. What we are discussing here is whether states can pass stronger laws to sue furnishers; whether states can pass stronger laws on notices and timetables under the Fair Credit Reporting Act and some other issues. But I do not see how that one applies.

I would defer to Attorney General Brill and ask her in a follow-up question.

Mr. TIBERI. Mr. Crowley, is that good?

Mr. CROWLEY. I was just making a point that there may be other issues, that may not necessarily be a grace period, it could be something else. I am just using it as an example, and it may be the wrong example, but you get the idea.

Mr. MIERZWINSKI. Again, we see that there are dozens of different credit reporting laws already, Congressman, and we do not see these problems occurring. Again, the federal law we see it as being a floor. Any law that is inconsistent with the federal law, we support being preempted. We disagree that "stronger" means "inconsistent." Under the current statute, if an industry group believes that a state law is inconsistent, it can appeal to the FTC and ask it to overturn it. I do not know that that happens very often.

Mr. TIBERI. The gentleman's time has expired.

Thank you to the panelists from the third group for being so patient with us. I would like to ask the fourth panel to be seated. I would like to tell the members that we are informed that there will be a series of votes around 4 o'clock, so I will ask the group of the fourth panel to get seated as quickly as possible. I will provide the introductions and we will get started. I will begin introducing the fourth panel today, starting from my left: John Ford, Chief Privacy Officer, Equifax; Cheryl St. John, Vice President, Fair Isaac Corporation; Mr. Richard Le Febvre, President, AAA American Credit Bureau; Mr. Paul Wohkittel, III, President, Lenders' Credit Services, Inc. and Director and Legislative Chair of the National Credit Reporting Association; Tim Spainhour, legal compliance leader, Acxiom Corporation; and last but not least, Mr. Anthony Rodriguez, staff attorney with the National Consumer Law Center.

Thank you all for coming. You each will have 5 minutes. The light will turn red. If you could wrap up at that point in time, and then we will hopefully be able to ask you some questions if there are any of us left, including me.

Mr. Ford?

STATEMENT OF JOHN FORD, CHIEF PRIVACY OFFICER, EQUIFAX, INC.

Mr. FORD. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am John Ford, Chief Privacy Officer for Equifax. I commend the members of this subcommittee and its excellent staff for the thoughtful and thorough manner in which it is reviewing uniform national standards under the Fair Credit Reporting Act. I appreciate this opportunity to present the Equifax point of view on this important public policy matter.

Before I go further, I would like to address for the record the implications made by a member of the second panel that somehow Equifax fails to provide quality reinvestigation services because we outsource some of our credit file maintenance operations to Jamaica. We are an international company with operations in many countries. As a publicly traded corporation, we have obligations to reduce unnecessary costs and to provide quality services. Our small operation in Jamaica does both. In fact, all of the service representatives happen to be college graduates.

Founded in 1899, Equifax is a publicly traded corporation that for 104 years has provided reliable information, products and services to our customers so that they, in turn, can make reliable and profitable risk decisions. Equifax treats consumers as valued customers, too. In fact, one of our fundamental operating principles is that by enlightening, enabling and empowering consumers through a comprehensive suite of credit solutions to better manage their credit health, consumers win, business wins, and our economy wins.

Our bottom line is really very simple. As a steward of sensitive financial information about virtually every adult American, Equifax must adhere to high standards for protecting privacy, for accuracy, and for customer service. Anything else is not just unsatisfactory, it is a threat to our very mission and success.

Today, there are three nationwide credit reporting companies engaging in real competition, competition that works to help promote a robust, healthy marketplace and to provide consumers with appropriate protections, knowledge and convenient and timely access to the goods and services they want. Also contrary to statements of an earlier panelist, banks, retailers and other information furnishers are not required to participate in the system, but most do so voluntarily because they understand the benefits of a full-file system for their business and for their customers' satisfaction.

In terms of data accuracy, I offer some statistics to help put that issue in perspective. Credit reporting agencies receive from data furnishers approximately two billion data elements each month on about 1.5 billion accounts for more than 210 million consumer files. We issue close to three million consumer credit reports every day. We at Equifax have a vested interest in the accuracy and the integrity of these credit reports and our credit database. So do our competitors, and so do lenders whose ability to make informed decisions depends on reliable data. If we provide inaccurate and unreliable data, we risk losing our customer's business and consumer trust. It is a testament to the extent of accuracy and reliability in the U.S. credit reporting system that lenders are willing to risk their capital with only a consumer application and a copy of a consumer's credit report.

Some consumer group reports often mistakenly count cosmetic errors as errors that impact a creditor's risk decision. If a credit report has a transposed character in the address or a missing middle initial, for example, these are cosmetic errors, data that is not critical to the risk decision. A data item that is true, but not yet updated, is also not an error. Error rates of the size touted by anecdotal, non-scientific research simply are not supported by the millions of highly efficient and predictive risk assessment decisions made in the marketplace every day. To generalize from sample sizes of 50 or 150 to a population of more than 210 million is simply faulty logic.

Equifax and our industry care very much about the integrity and the reliability of our databases, and we have invested millions of dollars in advanced technology and in skilled employees with an objective of putting the right information into the right file 100 percent of the time. Are we perfect? Absolutely not. Are we making great progress? Absolutely yes.

In the late 1980s, Congress began considering and deliberating possible FCRA reforms. These efforts culminated in the adoption of an extensive set of consumer protections in 1996. Having greatly strengthened the consumer protections afforded by the FCRA, Congress also elected to establish uniform national standards by preempting state authority with respect to carefully selected FCRA provisions. Much of the legislative language about the 1996 FCRA amendments reflect bipartisan support of national standards for credit reporting and a single set of federal rules.

Add to the lengthening list of reasons to retain national standards the fact that consumers are highly mobile and often have a presence in multiple states today. Forty-two million Americans move every year; six million Americans have second or vacation homes, many in a different state from their primary residence. In addition, millions of Americans live in one state, but work in another. If federal uniform standards were to lapse, it is possible that the most stringent state law from a large state would likely become the de facto national standard. I think there is sufficient evidence as well that despite statements to the contrary, that left in a vacuum, the states are not hesitant at all to jump in and to act with different and potentially conflicting law.

In closing, Mr. Chairman, I reiterate our position that retention of the current national standards in the FCRA is absolutely essential. Our banking system is national. Our credit reporting system is national. Our economy is national. Consumers' mobility is national in scope. Our enforcement and interpretative framework via the regulatory agencies is national. So should our governing law be national.

Thank you, Mr. Chairman.

[The prepared statement of John A. Ford can be found on page 234 in the appendix.]

Chairman BACHUS. Thank you.

Ms. St. John?

STATEMENT OF CHERYL ST. JOHN, VICE PRESIDENT, FAIR ISAAC CORPORATION

Ms. ST. JOHN. Thank you.

Mr. Chairman, members of the subcommittee, my name is Cheri St. John. I am the Vice President of global scoring solutions for Fair Isaac Corporation. Thank you for the opportunity to testify regarding the critical role played by uniform national credit reporting standards and credit scores that help consumers get the credit they deserve.

Fair Isaac invented statistically based credit risk evaluation systems, now commonly called credit scoring systems. Thousands of credit grantors use the scores known as FICO scores generated by Fair Isaac's scoring systems implemented at the three national credit reporting agencies. We also develop custom credit scoring systems for hundreds of the nation's leading lenders and insurance scoring systems for many leading insurance companies.

Fair Isaac has also given consumers an active role in credit reporting by pioneering consumer credit empowerment with its myFICO.com score explanation Web site. Millions of consumers have already taken control of their financial health by using myFico.com to obtain actionable credit information, including their FICO scores.

There are three main points I would like to highlight today. Point one, with credit scoring, more people get credit; they get it faster; and it is more affordable. By enabling lenders to extend credit quickly, while safely managing their risk, credit scores have made credit more accessible at lower rates to more people. More people can get credit because credit scores allow lenders to safely assess and account for the risk of consumers who are new to that lender and who may have been turned away by other lenders.

Scores make credit more affordable by reducing the cost of acquiring new accounts and managing portfolios, reducing loan losses, reducing marketing costs with pre-screening, and cutting the cost of capital with securitization. FICO scores are accepted, reliable and trusted to the point that even regulators use them to help ensure the safety and soundness of the financial system.

Point two, more data means smarter scores. Smarter scores help everyone get the credit they deserve. Fair Isaac supports the renewal of the national uniformity provisions of the FCRA. The current reporting system helps both consumers and lenders. If uniformity in credit information is lost, scores will be less predictive, lenders will be less able to distinguish risk, and consumers will be hurt. Consumers with better payment history will lose the benefit of always paying on time every time, and end up paying higher prices for credit. Varied rules that limit the nature and quality of the credit data available will only diminish the value of this powerful and beneficial tool.

Point three, people who understand their scores and improve their credit health have more credit power. Fair Isaac is the leader in helping consumers understand their scores and take control of their credit health. National uniformity in credit data empowers consumers by promoting consumer awareness and understanding of their credit standing, and helps prevent identity theft. If credit data varied from state to state, consumers would find it harder to understand and take charge of their credit, and harder to tell whether changes to their credit report are from state regulation or from suspicious activity. Well-meaning state regulation should not be allowed to diminish a consumer's role in managing his or her credit.

Removing information from credit reports, or even varying reported information from state to state would make the process of obtaining and understanding credit more difficult for consumers. Credit cost and availability should be based on each consumer's behavior, not on the state of residence.

In conclusion, credit scoring and the national credit reporting system created by the FCRA benefits consumers, lenders and our nation's economy.

I thank you for the opportunity to share Fair Isaac's experience and knowledge in this important area, and I would be happy to answer your questions.

[The prepared statement of Cheryl St. John can be found on page 464 in the appendix.]

Chairman BACHUS. Mr. Le Febvre?

STATEMENT OF RICHARD LE FEBVRE, PRESIDENT, AAA AMERICAN CREDIT BUREAU

Mr. LE FEBVRE. Good afternoon, Chairman Bachus and distinguished members of the subcommittee. My name is Richard Le Febvre. I am President and CEO of AAA American Credit Bureau. AAA was one of the first resellers that was allowed to re-score consumers' credit files dating back now five years. AAA has a national reputation and has calculated a tremendous number of consumers' credit scores with great success, and is considered one of America's foremost re-scoring companies.

I thank you for this opportunity to testify before you today on an issue that is fundamentally important to the American economy as a whole, and to individual Americans, the American dream of buying a home, an automobile, obtaining credit and insurance, and any other valuable asset.

Now, I want to explain what re-scoring is. Re-scoring is updating of credit information, updating account balances, deleting and updating inaccurate trade lines, deleting obsolete trade lines, updating and deleting public records, deleting inaccurate late payments, and updating incomplete or missing data. Every day, these errors can and do cost consumers money and result in credit denials. The errors cost consumers money by causing increased interest rates and less favorable credit terms. This is not meant to say the reports have a lot of inaccuracies, but inaccurate information in credit reports is a recurring and troubling problem that, under certain practices, now directly impacts facets of American lives.

H.R. 1473 is an insurance bill that I helped Congressman Gutierrez with with regard to the consumer disclosure section of that bill. I wanted to discuss reinvestigation or Section 1681 I. It is my opinion that the repositories do an overall good or fair job. But when the dispute is more sophisticated, requiring more basic thought, then they fail in their responsibilities.

Throwing technology at a problem with credit reporting errors does more harm when sometimes only a human can protect consumers against inaccurate reporting, no matter whose fault it is. The average dispute time at the repositories is 10 to 15 disputes per hour. As a national reseller handling consumer disputes, our average time per dispute ranges between 30 and 45 minutes; some lasting even longer. Dispute quality coming from the repositories must be questioned at an average time of one every five minutes.

Another problem I see all the time is reinsertion of previously deleted data that is updated or removed after re-scoring. I want to explain what a CRA-reseller is. The FTC created what they call the Credco consent decree, which is the bible of all re-sellers. But the industry is tying the hands of their CRA-resellers. One bad bureau trade line in a tri-merge credit report ruins consumers' credit worthiness and credit reputation. Consumer choices being destroyed by industry is focusing consumers to check their credit files in advance or buyer beware, or be ready to pay extremely high fees for re-scoring. It is a position that consumers should not have to face.

In the past, for $50, a reseller has verified two years of employment history, interviewed the consumer, sent them a copy of their credit report, verified any outdated trade lines, verified balances on accounts, verified any open collection of charge-offs, verified any public records, and verified whatever the consumer brought to our attention. This was all done within 24 to 48 hours.

Adverse action notice, which is one of the major issues under the FCRA, gives consumers a heads-up that something is wrong, causing them financial hardship. In today's information superhighway evaluations, these systems deny consumers the right to see their consumer reports, their credit reports, and scores that were used for the evaluations. Consumers cannot fight what they cannot see.

Risk-based pricing. Most consumer rate sheets show rates in terms based on minimum score requirements. Consumers cannot even apply for certain kinds of mortgages without meeting the minimum score requirements.

Account review. In many cases, credit card companies check the consumer's data almost on a monthly basis. I have seen interest rates double and triple over my 12.5 years in business, and lines decrease. I strongly question the logic for re-studying consumers' rates during a consumer's financial crisis, or they are a victim of errors, or victim of identity theft. I truly believe it puts the consumer further into debt and many times into bankruptcy. Infected scores lead to higher rates and terms. It also leads to increased risk for new lenders, lowering the consumer's credit worthiness and credit reputation, harming consumers and lenders that want to do a good loan.

Please review my examples. In my prepared statement, I gave you some examples that we have had. I want you to review numbers one, three and four, and if you have any questions, I would be more than happy to answer them.

Thank you.

[The prepared statement of Richard Le Febvre can be found on page 271 in the appendix.]

Chairman BACHUS. Thank you, Mr. Le Febvre.

At this time, Mr. Paul Wohkittel.

STATEMENT OF PAUL J. WOHKITTEL, III, PRESIDENT, LENDERS' CREDIT SERVICES, INC., DIRECTOR AND LEGISLATIVE CHAIR, NATIONAL CREDIT REPORTING ASSOCIATION

Mr. WOHKITTEL. Good afternoon, Mr. Chairman and distinguished committee members.

I am Paul Wohkittel. I am the President of Lenders' Credit Services in Baltimore, Maryland, and I am the Legislative GSE Chairman and a Director of the National Credit Reporting Association. Thank you for inviting me to today's hearing.

Lenders' Credit Services is a credit reporting agency that provides specialized mortgage credit reports, and it is referred to as a reseller in the Fair Credit Reporting Act because we do not gather and maintain a database of credit data on consumers, like the three main repositories do. Instead, we purchase their files and create specialized hybrid reports with the data and resell these specialty reports to our end-user, the mortgage lender.

In short, while the primary function of the repository is to collect and maintain consumer credit data, the primary function of resellers is to research and amend the data and perform enhanced customer service for lenders and borrowers alike. The services of my firm are utilized because we are highly specialized agents in the credit reporting industry, with the responsibility to act as a safeguard to assure the accuracy of the credit reports for the benefit of the lenders, and especially for the protection of consumers.

An excellent illustration of the valuable service we perform is the recent introduction of credit re-scoring. With the soaring popularity of automated underwriting systems that are driven to a high degree by risk-based scoring, consumers can be denied or offered higher than deserved interest rates if inaccuracies exist in their credit file, costing tens of thousands of dollars over the life of the loan. Our staff will fully analyze the entire credit report, and if inaccuracies exist, we will expediently correct them in conjunction with the credit repositories to generate a new and accurate score.

The National Credit Reporting Association, who I also represent today, is a nonprofit trade association that represents the consumer reporting industry and specifically reseller firms specializing in mortgage reporting, employment screening and tenant verifications. There are approximately 300 credit reporting agencies in the U.S. that specialize in mortgage reports. NCRA's more than 125 members provide in excess of 25 million reports per year to the mortgage industry to specifications required by HUD, Fannie Mae and Freddie Mac for mortgage underwriting. NCRA commends this committee for holding these hearings to seek a broad-based look at the credit reporting industry. The effectiveness of this industry is critical to the entire economy.

Further, we believe that the United States' credit reporting system, in a macro sense, is the best such system in the world. I say this from experience, as I have attended and presented at conferences in Central Asia and Eastern Europe, and I have knowledge of the systems in the different countries. I personally am currently involved in constructing a credit bureau in Kazakhstan, and I expect to begin one in Ukraine in September of this year. In these projects, I am afforded the opportunity to incorporate the best parts of our system and the Fair Credit Reporting Act. I am also able to spot developmental needs that, if addressed, could make our already superior system even better.

NCRA believes that an improvement to the system would not include allowing the preemption protection to expire. The need for a uniform national standard is clear to maintain the levels of efficiency that consumers currently enjoy when purchasing a product or a service on credit. Instead, we believe the focus should be placed on fine-tuning the Fair Credit Reporting Act to allow it to address the needs of all parties concerned in the credit lending process.

Four suggested enhancements are to strengthen the responsibilities of furnishers of information section; to provide better disclosure of the original qualifying report when any adverse lending actions exist; to enhance the definitions section of the Fair Credit Reporting Act pertaining to consumer reporting agencies, to better define and delineate responsibilities between repositories and intermediary agencies known as resellers; and finally to increase the availability of consumer assistance from these intermediary agencies.

In closing, on behalf of NCRA, Lenders' Credit Services, and resellers nationwide, I would like to thank you for inviting us to this hearing, and state that we stand ready to assist in a unique way to address and meet the challenges posed to the greatest credit reporting system in the world.

[The prepared statement of Paul J. Wohkittel can be found on page 490 in the appendix.]

Chairman BACHUS. Thank you.

Would the gentleman from Arkansas, Mr. Ross, like to introduce your colleague from Arkansas?

Mr. ROSS. Thank you. I do have a statement prior to his being recognized, if that is okay.

Thank you, Chairman Bachus and Ranking Member Sanders, for holding this second hearing to discuss such an important issue. The

Fair Credit Reporting Act is an essential part of our economy and it is important to discuss its use and effects on both businesses, as well as consumers. I am pleased that Tim Spainhour from Crossit, Arkansas in our congressional district, Arkansas' Fourth District, is here today in Washington, our nation's capital, to represent Acxiom and is testifying during this panel.

Acxiom is a leader in responsibly providing innovative data management services to leading companies in America. It is an Arkansas-based company. Their role in respect to the Fair Credit Reporting Act is as a processor in the creation and use of pre-screened consumer lists in credit, and also insurance solicitations. They are the only high-tech company in the state, and they have some 5,000 employees. Acxiom has been listed by Fortune magazine as one of the best companies to work for the last three years, and continues to bring highly skilled workers to Arkansas.

So I look forward to hearing the testimony of Mr. Spainhour as we continue to evaluate the Fair Credit Reporting Act and its implications on consumers, respected business like Acxiom, and the economy.

Again, thank you, Mr. Chairman, and I yield back the remainder of my time, so that we can hear from this witness.

Chairman BACHUS. Thank you. Mr. Ross, did you say they were the only high-tech company in Arkansas or the largest?

Mr. ROSS. It is our understanding that they are the only high-tech company in Arkansas. It probably depends on your definition, Mr. Chairman, of "high-tech."

[LAUGHTER]

We are pretty much a farm state, a lot of agriculture and a little bit of manufacturing, but we would welcome a lot more high-tech companies to make their home in Arkansas.

Chairman BACHUS. Okay, thank you.

Mr. Spainhour?

STATEMENT OF TIM SPAINHOUR, LEGAL COMPLIANCE LEADER, ACXION CORPORATION

Mr. SPAINHOUR. Good afternoon, Chairman Bachus and Ranking Member Sanders, and the distinguished members of the subcommittee. My name is Tim Spainhour and I am the legal compliance leader of Acxiom. I would like to thank you for holding this hearing and inviting Acxiom to participate.

The reauthorization of the preemptive aspects of the Fair Credit Reporting Act is important to Acxiom's clients, and therefore to Acxiom, and is vital to the national credit reporting system that consumers enjoy the benefits of today.

Although the scope of today's hearing is rather broad, I will limit my testimony to a single, discrete aspect of the activities in which Acxiom is involved. Specifically, I will address the role of the processor in the creation and use of pre-screened consumer lists.

For more than 30 years, Acxiom has been a leader in responsibly providing innovative data management services to leading companies in America. In a nutshell, we help businesses, including those businesses that use pre-screened lists for credit and insurance solicitations, to recognize and engage customers who have the highest need for their products or service.

Simply put, in the context of pre-screening, Acxiom's role is one of a data processor, not a bureau. We provide information products and services to our customers, and we build and maintain the computer systems that are the foundation of those client's customer management and marketing programs. Our clients use these systems and the consumer data available to them to identify potential customers.

In your May 8 hearing, testimony was presented which suggested that pre-screening may increase competition among issuers of credit, thereby providing consumers with greater access to favorable credit rates. Although pre-screening may offer such consumer benefit, not every consumer who meets or exceeds a credit issuer's minimum credit criteria for a firm offer of credit, will respond to that offer.

Acxiom assists credit issuers in matching consumers with the offers they will find most interesting, and then assuring that those offers are delivered to the right address. Furthermore, many consumers have expressed an interest in not receiving such offers. In this regard, the FCRA requires that consumer reporting agencies, which prepare pre-screened lists, also maintain an opt-out system whereby consumers can elect to be omitted from those lists.

Because consumers have the ability to opt out from inclusion in pre-screened lists, and in light of the substantial costs associated with large-scale pre-screened solicitations, our customers have a clear economic incentive to market only to those consumers who are most likely to respond to their offer. That is where Acxiom's expertise comes into play.

The credit issuer will first determine the criteria they will use to make a firm offer and communicates that criteria to a consumer reporting agency. Once the list of consumers meeting the issuer's credit criteria has been determined by the consumer reporting agency, a processor such as Acxiom will assist in further refining that field of potential customers to those who are more likely to want or need the product.

The process of refining the list of potential customers may entail the use of what we refer to as a partner file obtained by the issuer. A file such as this could identify participants in a frequent flyer program, who will be offered a product that accumulates frequent flyer credits. Or the issuer may wish to market to consumers who have demographic characteristics similar to those who have responded to similar offers in the past. A processor like Acxiom applies demographic data to the records and then identifies those consumers whose demographic characteristics are similar to past responders.

For example, golf has become a very popular sport. An issuer may offer a credit card with a golfing theme as the background on the actual card itself and utilize that same theme on the envelope and the letterhead that communicates the offer. That offer would be targeted to consumers who have an interest in golf or who live in areas near golf facilities.

Acxiom also performs the services needed for postal certification in order to assure that each letter gets delivered to the most current, correct address and qualifies for available postal discounts. This includes processing the file for address standardization, carrier route pre-sorting, and the application of the national change of address file to make sure the most current and accurate addresses are used. In other words, Acxiom utilizes all the tools at its disposal to assure that the right consumer gets the offer intended for him or her. This saves our clients money and lessens the amount of unwanted mail in a consumer's mailbox.

Consumer choice is important to the credit issuers and to Acxiom. Another service provided by the processor is to assist the issuer in honoring consumer preference. There are some consumers who do not want to receive pre-screened offers and who have opted out with the consumer reporting agencies. The issuer will also provide the processor with a list of consumers who have elected to opt out with them. Acxiom, as well as other processors who are members of the Direct Marketing Association, also apply the opt-out list maintained by the DMA. The issuer may also want to eliminate those consumers who are already customers or who have received recent offers.

By narrowing the scope of pre-screened offers to only those consumers most likely to welcome such offers, our activities complement and are consistent with the intent and policies underlying the FCRA. We add value to the pre-screen process by helping credit issuers place welcomed offers in the correct mailboxes. Without our expertise, consumers would receive more unwelcomed mail through less accurate targeting. Without this system, the issuers would incur higher costs, which would be passed on to consumers.

Let me sum up this way. While waiting in line a year or so ago at my polling place, I was asked by a poll worker who saw my name badge from Acxiom, "What does Acxiom do?" I explained that we assisted companies in marketing their services and products to consumers. She said, "So you are the reason I get nine pieces of mail every day." I said, "No ma'am. I am the reason you don't get 19." That is the essence of what we do, and I appreciate the opportunity to explain it here today.

Thank you.

[The prepared statement of Tim Spainhour can be found on page 459 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Anthony Rodriguez, National Consumer Law Center?

STATEMENT OF ANTHONY RODRIGUEZ, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER

Mr. ANTHONY RODRIGUEZ. Thank you, Mr. Chairman, Ranking Member Sanders and members of the subcommittee.

My name is Anthony Rodriguez. I am a staff attorney at the National Consumer Law Center. We are a nonprofit organization that advocates on behalf of low-income consumers. We work with thousands of attorneys across the nation on consumer law issues, and we publish 12 legal treatises on consumer law, including one entitled Fair Credit Reporting.

My comments today will address a number of issues, and I will list those issues now. First, we think the system is broken and needs to be fixed, and that Congress ought to enact high standards for accuracy, high standards for accountability when there are problems that arise as a result of those inaccuracies contained in credit reports, and failures by credit reporting companies and furnishers of information to conduct adequate investigations or reinvestigations when a consumer disputes the accuracy of information in their credit report.

Second, the fact there is real harm caused by these inaccuracies and caused by failures to reinvestigate. The harm that is caused to consumers is real; it is emotional harm; it is economic harm; it is the aggravation of having to deal with inaccurate information that is not caused by them, but caused by furnishers and the credit reporting agencies that deal with this information and disseminate it.

Third is the lack of incentives that exist in the system to ensure accuracy, in particular the lack of incentives for furnishers to provide accurate information and the fact that the current law preempts them from any state laws that would provide them with an incentive to ensure accuracy. Whether it is a lawsuit, whether it is defamation, negligence, those are currently preempted unless they can show malice, and we think that the preemption ought to end.

First, with respect to the broken system. I think it is not just anecdotal information about inaccuracies. There are various studies that have demonstrated that there are inaccuracies in our credit reporting system. U.S. PIRG has conducted several studies, at least six of them in the 1990s, and their last report in 1998 that showed that 29 percent of credit reports contain serious errors, not just minor errors dealing with incorrect addresses or incorrect names, but serious errors that included inaccurate delinquencies or accounts that had never belonged to the consumers, contained in their reports. These are serious errors that affect a consumer's ability and cause real harm to consumers when they seek to obtain a loan, seek to obtain educational opportunities, and other opportunities as well.

Finally, with respect to the broken system, we look at the complaints to the FTC, the fact that over the past several years the primary complaint has been about credit reports. The leading complaint now is about identity theft. The FTC itself reported just last year that they received approximately 3,000 calls per week to their identity theft hotline, and that approximately 43 percent of all their complaints are identity theft-related. This is as reported by the FTC, and it is available on their Web site.

Finally, the Consumer Federation of America conducted a study in 2002 that showed that, and they reviewed over 500,000 consumer files, and in that report, it reflected that for credit scores, there was a range of 50 points between the three credit bureaus. That range affects a consumer's ability to get credit. It affects whether or not they will be in the prime market for a loan or a sub-prime market for a loan. Therefore, it also affects whether the consumers affected by that information are subject to predatory lending practices as well.

This, in essence, demonstrates the fact that the system is broken and in need of repair, and the fact that the harm is real, lost educational opportunities, payment of higher finances when the information is inaccurate, difficulties and the fact that they have to pay higher rates as well, higher points, higher fees. All of this is a result of inaccurate information.

In conclusion, what NCLC proposes is that there be high standards established by Congress, and that those high standards address accuracy; that they address accountability; and they address access to information, that consumers must have complete access to this information that is being disseminated about them.

[The prepared statement of Anthony Rodriguez can be found on page 323 in the appendix.]

Chairman BACHUS. Thank you.

Mr. ANTHONY RODRIGUEZ. Thank you.

Chairman BACHUS. Mr. Rodriguez, let me ask you a question that you really did not maybe deal with in your testimony. The Law Center deals with public accommodation cases, I would suppose. Is that correct?

Mr. ANTHONY RODRIGUEZ. I am not sure what you mean by "public accommodation."

Chairman BACHUS. Okay. "Public accommodation" is a whole field of law, not housing discrimination in public accommodation; like accommodation in a motel, hotel.

Mr. ANTHONY RODRIGUEZ. Right, whether it is for disability-related or any civil rights-related public accommodation.

Chairman BACHUS. Okay. Do you practice that?

Mr. ANTHONY RODRIGUEZ. We do not specifically practice that, but I would be happy to see if I can answer a question if you have one.

Chairman BACHUS. How about housing discrimination?

Mr. ANTHONY RODRIGUEZ. We address it in the context of writing a legal treatise on the cost of credit and predatory lending and discrimination that may occur as a result of predatory lending or discrimination in the context of lending.

Chairman BACHUS. Okay. Well, it probably would not apply. What I am thinking of is there are national standards, or there is a national law in public accommodation and housing discrimination.

Mr. ANTHONY RODRIGUEZ. For example, in the context of disability, we have the Americans With Disabilities Act.

Chairman BACHUS. Right.

Mr. ANTHONY RODRIGUEZ. That is a federal law that establishes standards with respect to access to public accommodations for people with disabilities. That is a floor. States have the right to enact stricter laws, and I practice in Massachusetts where they in fact have stricter laws that regulate all of the entities within the state in terms of their public accommodations.

Chairman BACHUS. Okay, well, I think that is what I was asking. You practice public accommodation cases.

Mr. ANTHONY RODRIGUEZ. That is right.

Chairman BACHUS. I am not trying to trap you. You practice public accommodation, and as you are saying, there are state laws or federal laws.

Mr. ANTHONY RODRIGUEZ. There are both.

Chairman BACHUS. It is important to have a good national law, though, is it not? Or good national standards?

Mr. ANTHONY RODRIGUEZ. Yes, it is.

Chairman BACHUS. Then if our present Act is broken, we ought to attempt to fix it, should we not?

Mr. ANTHONY RODRIGUEZ. That is our recommendation, yes.

Chairman BACHUS. Right. Okay. That is what I was asking. And that would be helpful, to try to have a good uniform national standard. I am not talking about preemption.

Mr. ANTHONY RODRIGUEZ. Yes, it is important to have a uniform national standard that sets the floor as to what the standard should be.

Chairman BACHUS. Wouldn't it sometimes be an advantage, particularly to people that may be less informed or less sophisticated in dealing with financial matters? You hear that the average American moves every six years. But I would think that many of your clients, of the groups you represent, actually move more often than that, do they not?

Mr. ANTHONY RODRIGUEZ. I don't know the extent to which individuals move, but generally yes, that is accurate.

I think it is also important to point out that national standards are fine, but they have to be real standards that have real teeth in them.

Chairman BACHUS. Okay. I agree with you.

Mr. ANTHONY RODRIGUEZ. And that is what we are concerned about, that the current system does not have the adequate protections for consumers to ensure accuracy, provide them with the necessary access to the information, and to hold both credit reporting agencies and furnishers accountable when problems arise.

Chairman BACHUS. Okay.

Mr. Sanders?

Mr. SANDERS. Thank you, Mr. Chairman, and I thank all the guests for being with us today. We appreciate your being here. Let me pick up on a point that Mr. Rodriguez was making. I am looking at a statement from the Consumer Federation of America, which was the report that I think you were referring to. Essentially, they analyzed over 500,000 credit files and they found that in terms of the scores from the three major credit reporting agencies, that nearly one out of three files, 29 percent, had a score discrepancy between the three reporting agencies of 50 points or more. Did you understand what I was saying? Okay. Credit scores, in fact, ranged from 400 to 800, from rather poor to excellent.

Now, given that reality, do you believe, and I would like to start off with Mr. Ford and Ms. St. John, do you believe that all consumers should receive an annual free credit report which includes their credit score? Given the significant amount of discrepancies that exist right now, do the American consumers have a right to get free credit reports which include their credit scores?

Mr. Ford?

Mr. FORD. Thank you for the question, Mr. Sanders. Let me make sure that I understood what you said, because I may want to offer a correction. To my knowledge, the 500,000, that number you used, did not represent credit files or credit reports, but 500,000 credit scores.

Mr. SANDERS. No, I am reading credit files, which is the word in front of me.

Mr. FORD. Okay. My reading of the report indicates that it was credit scores, not credit files; that actually 51 credit files were used in drawing their conclusions.

Mr. SANDERS. Well, again, I am reading from the Consumer Federation of America, Mr. Chairman, which analyzed 502,000 credit files, and F-I-L-E-S is the word that they have here.

Mr. FORD. I understand what you are saying. We respectfully disagree on that. But the real question is whether consumers should be given a free disclosure of their credit score. Was that your question?

Mr. SANDERS. Should they receive annually a free credit report which includes their credit scores, that is the question.

Mr. FORD. Mr. Sanders, the Equifax position on that is that the current FCRA provides the best balance between consumer interests and business interests. We understand, and I am sure you know, that in cases where the need is significant, consumers already get a free report, when they are the subject of an adverse action, when they are a victim of identity theft.

Mr. SANDERS. Mr. Ford, I am hearing you say no to my question.

Mr. FORD. You are hearing me say no.

Mr. SANDERS. Okay. Ms. St. John?

Ms. ST. JOHN. With respect to the question of should a credit score be included with the credit report, I think it is important to address specifically which score, and point out that there are different kinds of scores that are used in different circumstances. Having said that, the most widely used scores, as we indicated, we believe are the FICO scores, and it would be important to disclose the scores that most lenders use.

With respect to the question about should it be a free credit report free score, it is a complicated issue. We feel that score disclosure is best done in the context either of a lending decision in the sense where a lender can have that conversation and explain the various different factors, or a complete service like Fair Isaac is offering that offers the opportunity for consumers to be able to ask questions.

Mr. SANDERS. I don't mean to be rude, and I apologize to Mr. Ford. There is just not a lot of time.

Mr. Rodriguez, what do you think?

Mr. ANTHONY RODRIGUEZ. Yes, and it ought to include information that not only relates to the consumer, but also it should be whatever information is given to the creditors as well.

Mr. SANDERS. It would seem to me, and I will open it up to anybody else who wants to comment, that if one credit bureau has me at 600 and one credit bureau has me at 400, and this is the information that is going out to people that I am going to do business with, I think I have a right to know how that information was ascertained, so that I can defend myself and perhaps pick apart some of the inaccuracies that might be out there.

Mr. Spainhour?

Mr. WOHKITTEL. I would like to clarify something. The National Credit Reporting Association was an active participant in that study with the Consumer Federation of America. That was in fact over 500,000 files, no scores. That represents over 500,000 people.

Mr. SANDERS. Mr. Ford, do you accept that?

Mr. FORD. I will have to go back and look for myself, sir.

Mr. SANDERS. Okay.

Mr. FORD. May I make another comment, though?

Mr. SANDERS. You sure can. Let him finish and we will get right back to you.

Was that your Statement, sir?

Mr. WOHKITTEL. That was my statement.

Mr. SANDERS. So, Mr. Ford?

Mr. FORD. We have been talking about whether the states should enact stronger laws, and I think in the case of California, for example, the credit score disclosure, as far as I know it is the only state that mandates disclosure of a score, there also a reasonable charge is allowed. So the issue of "free" is not on the table at least for California.

Mr. SANDERS. Well, it is on the table for the United States Congress. I will bring it on the table if others won't, but it certainly is on the table here.

Other comments on that issue? Yes, sir.

Mr. WOHKITTEL. I agree under 609 as far as the repositories disclosure, along with an understanding that the consumer understands that that score fluctuates, because a lot of consumers think when you have a 720 FICO score they have a 720 FICO score for the next two or three months. As long as there is disclosure that that will fluctuate up and down, I think it is great.

Mr. SANDERS. Good, thank you. But in general, let me throw it out to anybody who wants to respond to this, we heard the consumer representative from the Federal Trade Commission earlier today saying he, none of us, understands how that score is determined; that this is kind of a trade secret. That disturbs me, and you probably have different criteria for the different companies.

Is there any reason that that information as to how a company, the methodology, should not be made public, so that we would know that somebody from rural America is judged the same way from urban, black, white, woman, man? What is the objection to making that information public?

Ms. St. John, did you want to comment?

Ms. ST. JOHN. Yes, please. We actually have published the factors that go into the FICO scores for a number of years, and made that information available both in terms of the factors that are considered and even more importantly, what is not considered by the FICO scores. So a question that I know was brought up in the first panel this morning was a question of if race is included in the scoring system. It is absolutely not. Race, religion, ethnicity, national origin, gender are all prohibited bases. They are not considered.

Mr. SANDERS. They are not considered at all.

Ms. ST. JOHN. No. And that is information that we have published for a number of years in various different consumer booklets and made available since 2000 on the Web free of charge.

Mr. SANDERS. Mr. X lives in a low-income area; Mr. Y lives in a fancy suburb. Are they treated exactly the same?

Ms. ST. JOHN. Income is not a factor used in the FICO scores at all, so the FICO score would not see that. In addition to that, Fair Isaac specifically did look at a study, and this is part of our written testimony, to see if the scores varied in a high-income area versus a low-to moderate-income area, looking at application data. What we found was that the same Fair Isaac score indicated the same level of risk, regardless of whether someone was in a low-to moderate-income or in a high-income area.

Mr. SANDERS. Okay.

Mr. FORD. I had one comment, if I may.

Mr. SANDERS. Yes, sure.

Mr. FORD. Equifax recognizes that there is a great deal of interest on the part of consumers to find out more about what is in their score, what it means. We do provide a product on our Web site that allows consumers not only to see what their FICO score is, but to understand the ingredients, you might say, much as a colleague told me the other day that Coca-Cola will tell you what the ingredients are, but they will not tell you the formula because that is proprietary. But we tell consumers, and FICO does as well, how their score relates on a national index and the system allows him to play a "what if" scenario, what if I change this, what affect does it have on my score. So it is not free, but it is part of our service.

Mr. SANDERS. How much do you charge?

Mr. FORD. $12.95. It is part of our effort to help educate consumers about what the credit score is and what impact certain actions are going to have on that score.

Mr. SANDERS. Okay. Thank you.

Chairman BACHUS. Thank you.

That was like 10 minutes. What I am saying is, I think that is fine, because there are a limited number of us and these are serious issues. We might as well have some in-depth inquiries. So I am not complaining. I am actually affirming that we need to do this.

Mr. Hensarling?

Mr. HENSARLING. Mr. Chairman, in the interest of actually economizing on the time, I would simply like to yield my time back to you.

Chairman BACHUS. Yes, I will have 10 minutes, right?

[LAUGHTER]

Mr. SANDERS. I don't know that that is going to economize.

[LAUGHTER]

Chairman BACHUS. Thank you.

I will start with Mr. Ford, and work my way across. We have heard a lot of people, a lot of testimony about how difficult it is to correct an error on a credit report. I know that is anecdotal evidence, you know, this person, that person. But we have a great interest in that. In general, how long does it take to resolve the average consumer dispute? Is there a time frame within which the vast majority of disputes are resolved?

Mr. FORD. Mr. Chairman, the answer to that question is, by statute the credit reporting agencies must within five days of receiving the dispute from the consumer forward that to the credit grantor-provider, and we must correct the file or, depending upon the answer from the credit grantor as well, within 30 days.

Chairman BACHUS. All right. I did hear earlier someone said that if they submit information to the credit bureaus, that the credit bureaus will actually say, well, we actually have to have that information corrected by the furnisher. I myself, I will give you some anecdotal, I received a collection letter and I called a credit bureau.

It was actually from a credit bureau that had a debt collection service associated with it, and they tried to collect it. They actually in fact told me that I needed to call the hospital which had supplied them the information.

As a practical matter, I can see a reason for that. But at the same time, I was calling them saying that I had a cancelled check, that I had paid that. I would think that there ought to be some provision where I could have sent them the cancelled check and then they could have called the hospital.

Would you like to comment on that?

Mr. FORD. I will.

Chairman BACHUS. You can see how that was frustrating.

Mr. FORD. Absolutely. I would be frustrated, too, and I am frustrated often when I call places and things do not go the way that I want them to as quickly as I want them to. We are talking about an individual case versus an overall policy.

Chairman BACHUS. I understand that.

Mr. FORD. Let me say first that we believe that the overall system is designed to make the process straightforward and clear for consumers to take a look at their credit report, see if there is anything wrong, and go through a dispute or reinvestigation process. If a consumer provides Equifax with documentation, we will forward that documentation, with discussion, to the credit grantor who is responsible for that line or the collection agency, in this case, but to the credit grantor. We will help facilitate the resolution of that issue.

Equifax is in the middle. We have a difficult time in the middle being the arbiter of truth. When a consumer provides us with adequate documentation, it makes our job a whole lot easier. But the fact remains, if they provided that documentation to the credit grantor, the credit grantor is going to change it as well.

Chairman BACHUS. So the situation I ran into, where the agency told me "we cannot actually accept something from you"?

Mr. FORD. That is not the policy of Equifax. We would accept the documentation.

Chairman BACHUS. Ms. St. John, we have heard complaints from some consumers that the current credit scoring system penalizes comparison shopping for financial products and services by lowering a consumer's credit score based on the number of inquiries that are made by potential creditors. For example, we have heard the scenario where a consumer seeking the lowest interest rate when refinancing a mortgage generates multiple inquiries by potential lenders, that that drives down their credit score, and that would result in driving up the cost of the mortgage.

Is that a legitimate criticism? And is it fair for consumers to lower their credit scores based on multiple inquiries?

Ms. ST. JOHN. Fair Isaac has made a number of innovations and improvements in scoring over the years. One of the things we looked at several years ago was this question of rate shopping and inquiries, and ways to take that into account. The FICO scores in fact do take into account rate shopping. Any inquiries within the prior 30 days as of the time that the score is being calculated are actually not counted. In fact, we go back in time and look over a specific period of time, looking for multiple auto and mortgage inquiries and counting those as a single incidence.

So we have done research to find ways to accommodate rate shopping and continue to look at number of inquiries as a predictive variable, but one that is calculated fairly along the lines of what you have indicated. That was a change that was made in the FICO scoring systems at all three credit reporting agencies a few years ago.

Chairman BACHUS. If I comparison shop, and I would actually think that is what you would do if you were trying to get the lowest rate. I would call four or five mortgage lenders. There is a lot of refinancing right now. In fact, I have done that very thing. That would, in fact, or could under credit scoring lower my credit score today?

Ms. ST. JOHN. Comparison shopping is actually taken into account when we calculate the number of inquiries. So multiple auto or mortgage inquiries within a very specific period of time would be counted as a single inquiry. If that was spread out over a longer period of time that someone was searching, it is possible it could be counted as more than one. In general, multiple inquiries indicate a higher degree of risk in some cases, not in all cases.

Chairman BACHUS. Okay. Have you performed any validations of your proprietary credit score models? In other words, do you have any data that would suggest that the credit scores you assign to individuals are statistically valid and predictive of their consumer behavior?

Ms. ST. JOHN. Absolutely. The scoring formulas are tested extensively by Fair Isaac in terms of the data and holdout samples from which they are developed. Even more importantly, they are tested by those lenders on an ongoing basis, and by regulators who oversee the financial institutions.

Chairman BACHUS. Okay. Mr. Le Febvre, your testimony is fairly critical of the role that credit scores play in the consumer credit system. Yet Federal Reserve Board Chairman Greenspan recently commented that the emergence, and I will quote; the emergence of credit scoring technologies which rely on the availability of information about the financial experiences of individuals has proven useful in expanding access to credit for us all, including for low-income populations and others who have traditionally had difficulty obtaining credit.

Do you agree with Chairman Greenspan's assessment that credit scoring has in fact served to democratize credit availability and helped to open up opportunities to those who may have previously been shut out of the mainstream financial system?

Mr. LE FEBVRE. In certain circumstances, I believe he is correct. Back years ago before scoring, a lot of low-to moderate-income minority groups would not. If you look at my example one, my issue with scoring is I base it on what we call ethnic tendencies. When you look at minority groups, they have different tendencies than the rest of the population.

So what happens is, if you have a thin file and you have one error, versus the average white male with one error, the impact on a FICO score is tremendous. If you look at example one, what they had is a three-year credit history, a three-year mortgage payment history, but they made one $10 mispayment that was an error, and the average FICO score drop was 72 points, 121 points, and 178 points.

Chairman BACHUS. Okay. I will tell you what, because of time, we will look at those and I appreciate it.

Mr. LE FEBVRE. Sure.

Chairman BACHUS. We will re-read those things.

I want to move to Mr. Ackerman and then Mr. Crowley, and then we will actually recess the hearing.

Mr. Ackerman?

Mr. ACKERMAN. Thank you, Mr. Chairman.

Thank you, Mr. Chairman, for this wonderful hearing. I ask unanimous consent that an opening statement, I just want to put it in the record, to save time, if that is okay.

Chairman BACHUS. In fact, I will ask unanimous consent for all members.

[The prepared statement of Hon. Gary L. Ackerman can be found on page 111 in the appendix.]

Mr. ACKERMAN. Good. Thank you.

Several quick points. Mr. Ford, you said that you used the Coca-Cola analogy of "what is good for Coca-Cola is good for the finance industry." But I did want to call your attention, I just happen to have a bottle back here that is Diet Pepsi, if you would accept that as an equivalent.

Mr. FORD. Being from Atlanta, I cannot do that.

[LAUGHTER]

Mr. ACKERMAN. You are right. They do not put the recipe or the formula, but they do put the ingredients. But the law requires, and they all follow the law if you are an ingredient reader, when it says what it contains, which in this case is carbonated water, caramel color, aspartame, phosphoric acid, potassium benzoate, caffeine, citric acid, natural flavors.

The point is, they are listed in weighted order. It does not tell you how to make it, so you do not know the exact recipe, but you know that the prime weight in this thing that you are about to consume is carbonated water. If you are trying to cut back on salt, you know where it is relatively. If you are trying to cut back on sugar, you know there is none in here. It is aspartame, and whatever.

So that is very, very helpful to the consumer, and that is why, as you say, Coca-Cola does it. So it would be helpful to the consumer to know what is the most important factor. If you listed it in order, that would certainly be of great benefit. Voila, the worst thing that happens is you create a better consumer. If you have better consumers, it is better for the industry. And if the consumer knows what is important, that is what the consumer hopefully will concentrate on. If you go to school and you know the important thing is getting good grades and staying out of trouble, that is what you concentrate on. If you knew that was not important, then you could be a real cut-up. That is why people are motivated, because you know what the rules are. If you do not tell consumers what the rules are, you should not penalize them for not being good at getting high scores in the game.

I guess that is a comment.

Chairman BACHUS. That was a Pepsi you were using to talk about Coca-Cola.

Mr. ACKERMAN. Yes, but they all do the same. Every can you read has ingredients listed in the order of which is the most that makes up that product.

Mr. FORD. Congressman, may I respond briefly to your comment?

Mr. ACKERMAN. Yes.

Mr. FORD. And I will likely defer to anybody else on the panel. I certainly will defer to anybody else on the panel who wants to add to it.

I recognize what you are saying about the ingredients and listing them in order of importance. When I mentioned that Equifax provides score power at our Web site, we also provide the four most significant reasons accounting for the score. So in some respects, the analogy still holds true because we tell consumers what are the four primary reasons that caused the score.

Mr. ACKERMAN. What is in the report that would make the people responsible for aviation safety use that report in determining the profile of flyers and whether or not they might be arrested?

Mr. FORD. I am not aware that they are, sir. I am not aware that they are using scores.

Mr. ACKERMAN. They are. They have announced they are using the FICO scores to make determinations on flyers as to whether or not they are going to search them. Is it their neighborhood? You know, that is why I asked the ethnicity questions and those other profiling questions. I am not saying they are wrong or right, but the public has a right to know. We are getting very suspicious of what information you have in there and what weight it is given in the score, because they are just getting the scores and making determinations. So maybe you could get back to us on that.

The other question that I raised before had to do with how long it takes to get something off of your credit report if it is outright wrong, and everybody agrees it is wrong, and there is no contention that it is wrong. The suggestion previously was that the law said 30 days. That is not so. Section 611 of the Fair Credit Reporting Act requires that the reporting agencies have to "promptly," is the word, remove inaccurate information. What is "promptly"? We know that you get it on with 24 hours after it is reported, usually. How do you get something off? In my case, and I will not mention any company because I won't embarrass anybody here, but it was six months to get it off, when the person who put it on sent me copies of the letters he kept sending every day, every week, "please take this off; we made a mistake."

Mr. FORD. Is your question directed to me, sir?

Mr. ACKERMAN. Yes.

Mr. FORD. It is my understanding that the statute requires us to respond within 30 days.

Mr. ACKERMAN. That is not the question. You have to make a determination within 30 days, according to the statute. The person who put it on said it was wrong; shouldn't have put that on; it is identity theft or the wrong person with that name, my name; please take it off. The answer was: We take it off according to the cycle, which is going to be six months.

This says "promptly." "Promptly" is six months? That is as early as you could do it. Do we need to say that it has to be within a certain time frame? If you can put it on within 24 hours after it is reported to you, why does it take six months, 180-times 24 hours, to take something off? While I am trying to take advantage of a mortgage rate, which now no longer exists, or finance a house or a homebuyer for a first-time, or buy a car.

Chairman BACHUS. Let me interrupt just a second. We have about 5 minutes on the floor.

Mr. ACKERMAN. Yes. I am sorry.

Chairman BACHUS. We can come back.

Mr. ACKERMAN. Okay.

Chairman BACHUS. But there are five votes on the floor.

Mr. ACKERMAN. Five votes.

Chairman BACHUS. I know Mr. Crowley has been here forever. I apologize to him.

Mr. ACKERMAN. Why don't we come back?

Chairman BACHUS. Okay. I am fine with coming back. If you could ask questions, then we will come back.

Mr. ACKERMAN. I will yield my time to Mr. Crowley.

Chairman BACHUS. Mr. Crowley?

Mr. CROWLEY. Let me just ask quickly, and actually follow-up on what Gary said previously in terms of the FICO scores. It goes back to what I think Ms. Smith talked about on the previous panel in terms of the Black tax or judging one on their race, age, gender, and those issues going into determining whether or not one receives credit or not.

Let me ask you a question, Ms. St. John, in terms of the FICO scores. Do you share with regulators how or what goes into making up how you determine one's FICO scores?

Ms. ST. JOHN. Yes. We have worked with both the lenders, who obviously have a keen interest in understanding how those scores are determined, and the regulators.

Mr. CROWLEY. So the regulators know exactly what you are doing? There is some public entity that has an idea or concept of what you are using to determine those scores?

Ms. ST. JOHN. In terms of the methodology.

Mr. CROWLEY. Who are there to protect the interest of the public?

Ms. ST. JOHN. They have an understanding of that.

Mr. CROWLEY. No, no. What I am saying is, do they know what formula you are using? Not this is proprietary information are they aware of it; not necessarily the general public; but are the people's representatives in government aware of what the formula is?

Ms. ST. JOHN. They are aware of all of the factors that go into the score. They have an understanding of the methodology in terms of how we determine those scores and how they are computed. With respect to the exact formulas that are in place, in some cases with insurance scores, those are disclosed in some cases with state insurance Commissioners. The concern that we have with respect to the exact formula is making sure that it is protected because if that information was generally available, it would be subject to gaming if there were potential illegal activity out there trying to unfairly influence the algorithms.

Mr. CROWLEY. I don't really have enough time to go into more of it, because there are other questions I have as well. I mean, obviously Coca-Cola, someone in the federal government knows what it is in Coca-Cola and how it is put together, and I am sure there are people who work for Coca-Cola who retire, and I am sure there are spies out there asking Coca-Cola, "how do you make it; how do you do it."

My question is whether or not the interests of the people are represented in terms of the formula and how it is developed and how it is implemented. That is the question I had.

I had more things, but I think we all have to go over and make our votes.

Chairman BACHUS. Let me just say this, the chair notes that some members may have additional questions for the panel and they may wish to submit them in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions and for those witnesses to place their responses in the record.

This hearing is adjourned.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned.]

A P P E N D I X

June 4, 2003

STATEMENT OF CHAIRMAN SPENCER BACHUS SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT "FAIR CREDIT REPORTING ACT: HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY"

Good morning. The subcommittee will come to order. Our hearing today about how the Fair Credit Reporting Act, or FCRA, functions for consumers and the economy is another installment in the series of hearings that the subcommittee is holding with respect to the FCRA and how secure consumers feel with respect to their personal information.

At our last hearing, we heard a representative of the Treasury Department and academics discuss the FCRA's importance to consumers and the economy. We also heard a number of views on the importance of the provisions in the FCRA that ensure national uniformity for several core issues regulated by the FCRA. Today, we will learn *why* and *how* the FCRA is important to consumers and the economy, and how the national standards established by the FCRA relate to the law's importance in these respects. I believe that the diverse group of witnesses testifying today will assist us to better understand how and why the FCRA benefits consumers and the economy.

The FCRA is a comprehensive and complex law. Those who are familiar with the FCRA know that it governs the credit reporting process. For example, the FCRA governs those who furnish information to consumer reporting agencies (or credit bureaus), it governs the credit bureaus themselves, and it governs those who use credit reports obtained from credit bureaus. However, it is important for us as a subcommittee to examine exactly how each of these entities is governed by the FCRA, and how the end result benefits consumers and the economy. It is my hope that we will also have a thorough discussion with respect to the provisions in the FCRA that establish a uniform national standard, such as those governing furnisher obligations, the contents of a credit report, reinvestigation timeframes, adverse action responsibilities, affiliate sharing, and prescreening. I am sure I will not be disappointed.

The witness panels have been divided into four general groups. Our first panel consists of federal and state regulators with experience in enforcing the FCRA or regulating institutions governed by the FCRA. Our second panel consists of users of credit reports and furnishers of information to credit bureaus. The diversity of this panel reflects the diversity of interest in, and application of, the FCRA. Our third panel is intended to provide the perspective of individuals, i.e. consumers, as represented by some of the national organizations representing various groups of people. This panel should provide a lively debate and include the full spectrum of viewpoints. Finally, we will hear from those who work behind the scenes, so to speak, in the credit reporting process.

We must hear from all of these witnesses if we are to evaluate the impact of the FCRA on consumers and the economy. For example, I look forward to hearing why a state bank supervisor may, in this rare instance, agree on the need for national uniformity with respect to the FCRA. I look forward to hearing how the prescreening process has resulted in lower costs to consumers. I also look forward to hearing the perspective of the Hispanic Chamber of Commerce, of senior citizens, and of consumer attorneys in the FCRA debate.

As I have mentioned in the past, Congress will have a choice to make in the very near future. The provisions in the FCRA that guarantee a single national standard with respect to many of the FCRA's provisions are set to expire on January 1, 2004. My focus throughout this debate will remain on providing consumers and the economy with strong benefits and protections. I believe this can, and should be, done at the federal level in order to avoid a patchwork of state laws that may affect the cost and availability of credit, and therefore the economy as a whole. I look forward to our witnesses' testimony on this important topic

In closing, I would like to thank Chairman Oxley, Ranking Member Frank and Mr. Sanders for working together on this important issue and making it a priority for the Committee.

The chair now recognizes the Ranking Member of the Subcommittee, Mr. Sanders, for any opening statement that he would like to make.

JUNE 4, 2003

STATEMENT OF REPRESENTATIVE GARY L. ACKERMAN

FINANCIAL INSTITUTIONS SUBCOMMITTEE HEARING THE IMPORTANCE OF THE NATIONAL CREDIT REPORTING SYSTEM TO CONSUMERS AND TO THE U.S. ECONOMY

Good Morning. Thank you Chairman Bachus and Ranking Member Sanders for holding this hearing on this very important and timely issue of the Fair Credit Reporting Act. As you know, the issue of credit reporting is one in which I am particularly interested.

I appreciate that our country has such an expansive and voluntary credit reporting system. It is this system which enables millions of Americans to purchase homes, purchase cars, and obtain lines of credit. However, there are some serious problems that must be addressed. Specifically, I am talking about the unacceptable number of inaccuracies in credit reports. A 1998 U.S. PIRG study found that 70% of the credit reports studied contained inaccuracies. 29% of those errors were serious enough to result in a denial of credit. Court records indicate that consumers file 25,000 reports of inaccuracies against the major credit reporting agencies every day! This simply cannot be allowed to continue. Moreover, the time it takes to have inaccurate information removed from your credit report is vastly disproportionate to the amount of time it takes to have this same inaccurate information added to your credit report. This must be changed.

I appreciate the opportunity to hear from our witnesses today about this serious problem. In addition, would like to see the issue of notice to consumers discussed, as well as the use of credit scores for a variety of purposes including the use by the Transportation Security Administration (TSA) in determining who can and cannot fly.

I look forward to working with my colleagues on both sides of the aisle on these and other issues as we consider the Fair Credit Reporting Act. I welcome our witnesses today and thank them for their participation.

June 4, 2003

Opening Statement by Congressman Paul E. Gillmor
House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit Hearing entitled, "Fair Credit Reporting Act: How it Functions for Consumers and the Economy"

Thank you, Mr. Chairman, for holding this second important hearing on the Fair Credit Reporting Act (FCRA) and for your leadership on this issue. Ensuring a uniform national standard for consumer protections governing credit transactions is one of the most important tasks this committee will face in the 108th Congress.

As we are all now aware, on January 1, 2004 these standards as established in the FCRA will expire and states will again have the ability to enact differing regulations. As Federal Reserve Board Chairman Alan Greenspan stated, before this committee on April 30, 2003 in response to a question I posed on the FCRA:

> [T]here is just no question that unless we have some major sophisticated system of credit evaluation continuously updated, we will have very great difficulty in maintaining the level of consumer credit currently available because clearly, without the information that comes from various credit bureaus and other sources, lenders would have to impose an additional risk premium because of the uncertainty before they make such loans or may, indeed, choose not to make those loans at all.

Congress enacted the FCRA in 1970, to bring the consumer credit reporting industry under Federal regulation and to create a uniform system of rights governing credit reporting transaction. This mandate has been incredibly successful and allowed for the creation of the sophisticated system we have today. It has greatly expanded consumer access to credit and allowing individual states to enact their own standards would undoubtedly risk its collapse.

Extending these uniform standards have been endorsed by both Treasury Secretary Snow and Chairman Greenspan, who made his support explicit with these remarks before also before our committee, "I've been in favor of national standards here for reasons which are technically required. If you have very significant differences state by state, it would be very hard to maintain as viable a system as we currently have."

Thank you again, Mr. Chairman, for continuing our dialogue on this issue and I look forward to swift committee action.

OPENING REMARKS FOR THE HONORABLE RUBEN HINOJOSA
HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
"FAIR CREDIT REPORTING ACT: HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY"
JUNE 4, 2003

Chairman Bachus and Ranking Member Sanders,

I want to thank you for holding this second in a series of hearings today to investigate how the Fair Credit Reporting Act functions for consumers and the economy. It is necessary that we continue to assess the importance of the national credit reporting system. I look forward to this hearing and the series of hearings this Subcommittee will hold to further clarify the issue.

As I noted at the first hearing, my office has been contacted by numerous individuals and groups about the Fair Credit Reporting Act over the past few months. I personally have heard from industry, consumer groups and several regulators on this issue.

One of the main decisions we, as a Committee, will need to make remains whether to extend all seven exceptions to the Fair Credit Reporting Act that preempt state law, just some of the exceptions, or none of them. They all expire January 1, 2004.

We will have to delve into Identity Theft issues as an integral part of our consideration of the Fair Credit Reporting Act. While these two issues are separate and distinct, they are also interwoven, creating a sort of paradox.

It is becoming obvious that the scope of these hearings will not be limited solely to the extension of the exceptions to the Fair Credit Reporting Act. Gramm-Leach-Bliley privacy issues might also be reopened for discussion, and, as noted, Identity Theft will be addressed.

Several groups recommended that we remain as focused as possible on the extension of the FCRA exceptions if we are to accomplish anything on this important issue this session. I fear that the cat is already out of the box.

Determining the importance of the national credit reporting system is going to be very difficult. However, we need to remember that industry representatives and Chairman Greenspan of the Federal Reserve Board provide strong arguments that privacy laws that restrict the availability of credit bureau data could impose significant economic costs. I want to reiterate the statement by Chairman Greenspan, and I quote:

> "Limits on the flow of information among financial market participants, or increased costs resulting from restrictions that differ based on geography, may lead to an increase in the price or a reduction in the availability of credit, as well as a reduction in the optimal sharing of risk and reward. As a result, I would support making permanent the provision currently in the Fair Credit Reporting Act (FCRA) that provides for uniform federal rules governing various matters covered by the FCRA and would not support allowing different state laws in this area."

This is a very strong endorsement for the continued preemption of state laws pertaining to the credit reporting system. Almost all of the financial services representatives that have contacted me agree with Chairman Greenspan's conclusion.

However, they continue to be split on whether or not to solely preempt the state law or to open up Gramm-Leach-Bliley to address additional privacy issues. Some industry representatives have even presented a new opt-out proposal that this Committee should consider carefully and seriously.

Perhaps we are playing a game of tit-for-tat, but I would like the industry to present a united voice on this issue.

I would seek clarification from industry, all of today's witnesses, future witnesses, Committee staff and the regulators on one issue. Section 507 of the Gramm-Leach-Bliley Act appears to authorize states to enact privacy laws that are more stringent than the Gramm-Leach Bliley standard. Section 506(c) of the Gramm-Leach-Bliley Act also seems to clarify that the Gramm-Leach-Bliley Act in no way modifies or supersedes the Fair Credit Reporting Act and that Act's preemptions of state law. I am interested in knowing how all of today's witnesses interpret the interaction of Gramm-Leach-Bliley and the Fair Credit Reporting Act with regard to state laws on affiliate-sharing.

At the same time, I have also heard from consumer groups and constituents who want the Fair Credit Reporting Act preemption of state law to expire. They are concerned about the need to protect social security numbers, fight identity theft, and ban unfair uses of credit scores by insurance companies.

I hope that this Subcommittee and the Full Committee will research these concerns carefully prior to making a final decision on what action to take with respect to the seven exceptions to the Fair Credit Reporting Act.

I hope that today's witnesses will address some of these concerns, Mr. Chairman, and I thank you again for continuing the dialogue on this important issue.

I yield back the balance of my time.

Opening Statement of the Honorable Darlene Hooley (OR-5)
House Financial Services Committee
Subcommittee on Financial Institutions
"Fair Credit Reporting Act: How it Functions for Consumers and the Economy"
June 4, 2003

Thank you Mr. Chairman and Ranking Member Sanders,

Good morning, I'm happy to be here for the second in the series of hearings on whether or not to reauthorize the seven expiring provisions of FCRA. As I said at the last hearing, I remain convinced that the credit system in place in the United States is the best credit system in the world, and I am hopeful that we can take positive steps in this 108th Congress to ensure that the supremacy of our credit system continues.

During the last hearing, I mentioned that I believe there is room for improvement in both industry practices and government regulation.

At that time I mentioned that foremost on my mind is the rising problem of Identity Theft....the fastest growing crime in the nation. On the day of the first hearing on FCRA, myself and Mr. LaTourette from Ohio introduced H.R. 2035, the Identity Theft and Financial Privacy Protection Act, with over 45 cosponsors.

However, I do not believe that the problems with our credit reporting system are merely limited to identity theft. Another problem that I would like this Committee to focus on is the continuing issue of inaccurate credit reports, as well as the amazing difficult process an individual must go through in order to correct these inaccuracies. A consumer should not, under any circumstances, be forced to spend 1 ½ years fixing an inaccuracy in their credit report, much less 4 years! We must do something to correct this problem.

Credit report inaccuracies also lead to me to question the practice of both employers and insurance providers using credit reporting scores to make employment and insurance decisions. If it can be demonstrated that low credit scores actually determines someone's employment performance, or a low score actually determines that someone is a higher risk for burglary, then maybe credit scores do serve a purpose in these fields...although I believe their use deserves careful scrutiny by this Committee.

However, imagine a young couple applying for home insurance that is forced to pay higher premiums because the husband shares his fathers name, and his father's loan defaults have appeared on the husbands credit report. Or imagine an unemployed high-tech worker that finally gets a job offer, only to be turned away because of a college loan that he had paid off, but that for one reason or another was declared delinquent.

It's easy to sit here in this Committee room and talk about "credit scores" determining risk, and about the low rate of inaccuracies that are reported to the FTC. But we in the Committee, and the consumer groups and industry representatives in the audience, must remember that on the other end of these numbers are real lives that are depending on the accuracy of these numbers for housing, and even for jobs. These individuals deserve the most accurate reporting industry can provide, and we in Congress owe it to them to ensure that this maximum accuracy is provided.

Thank you Mr. Chairman.

Statement of Congresswoman Sue Kelly
Subcommittee on Financial Institutions and Consumer Credit
Hearing: "Fair Credit Reporting Act: How it Functions for Consumers and the Economy"
June 4, 2003

Thank you, Chairman Baucus, for holding this important hearing on the Fair Credit Reporting Act (FCRA) – an issue that is of great importance to this Committee and Americans across the country.

Last month, we heard testimony from the Treasury Department and a diverse panel of witnesses endorsing the extension of FCRA's uniform standards. Several witnesses testified that the failure to reauthorize FCRA will have a negative impact on the flow of credit and our economy. I share these concerns and believe that we must reauthorize FCRA to ensure that we continue to offer millions of Americans greater access to low cost credit.

I would also like to stress the importance of reauthorizing FCRA in our efforts to combat identity theft and help law enforcement officials track down illicit money under the PATRIOT Act. In numerous hearings – including several in my Subcommittee on Oversight – we have found that criminals and terrorists use complex and sophisticated schemes to manipulate our laws and financial systems. This law is essential to protecting the American people by detecting this activity and weeding out wrongdoers.

Today, we continue our work and will hear testimony from another diverse group of witnesses. I am honored to have the opportunity to introduce one special witness from the Great State of New York – Superintendent of Insurance Greg Serio. As the Committee continues to examine FCRA reauthorization, there are many important issues we must address, but none more important than protecting consumers – an endeavor that Mr. Serio has prided himself on while carrying out his duties as the New York Superintendent of Insurance.

Superintendent Serio, it is a pleasure to see you. This Committee will undoubtedly benefit from your expertise. I look forward to hearing your testimony on FCRA's impact on insurance and the role of insurance regulators.

Thank you, Mr. Chairman.

Statement of Congressman Patrick J. Tiberi
June 4, 2003

Subcommittee Hearing entitled "Fair Credit Reporting Act: How it Functions for Consumers and the Economy"

Chairman Bachus thank you for holding this hearing and for your hard work and dedication to this process. I look forward to hearing from our distinguished panel today on this important issue.

American consumers are the lifeblood of our national economy. In fact, consumer spending is by far the largest single component of the U.S. economy fueled in large part by the availability of consumer credit. Credit is the lynchpin of our economy. The more than $7 trillion dollars of consumer credit in our economy finances homes, cars, educations and the credit cards that consumers use to purchase literally tens of millions of goods and services every year. Obviously credit is absolutely necessary in our economy for large purchases such as homes, cars and college educations. Credit is fundamental to our highly mobile society and is necessary for long distance transactions such as the purchase of goods and services through the telephone, mail and the Internet. Without doubt, our nation's credit granting system is the envy of the world.

This powerful economic engine is supported by the most highly developed, efficient and reliable credit reporting system ever known in the world. Our national credit reporting system helps make the United States a world economic power. The availability of accurate and reliable consumer credit information at the lowest possible cost is vital to the U.S. economy.

It allows businesses in one location to safely do business with consumers located throughout the country. It makes our economy vastly more efficient. It lowers the cost of credit to individual consumers and is instrumental in making credit widely available, particularly for low- and moderate-income Americans who have historically not had access to traditional sources of credit. And, it permits bankers to make sound credit granting decisions everyday assuring that a safe and sound banking system stands behind our national economy day-in and day-out.

The reliability of this credit reporting system is achieved by the uniform national framework of the Fair Credit Reporting Act (FCRA). Thanks to the FCRA and the credit reporting system it has shaped, U. S. consumers have access to more credit, from a greater variety of sources, more quickly and at lower cost than consumers anywhere else in the world.

This year the Congress can act to ensure this important national economic asset is maintained. At the end of this year, provisions of the FCRA that establish uniform national standards for the credit reporting industry expire. If this happens, it will harm the nationwide US credit reporting system, significantly affecting adversely the national economy by disrupting the flow of credit and adding substantial costs to all consumers especially those in the middle, low and moderate income groups.

I have introduced legislation, along with Congressman Ken Lucas, that establishes uniform national standards that protect the privacy of personal financial information, facilitate the use of information in consumer reports for extending credit, and other misuse of consumer information. H.R. 1766, the National Uniform Privacy Standards Act would assure that the standards of the Fair Credit Reporting Act and the Gramm Leach Bliley Act protect consumers in the same manner in every state, but does not make substantive changes to either law.

The premise of this legislation is very simple: if ain't broke, don't fix it. H.R. 1766 would make permanent the standards that provide for unprecedented consumer access to credit, reduced costs of credit and more accurate decision-making of credit grantors and other commercial users of credit report data nationwide.

If we turn back the pages and allow our credit reporting system to be regulated on a state-by-state basis the cornerstone of our economy our national consumer credit granting system will become balkanized. As a nation, we will loose the efficient flow of credit information, consumers will face increases in the costs of credit and marginal consumers, in particular, will be challenged with a reduction in the availability of credit altogether.

If we fail to act we will impose unnecessary uncertainty and risk into our nation's credit markets. This is not a time we can afford to gamble with the foundations of our consumer economy.

Importantly, the introduction of inconsistent credit reporting requirements imposed by state law will significantly reduce the quality of information available to credit grantors and deteriorate the safety and soundness of our nation's banking system. The soundness of our national banking system depends in large part on the availability of accurate consumer credit information. If we revert to a balkanized credit reporting system, the information that bankers rely on to make sound credit granting decisions will be less uniform and less reliable. With less reliable information available to them, creditors will be less able to discern good credits from bad. As a result, consumers will pay more for access to the credit they need and the nations economic growth and efficiency will injured.

The national standards established by the FCRA assure the availability of consumer credit on reasonable terms irrespective of where a consumer lives, with whom a consumer chooses to do business or the location of a creditor to whom a consumer chooses to apply for a loan.

Let's keep our consumer credit granting system the envy of the world.

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

THE FAIR CREDIT REPORTING ACT

Before the

FINANCIAL INSTITUTIONS AND

CONSUMER CREDIT SUBCOMMITTEE

of the

HOUSE FINANCIAL SERVICES COMMITTEE

Washington, D.C.

June 4, 2003

I. Introduction

Mister Chairman and members of the Subcommittee, my name is Howard Beales, and I am Director of the Bureau of Consumer Protection of the Federal Trade Commission ("Commission" or "FTC"). I am pleased to have this opportunity to provide background on the Fair Credit Reporting Act ("FCRA").[1] The Commission has played a central role in interpreting and enforcing the FCRA since the law was enacted in 1970. I appreciate the opportunity to discuss the FCRA and its role in regulating credit report information.

II. Consumer Credit Reporting

The development of consumer credit was a phenomenon of the post-World War II years. Prior to that time, consumer credit relationships were largely personal because many consumers lived in one place all their lives and dealt only with local merchants and banks. After WWII, the American population grew and became vastly more mobile. Consumer credit also exploded for many reasons, including pent-up demand for consumer goods and services and fading of the cash-only Depression psychology. At the same time there was an increased demand for home ownership. In response, the government supported the growth of a long-term consumer credit market. For all these reasons, the amount of consumer credit outstanding has grown

[1] While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

exponentially.[2] Indeed, consumer spending accounts for over two-thirds of U.S. gross domestic product and consumer credit markets drive U.S. economic growth.[3]

The credit reporting industry developed in tandem with the burgeoning of consumer credit. Early on, credit reporting was local or regional and relatively unsophisticated; the amount of information collected was limited and not standardized. Credit bureaus (consumer reporting agencies)[4] manually recorded consumer information on index cards, updated irregularly, and often retained indefinitely. Over time, however, small credit bureaus grew to become large repositories of information on consumers.[5]

Today, the credit reporting system, consisting primarily of three main credit bureau repositories, contains data on as many as 1.5 billion credit accounts held by approximately 190 million individuals.[6] Creditors and others voluntarily submit this information to centralized,

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[2] In 1946, the beginning of the post-war period, total outstanding consumer credit stood at $55 billion; by 1970, the time of enactment of the FCRA, it had grown to $556 billion. [Figures adjusted for inflation.] Today it is $ 7 trillion. *See* Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, at 1.

[3] *Id.* at 8.

[4] "Consumer reporting agency" is the term used in the FCRA, and reflects the fact that consumer information is collected and reported for a variety of purposes in addition to credit transactions. In common terminology, however, the agencies are known as "credit bureaus" or "credit reporting agencies." (Similarly, "credit report" and "credit history" are commonly-used non-technical terms for "consumer report.") The term "repository" is most often reserved for the large, national bureaus that collect and store information on over 190 million consumers. The "repository" agencies, in turn, are sometimes referred to as the "big three," in recognition of the three major companies that have predominated for several years – Equifax, Experian, and Trans Union. A fourth company, Innovis Data Services (an affiliate of CBC Companies), also maintains "a national database of consumers with unfavorable current or past credit histories." *See* http://www.innovis-cbc.com/products.htm.

[5] For a more complete recitation of the early history of the consumer reporting industry, *see* Retail Credit Co., 92 F.T.C. 1 at 134-36 (1978).

[6] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 49.

nationwide repositories. Lenders analyze this data and other information to develop sophisticated predictive models to assess risk, as reflected in the consumer's credit score.[7] The flow of information enables credit grantors to make more expeditious and accurate credit decisions, which benefits consumers as a whole. These benefits are illustrated by a study of credit bureau files that found that nearly 20% of the currently-reported active accounts had been open for less than 12 months.[8]

The modernization of credit reporting has played a key role in providing American consumers rapid access to consumer credit. It was not that many years ago that applying for credit required a personal visit to a loan officer. The loan officer, if he did not know you personally, contacted your references, including other creditors, before making a decision on your application. If you were new to the community or applying for credit for the first time, you might get turned down or be approved for only a small, entry-level loan. The decision would often take days and would be based solely on the judgment of the loan officer.

By contrast, consumers today can use the internet from the comfort of their home to comparison shop for a wide array of credit products and get a virtually instantaneous offer, including rate and other terms. Or, they can obtain a five-figure loan from an auto dealer they have never been to before and drive a car away from the showroom the same day. In each instance, their eligibility for the lowest rate or most favorable terms depends on a sophisticated

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[7] Scoring products are based on analyses of historical consumer credit data, which allow creditors to develop models that help them predict the risk of default of a particular consumer. (The products are thus sometimes referred to as "risk scores" or "credit scores.") When the consumer applies for credit or other goods or services, the scoring programs that are developed from the complex analysis of past data compare the scoring factors to the individual information of the particular consumer, with the result reflected in a score that is generated for that application.

[8] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 52, table 2 ("All credit accounts and balances...").

credit scoring system that produces rapid, reliable scores based on information from a consumer report.

Chairman Greenspan of the Board of Governors of the Federal Reserve System put it well when he recently testified before the full Committee that "...there is just no question that unless we have some major sophisticated system of credit evaluation continuously updated, we will have very great difficulty in maintaining the level of consumer credit currently available because clearly, without the information that comes from various credit bureaus and other sources, lenders would have to impose an additional risk premium because of the uncertainty before they make such loans or may, indeed, choose not to make those loans at all. So it is clearly in the interests of consumers to have information continuously flowing into these markets. It keeps credit available to everybody, including the most marginal buyers. It keeps interest rates lower than they would otherwise be because the uncertainties which would be required otherwise will not be there."[9]

Before describing some of the primary elements of the FCRA, let me describe briefly how the consumer reporting system works in this country today. Creditors voluntarily report account histories to consumer reporting agencies.[10] Typically, creditors report full account payment information, both "positive" information that the account is current, as well as "negative" information, such as delinquencies and collection accounts.[11] This contrasts with practices in

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[9] Remarks following testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee, at

[10] Each of the three national credit reporting companies receives more than 2 billion items of information each month. *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 49.

[11] Although the majority of creditors report full account information, some types of accounts are typically reported only when the payment history turns negative, most often when the debt is transferred

some other countries (and, indeed, with some credit bureaus in the early years of their development in this country) where only negative payment history is reported.[12]

Although the credit reporting industry has developed uniform reporting formats and methods,[13] not all creditors necessarily report to all major repositories. Moreover, credit reporting agencies have different schedules and procedures to augment individual consumer files with updated data from creditors. Consumer reporting agencies also obtain information from other sources, such as public record data. For all of these reasons, at any given point in time, each of the credit reports on an individual as supplied by the three major repositories may contain somewhat different information.[14] As a result, in the residential mortgage market, for example, creditors use credit reports produced by resellers who consolidate the data available from the three major repositories.

When a consumer applies for credit, lenders obtain consumer reports by providing identifying information on the consumer to the credit bureau. The credit bureau provides a full report listing all accounts and payment histories and/or a credit score, which is a numerical

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to a debt collector. Accounts related to medical debts, telecommunications, and power companies are the most common examples. *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 50, 68. To the extent that consumers have positive payment history only from non-traditional credit such as rent and utilities, this may limit their access to credit.

[12] *See, e.g.,*The World Bank, "World Development Report 2002," at 95 (2002); John M. Barron and Michael Staten, "The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience," at 14, available online at http://www.privacyalliance.org/resources/staten.pdf (2000) (comparing the U.S. comprehensive credit reporting system to the Australian negative-information-only system).

[13] *See* http://www.cdiaonline.org/data.cfm for information on the uniform reporting format utilized by most creditors and other furnishers of information to consumer reporting agencies.

[14] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 50-51, 70-71.

classification based on information in the consumer report.[15] The credit agencies also handle other functions (including those required by the FCRA, such as responding to consumer disputes) through uniform industry processes.[16] The importance of these additional functions has grown along with concerns about identity theft,[17] because credit reporting agencies play a major role in limiting the damage and correcting the fraudulent records that identity thieves leave behind.

III. FCRA Overview

A. Background

Along with the growth of consumer credit, and the parallel development of consumer reporting agencies, concerns began to surface about the treatment of consumer information in credit reporting. The credit reporting industry had evolved piecemeal, and there was little consistency in methods of data collection or, before the FCRA, standards of retention or accuracy. For example, there were no federal legal restrictions on access to consumer credit data, so reporting agencies were free to share a wide range of information with credit grantors and others, without regard to the purpose for which the information was sought. Consumer

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[15] Between 2 and 3 million consumer reports are issued by credit bureaus each day. *See* http://www.cdiaonline.org/about.cfm. For a brief description of scores, *see* Note 7, *supra.*

[16] The Consumer Data Industry Association (CDIA) is a trade association for major consumer reporting agencies. Among other steps to promote standardized automated procedures between and among consumer reporting agencies and furnishers of information to agencies, CDIA oversees a system for credit bureaus to forward consumer disputes to furnishers for investigation. Disputes are forwarded on standardized Automated Consumer Dispute Verification (ACDV) forms. The system now has a web-based component, E-OSCAR, that is intended to further enhance the flow of consumer disputes, update information, and other data. The automated dispute system not only provides a uniform format for conveying the disputes, it also serves an implicit authenticating function – a creditor who receives a consumer dispute via the system knows that the forwarding entity has been approved by CDIA for use of the system.

[17] Identity theft occurs when someone commits fraud by using another person's identifying information, such as date of birth, social security number, or credit account numbers. The fraud could include applying for or using credit in another's name, obtaining bank loans, employment, utility services (including cell 'phones), or similar illegal conduct in the "true name" identity of the consumer whose information was misappropriated.

awareness of credit reports was low due in part to the fact that users of reports were contractually prohibited by credit bureaus from disclosing the reports to consumers.[18] Even if a consumer could learn what was in his or her credit report, there was no way for the consumer to challenge erroneous information.

In response to rising concerns about the consumer reporting system, and recognizing its importance to business and consumers, Congress held hearings that resulted in passage of the FCRA to provide a framework for the industry and to secure protections for consumers. In enacting the FCRA, Congress specifically recognized that consumer credit "is dependent upon fair and accurate credit reporting."[19]

The 1970 FCRA imposed duties primarily on consumer reporting agencies, with very limited requirements on those that use credit reports, and no provisions aimed at those who furnished information to the reporting agencies.

The consumer reporting industry and the consumer credit economy changed tremendously in the decades following the enactment of the FCRA. The computerization of credit histories into vast databases accelerated markedly. The industry further consolidated, eventually comprising three major credit bureau repositories that maintain large, automated databases of consumer information, and a limited number of other agencies.[20] Logistical challenges

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[18] Congress was especially concerned about this lack of awareness in the context of "investigative consumer reports" – reports on a consumer's character, general reputation, personal characteristics, or mode of living, obtained through personal interviews with neighbors, friends, or associates of the consumer – and thus provided special notice and disclosure requirements, together with other provisions, for investigative reports. Section 606 of the FCRA; 15 U.S.C. § 1681d.

[19] Section 602(a)(1), the Congressional findings and statement of purpose for the FCRA. 15 U.S.C. § 1681(a)(1).

[20] At present, the three largest bureaus are Trans Union, Experian (formerly owned by TRW), and Equifax. Although some local bureaus still remain, most are affiliated in some fashion with one of the "big three" repositories. The industry has also witnessed the emergence of companies that collect

associated with increased computerization and further changes in the industry led to an increase in complaints about mixed files – inclusion in a single file of information belonging to two or more different individuals – and other consumer report inaccuracies. More generally, the American public has become increasingly aware of privacy issues related to personal information.

In 1996, after several years of legislative consideration, Congress passed significant amendments to the FCRA. The amendments built on the core elements of the original FCRA and provided added protections to consumers in several key areas. The amendments also permitted greater sharing of consumer report information by affiliated companies under certain conditions,[21] and granted more flexibility to creditors and insurers in making prescreened offers, *i.e.*, obtaining lists of consumers based on consumer report information, in order to make offers of credit or insurance to consumers who the offeror deems qualified.[22] Let me briefly review

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and report specialized information such as check writing histories, rental records, and employment applications. The 1990's saw the growth of "resellers," consumer reporting agencies that purchase consumer information from one or more of the major repositories and then resell it, usually after re-formatting, categorizing, or otherwise treating the information. All of these entities are covered by the FCRA.

[21] Section 603(d)(2)(A)(iii) exempts from the FCRA communication of information among affiliates, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated and the consumer is given the opportunity to opt out of such information sharing. 15 U.S.C. § 1681a(d)(2)(A)(iii).

[22] Prescreened offers, which are discussed in more detail below, are unsolicited "firm offers" of credit or insurance that are based on information from consumer reports. Generally they take the form of lists of consumers to whom credit grantors make offers of credit – the most obvious example is mailed promotions of credit cards. These lists are assembled by credit bureaus based on criteria set by the credit grantor; the bureau screens its consumer files (except those that have opted out of prescreened offers) for all consumers who meet the creditor's criteria. Generally speaking, the FCRA requires that all consumers who survive the prescreen must receive a "firm offer" of credit. Prescreened lists are thus an exception to the general rule that credit reports can be furnished only when a consumer initiates a transaction or has a preexisting relationship with the creditor seeking a copy of the report. *See* H. Rep. 103-486, 103rd Cong., 2nd Sess., 32-33 (1994).

some of the important elements of the FCRA as it stands today, thirty-three years after its original passage.

B. Key FCRA Provisions

As I discussed earlier, the FCRA establishes a framework that enables businesses to engage in the information exchanges necessary for the proper functioning of the credit markets. At the same time, it provides corresponding consumer protections in two vital areas – privacy and accuracy. It is important to keep in mind that, notwithstanding its title, the Fair Credit Reporting Act has always covered more than what are conventionally termed "credit reports." It applies generally to any information collected and used for the purpose of evaluating consumers' eligibility for products and services that they want. Thus, the FCRA has always applied to insurance, employment, and other non-credit consumer transactions.[23] The focus here will be on credit reporting, but the same basic regulatory structure applies to all consumer reports.

1. Privacy

As recognized by Congress in its initial passage of the FCRA, the confidentiality of consumer report information is a fundamental principle underlying the statute.[24]

a. Permissible purposes

The FCRA is designed to protect consumer privacy in a number of ways. Primarily, it limits distribution of credit reports to those with specific, statutorily-defined "permissible

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[23] "It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information..." Section 602(b) of the FCRA; 15 U.S.C. § 1681(b).

[24] The congressional findings note the "...need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy." Section 602(a)(4); 15 U.S.C. § 1681(a)(4). Under the "reasonable procedures" portion of the statement of purpose for the FCRA, Congress noted the importance of the "confidentiality" of consumer report information. Section 602(b); 15 U.S.C. § 1681(b).

purposes."[25] Generally, reports may be provided for the purposes of making decisions involving credit, insurance, or employment.[26] Consumer reporting agencies may also provide reports to persons who have a "legitimate business need" for the information.[27] Under the FCRA, government agencies are treated like other parties – that is, they must have a permissible purpose to obtain a credit report.[28] The written instructions of the consumer may also provide a permissible purpose for a consumer reporting agency to furnish a credit report.[29] Under the FCRA, target marketing – making unsolicited mailings or telephone calls to consumers based on information from a credit report – is generally not a permissible purpose.[30] In a 1992

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[25] What constitutes a "consumer report" is a matter of statutory definition (Section 603(d); 15 U.S.C. § 1681a(d)) and case law. Among other considerations, to constitute a consumer report, information must be collected or used for "eligibility" purposes. That is, the data must not only "bear on" a characteristic of the consumer (such as credit worthiness, credit capacity, character, general reputation, or mode of living), it must also be *used* in determinations to grant or deny credit, issue insurance, make employment decisions, or make other determinations regarding permissible purposes. Trans Union Corp. v. FTC, 81 F.3d 228, 234 (D.C. Cir. 1996).

[26] Section 604(a)(3); 15 U.S.C. § 1681b(a)(3). Credit reports may also be furnished for certain on-going account-monitoring and collection purposes.

[27] 15 U.S.C. § 1681b(a)(3)(F). *See also* Note 33, *infra*, and text accompanying.

[28] Under Section 608 of the FCRA, government entities may obtain limited identifying information (name, address, employer) without a "permissible purpose." 15 U.S.C. § 1681f. The FCRA additionally now contains express provisions on government use of consumer reports for counterintelligence and counter-terrorism. Sections 625 and 626, respectively; 15 U.S.C. §§ 1681u, 1681v.

[29] Other permissible purposes specified in the FCRA include (1) in response to an order of a court or a Federal grand jury subpoena; (2) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; and (3) in response to a request by the head of a state or local child support enforcement agency if the person making the request certifies to the credit bureau that certain conditions are met (and in certain other child support circumstances). Section 604(a); 15 U.S.C. § 1681b(a).

[30] Prescreening, discussed more fully below at notes 35-41 and accompanying text, is a form of target marketing for firm offers of credit or insurance, for which the FCRA now provides an explicit permissible purpose keyed to adherence to statutory procedures, including affording consumers the opportunity to opt out of future prescreened solicitations. *See also* note 22, *supra*.

Commission action to enforce the FCRA against a consumer reporting agency that sold target marketing lists assembled using consumer report information, the court of appeals held that "...a major purpose of the Act is the privacy of a consumer's credit-related data."[31] If consumer information is "so sensitive as to rise to the level of a consumer report," then it must "...be kept private except under circumstances in which the consumer could be expected to wish otherwise or, by entering into some relationship with a business, could be said to implicitly waive the Act's privacy to help further that relationship."[32]

The 1996 amendments added provisions that reflected Congress' awareness of increased public concern about the privacy of personal information. For example, Congress added, for the first time, an express provision stating that the "legitimate business need" permissible purpose requires that the transaction be "initiated by the consumer."[33] Congress also added express language prohibiting any person from *obtaining* a consumer report without a permissible purpose.[34]

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[31] Trans Union Corp. v. FTC, 81 F.3d 228, 234 (D.C. Cir. 1996). The Trans Union case has a long history. The Commission issued an administrative complaint in 1992, and a Commission administrative law judge ("ALJ") granted summary judgment to complaint counsel, and was affirmed by the full Commission. 118 F.T.C. 821 (1994). On appeal, the case was remanded back to the ALJ for a trial. Trans Union Corp. v. FTC, 81 F.3d 228 (D.C. Cir. 1996). After a trial, the ALJ issued another decision in the Commission's favor, which was affirmed by the full Commission. ____ F.T.C. ___ (2000). This decision was affirmed by the U.S. Court of Appeals for the D.C. Circuit , and certiorari was denied by the Supreme Court. Trans Union Corp. v. FTC, 245 F.3d 809, *reh. denied* 267 F.3d 1138 (D.C. Cir. 2001), *cert. denied*, 122 S. Ct. 2386 (June 10, 2002).

[32] *Id.*

[33] Section 604(a)(3)(F)(i); 15 U.S.C. 1681b(a)(3)(F)(i). The review of an account "to determine whether the consumer continues to meet the terms of the account" supplies the other "legitimate business need" of this permissible purpose. Section 604(a)(3)(F)(ii); 15 U.S.C. 1681b(a)(3)(F)(ii).

[34] The 1970 FCRA prohibited consumer reporting agencies from *furnishing* consumer reports to those who do not have a permissible purpose, but there was no analogous provision aimed at those who obtained consumer reports (with the exception of a criminal provision imposed on those who obtained information on a consumer "under false pretenses." Section 619, 15 U.S.C. § 1681q).

b. Consumer right to opt out of prescreening.

The 1996 amendments also added an express permissible purpose for prescreening. As noted above, prescreened offers are unsolicited offers of credit or insurance that are made (typically in mass mailings) to consumers who were selected for the offer based on information in their credit reports. Prior to the 1996 amendments, the FCRA did not specifically address the use of consumer reports for such unsolicited offers. The Commission, however, had issued an interpretation of the FCRA in 1973 that permitted the use of consumer reports by creditors for unsolicited offers of credit if creditors followed guidelines set forth in the Commission's interpretation.[35] Those guidelines required every consumer on any list resulting from the use of consumer reports to receive a firm offer of credit – *i.e.*, the offer must be unconditional; all the consumer had to do to receive the credit was to accept the offer.

In the 1996 amendments, Congress added a number of provisions to the FCRA to provide an explicit statutory framework for prescreening.[36] The legislative process leading to the 1996 amendments included an extensive consideration of prescreening issues. Congress ultimately

[35] 16 C.F.R. § 600.5 (withdrawn in 1990 when the Commission *Commentary* was published; *see* notes 52-53, *infra*). The Commission's rationale for permitting prescreening was that the minimal invasion of consumer privacy involved in prescreening was offset by the fact that every consumer received an offer of credit. The four banking regulatory agencies also interpreted the FCRA to sanction prescreening for the entities under their jurisdiction.

[36] Sections 603(*l*); 604(c) and (e); and 615(d); 15 U.S.C. §§ 1681a(*l*), 1681b(c) and (e), and 1681m(d), respectively. "Firm offer of credit or insurance," the term used by Congress for what is commonly known as "prescreening," is defined in Section 603(*l*), which also contains much of the operable language governing prescreening. The permissible purpose is set out in Section 604(c) and the opt-out scheme is contained in Section 604(e). Section 615(d) recites the disclosures required of those who use consumer reports to make prescreened offers. *See* H. Rep. 103-486, 103rd Cong., 2nd Sess., 32 (1994)("The bill permits a consumer reporting agency to furnish limited information, commonly referred to as a prescreened list, in connection with such transactions only if the transaction consists of a 'firm offer of credit,' the consumer reporting agency has established a notification system whereby consumers can opt out to have their names excluded from consideration from such offers of credit, and the consumer has not elected to be so excluded. Under the bill, a pre-screened list, furnished by a consumer reporting agency in connection with a credit transaction that is not initiated by the consumer, may contain only certain types of information.").

chose to permit prescreening for both credit and insurance purposes, and to permit certain postscreening[37] to protect the safety and soundness of the financial industry.

At the same time, Congress provided an important mechanism for consumers to safeguard their privacy. Every written prescreened offer must provide notice of the consumer's right to "opt out" of future prescreen lists.[38] Credit bureaus must have a system, including a toll-free telephone number, that consumers can use to opt out,[39] and they cannot include consumers who opt out on any subsequent prescreened list.[40] The FCRA requires nationwide bureaus to maintain an opt-out notification system, so that a notification by a consumer to one bureau is sufficient to have the consumer excluded from prescreened offers at all of the bureaus.[41]

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[37] Section 603(*l*) limits permissible postscreening to verifying that consumers continue to meet the criteria used in the prescreening and to verify any application information (such as income or employment) that is used in the process of granting credit or insurance. Credit grantors are also permitted to require that consumers furnish collateral so long as the collateral requirement is established before the prescreening is conducted and is disclosed to the consumer in the solicitation that results from the prescreening. 15 U.S.C. § 1681a(*l*). *See also* H. Rep. 103-486, 103rd Cong., 2nd Sess., 33 (1994)("The Committee recognizes that the furnishing of consumer reports for such credit solicitation is an exception to the general rule in Section 604(a)(3)(A) that consumer reports may be furnished by consumer reporting agencies only for credit transactions that are initiated by the consumer. Consequently, the Committee has established a special rule which permits the furnishing of consumer reports by a consumer reporting agency for credit transactions not initiated by the consumer, but only if the agency complies with strict limitations to ensure privacy protections for consumers. This special rule is a liberalization of an FTC interpretation of the FCRA.").

[38] Section 615(d) requires that written prescreen offers make a clear and conspicuous statement that (i) information in the consumer's credit report was used in the prescreen; (ii) the consumer was selected because the consumer met criteria for credit worthiness or insurability; (iii) the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not continue to meet the criteria used to select the consumer for the offer; (iv) the consumer has the right to opt out of further unsolicited offers; and (v) the methods by which the consumer can notify the credit bureau of a decision to opt out. 15 U.S.C. § 1681m(d).

[39] Section 604(e)(5); 15 U.S.C. § 1681b(e)(5).

[40] Section 604(c)(1)(B)(iii); 15 U.S.C. § 1681b(c)(1)(B)(iii).

[41] Section 604(d)(6); 15 U.S.C. § 1681b(d)(6). The opt-out is effective for two years if conveyed by telephone, or permanently (unless revoked) if conveyed in writing. Section 604(d)(4)(B); 15 U.S.C. § 1681b(d)(4)(B).

2. Accuracy

Credit report accuracy was, and remains, a core goal of the FCRA. Because even small differences in a consumer's credit score can influence the cost or other terms of the credit offer, or even make the difference between getting approved or denied, accuracy of the information underlying the score calculation is paramount. Accurate reports benefit not only consumers but also credit grantors, who need accurate information to make optimal decisions. These considerations provide significant incentives for all parties to maintain a high level of accuracy in consumer credit files. Congress recognized, however, that decisions based on inaccurate information can impose potentially severe consequences to individual consumers. Consequently, Congress enacted the FCRA accuracy protections.[42]

The FCRA uses two major avenues to achieve the goal of optimal accuracy. First, it provides that consumer reporting agencies must follow "reasonable procedures to assure maximum possible accuracy of the information" they report.[43] Second, the FCRA establishes mechanisms for consumers to learn about possible errors in their credit reports and have them corrected. The statute gives consumers both the right to know what information the credit bureau maintains on them, and the right to dispute errors.

a. Consumer right to know.

Under Section 609 of the FCRA, consumers have a right to know all information in their files (except risk scores) upon request and proper identification. They also have the right to learn

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[42] Section 602(a)(1) of the FCRA, Congressional findings and statement of purpose, notes that "Inaccurate credit reports directly impair the efficiency of the banking system...." 15 U.S.C. § 1681(a)(1).

[43] By its terms therefore ("*reasonable* procedures...maximum *possible* accuracy"), the statute itself recognizes that absolute accuracy is impossible. Section 607(b); 15 U.S.C. § 1681e(b). Pragmatic consideration of the large volume of data that credit bureaus must store and process also bears on this issue. *See* notes 2, 5, 6, 10 and 15, *supra,* and text accompanying.

the identity of all recipients of their report for the last year (two years in employment cases).[44] In addition, the consumer's right to learn about and dispute inaccuracies is facilitated by the FCRA's "adverse action" notice requirements. Adverse action notices – sometimes called "Section 615 notices" – are a key mechanism for maintaining accuracy. Since 1970, the FCRA has required that when credit is denied based even in part on a consumer report (or, in some cases, when the consumer is offered less-advantageous terms than would be the case in the absence of the consumer report information), the creditor must notify the consumer and provide certain key information, including (1) the identity of the consumer reporting agency from which the creditor obtained the report; (2) the right to obtain a free copy of the report; and (3) the right to dispute the accuracy of information in the report.[45]

Under the 1970 FCRA, adverse action notices were required only when consumer reports were used for credit, insurance, or certain employment purposes. In the 1996 amendments, Congress broadened the circumstances under which adverse action notices are required in connection with insurance and employment decisions. It also required notices of adverse action when consumer reports are used in other situations, such as opening savings or checking accounts, apartment rentals, and retail purchases by check.[46]

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[44] 15 U.S.C. § 1681g.

[45] Section 612 provides that consumer reporting agencies must make free disclosure if a consumer makes a request within 60 days of receipt of an adverse action notice, and may charge a maximum of $8 in other cases. 15 U.S.C. § 1681j. The Commission is charged in the FCRA with modifying the maximum amount, based proportionally on changes in the Consumer Price Index. The latest annual finding on the matter raised the maximum allowable charge to $ 9. 67 Fed. Reg. 77282 (Dec. 17, 2002); *see also* http://www.ftc.gov/opa/2002/12/fyi0265.htm.

[46] In the original FCRA, adverse action notices were required only when "credit or insurance...or employment...is denied or the charge for such credit or insurance is increased...." After changes enacted in the 1996 amendments, adverse action for purposes of credit transactions is tied to the interpretation of "adverse action" in the Equal Credit Opportunity Act. For use of consumer reports in insurance, the scope of "adverse action" was expanded to include "a denial or cancellation of, an increase in any charge

The Commission believes that the "self-help" mechanism embodied in the FCRA's scheme of adverse action notices and the right to dispute is a critical component in the effort to maximize the accuracy of consumer reports. Consumers are most likely to recognize the errors in their credit history and are more highly motivated to raise their concerns once they know that an adverse action was based on their credit report. The Commission has given high priority to assuring compliance with this provision.[47]

b. Consumer dispute rights

The consumer initiates a dispute by notifying the consumer reporting agency of an error in the completeness or accuracy of any item of information contained in the file. The consumer reporting agency must reinvestigate the dispute, generally within 30 days, record the current status of the information and delete it if it is found to be inaccurate or unverifiable. The consumer reporting agency is required to provide "all relevant information" to the original furnisher of the disputed information, to help ensure that the furnisher fully investigates the dispute. The agency must report the results of the investigation to the consumer. If the investigation does not resolve the dispute, the consumer may file a statement with his or her version of the facts, which must then be furnished with the credit report.

For the first time, the 1996 amendments imposed certain accuracy and reinvestigation duties on furnishers of information to credit bureaus. These requirements recognize that

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for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for...." Similar expansion of the scope of "adverse action" was enacted for employment purposes ("a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee") and other permissible purposes. *See* Section 603(k); 15 U.S.C. 1681a(k).

[47] *See, e.g.*, Quicken Loans Inc., D-9304 (April 8, 2003) at Note 67, *infra*, and text accompanying.

furnishers – the original source of the information – have a critical role to play in the overall accuracy of consumer report information.

The 1996 amendments also sought to address the problem of recurring errors by prohibiting consumer reporting agencies from reinserting into a consumer's credit file previously-deleted information without first obtaining a certification from the furnisher that the information is complete and accurate, and then notifying the consumer of the reinsertion.

3. Other important FCRA provisions.

Under the FCRA, adverse items of information may, with certain exceptions, be reported for only seven years. The 1996 amendments clarified the date from which the seven years should be calculated.

The 1996 amendments expanded the obligations of certain users of consumer reports. In the employment context, these changes were quite significant; they include requirements that an employer obtain the consent of a job applicant or current employee before obtaining a consumer report and, before taking adverse action based on the report, provide a copy of it to the individual.[48]

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[48] Because the new employer obligations imposed by the 1996 amendments apply also to investigative consumer reports and Congress removed a prior exemption for use of investigative reports in certain employment circumstances, employers may encounter difficulties when using outside entities to assist by preparing reports based on interviews in investigations of alleged workplace misconduct. Concerns arose because such investigations might be hampered by FCRA obligations, such as the requirement that an employer obtain the authorization of an employee before obtaining a consumer report, and the requirement that the employee be provided a copy of the report before the employer can take adverse action. Several Congressional proposals to amend the FCRA to meet the workplace investigation concerns have been introduced. In 2000, the Commission commented (*see* http://www.ftc.gov/os/2000/03/ltrpitofskysessions.htm) and testified with respect to one such proposal (*see* http://www.ftc.gov/os/2000/05/fcratestimony.htm). The Commission remains of the opinion that a legislative remedy of the type endorsed by the Commission in 2000 is the most appropriate response to these concerns.

The 1996 amendments also made changes in the relationship between the FCRA and state laws. As originally enacted in 1970, the FCRA provided that the federal statute did not exempt persons from complying with state laws "with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent" with the FCRA. The 1996 amendments retained this language, but significantly modified the provision to preempt state laws in certain specified areas covered by the amended FCRA.[49]

Section 624 of the FCRA ("Relation to State Laws") now provides that no state laws may be imposed in the areas of (i) prescreening (including the definition of the term "firm offer of credit or insurance" and the disclosures which must be made in connection with prescreened offers), (ii) the time within which a consumer reporting agency must complete its investigation of disputed information, (iii) the adverse action notice requirements of Section 615, (iv) the obsolescence limitations and other provisions of Section 605, (v) furnisher obligations under Section 623, (vi) the consumer summary of rights required by Section 609(c) to be provided by consumer reporting agencies to consumers who obtain disclosure of their files, and (vii) information sharing by affiliates.[50] The specific preemptions are qualified in a number of respects, including specifying particular pre-existing state enactments to which the preemptions do *not* apply.[51] The primary proviso with respect to the preempted provisions, however, is that

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[49] Thus, both before *and after* the 1996 preemptions, states were free to legislate in areas covered by the FCRA but not specifically preempted. *See, e.g.,* Colo. Rev. Stat. § 12-14.3-104 (providing for free annual credit reports).

[50] Section 624(b); 15 U.S.C. § 1681t(b).

[51] Section 624(d); 15 U.S.C. § 1681t(d). There is, moreover, a blanket "grandfathering" of state laws relating to the obsolescence limits of Section 605. Section 624(b)(1)(E); 15 U.S.C. § 1681t(b)(1)(E). An example is N.Y. Gen. Bus. L. § 380-j(f)(1)(ii)(paid judgments may not be reported for more than five years).

after January 1, 2004, states may enact laws that (i) are specifically intended to supplement the FCRA, and (ii) give greater protection to consumers than is provided under the FCRA.

Finally, other significant additions of the 1996 amendments include authorizing states to enforce the FCRA, and adding civil penalty authority for the Federal Trade Commission.

IV. FTC Interpretive Guidance and Enforcement

When it enacted the FCRA in 1970, Congress provided that the Commission would be the principal agency to enforce the statute. To help foster understanding and ensure compliance with the law, the Commission engaged in extensive business education and guidance, including, in the first two decades, publishing over 350 staff opinion letters, a staff guidance handbook, and six formal Commission interpretations.[52] All of this material was then brought together in the Commission's 1990 *Commentary on the FCRA*.[53] The *Commentary* was well received and has served as a valuable explanatory and enforcement guide to industry and other affected parties. It also has assisted the staffs of the Commission and other regulatory agencies in interpreting the Act efficiently and consistently.

After the 1996 amendments, the Commission intensified its long-standing program of consumer and industry education.[54] In view of the extension of enforcement authority to the

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[52] The interpretations were published at 16 C.F.R. § 600 and were withdrawn when the Commission published the 1990 *Commentary*.

[53] 55 Fed. Reg. 18804 (May 4, 1990). The 1990 Commentary was the culmination of a proposal published in August 1988 and the Commission's review of over 100 submissions it received in response to its request for public comments on that proposal. 53 Fed. Reg. 29696 (August 8, 1988).

[54] The Commission also drafted and published language for the three notices required by the 1996 amendments to be distributed by credit bureaus: (1) a notice to consumer report users of their FCRA responsibilities; (2) a notice to furnishers explaining their new obligations; and (3) a notice to consumers, describing their FCRA rights, which must be included with any credit report requested by the consumer. The Commission believes that Congress' aim in requiring these notices has been achieved – the notices seem to be effective in conveying to consumers and businesses their rights and obligations under the Act.

states, the Commission conducted a nationwide series of training sessions on the FCRA for state officials. The Commission's informal guidance expanded to meet the interpretive needs prompted by the amendments. As one result of that effort, the Commission staff published an additional 85 opinion letters. The letters can be found on the Commission's website, which also features easy access to other useful FCRA information for both business and consumers.[55] The Commission and its staff maintain active participation in many industry and consumer outreach efforts and respond daily to callers with FCRA questions.[56]

Current interpretive efforts at the Commission are focused on a revision to the 1990 *Commentary*.[57] The passage of time generally, and the 1996 amendments specifically, have rendered the 1990 Commentary partly obsolete. The new *Commentary* will draw on the staff opinion letters that post-dated the 1990 effort, as well as other Commission enforcement and interpretive experience.

Over the entire period of the FCRA, the Commission has engaged in extensive consumer education.[58] The Commission continues to regard consumer education as particularly vital to the FCRA because the statute contains self-enforcing elements, such as the right to dispute inaccurate or incomplete information.

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[55] *See, e.g.,* the Commission's FCRA "home page," http://www.ftc.gov/os/statutes/fcrajump.htm, and plain-English consumer information, http://www.ftc.gov/bcp/conline/edcams/fcra/index.html.

[56] To achieve compliance, the Commission has also periodically worked with industry and self-regulatory groups where appropriate.

[57] *See* Commission press release at http://www.ftc.gov/opa/2003/01/fyi0302.htm, and "Notice of intent to request public comments" at http://www.ftc.gov/os/2003/01/16cfr1frn.htm.

[58] Over the past seven years, 3.9 million of the five most popular FCRA brochures were distributed by the Commission. The information is duplicated on the Commission's web site, where the same brochures have registered over 1.6 million visits during the past five years. FCRA brochures such as "Building a Better Credit Record," "How to Dispute Credit Report Errors," and "Fair Credit Reporting" have each been distributed in numbers exceeding 100,000 per year over the past five years.

The Commission has also brought a number of formal actions to enforce the FCRA. These actions have included cases to ensure (1) compliance with the adverse action notice requirements on the part of creditors[59] and employers;[60] (2) compliance with privacy and accuracy requirements by the major nationwide credit bureaus;[61] (3) compliance by resellers of consumer reports (agencies that purchase consumer reports from the major bureaus and resell them);[62] as well as cases addressing a number of other FCRA issues.[63]

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[59] Hospital & Health Services Credit Union, 104 F.T.C. 589 (1984); Associated Dry Goods, 105 F.T.C. 310 (1985); Wright-Patt Credit Union, 106 F.T.C. 354 (1985); Federated Department Stores, 106 F.T.C. 615 (1985); Winkleman Stores, Civ. No. C 85-2214 (N.D. Ohio 1985); Strawbridge and Clothier, Civ. No. 85-6855 (E.D. Pa. 1985); Green Tree Acceptance, Civ. No. CA 4 86 469 K (M.D. Tex. 1988); Quicken Loans Inc., D-9304 (April 8, 2003). *See also,* Aristar, Civ. No. C-83-0719 (S.D. Fla. 1983); Allied Finance, Civ. No. CA3-85-1933F (N.D. Texas 1985); Norwest Financial, Civ. No. 87 06025R (C.D. Cal. 1987); City Finance, Civ. No. 1:90-cv-246-MHS (N.D. Ga. 1990); Tower Loan of Mississippi, Civ. No. J90-0447 (J) (S.D. Miss. 1990); Barclay American Corp., Civ. No. C-C-91-0014-MU (N.C. 1991); Academic International, Civ. No. 91-CV-2738 (N.D. Ga. 1991); Bonlar, Civ. No. 97C 7274 (N.D. Ill. 1997); Capital City Mortgage, Civ. No. 1:98CV00237 (D.D.C. 1998).

[60] Electronic Data Systems, 114 F.T.C. 524 (1991); Kobacker, 115 F.T.C. 13 (1992); Keystone Carbon, 115 F.T.C. 22 (1992); McDonnell Douglas Corp., 115 F.T.C. 33 (1992); Macy's,115 F.T.C. 43 (1992); Marshall-Field, 116 F.T.C. 777 (1993); Bruno's, Inc., 124 F.T.C. 126 (1997); Aldi's, 124 F.T.C. 354 (1997); Altmeyer Home Stores, Inc., 125 F.T.C. 1295 (1998).

[61] Trans Union Corp., 102 F.T.C. 1109 (1983); FTC v. TRW Inc., 784 F. Supp. 362 (N.D. Tex. 1991); Trans Union Corp. 116 F.T.C. 1357 (1993)(consent settlement of prescreening issues *only* in 1992 target marketing complaint; *see also* Trans Union Corp. v. FTC, 81 F.3d 228 (D.C. Cir. 1996)); Equifax Credit Information Services, Inc., 130 F.T.C. 577 (1995). Each of these "omnibus" orders differed in detail, but generally covered a variety of FCRA issues including accuracy, disclosure, permissible purposes, and prescreening.

[62] *See* I.R.S.C., 116 F.T.C. 266 (1993); CDB Infotek, 116 F.T.C. 280 (1993); Inter-Fact, Inc., 116 F.T.C. 294 (1993); W.D.I.A., 117 F.T.C. 757 (1994)(consents against resellers settling allegations of failure to adequately insure that users had permissible purposes to obtain the reports). *See also* First American Real Estate Solutions, LLC, C-3849, January 27, 1999, 1999 FTC LEXIS 137 (consent with a reseller concerning the dispute obligations of consumer reporting agencies).

[63] Howard Enterprises 93 F.T.C. 909 (1979)(bad check lists); Equifax, Inc. (formerly Retail Credit Company), 96 F.T.C. 844 (1980)(investigative consumer reports);. MIB, Inc., d/b/a Medical Information Bureau, 101 F.T.C. 415 (1983)(prohibits a non-profit medical reporting agency from conditioning the release of information to a consumer on his/her execution of a waiver of claims against the firm; requiring timely reinvestigations of disputed information; contact, when possible, the source(s) of disputed information or other persons identified by the consumer who may possess information relevant to the challenged data and modify its files accordingly).

The Commission's enforcement efforts since 1996 have focused on the new requirements added by the amendments. For example, the amendments added a requirement that the nationwide credit bureaus have "personnel accessible" at toll-free numbers printed on a consumer's credit report.[64] The Commission settled cases against the three major repositories charging that they failed to have adequate personnel available to answer FCRA-mandated toll-free telephone numbers. The orders required the repositories to (1) maintain adequate personnel; (2) establish auditing requirements to ensure future compliance, and (3) pay a total $2.5 million in civil penalties.[65] The Commission also has settled cases against furnishers of information to consumer reporting agencies alleging that they reported inaccurate dates for when consumers' delinquencies had begun, with the result that adverse information remained on the consumer' reports past the seven-year limit provided by the FCRA.[66]

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[64] Section 609(c)(1) of the FCRA, 15 U.S.C. § 1681g(c)(1), requires a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis to establish a toll-free telephone number, at which personnel are accessible to consumers during normal business hours. This telephone number must be provided with each written disclosure of information in the consumer's file, by the consumer reporting agency to the consumer.

[65] Equifax, No. 1:00-CV-0087 (N.D. Ga. 2000); Experian, No. 3-00CV0056-L (N.D. Tex. 2000); TransUnion, 00C 0235 (N.D. Ill. 2000).

[66] DC Credit Services, Inc., No. 02-5115 (C.D. Cal. 2002)(furnishing information to a consumer reporting agency knowing or consciously avoiding knowing that the information is inaccurate, failure to notify consumer reporting agencies when previously-reported information is found to be inaccurate and to provide corrections, failure to provide accurate delinquency dates, failure to report accounts as "disputed" to consumer reporting agencies; $300,000 civil penalty); Performance Capital Management, Inc., 2:01cv1047 (C.D. Cal. 2000)(providing inaccurate delinquency dates, failure to properly investigate disputes, failure to report accounts as "disputed" to consumer reporting agencies; $2 million civil penalty).

Recently, the Commission settled an action against an Internet mortgage lender that failed to give adverse action notices to consumers who did not qualify for online pre-approval because of information in their credit reports.[67]

The Commission staff recently conducted an investigation of fifteen landlords in five cities across the United States. The staff found a high level of compliance with the adverse action requirements of the FCRA.[68] To a significant degree, landlords *do* notify applicants when they turn them down for rentals based on information from a consumer report. The Commission will continue this type of compliance review in other industries, and bring law enforcement actions as appropriate. The Commission will continue to use this combination of education initiatives and vigorous enforcement to foster compliance with the FCRA.

V. Current Issues: The FCRA and the Expanded Use of Consumer Reports

Based on the Commission's experience interpreting and enforcing the FCRA, we see several ongoing developments in the consumer reporting marketplace that may have significant impact on consumers. First, more types of businesses are using credit reports to make decisions in consumer transactions. For example, telephone service providers routinely use consumer reports to make decisions on whether to provide service and what deposit requirements (if any) to impose. Insurance companies have long considered consumer reports when underwriting homeowners and auto insurance policies. While insurers once looked primarily at consumers'

[67] Quicken Loans Inc., Docket No. D-9304 (April 8, 2003); *see also* http://www.ftc.gov/opa/2002/12/quicken.htm.

[68] The Commission's January 15, 2002 press release on the investigation and resulting business education brochure can be found at http://www.ftc.gov/opa/2002/01/fcraguide.htm.

claims history to determine risk of loss, it appears that they are increasingly using information from consumers' credit histories to make underwriting decisions.[69]

Second, we are seeing new types of consumer credit providers and products in the marketplace. For example, the growing use of prescreened offers for marketing credit cards has led to the development of credit card banks that rely almost entirely on prescreened offers to market their cards.[70] Prescreening, in combination with other direct marketing and advertising, has led to the widespread availability of credit cards with no annual fee and other attractive benefits, and has enhanced competition.[71] Of course, some consumers may object to what may seem like a flood of prescreened offers in their mail boxes, or have concerns about the increased risk of identity theft that may occur in the same context. The 1996 Amendments to the FCRA allow these consumers to opt out of future offers.

Third, businesses increasingly are using consumer report data to undertake risk-based pricing of products or services.[72] In many areas, the decision making of creditors and other businesses has moved away from a simple approval or denial model, and towards using consumer

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[69] *See, e.g.,* Sabrina Jones and Sandra Fleishman, "One Claim Too Many? Insurance's New Policy: Use It and Lose It," Washington Post, November 10, 2002, at H01; Dan Oldenburg, "Car Insurers Take Credit Into Account," Washington Post, October 15, 2002, at C10; Albert Crenshaw, "Bad Credit, Big Premiums; Insurers Using Bill-Payment History to Help Set Rates," Washington Post, June 18, 2002, at E01.

[70] *See* Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, at 11.

[71] *See* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 72-73. *See also* Note 8 *supra*, and text accompanying.

[72] *Id. See also* Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, at 12.

report data in a more finely-calibrated evaluation of what terms to offer.[73] Consumers whose credit histories warrant more favorable treatment benefit from access to products and terms that are more tailored by risk evaluations based on their actual performance. Consumers with poorer credit histories who in the past might have been turned down, may now qualify for credit, but on less favorable terms commensurate with the risk. Consumers benefit from a more efficient and competitive consumer credit market.[74]

Credit report scoring products are used in a variety of other contexts, including on-going monitoring and servicing of consumer accounts that can result in adjustments in terms, such as credit limits and finance changes. Rapid access to credit scores also permits retailers and others to offer "instant credit" to consumers.

Overall, developments in the consumer credit marketplace have increased consumer choice and provided financial benefits to consumers.[75] The Commission believes that the growth of the consumer credit market has also increased public awareness and interest in credit reports and credit scores, and that the FCRA made this information more timely, accurate, and accessible.

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[73] *See, e.g.,* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 70 ("[consumer report] data and the credit-scoring models derived from them have substantially improved the overall quality of credit decisions and have reduced the costs of such decision-making"), *citing* Gates, Perry and Zorn, "Automated Underwriting in Mortgage Lending: Good News for the Underserved?" *Housing Policy Debate*, vol. 13, issue 2, 2002, pp. 369-91; and Barron and Staten, "The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience," Credit Research Center, Georgetown University, 2002.

[74] Some commentators suggest that using credit score cards built with data supplied by credit bureaus results in delinquency rates 20-30 percent lower than lending decisions based solely on judgmental evaluation of applications for credit. *See* Peter McCorkell, "The Impact of Credit Scoring and Automated Underwriting on Credit Availability," in Thomas A. Durkin and Michael E. Staten, eds., *The Impact of Public Policy on Consumer Credit* (2002).

[75] *See, e.g.,* "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, February 2003, at 70; Fred H. Cate, Robert E. Litan, Michael Staten, and Peter Wallison, "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining the Balance," AEI-Brookings Joint Center for Regulatory Studies, March 2003, *passim*.

The consumer reporting system, and the obligations and protections of the FCRA, make it possible for creditors and other businesses to have access to timely, accurate consumer data.

Any reference to the consumer reporting system should also recognize the increasing problem of identity theft. The range, accuracy, and timeliness of information in consumer reporting databases make them unique resources. They are therefore simultaneously a target for identity thieves and a valuable resource for combating identity theft. Identity theft threatens the fair and efficient functioning of consumer credit markets by undermining the accuracy and credibility of the information flow that supports the markets.

As I detailed recently before this Committee, the Commission is working actively to combat identity theft in a number of areas.[76] As awareness of the FTC's role in identity theft has grown, businesses and organizations who have suffered compromises of personal information have begun to contact the FTC for assistance. For example, in the cases of TriWest[77] and Ford/Experian,[78] in which massive numbers of individuals' personal information was taken, the Commission provided advice on notifying those individuals and what steps they should take to protect themselves. From these experiences, the FTC developed a business record theft response kit that will be posted shortly on the identity theft web site. The kit includes the steps to take in responding to an information compromise and a form letter for notifying the individuals whose information was taken. The kit provides advice on the type of law enforcement agency to contact, depending on the type of compromise, business contact information for the three major credit

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[76] *See* http://financialservices.house.gov/media/pdf/040303hb.pdf.

[77] Adam Clymer, *Officials Say Troops Risk Identity Theft After Burglary*, N.Y. TIMES, Jan. 12, 2003, § 1 (Late Edition), at 12.

[78] Kathy M. Kristof and John J. Goldman, *3 Charged in Identity Theft Case*, L.A. TIMES, Nov. 6, 2002, Main News, Part 1 (Home Edition), at 1.

reporting agencies, suggestions for setting up an internal communication protocol, information about contacting the FTC for assistance, and a detailed explanation of what information individuals need to know. Organizations are encouraged to print and include copies of *Identity Theft: When Bad Things Happen to Your Good Name* with the letter to individuals.

VI. Conclusion

In 1970, Congress recognized that "consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers."[79] While Congress in 1970 may not have envisioned the specific ways in which consumer report information would facilitate the development of products and services that ultimately benefit the American consumer, the thirty-three years since passage of the Act have fully demonstrated the wisdom of Congress in enacting the FCRA.

The FCRA helps make possible the vitality of modern consumer credit markets. The consumer reporting industry, furnishers, and users can all rely on the uniform framework of the FCRA in what has become a complex, nationwide business of making consumer credit available to a diverse, mobile American public.

The 1970 Act, along with the 1996 amendments, provide a carefully balanced framework, making possible the benefits that result from the free, fair, and accurate flow of consumer data. All of these benefits depend on the consumer reporting system functioning as intended. That is why the Federal Trade Commission continues to emphasize the importance of educating consumers and businesses, and of enforcing the law to ensure compliance by all who have a role in making the system work.

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[79] Section 602(a)(3) of the FCRA.

Testimony

Before

Subcommittee on Financial Institutions And Consumer Credit

of the

COMMITTEE ON FINANCIAL SERVICES

Regarding

"Fair Credit Reporting Act: How it Functions for Consumers and the Economy"

June 4, 2003

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Chairman Bachus, Congressman Sanders and other distinguished members of the Financial Services Committee, the National Association of Consumer Advocates (NACA) thanks you for inviting us to testify today in this early stage of considering changes to the Federal Fair Credit Reporting Act.

My name is Leonard A. Bennett. I have been asked to appear before you on behalf of NACA, its 850 plus members and the tens of thousands of consumers who we represent or on whose behalf we litigate. I am a consumer protection attorney. I have practiced law in Virginia since 1994, and in North Carolina since 1995. I obtained my undergraduate degree in Finance from George Mason University and my law degree from the George Mason University School of Law and Economics. I have been asked to represent NACA today because of my litigation experience. More than anything else, my practice is focused on the private enforcement of the FCRA.

I have had the opportunity to review the prepared statements of the sub-committee's witnesses from your May 8th hearing. I expect that you will have heard more of the same today. The position of both the financial services industry and the credit bureaus is essentially the same - the FCRA system is perfect and you should not allow preemption to expire. The reality is far from these mis-truths. The Credit Reporting system remains seriously flawed and under present trends will only get worse. And the fear of the preemption sunset is blown out of proportion and would not jeopardize what national standards the FCRA has established.

Unlike some consumer protection statutes, the FCRA is not targeted to protect any particular group of Americans. It protects all of us. Wealthy and those of modest means alike. Husband and wife. Father and Son. It protects those of us in the South as much as those of you from any other region. I practice primarily in Hampton Roads, Virginia. As a result, I have had the privilege to represent countless members of the United States Armed Forces. I represented several consumers in pending cases while they proudly served our country in Iraq. And whether an enlisted or an officer, the law protects each the same. The FCRA's protections do not know party line or ideology. It is a unique statute for a unique problem. The law must protect our privacy. It should help maintain the security of our information. It could help expand a frictionless economy. And ideally it would better guarantee that those who have earned good credit are able to keep the fruits of their efforts and responsibility.

Beyond the importance of the FCRA to consumers, you must also consider its benefits to our economy and American business. In its original adoption of the FCRA, Congress found that "the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." 15 U.S.C. Section 1681(a)(1). In considering the 1996 Amendments to the Act, Representative Kennedy explained, "[i]f these reports are not accurate, or if they are distributed without a legitimate purpose, then our whole society suffers. Consumers may be unfairly deprived of credit, employment, and their privacy. And businesses may lose out on the opportunity to gain new customers." 140 Cong. Rec. H9809, September 27, 1994. These insights are still true today. Accurate information is critical for a functioning economy. I am a believer in the free market system. The more accurate the information, the better the decisions made by our economy's actors. One of the principals I was taught in my undergraduate years studying the stock and investment markets is a concept titled "the efficient market hypothesis." The idea is that the investment markets will be fluid and frictionless only if perfect and equal information is available to all market participants. The same may be said for the consumer credit markets. Businesses need more accurate and complete information with which to make better lending decisions. Whether for the financing of an automobile, a home, or a department store purchase, sellers and lenders need access to accurate credit information so that they may transact business safely and with lower risk. These include large consumer lenders such as the credit card industry or mortgage lenders. But, it also includes more modest-sized businesses without the large margins for error available to institutional creditors. Credit file inaccuracies are damaging to businesses in both directions. Inaccurate credit reports may misstate the quality of a consumer's credit in a manner which could cause a potential seller or lender to inappropriately extend credit. The rise in consumer bankruptcies is one of the results of this false positive. On the other side of the coin, inaccurate derogatory information will keep businesses from selling and financing goods and services to consumers with otherwise excellent credit. The growing flaws in the credit system are endangering American businesses in both ways. Credit risks are inappropriately getting credit, while responsible consumers are often saddled with inaccurate derogatory histories that keep them from doing the same. The irony of the credit industry's opposition to FCRA improvement is the fact that the industry stands to gain as much as any other participant in this debate.

You have heard or will hear from countless witnesses all who express the policy view of their respective organizations or trade groups. Few if any of your witnesses will have any live experience actually using or enforcing the statute. Throughout the history of the consumer credit laws, attorneys such as myself have been titled "private attorneys general" by courts and commentators. It is our role to bring private enforcement actions to ensure compliance with laws such as the FCRA. Without these efforts, the FTC would need an army of regulators to perform the function - a possibility an advocate of limited government such as myself could not accept. You have now met one of the individuals who actually goes into federal court to implement the laws that you enact. I and other members of NACA see the flaws in the FCRA firsthand. We face the walls and obstacles placed in the way of full enforcement by the credit bureaus and their army of lawyers. We face the limitations and restrictions of the FCRA on a daily basis. I would like to take this opportunity to better inform the sub-committee on the mechanics of the FCRA system and some of the flaws within it.

Most of my litigation experience arose from claims of credit file inaccuracy. There are countless ways in which my clients' credit reports have been inaccurate. Often, my client's credit files were combined - partially or entirely - with those of another person. This may happen through the criminal acts of a third-party. I am involved in a Michigan case in which an identity thief discovered that our client, with a social security number off by one digit, had better credit. So she began to apply for credit using our client's social. Within no time, the credit files at the bureaus began to show a single identity with the thief's name as our client's alias. Despite multiple investigation demands, nothing was done about the problem or to keep it from recurring. She has been forced to sue. These cases are identity thefts and they have received the greatest notoriety. Unfortunately, they are far from the exception. The industry describes ID Theft as a criminal law problem. But the only reason that identity theft is so prevalent and so easy to accomplish is because of the lack of any industry safeguards to stop it.

As common in my case portfolio are those claims we describe as "merged identity" cases. As easy as it is for an identity thief's credit files to be combined with that of an innocent consumer, it is even more likely to happen to persons of similar name and address or social security number. The credit reporting industry is now almost entirely automated. Its file searches do not require full identifying information - either to obtain a credit report or to furnish information to the bureau. As a result, I have been asked to help Sandra K. Brown, who had perfect credit, when Equifax could not keep the files of Sandra M. Brown from merging. And Mary E. Jones and Mary W. Jones, who because of their similar names and addresses had both of their identities combined by Trans Union. Or Teresa B. Davis, who lived on the same street as had Teresa G. Davis several years prior and had much better credit before Equifax merged the two files. These are my cases, solely out of Newport News and Hampton, Virginia. But, there is nothing about this problem which is unique to my community. It is happening everywhere throughout America. And while no one consumer is truly immune from it, the problem is much worse for consumers with common surnames, particularly those who share their name with multiple generations.

I also see a large number of pure inaccuracy cases - those in which an individual item within a credit report is inaccurate. These types of problems, though lacking the glamour and intrigue of an identity theft, are far more common and just as damaging. The Consumer Federation of America study, already made a part of the sub-committee's record by Representative Hinojosa on May 8, found that 1 in 10 credit scores were inaccurate. This is because of inaccurate information within the credit files used to calculate such scores. At the present, there are far more FCRA cases in my community than I can accept and litigate. Some examples which repeat again and again include Mr. Jeffreys who refinanced his Bank of America mortgage in early 2002. Within his credit report the creditor and bureaus continue to report the account as a charge off and pending foreclosure with a full balance. This is despite the fact that he has mailed to all parties a copy of the original note marked paid in full by the creditor, a letter from the Bank stating as much, and a letter from his real estate attorney. Or Linda Johnson, whose ex-husband filed bankruptcy on a credit card for which she was never responsible. When he filed bankruptcy, MBNA added Ms. Johnson as a cardholder and would not remove the account from her credit files until it was sued. These are only examples and they are far more typical of these problems than not.

The FCRA, as amended, includes a system of reinvestigation which Congress had hoped could provide a remedy by which consumers could obtain a correction of an inaccuracy within their credit files. Unfortunately, the system does not work. Of all of the provisions within the Act, no other is more fatally flawed than the investigation requirement. Let me first explain the real world mechanics of the system.

When a consumer discovers an inaccuracy within his or her credit report, they may initiate a dispute in one of two ways - by contacting the furnisher directly or by contacting the credit reporting agency. If the consumer contacts the furnisher directly, he does so at his own peril. Despite the 1996 amendments, the FCRA has left the furnisher largely immune from effective oversight. Without a private cause of action, the broad and admirable accuracy standards of Section 1681s-2(a) are merely aspirational. The only furnisher liability under the FCRA is under Section 1681s-2(b) and this is only triggered through a contact from the credit reporting agencies. No FCRA case has survived even the earliest stages of litigation without the consumer establishing that the dispute was initiated through the bureaus.

Approximately 80% of all consumer disputes received by the credit reporting agencies are made in writing. The remaining 20% come in by telephone. Each agency has a different process for handling these disputes, but all three use a similar system. The three bureaus collaborated through their trade organization to automate the entire reinvestigation process using an online computer program, E-Oscar. Upon receiving a written dispute, often in the form of a detailed letter with documents attached, the CRA assigns the dispute to its dispute department. The employees within the department are usually hourly employees and are minimally paid. In the case of Equifax, things are even worse. The CRA contracts out its FCRA responsibilities to a foreign company based in Jamaica which uses only foreign labor for its "investigations." The job of a CRA dispute department employee, even if titled "investigator," is solely data entry. No matter how detailed the written dispute, the CRA will merely translate it into a two digit code and, usually by automated means (ACDV), send a message to the furnisher identifying the code its employee believes best describes the dispute. The employees of all three CRAs operate under a quota system whereby each employee is expected to process all of the disputes of an individual consumer in less than four minutes. Worse still, the "codes" used by both the CRAs and their subscribers (the furnishers) are limited in number and rarely describe the actual basis for the consumer's dispute. For example, in two of my recent cases, both identical, consumers Van Evans and Ray Bailey wrote dispute letters to all three bureaus. The disputes were conveyed in great detail and explained that the consumers were not responsible for the disputed accounts and that any signatures claimed to be theirs were forgeries. Each consumer dispute letter also enclosed copies of handwriting exemplars such as signatures on driver's license, military ids and other credit cards. Van Evans had also obtained a copy of the forged note and included it in his dispute letter. When Equifax and Trans Union received the letters, their employees simplified the disputes to a code and the description "not his/hers." This was all the furnishers received. In a deposition taken in a Pennsylvania case, Trans Union's responsible employee explained the CRA's "investigation procedure."

> Q . . . [T]he dispute investigator looks
> at the consumer's written dispute and then
> reduces that to a code that gets transmitted
> to the furnisher?
> A. Yes.
> Q. Does the furnisher ever see the
> consumer's written dispute?
> A. No.
>
> . . .
>
> Q. Are there any instances in which the
> dispute investigator would call the consumer
> to find out more about the dispute?
> A. No.

This is consistent with CRA testimony in every other case of which I am aware. The Bureaus do not convey the full dispute or forward any of the documents to the furnishers. As an expected result, nearly all consumer disputes are verified against the consumers.

However, while the CRAs are the cause of many of the FCRA problems, they are not solely responsible. Despite the 1996 Amendments, the furnishers continue to neglect or ignore their role in the credit reporting system. It is not an unfair characterization to describe the investigation process as a shell game wherein the CRAs and furnishers have worked in concert to protect one another from their already minimal liabilities under the FCRA. In nearly every case against a credit reporting agency in which I have been involved, the bureau has asserted as its defense the fact that the furnisher verified and re-reported the inaccurate information. Contrary to the plain language of the FCRA and the unanimous judgment of the federal judiciary, the CRAs do not believe they have any duty under the FCRA to independently evaluate the documents and disputes before them. Rather, they continue to assert the position that their only duty in conducting an investigation is to confirm that the furnisher wishes to maintain the disputed item. The CRAs continue to blindly mirror whatever the furnishers provide. In its deposition, Trans Union brazenly admitted this fact on the record.

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Q.      What happens when a dispute
investigator gets some type of documentation,
other than the consumer's dispute, that comes
from a third party, but doesn't come from the
furnisher?
A.      We wouldn't be able to act on any
instructions or anything in there.
They're not the furnisher of
the information.
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Trans Union's policy is identical to that of Equifax and Experian. The CRAs simply parrot whatever they receive from the furnisher. At the same time, the furnishers are relying heavily on the fact that there is no private cause of action under Section 1681s-2(a) and no standard for the furnisher investigation under Section 1681s-2(b). Nearly all institutional furnishers have the same procedures. On January 21, 2003, I represented a consumer in a jury trial against a furnisher in a Richmond federal court. In Johnson v. MBNA, we obtained the first plaintiff's verdict in the country under 15 U.S.C. Section 1681s-2(b). In pre-trial depositions and in evidence at trial, MBNA admitted that its sole procedure for handling consumer disputes under the FCRA was to compare the CRA data to its own summary of the account in its computer. That itself was the subject of the consumer's dispute. MBNA's 12 "investigators" were expected to perform an average of 250 investigations per eight hour day. They were never to consult original documents and were not provided any means by which to determine if the account summary within their computer was in fact accurate. Throughout the litigation of this case and now on MBNA's appeal, the furnisher has made two arguments: 1. The furnisher duties under Section 1681s-2(a) are not enforceable by any means and are separate and apart from the duties under Section 1681s-2(b); and 2. There is no qualitative national standard for furnisher compliance under the FCRA. MBNA has opposed even the imposition of a "reasonable investigation" standard under the Act. In its Appellant's Brief, the furnisher argued,

> The words "reasonable" and "procedures" are plainly absent from Section 1681s-2. Thus Congress did not intend to impose upon any furnisher the duty to defend its investigation or

> records qualitatively under Section 1681s-2(b). Indeed, the requirements of accuracy as they relate to mere furnishers of information are contained in Section 1681s-2(a), a section which is expressly made non-actionable by consumers like Johnson under Section 1681s-2(c)-(d). ... If Congress had wanted to subject furnishers to a qualitative standard, it easily could have done so.

This position, taken by MBNA, the largest credit card company in America, exposes the distinction between the industry's cry for Congress to maintain preemption and the reality in which furnishers actually operate - one which still lacks any enforceable national standard.

Rather than comply with the spirit and intent of the FCRA, furnishers continue to fight its application or ignore its accuracy objectives. Nearly every major furnisher who has been deposed has confessed to a policy of automated investigations in which the consumer has almost no hope of obtaining relief. The furnishers merely proofread the form from the CRA and match it to the data within their computer's account screen. There is no other means by which to verify and correct a credit reporting dispute once the error has worked its way into the furnisher's computer account record. None of the major furnishers of which I am aware reviews original documents or paper records. In a May 21, 2003 deposition, Capital One's representative confirmed this fact for her employer.

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Q Okay. What kinds of information do your ACDV operators have available to them through the interface of the Odyssey system?
A Name, address, ECOA, pay history, cycle11 date, last date paid. Statements, action or activity on the account, late fees, past-due fees, membership fees, etc.
Q What about original application information?
A That, we cannot see in Unisys.
Q All right. Is there a reason why it is that your ACDV operators do not have access to all of the other systems that I mentioned, being Tandem, CHIA, Retain One, Casper, Baltrax, Amdahl, Capstone, and Rocky?
A Yeah, I'll give you the simplified answer first. Based on what my associates do, which is to verify the information, the -- some of the systems that you mentioned there are for in-depth research; my associates do not complete in-depth research.
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When questioned further as to why Capital One would never conduct "in-depth research" of FCRA disputes, the representative explained that the furnisher's procedures were developed in collaboration with the three bureaus, and that this is the policy which was developed through such involvement.

Q Okay, why is it that your associates do not complete in-depth research?
A They do that because, when the -- we had three bureau reps actually come to Capital One in -- I can verify this, I want to say it was like February of 2000 --
Q When you say -- let me stop you here for a minute and interrupt, I'm sorry -- you say three bureau reps, do you mean a rep from each of the different bureaus or from combinations thereof?
A I'm sorry, a representative from each bureau came on three separate visits, so a Trans Union rep came, Experian rep, and then an Equifax rep.
Q Okay.
A And they came to explain to my team how to more properly and more accurately work accounts, the cases. One of the questions that I had for them, as a manager, was should we verify the accounts -- and I even explained to them what my definition of verify is -- which is, we pull up our system of record, in this case Unisys or Beast, we look at what the bureau has sent us on the ACDV. If there are any discrepancies, we make sure that what the bureau has mirrors exactly what we, as Capital One, have. That's verifying.
Q That was what you described to the representatives as verifying?
A Yes.
Q And what did they say in response to that?
A Well, I actually followed that up with, Do you want us to do that, or do you want us to do things such as pull statements, etc., actually do the research which would involve CHIA. And in each case, the bureau rep said, No, we want you to verify it. We want you to make our system look like your system. So that's what we've been doing.

As long as consumers remain stuck in the catch-22 of the CRA-Furnisher responsibility dodge, the FCRA will continue to offer little relief for your constituents. The Bureaus will continue to issue flawed and inaccurate credit reports to the many innocent users who must rely on same for their daily business decisions. Whether or not the industry lobby accepts this truth, the financial services industry has far more to gain by improving the credit reporting system than by accepting its serious flaws.

The continuing drumbeat from the other side of this issue is for extension of the FCRA's preemption of state credit reporting statutes. The argument that was made on May 8 and will be repeated today is that our economy would be badly harmed if we replaced the FCRA's "national standards" with a patchwork of state substitutes. This argument is founded upon several false assumptions. First, the argument assumes that the FCRA in its current form is working. It is not. Disputes are up, identity theft is rampant, and consumer complaints to the FTC in the FCRA and identity theft areas are overwhelming all other matters. Businesses cannot now comfortably rely upon the credit reporting industry to produce an accurate predictor of default or bankruptcy. Despite the efforts made in 1996, the FCRA still has failed to place and keep pressure upon either the credit reporting agencies or the furnishers to maintain accuracy in the information they report.

Industry's preemption argument assumes that the FCRA's "national standards" are in competition with certain, unstated state standards. They are not. At a minimum, even with the scheduled sunset, Section 1681t(a)'s preemption of "inconsistent" state laws will remain. Furthermore, the FCRA establishes for furnishers a "national standard" of completeness and accuracy. (The standard for CRAs remains "maximum possible accuracy.") I am unaware of any state laws whose standards exceed those of the FCRA. The issue is not competing state standards but more generous state remedies that protect consumers better than the FCRA does. Industry ought to be forced to identify the purported "unworkable" state standards that form the foundation of its position. If there really is a legitimate problem with competing state law standards, NACA would join with industry and this Committee in accommodating those concerns. Otherwise, the national standards established by the FCRA need simply to be followed. This objective will not be furthered by adopting industry's proposed amendment.

Testimony

Of

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before the

Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives

108th Congress, 1st Session

Hearing on "Fair Credit Reporting Act: How It Functions for Consumers and the Economy"

June 4, 2003

Good morning, Chairman Bachus and distinguished members of the Subcommittee on Financial Institutions and Consumer Credit. Thank you for inviting me to speak with you today on the important issue of credit reporting and how it functions for consumers and the economy. My name is Julie Brill, and I'm an Assistant Attorney General for the State of Vermont. I have been working in the consumer protection area for 12 years, and have specialized in credit reporting issues in Vermont. In addition, I am co-chair of the National Association of Attorneys General Working Group on Credit Reporting, and co-chair of the National Association of Attorneys General Working Group on Privacy. In these capacities, I have worked through the National Association of Attorneys General on numerous national issues relating to credit reporting and privacy, including comments to Congress and various federal agencies.

I would like at the outset to recognize the important role played by this Committee in the protection of consumers' interests with respect to credit reporting, which has a profound effect on consumers. Credit reports are relied upon almost universally in determining a consumer's eligibility for credit, and are used often in determining a consumer's eligibility for employment, insurance, and housing. Moreover, credit grantors use credit reports to determine the terms on which such benefits will be granted to consumers. In light of the critical role played by credit reporting agencies in the economy, Congress has created a dual regulatory structure: in addition to creating national baseline standards for the industry under the federal Fair Credit Reporting Act,[1] Congress authorizes states to fashion state laws governing a wide variety of credit reporting issues.

[1] 15 U.S.C. § 1681 *et seq.*

In these comments, I recommend that this Committee permit this dynamic, dual system for regulating credit reporting agencies to flourish by allowing the preemption provisions to sunset as originally contemplated, and by not enacting any further temporary or permanent provisions that would preempt the states from creating innovative solutions to credit reporting problems.

I discuss the following topics in these comments:

1. State Attorneys General have addressed enormous credit reporting problems over the past decade in their states, including accuracy of information in credit files, inadequate investigations into credit file errors, and the role of the credit reporting industry in creating additional problems for victims of identity theft.
2. As authorized by Congress, State legislatures have enacted innovative state laws to address in a timely manner many of the credit reporting problems that have arisen in the states.
3. The economies of the states that have enacted innovative state credit reporting laws have not been harmed by the additional state law requirements.
4. The states have thus played an important and useful role as "laboratories of democracy," and the innovative state requirements governing credit reporting enlighten the national debate over appropriate credit reporting standards.
5. Congress should employ the same strategy with respect to credit reporting that it has employed with respect to privacy, telecommunications,

telemarketing, fair credit billing and equal credit opportunity – by creating a national baseline standard and permit states to enact laws that are more protective of consumers.

I. State Attorneys General Have Addressed Consumer Problems Relating to Credit Reporting.

Consumers have long experienced problems with credit reports, and State Attorneys General have long served on the front lines to handle these problems. State Attorneys General have enforced state and federal laws for over a decade, and have promoted the adoption of innovative state laws, in an effort to protect their citizens from problems that have arisen in the credit reporting industry.

A. The 1991 Vermont Tax Lien Debacle.

In 1991, our office began to receive calls from consumers who were unable to refinance mortgages or obtain loans as a result of errors in their credit reports. At first the calls appeared to be isolated to the residents of one town – Norwich, Vermont. A Norwich doctor couldn't use his credit cards on vacation, a local jewelry store owner's mortgage was turned down, and a professor at the nearby law school had his home improvement loan delayed.[2] Then the calls began to come in from other Vermont towns: Woodstock, Hartland, Hartford and Sheffield. After investigating the problems, our office learned that two of the three credit reporting agencies – TRW Inc. (now Experian) and Equifax Credit Information Services – had hired a subcontractor that

[2] Miller, Michael, "Bad History: Credit-Report Firms Face Greater Pressure; Ask Norwich, Vt. Why; It's Citizens All Became Risks, In the Kind of Error That Could Lead to New Law", Wall Street Journal, Sept. 23, 1991, A1.

misunderstood public record information on file in Vermont town clerks' offices. As a result, these two credit reporting agencies falsely listed hundreds of Vermont residents as "tax dead beats:" their credit files stated that they had tax liens on their real property for failure to pay property taxes, when in fact the consumers so identified did not have tax liens and had paid their property taxes. This egregious error by two of the major credit reporting agencies caused enormous disruption in the lives of hundreds of Vermont residents.[3]

The Vermont Attorney General's Office sued one of the credit reporting agencies, alleging that it had violated Vermont's Consumer Fraud Act and the federal Fair Credit Reporting Act by failing to maintain reasonable procedures to assure maximum possible accuracy of information contained in consumer credit reports.[4] Ultimately, the Vermont Attorney General resolved his concerns by entering into settlements with both TRW and Equifax.[5] The settlements required the credit reporting companies to pay each eligible consumer either $250 or the amount of damages (up to $1,000) suffered by the consumer, as determined by an arbitrator.[6] According to the Wall Street Journal, these settlements were believed to mark the first time that a company agreed to reimburse a large group of consumers for problems caused by credit-reporting errors.[7]

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[3] Miller, Michael, "Privacy: Rash of Errors Blemishes TRW Credit Reports," Wall Street Journal, Oct. 14, 1991, B1.
[4] State of Vermont v. TRW, Inc., Docket No. S630-91WrC (Winds. Cty., Oct. 21, 1991).
[5] In the Matter of TRW, Inc., Docket No. S-790-92 WnC (Wash. Cty., Dec. 17, 1992); In the Matter of Equifax Credit Information Services, Inc. and National Data Retrieval, Inc. (Wash. Cty., May 21, 1993).
[6] Consumers could also choose to opt out of the settlement in the event that their damages were greater than $1,000.00. *Id.* In addition, the settlements required the credit bureaus to pay $250,000 to the State of Vermont. *See id.*
[7] "Business Brief: TRW Will Pay Vermont Residents Hurt By Firm's Credit-Report Errors in 1991," Wall Street Journal, Dec. 23, 1991, B4.

B. Concerns in Other States about Credit Reporting Problems.

At the same time, other State Attorneys General also were very concerned about credit reporting errors and other problems caused by the credit reporting agencies. In 1991, the Attorneys General of six states filed suit against TRW Inc., accusing the credit bureau of various violations of law, including: sloppy procedures that created errors in credit files; inadequately investigating alleged inaccuracies in credit reports; and allowing errors to recur in credit files.[8] After just a few months of litigation, TRW entered into a consent decree with 19 states, agreeing to sweeping new procedures to improve and make fairer its credit reporting practices.[9] The Federal Trade Commission entered into a similar settlement.[10] Ultimately, the other two major credit bureaus – Equifax and Trans Union – also entered into settlements regarding the accuracy of the information in their credit files and other concerns.[11]

II. State Laws Are An Important Part of The Dual Regulatory System Created by Congress to Govern The Credit Reporting Industry.

Some of the concerns regarding the practices of the credit bureaus that were raised by the Attorneys General in these actions in the early 1990s were addressed by Congress five years later, in the 1996 Fair Credit Reporting Act Amendments,[12] which extensively overhauled the federal Fair Credit Reporting Act, originally enacted in

[8] Miller, Michael, "Six States Sue TRW Over Credit-Reporting Practices", Wall Street Journal, July 10, 1991, B1.
[9] TRW Inc. v. Morales, Civil Action No. 3-91-1340-H (N.D. Tex. Dec. 10, 1991) (consent order). *See also* Miller, Michael "TRW Agrees to Overhaul Its Credit-Reporting Business", Wall Street Journal, Dec. 11, 1991, B1.
[10] FTC v. TRW Inc., 784 F. Supp. 361 (N.D. Tex. 1991).
[11] Equifax Agreement of Assurances with Attorneys General of Alabama, Arkansas, California, Connecticut, Florida, Idaho, Illinois, Michigan, Minnesota, Missouri, Nevada, New Mexico, New York, Ohio, Pennsylvania, Texas, Utah and Washington, June 22, 1992, cited in *Fair Credit Reporting*, National Consumer Law Center, App. H.2.3 (2002); In the Matter of Equifax Credit Information Services, Inc., File No. 902-3149 (FTC 1994); Alabama, et al. v. Trans Union Corporation, Civ. Action No. 92c-7101 (N.D. Ill., Oct. 26, 1992).
[12] Pub. L. No. 105-107, 111 Stat. 2255 (Nov. 20, 1997) (hereinafter "1996 Amendments").

1970.[13] However, well before Congress acted to clean up the practices of the credit reporting industry, states enacted legislation to address problems in the industry and to provide greater consumer protections than were available under the 1970 federal law. The states' response to problems in the industry also was broader than the 1996 Amendments ultimately enacted by Congress, so that state fair credit reporting enactments also provide greater consumer protections than currently available under federal law. Moreover, some states have amended their credit reporting laws to assist victims of the growing crime of identity theft in a manner not yet addressed by Congress. Thus the dual regulatory system governing credit reporting has provided significant benefits to consumers in this important economic arena.

A. Congress Recognizes The Importance of State Laws In Addressing Credit Reporting Problems.

Recognizing the essential role played by the numerous and varied state laws in the Nation's dual regulatory scheme for credit reporting, Congress did not subject the majority of these laws to preemption.[14] Rather, Congress determined that only seven limited areas required preemptive standards: prescreening and "firm offers of credit" offered pursuant to the prescreening process; time periods for taking action required when a consumer disputes accuracy of a report; duties of a person who takes an adverse action based on a credit report; information contained in a credit report; responsibilities of furnishers of information to credit reporting agencies; sharing of information among affiliates; and the form and content of information required to be disclosed to consumers under federal law.[15] Even then, Congress decided that certain

[13] 15 U.S.C. §1681; 84 Stat. 1136; Public Law 91-508 (Oct. 26, 1970).
[14] 15 U.S.C. §1681t(a).
[15] 15 U.S.C. §1681t(b) and (c).

state laws regarding some of these seven issues that were in existence at the time of the 1996 amendments should be exempt from preemption.[16] In addition, Congress specifically did not preempt any settlements between the credit reporting agencies and any State Attorney General that was in existence prior to the effective date of the 1996 Amendments.[17] Finally, Congress determined that preemption in these seven areas would expire on January 1, 2004.[18]

The numerous and varied states laws that are allowed under Congress's dual regulatory scheme in the credit reporting arena are worthy of detailed examination.

B. Vermont State Laws.

The Vermont Legislature acted very quickly to address the credit reporting problems that came to light as a result of the 1991 debacle. In 1992, the Vermont Legislature enacted the Vermont Fair Credit Reporting Act.[19] This state law contains several important consumer protection provisions designed to address the credit reporting problems that arose the year before:

- Free Credit Reports. Vermont's Fair Credit Reporting Act requires credit reporting agencies to provide Vermont consumers with a free copy of their credit report once every 12 months upon request.[20]

- Liquidated Damages. Vermont's FCRA allows a consumer, or the Attorney General acting on the consumer's behalf, to recover the consumer's actual damages, or $100.00, whichever is more, in the event

[16] 15 U.S.C. §§1681t(b)(1)(B) (time periods for taking action required when a consumer disputes accuracy of a report); 1681t(b)(1)(E) (information contained in a credit report); 1681t(b)(1)(F) (Massachusetts and California laws relating to responsibilities of furnishers of information to credit reporting agencies); 1681t(b)(2) (Vermont law relating to affiliate sharing of information)
[17] 15 U.S.C. §1681t(d)(1). This includes the multistate settlements with TRW, Equifax and Trans Union described above in nn. 9 and 11, *supra*, and accompanying text, and the settlements with the Vermont Attorney General's Office described in n.5, *supra*, and n.29, *infra*, and accompanying text.
[18] 15 U.S.C. §1681t(d)(2).
[19] 9 V.S.A. § 2480a *et seq.*; Act No. 246, 1991 (Adj. Sess.).
[20] 9 V.S.A. § 2480c(a)(1).

that a credit reporting agency violates the state law, or in the event that a financial institution or other person "willfully" violates the state law.[21]

- Consumer Consent Required. For credit transactions entered into after January 1, 1993, users of credit reports must obtain the consent of the consumer prior to reviewing his or her credit report.[22] Credit information obtained for purposes of providing prescreened credit offers are exempt from this consent requirement.[23]

- Affiliate Sharing of Credit Reports Included in Consent Requirement. Vermont's consumer consent requirement applies with equal force to credit reports shared among affiliates. Congress specifically exempted Vermont's consent provision from the federal FCRA's provision preempting states from enacting laws with respect to the exchange of information among affiliates.[24] As a result, a financial institution that obtains a credit report from a Vermont consumer, after obtaining his or her consent, may not share the credit report with the institution's affiliates unless the consumer consents to such sharing with the affiliate.

- Reasonable Procedures to Assure Maximum Possible Compliance with Consent Provision. Vermont's law requires credit reporting agencies to adopt reasonable procedures to assure maximum possible compliance with Vermont's consent provision among credit report users.[25]

- Credit Reports Accessible by Telephone. Vermont's law requires credit reporting agencies to publish their phone numbers in each telephone directory.[26] The agencies must make disclosures to consumers, including the once-a-year free report, available through these published telephone numbers.[27]

- Notification to Consumers of Additional Rights Under State Law. Vermont's law requires credit reporting agencies to disclose to Vermont consumers their additional rights under Vermont law each time a disclosure is required under federal law.[28]

The Vermont Legislature determined that these additional provisions are necessary to ensure that credit reports are accurate and are used in an appropriate

[21] 9 V.S.A. § 2480f(b).
[22] 9 V.S.A. § 2480e(a)(2).
[23] 9 V.S.A. § 2480e(c)(2).
[24] 15 U.S.C. § 1681t(b)(2).
[25] 9 V.S.A. § 2480e(b).
[26] 9 V.S.A. § 2480b(b).
[27] *Id*; *see also* Vermont CF Rule 112.01 (available at http://www.state.vt.us/atg/Rule%20CF112.htm).
[28] 9 V.S.A. § 2480b(c).

fashion. The Vermont Attorney General's Office has actively enforced these state law consumer protection provisions with respect to both credit reporting agencies[29] and credit grantors[30] over the past ten years.

C. Enactments in Other States.

Other states similarly have enacted reforms to address problems in the industry, and Congress has recognized that these reforms provide important protections to consumers not available under federal law. California and Massachusetts both placed requirements on furnishers of information to the credit reporting system to ensure that the information being furnished to credit reporting agencies is accurate.[31] Six states – Colorado, Georgia, Maryland, Massachusetts, New Jersey and Vermont – require credit reporting agencies to provide consumers with at least one free report each year upon request.[32]

[29] *See, e.g.*, In the Matter of Credit Bureau Services of Vermont, Inc., Docket No. 493-9-95 WnCV (Wash. Cty. Sept. 18, 1995) (violation of telephone number disclosure requirements); In the Matter of Equifax Credit Information Services, Inc., Docket No. 492-9-95 WnCV (Wash. Cty. Sept. 18, 1995) (same); In the Matter of TRW Inc., Docket No. 491-9-95 WnCV (Wash. Cty. Sept. 18, 1995) (same); In the Matter of Equifax Credit Information Services, Inc., Docket No. 51-1-00 WnCV (Wash. Cty. Jan. 27, 2000) (failure to institute reasonable procedures to ensure maximum possible compliance with Vermont's law requiring users to obtain consumer consent prior to using credit reports).
[30] Coburn and Feeley Property Management, (Wash. Cty. July 17, 1995) (property management firm obtained credit reports on tenants without tenants' consent); In the Matter of MCI Communications Corporation, Docket No. 171-4-98 WnCV (Wash. Cty. April 2, 1998) (telecommunications company failed to obtain consumer consent from over 12,000 Vermont consumers prior to using their credit report); In the Matter of Alliant Foodservice Inc., Docket No. 116-3-00 WnCV (March 1, 2000) (food service company failed to failed to obtain consumer consent prior to using consumer credit report, and failed to have a permissible purpose under federal law); In the Matter of May Department Stores Company, Docket No. 605-11-01 WnCV (Wash. Cty. Nov. 15, 2001) (department store chains failed to adequately obtain consumer consent prior to using consumer credit report).
[31] Cal. Civil Code § 1785.25(a); Mass. Ann. Laws ch. 93, § 54A(a).
[32] Ga. Code Ann. § 10-1-393 (Individuals are entitled to two free credit reports from each national credit reporting agency); Col. Rev. Stat. 12-14.3-105 (Individuals are entitled to a free credit report once a year); Md. Com. Law Code Ann. § 14-1209 (same); Mass. Gen. Laws Ann. Ch. 93 § 59 (same); N.J. Stat. Ann. § 56:11-37 (same); 9 Vt. Stat. Ann § 2480c (same).

Other areas where states have passed more protective laws that have not been preempted by Congress include:[33]

- Arrest, Conviction, and Bankruptcy Records.
    - California: Credit reporting agencies may not report bankruptcies after ten years. Cal. Civil Code § 1785.13.
    - Massachusetts: Credit reporting agencies may not maintain arrest records more than seven years old. Mass. Gen. Laws Ann. Ch. 93 § 52.
    - New Mexico, Kansas and Montana: Criminal data must be purged from the report after seven years, and bankruptcies must be purged after 14 years. N.M. Stat. Ann. § 56-3-6; Kan. Stat. Ann. §§ 50-704; Mont. Code Ann. §§ 31-3-112.
- Lower Cost of Reports.
    - Connecticut: Credit reports are $5. Conn. Gen. Stat. Ann. § 36a-699a.
    - Minnesota: Caps the cost of credit reports at $3. Minn. Stat. § 13C.01.
    - Maine: Caps the cost of credit reports at $2. 10 M.R.S. § 1316.
- Credit Scores.
    - California: Credit reporting agencies must furnish credit scores to individuals for a reasonable fee. Cal. Civil Code § 1785.15.1.
    - Colorado: Credit reporting agencies must provide a credit score to the consumer if a score is used when extending credit secured by a dwelling. Colo. Rev. Stat. § 12-14.3-104.3.
    - Connecticut: Consumers must receive report within five days of receipt of the request; report must include all information in the file, including any credit score. Conn. Gen. Stat. § 36a-696.
    - Idaho: Prohibits insurers from raising rates, denying coverage, or canceling a policy primarily based on a credit rating or credit history. Idaho Code § 41-1843.
- Duties of Users of Reports.
    - California: Individuals may receive a free copy of their credit report when it is requested by an employer. Cal. Civil Code § 1785.20.5.
    - Utah: Credit grantors must notify consumers when negative information is furnished to a credit reporting agency. Utah Code Ann. § 70C-7-107.

[33] The citations and summaries of state laws were provided by Chris Hoofnagle of the Electronic Privacy Information Center, and were drawn from Robert Ellis Smith, *Compilation of State and Federal Privacy Laws*, Privacy Journal 2002.

- Investigative Consumer Reports.
  - Arizona: Sources of investigative consumer reports must be furnished to the individual upon request. Ariz. Rev. Stat. § 44-1693(A)(4).
  - California: Investigative consumer reporting agencies must allow individuals to visually inspect files. Employers must furnish copies of the report to employees. Cal. Civil Code § 1786.
- Notice to Consumers.
  - Colorado: Credit reporting agencies must notify individuals where there have been eight inquiries on the report within one year or where adverse information is added to the report. Colo. Rev. Stat. § 12-14.3-104.
- Sale of Personal Information.
  - California: Credit card issuers must give notice and an opportunity to opt out when they sell customer information. Cal. Civil Code § 1748.12 (c)(3)(b).
  - Connecticut: Selling the names from credit card purchases is prohibited. Conn. Gen. Stat. Ann § 42-133gg.
  - Maryland: It is illegal to disclose ATM or credit card numbers. Md. Crim. Code § 8-214.
- Use of Medical Information
  - Florida: An individual must be informed when genetic information was used to deny credit. Fla. Stat. Ann. § 760.40(b).

A compendium of nonpreempted state laws relating to credit reporting and identity theft is attached to this testimony as Exhibit 1.

D. California State Law Enactments Governing Identity Theft.

California's efforts to address the growing problem of identity theft[34] are worthy of special mention. This state has added numerous unique provisions to its state credit

[34] For information about the growing problem of identity theft, *see* U.S. General Accounting Office, *Identity Theft: Prevalence and Cost Appear to be Growing* (GAO-02-363 March 2002); U.S. Federal Trade Commission, *National and State Trends in Fraud and Identity Theft January – December 2002* (Jan. 22, 2003); U.S. General Accounting Office, *Identity Theft: Greater Awareness and Use of Existing Data Are Needed* (GAO-02-766 June 2002) (surveying state laws enacted to combat identity theft).

reporting law – none of which appear in federal law – to enable identity theft victims to minimize their victimization. California laws relating to identity theft include the following requirements for both credit reporting agencies and credit grantors that use credit reports:

- Credit reporting agencies must include a "security alert" in a credit report at the request of the consumer.[35]

- Credit reporting agencies must place a "security freeze" upon a credit report at the request of the consumer, and must provide for "thaws" at the request of the consumer. The credit reporting agency is allowed to charge a "reasonable fee" for both the freeze and the thaws; however, the freeze and thaw must be provided free to an identity theft victim who has submitted a valid police report or valid Department of Motor Vehicles investigative report.[36]

- Notice of consumers' rights with respect to a "security alert" and "security freeze" must be included in the summary of rights provided to consumers with their credit report.[37]

- Effective July 1, 2003, any credit reporting agency contacted by a person who has reason to believe he or she may be an identity theft victim must provide that person with a written statement describing all identity theft rights under state law.[38]

- If an identity theft victim submits a police report or Department of Motor Vehicle investigative report to the credit reporting agency, the credit reporting agency is required to permanently block the reporting of any information the victim alleges is a result of the identity theft, and report the block to the furnisher of the information. The information can be unblocked only if there was a material misrepresentation by the consumer or the consumer consents; and the consumer must be notified in writing that the information has been unblocked.[39]

- Where a credit grantor receives an application with an address that does not match that in the consumer report, the credit grantor must

[35] Cal. Civil Code § 1785.11.1.
[36] Cal. Civil Code § 1785.11.2.
[37] Cal. Civil Code § 1785.15(f).
[38] Cal. Civil Code § 1785.13.
[39] Cal. Civil Code § 1785.16(k).

take "reasonable steps" to verify the address and confirm the transaction is not the result of identity theft.[40]

These innovative provisions of California law, governing the actions of credit reporting agencies and credit grantors with respect to identity theft, have not been preempted by Congress and, therefore, represent another aspect of the dynamic, dual regulatory system governing the nation's credit reporting system.

III. More Protective State Laws Do Not Have An Adverse Effect On The Economy.

The states that have enacted more protective credit reporting laws have not been economically harmed because of the greater protections afforded consumers under state law. Indeed, Vermont consumers face some of the most favorable conditions for loan rates in the country. Moreover, credit is readily and speedily available in states that have enacted more protective laws.

In his testimony filed with this Committee, Fordham University Law Professor Joel Reidenberg demonstrated that lenders make better credit decisions in Vermont, California and Massachusetts, three of the states with more protective laws that were specifically "grandfathered" under the 1996 Amendments.[41] Vermont has the lowest level of consumer bankruptcies in the nation, Massachusetts is the next lowest with a rank of 49th, and California is below the national median with a rank of 27th.[42] Professor

[40] Cal. Civil Code § 1785.20.3.
[41] Hearing on the Importance of the National Credit Reporting System to Consumers and the U.S. Economy Before the Subcommittee on Financial Institutions and Consumer Credit, House Committee on Financial Services, 108th Cong., May 8, 2003, (Statement of Prof. Joel Reidenberg at 3).
[42] *Id.*, citing American Bankruptcy Institute, U.S. Bankruptcy Filing Statistics: Households per filing, Rank (2003), available at http://www.abiworld.org/stats/housholdrank.pdf.

Reidenberg also notes that consumer interest rates are below the national median in all three of these states.[43]

In addition to the data cited by Professor Reidenberg, there are other data that demonstrate that the economies of Vermont, Massachusetts and California have not been harmed by enactment of more protective laws. Auto loan rates are similarly low in these three states: Vermont ranks 50th in the country, meaning that its auto loan rates are next to the lowest; California ranks 31st in the country; and Massachusetts ranks 24th, just about at the national median.[44]

A chart of the bankruptcy, mortgage loan and auto loan rates for California, Massachusetts and Vermont is attached to this testimony as Exhibit 2.

Moreover, credit is widely available in these states, and available without delay. Exhibit 3 contains loan advertisements placed in Vermont's three major daily newspapers over the ten-day period of May 19 through May 29, 2003. As the ads demonstrate, "zero percent" financing and instant credit for mortgages, car loans and personal loans are widely available in Vermont.

It is important not to overstate the relevance of this data. It cannot be said, for example, that the more protective laws in Vermont, California and Massachusetts *cause* these more favorable economic conditions. As Professor Reidenberg notes, there may be other factors at play, such as state unemployment data for bankruptcy filings and non-interest transaction costs for mortgages.[45] However, these data appear to

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[43] Statement of Prof. Joel Reidenberg, *supra* note 41, at 3.
[44] 48-month new car loan rates as of May 2003, available at http://bankrate.com/brm/graphs/graph_trend.asp?product=1&prodtype=M&ad=mtg&nav=mtg30year_graph.
[45] Statement of Prof. Joel Reidenberg, *supra* note 41, at 4.

demonstrate that the economies of these states have not been adversely affected by their more protective credit reporting laws.

The absence of an apparent adverse impact upon Vermont's economy is particularly interesting because, in addition to its more protective fair credit reporting laws, Vermont has also enacted more protective laws governing the sharing of nonpublic personal financial information, as allowed under Section 507 of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999.[46] In 1994, Vermont enacted a bank privacy opt-in law, prohibiting banks and other similar financial institutions from sharing nonpublic information unless the consumer consents.[47] In 2001, Vermont enacted regulations extending the opt-in requirements to the insurance and securities industry, and clarifying the regulations for the banking industry.[48] Thus, none of Vermont's more protective laws – governing privacy as well as fair credit reporting – appear to have adversely affected Vermont's economy.

IV. 1996 Amendment Preemption Provisions Should Sunset As Originally Contemplated, and No New Preemption Provisions Should Be Created.

Earlier this year, the National Association of Attorneys General adopted a resolution urging Congress to allow the limited preemption provisions contained in the 1996 Amendments to sunset as originally contemplated.[49] In addition, in their bipartisan

[46] 15 U.S.C. § 6807(b), which provides that the federal Gramm-Leach-Bliley law does not supersede any state provisions on privacy except to the extent that they are "inconsistent" with privacy provisions of GLB, and further provides that state laws are not "inconsistent" to the extent that they afford greater consumer protection than provided under GLB.
[47] 8 V.S.A. § 10201 *et seq.*
[48] The banking opt-in regulation can be found at: http://www.state.vt.us/atg/Banking%20Adopted%20Rule.pdf. The insurance opt-in regulation can be found at: http://www.state.vt.us/atg/Insurance%20ADOPTED%20rule.pdf. Vermont's opt-in regulations became completely effective on February 17, 2002.
[49] Resolution in Support of Fair Credit Reporting Reform (National Association of Attorneys General), available at http://www.state.vt.us/atg/fair%20credit%20reporting%20reform%20resolution.pdf.

resolution,[50] the State Attorneys General called upon Congress to refrain from enacting any new provision that would preempt the states from enforcing or enacting laws relating to the reporting of consumer credit information that provide greater consumer protection than in the federal law.[51]

Congress should follow these recommendations. States have demonstrated the importance of their role as "laboratories of democracy" with respect to state credit reporting laws. State legislatures have the ability to rapidly fashion local remedies to solve local problems relating to credit reporting, as in the case of Vermont's 1991 credit reporting debacle. California's innovative solutions to the growing problem of identity theft are the most recent example of state action that ensures that credit reporting agencies, furnishers of credit information, and users of credit reports exercise their key responsibilities with fairness, impartiality, and respect for the consumer's right to privacy, and without imposing further inappropriate harm upon consumers.

This dynamic regulatory system allows states to innovate solutions to local problems as they arise, and informs the national debate over credit reporting. As the states' innovative solutions filter up to Congress, they can be considered for incorporation into the national baseline standards governing the industry.

Previous Congressional enactments relating to consumer protection issues have addressed the goal of national uniformity as well as the importance of allowing states to fashion remedies suited to local problems, by setting a national floor while permitting states to create additional or greater consumer protection provisions that are not

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[50] The State Attorneys General consist of 20 Republicans and 31 Democrats, including the District of Columbia. A listing of their party affiliations can be found at http://www.naag.org/ag/full_ag_table.php.
[51] Resolution in Support of Fair Credit Reporting Reform, *supra*, n.49.

inconsistent with federal law. Privacy of financial information,[52] telecommunications,[53] telemarketing,[54] fair credit billing,[55] equal credit opportunity[56] and subprime lending[57] are among the areas in which Congress has specifically allowed the states to enact more protective state laws. Congress should employ the same strategy with respect to credit reporting, an area equally critical to consumers' participation in the nation's economy.

In sum, Congress has recognized the important role of states in the dual regulatory system governing credit reporting by allowing for limited preemption in the 1996 amendments, and calling for the termination of those preemption provisions on December 31, 2003. Nothing has changed since 1996. The states continue to enforce both federal and state laws with respect to credit reporting agencies, furnishers of credit information and users of credit reports. The states continue to play a vital role in the dual regulatory system governing credit reporting. The states should be allowed to continue to serve as laboratories of democracy, fashioning local remedies to local problems that can be considered by Congress for implementation on a national level. The limited preemption provisions contained in the 1996 Amendments should sunset as originally contemplated, and Congress should not enact new preemption provisions.

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[52] Gramm-Leach-Bliley Financial Services Modernization Act of 1999, 15 U.S.C. § 6807(b).
[53] Telecommunications Consumer Protection Act, 47 U.S.C. § 227(e)(1).
[54] Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*
[55] Fair Credit Billing Act, 15 U.S.C. § 1666j.
[56] Equal Credit Opportunity Act, 15 U.S.C. § 1691d(f).
[57] Home Ownership and Equity Protection Act, 15 U.S.C. § 1640(e).

Exhibit 1

State-by-State Summaries of Laws on Credit Reports and Identity Theft, from National Consumer Law Center, Fair Credit Reporting, 5th Ed., App. B-3

B.3 State-by-State Summaries of Laws on Credit Reports and Identity Theft

Alabama

***State Identity Theft Statute*: Ala. Code §§ 13A-8-190 to -201.**

Definition of Offense: Identity theft: Obtains, records or accesses identifying information that would aid in accessing financial resources, or obtaining benefits or identifying documents of victim; obtains goods or services by use of victim's identifying information; obtains identifying documents in victim's name. Trafficking in Stolen Identities: Manufactures, sells, purchases, transfers, or possesses with intent to manufacture, sell, etc., for the purpose of committing identity theft, identifying documents or identifying information of another; unauthorized possession of five identifying documents of one person, or identifying documents of five people creates an inference of intent to commit identify theft.
Victim Remedies in Criminal Case: Mandatory restitution. May include any costs incurred by the victim in correcting credit history or credit rating or costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligations resulting from the theft, including lost wages and attorney fees. The court may order restitution for financial loss to any other person or entity that suffers a loss from the violation. Court records must be corrected if there was a conviction under a stolen name, to indicate that victim did not commit the crime. Court should make detailed order for correction of public and private records, which may then be used by victim in a civil proceeding to set aside a judgment, or submitted it to governmental entity or private business to show that accounts, etc. were not those of victim.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: If consumer presents court order (see above) agency must within thirty days block all information resulting from the ID theft.
Private Right of Action: Civil action against thief for greater of \$5000 or treble damages, reasonable attorney fees and costs. Intentional or reckless violation by agency gives consumer cause of action for actual damages, and attorney fees, and for an injunction (reasonable procedures are a defense).

Alaska

***Child Support Debts*: Alaska Stat. § 25.27.273 (Michie).** Child support enforcement agency may report delinquencies but must immediately report payments if delinquency was reported. May only report the payment history of the obligor, for not more than ten years preceding the report.

Arizona

***State FCRA Statute*: Ariz. Rev. Stat. Ann. §§ 44-1691 to 44-1697 (West).**

Scope: Definitions similar to the federal law.
Purposes for Which Reports May Be Issued: Similar to federal law, except no authorization for provision to potential investors or servicers, or current insurers, in connection with the evaluation of credit or prepayment risks associated with existing credit obligations. Limited information to government agencies.
Consumer Access and Disclosure: Upon consumer request; all information and sources in addition to all persons receiving information within the last six months.
Disclosures to Consumers By User: Name of the consumer reporting agency, without consumer request.
Restriction on Content of Reports: The number of days an account has been delinquent may not be rounded up by more than four days.[1]
Consumer Disputes: Written notice to the consumer reporting agency. Thirty days to respond.[2] If disputed information inaccurate, must notify consumer and users within past six months, if requested by consumer; if agency denies information is inaccurate, must notify consumer in writing of the basis for its denial, the name and address and telephone number (if reasonably available) of any furnisher contacted; and notice that the consumer may request description of the procedures used in the reinvestigation.
Duties of Furnishers: A furnisher may not round up by more than four days the number of days an account has been delinquent.[3]
Consumer Remedies: No liability if information is correct. Refusal to correct: court costs, damages, and attorney fees. Willful or gross negligence: actual damages, attorney fees, court costs, and punitive damages.
Statute of Limitations: No relevant provisions.
Miscellaneous: A consumer may file a written statement regarding the contents of the consumer's file, and provided the statement is not frivolous or irrelevant, the agency must include the statement in future reports without charge to the consumer. The agency may limit such statements to 100 words if the agency assists the consumer in writing the statement.

***Child Support Debts*: Ariz. Rev. Stat. Ann. § 25-512 (West).** Child support delinquencies shall be reported to consumer reporting agencies after fifteen days advance notice and opportunity for administrative review.

***State Credit Repair Statute*: Ariz. Rev. Stat. Ann. §§ 44-1701 to 44-1712 (West).** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state.[4]

***State Identity Theft Statute*: Ariz. Rev. Stat. Ann. § 13-2008 (West).**

Definition of Offense: Takes, uses, sells or transfers any personal identifying information of another, without authority, with the intent to obtain, use, sell or transfer the other person's identity for any unlawful purpose or to cause loss to a person.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

1 Note that for preemption purposes, this provision was not in effect on Sept. 30, 1996, and as it regulates the contents of consumer reports, it may be preempted. *See* § 10.4.4, *supra*.
2 This provision was in effect on September 30, 1996, so although it regulates the time allowed for an agency to reinvestigate a dispute, it is not preempted. *See* § 10.4.4, *supra*.
3 Most state laws concerning the duties of furnishers are now preempted. *See* § 10.4.4, *supra*.
4 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

Arkansas

***State FCRA Statute*: Ark. Code Ann. §§ 4-93-101 to 4-93-104.**
Scope: Consumer credit (employment, insurance, etc. not mentioned).
Purposes for Which Reports May Be Issued: Granting, denying or limiting of consumer credit.
Consumer Access and Disclosures: No relevant provisions.
Disclosures to Consumer by User: If user denies credit, the further extension of existing credit, or an increase in credit limit for personal, family or household purposes, wholly or partly because of information in a credit report, it shall so advise the consumer. Must disclose action taken, name and address of creditor and of consumer reporting agency, and consumer's social security number.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: No relevant provisions.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: No relevant provisions.
Statute of Limitations: No relevant provisions.

***Child Support Debts*: Ark. Code Ann. § 9-14-209.** Child support delinquencies shall be reported to consumer reporting agencies after seven days advance notice to obligor and an opportunity to contest accuracy of the information.

***State Credit Repair Statute*: Ark. Code Ann. §§ 4-91-101 to 4-91-109.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Remedies are available under the state deceptive practices statute.[5]

***State Identity Theft Statute*: Ark. Code Ann. § 5-37-227.**
Definition of Offense: With intent to unlawfully appropriate financial resources of another to his or her own use or to the use of third party, obtains or records without authority identifying information [defined] that would assist in accessing the financial resources of the other, or accesses or attempts to access the financial resources of the other through the use of the identifying information.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Violation is a deceptive trade practice, within the meaning of Ark. Code Ann. § 4-88-101.

California

***State FCRA Statute*: Cal. Civ. Code §§ 1785.1 to 1787.3.**

Scope: Detective agencies may be excluded. (*See* § 1785.4)
Purposes for Which Reports May Be Issued: Similar to the federal law, and may be issued for rental of a dwelling and insurance claims settlements. No express authorization, however, for provision to potential investors or servicers, or current insurers, in connection with the evaluation of the credit or repayment risks associated with existing credit obligations. Agencies must match at least three pieces of identifying information in a consumer's file with information provided by proposed retail seller users before providing a report, and retail sellers must certify that they require photo identification from all who apply for credit in person. Agencies must keep a record of the purposes of the report as stated by the user. Consumers must be given the opportunity to opt out of prescreened lists.[6]
Consumer Access and Disclosure: Similar to the federal law, except all information in file must be disclosed. The agency may charge up to an $8 preparation fee. Notice or disclosure is required only to those consumers who have mailing addresses in California. If a credit score is used the agency must, upon request, disclose the score, the key factors used to determine it, and related information as defined by § 1785.15.1. The agency may charge a reasonable fee to provide this information.
Disclosures to Consumers By User: Similar to the federal law. The user, if requested, may ask the agency to investigate inaccuracies. Insurers, landlords, and employers must inform a consumer of a request for an investigative report no later than three days after the report request. A user for employment purposes must disclose to the consumer before requesting a report, and offer the consumer a free copy of the report. A lender who uses credit scores must disclose the score and the key factors used to determine it to the consumer. The statute prescribes a form of notice to home loan applicants if credit scores are used. A contractual provision that forbids a lender to disclose the credit scores furnished by an agency is void.
Restrictions on Content of Reports:[7] Similar to federal law, and criminal records more than seven years old or where offense pardoned or no conviction obtained. Inquiries resulting from credit transactions not initiated by a consumer. Unlawful detainer (eviction) actions where the defendant is the prevailing party or the action is settled. Medical information reported to creditors or employers without a consumer's consent. Liens or encumbrances, including lis pendens, which have a court order with them striking the lien or encumbrance because against the property of a public officer or employee.[8] Must delete from the file any inquiries for credit reports based on applications for credit initiated as a result of identity theft. Cal. Civ. Code § 1785.16.1. Requires certain precautions by users of consumer reports to prevent identity theft (*i.e.*, further checking if applicant's address doesn't agree with address in credit report, or if some information in credit report is blocked because of reported identity theft). Cal. Civ. Code § 1785.20.3.
Consumer Disputes: Similar to the federal law except 30 business days to reinvestigate. In addition, an agency must notify a consumer if information reinserted or the agency refuses to (re)investigate. If a consumer files a police report alleging that consumer's personal identification information is being used without consumer's consent, agency must block any information in consumer's file which consumer alleges appears on report due to illegal usage and must notify furnishers. A creditor may not sell a consumer's debt if the information regarding that debt is blocked pursuant to this section, or if consumer has provided sufficient information to

5 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

6 State laws regarding the use of prescreened reports are preempted. *See* § 10.4.4, *supra*.

7 Most of these various stricter definitions of information which may not under California law be contained in a consumer report, were in effect on Sept. 30, 1996, and therefore, although they regulate the contents of consumer reports and might otherwise be, they are not preempted. *See* § 10.4.4, *supra*.

8 Note that for preemption purposes, this provision was not in effect on Sept. 30, 1996, and therefore may be preempted by 15 U.S.C. § 1681c. *See* § 10.4.4, *supra*.

creditor concerning the identity theft. A consumer may place a "security alert" on his or her account, by notifying the reporting agency that the consumer's identity may have been used without consent to fraudulently obtain goods or services. The agency must have a toll-free number, available 24 hours per day, to receive requests for security alerts, and must place an alert in a consumers account within five business days of the request. The agency must notify all who request credit information on a consumer that a security alert is in place. The alert remains in place for 90 days, and may be renewed at the consumer's request. (Cal. Civ. Code § 1785.11.1) A consumer may also place a "security freeze" on his or account, which forbids the agency from releasing credit information without the consumer's specific consent, including the use of a "unique identification number" that the agency must assign when it implements the freeze. (certain exceptions, mainly for tax and law enforcement). Cal. Civ. Code § 1785.11.2.

Duties of Furnishers: A furnisher of information must investigate disputed information upon notice of dispute by a consumer reporting agency. If a dispute remains after reinvestigation by the consumer reporting agency, the consumer may demand that the furnisher of the information correct the disputed information. A creditor must notify the consumer when first furnishing negative credit information to a consumer reporting agency.[9]

Consumer Remedies: Similar to the federal law; in addition, prevailing plaintiffs get court costs and reasonable attorney fees, and debt collector defendants get reasonable attorney fees for actions brought in bad faith by consumers. Negligence can result in damages for loss of wages and for pain and suffering. A willful violation results in punitive damages of $100 to $5000 per violation. Injunctions and class actions can result in punitive damages. Civil fines of $2500 for willfully obtaining or using a report without a legitimate purpose. A credit card issuer knowingly communicating false information about a cardholder may be liable for three times actual damages, court costs, and attorney fees. Cal. Civ. Code § 1747.70. For statutory violations by reporting agency, with regard to investigative reports: greater of actual damages or (except in case of class action) $10,000, costs and attorney fees. Punitive damages for grossly negligent or willful violations. Cal. Civ. Code § 1786.50. Non-government creditor who fails to comply with provisions regarding disclosure of reasons for credit denial, liable for actual damages, costs and attorney fees, with possible punitive damages up to $10,000 (or in a class action, lesser of $500,000 or 1% of creditor's net worth). Cal. Civ. Code § 1787.3. No liability if creditor acts in accordance with Federal Reserve Board rules, interpretations or approvals.

Statute of Limitations: Two years from violation or time of discovery but, effective July 1, 1998, not more than seven years.

Miscellaneous: The seven year limit for reporting delinquent accounts begins 180 days after delinquency. Reports of bankruptcies under Title 11 must refer to Title 11 of the Bankruptcy Code if that can be ascertained from the agency's source. Adverse information must be reported to a cosigner at the same time as to the consumer reporting agency. Prospective users who intend to extend credit through solicitation by mail must mail the extension of credit to same address as on the solicitation unless user verifies address change by such method as contacting the person solicited. This statute does not affect a consumer's ability to sue agencies, furnishers or users for defamation or invasion of privacy. A Federal FCRA action will bar action under this statue for the same act or omission. Cal. Civ. Code § 1786.52

***Child Support Debts*: Cal. Civ. Code § 1785.13(g) (West).** A consumer reporting agency shall include in its credit reports information about overdue child or spousal support, if the information has been reported or verified by a federal, state or local governmental agency.

***State Credit Repair Statute*: Cal. Civ. Code §§ 1789.10 to 1789.26.** There must be a written contract including specific services provided, total payments due and right of rescission. Must perform agreed services within six months. Must post a bond with the state. Must disclose rights under FCRA. Remedies include actual and punitive damages, injunctive relief and reasonable attorney fees and costs.[10]

***State Identity Theft Statute*: Cal. Penal Code §§ 530.5 to .7; Cal. Civ. Code §§ 1798.92 to .97, 1785.11.1 and 11.2, 1785.16(k), 1785.16.1 and .2 and 1785.20.3.**

Definition of Offense: Willfully obtains personal identifying information, [defined] of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent.

Victim Remedies in Criminal Case: If person convicted under false name, court record must show that identity theft victim did not commit crime. Person who suspects he or she is victim of identity theft may initiate law enforcement investigation, receive copy of police report, and petition court for expedited determination and certification of factual innocence if identity thief has been charged with crime under victim's name. California Department of Justice must maintain a data base of identity theft victims, accessible to law enforcement, to victims, and to persons authorized by victims. Victim who wishes to be included must submit fingerprints and copy of police report.

Special Record-Clearing Provisions: If a victim of identity theft (defined in Civil Code as unauthorized use of another person's personal identifying information [defined] to obtain credit, goods, services, money, or property) is sued on an obligation resulting from the theft, victim may bring a cross claim alleging identity theft. If victim prevails, he or she is entitled to a judgment stating that the victim is not obligated on the claim, any security interest in the victim's property resulting from the claim is void and unenforceable, and an injunction restraining any collection efforts. Victim may join other claimants, and court may keep continuing jurisdiction for up to ten years, so as to deal with all claims resulting from the identity theft.

Duties of Private Entities: If victim submits copy of police report, credit reporting agency must block all information resulting from identity theft, and must notify furnishers of that information. May unblock only if block resulted from fraud by consumer, or if consumer agrees block was erroneous, or if consumer knowingly received goods or services as a result of blocked transaction. Credit reporting agency must maintain 24-hour toll-free number, to allow

9 California law regarding the responsibilities of furnishers of information is explicitly not preempted by federal law. 15 U.S.C. § 1681t(b)(1)(F). *See* § 10.4.4, *supra*.

10 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

consumers to report identity thefts, and seek a security alert or security freeze on account. Alert requires agency to inform all users who request information that a security alert is in place. Freeze requires agency to release information only in response to request by the consumer. Agency must delete from file records of any inquiries based on applications for credit initiated as a result of identity theft. Creditor may not sell debt if information about debt is blocked pursuant to this section, or if consumer provides sufficient information to show identity theft. Users of reports must take certain precautions against identity theft, i.e. check further if consumer's address does not agree with that in report, or if some information in credit report is blocked because of reported identity theft.
Private Right of Action: Against user of credit report who omits required precautions, for actual damages, costs and attorney fees, and, if appropriate, punitive damages up to $30,000. Victim who brings cross-claim against one attempting to collect a debt that resulted from identity theft (see above) is entitled to actual damages, attorney fees and costs, if victim proves that notice was given—including a copy of a police report—to the claimant thirty days before filing the cross-claim. A civil penalty of up to $30,000 if claimant, after being notified of possible identity theft, pursued the claim without diligently investigating the possibility of identity theft. The provisions for cross-claim, etc. do not bar any other cause of action against the thief or anyone who used or possessed the goods, services or property obtained by the theft. Remedies under this section are cumulative to rights and remedies under other laws.

***Other State Provisions*: Cal. Civ. Code § 1785.13(c), (e) (West).** If a bankruptcy is reported, the report must specify the chapter of the Bankruptcy Act. If an open-end credit account was closed by the consumer, the report must say so.

Colorado

***State FCRA Statute*: Colo. Rev. Stat. §§ 12-14.3-101 to 12.14.3-109.**

Scope: Same as the federal law.
Purposes for Which Reports May Be Issued: Same as the federal law, except that use for insurance underwriting requires prior notice to consumer.
Consumer Access and Disclosure: Upon request by consumer: 1) All information in its files; 2) Names of persons requesting reports within previous twelve months; 3) A toll-free number for use in resolving disputes submitted in writing to a consumer reporting agency which operates nationwide. No fee for first report requested by consumer each year. Agency must notify consumer once per year of right to free report, if agency has either 1) received eight credit inquiries on consumer or 2) received a report that would add negative information to consumer's file. The disclosures may be given in a form letter if it advises the consumer of the number and type of events, and includes a notice or separate form by which the consumer may request a free copy of her credit report.
Disclosures to Consumer by User: A person who intends to use credit-scoring information in connection with the underwriting or rating of the insurance must notify the consumer in writing or in the same medium used in the application of insurance.
Restrictions on Content of Reports: Similar to federal law, and criminal records more than seven years old.[11]
Consumer Disputes: Same as the federal law, but consumer reporting agency must reinvestigate within thirty days and must correct reports within five days after it receives corrections from furnisher.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Disputes may be submitted to court or binding arbitration after attempt made to resolve with consumer reporting agency under Act's procedures. Willful violations: three times actual damages or $1000 per inaccurate entry disputed by consumer, whichever is greater, reasonable attorney fees and costs. Negligent violations: actual damages or $1000 per inaccurate entry disputed by consumer which affects consumer's creditworthiness, whichever is greater, reasonable attorney fees and costs. If negligent violation does not affect consumer's creditworthiness, minimum damages are limited to $1000 for all inaccurate entries. No liability for negligent violations if corrected within thirty days of notice from consumer. If consumer's file remains uncorrected ten days after entry of any judgment for damages, additional penalty of $1000 per day per inaccurate entry available, until inaccurate entry corrected.
Miscellaneous: Agency shall not provide users with names of others who have requested consumer's file or with the number of other inquiries.[12]

***Child Support Debts*: Colo. Rev. Stat. § 26-13-116.** Child support enforcement agencies may report information on child support debts to consumer reporting agencies. Prior to furnishing such information, an agency must provide to the obligor parent advance notice containing an explanation of the obligor parent's right to contest the accuracy of the information.

***State Credit Repair Statute*: Colo. Rev. Stat. §§ 12-14.5-101 to 12-14.5-113.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[13]

Connecticut

***State FCRA Statute*: Conn. Gen. Stat. §§ 36a-695 to 36a-699e.**

Scope: Credit for personal, family, or household purposes. Does not apply to disclosure made to federal, state, or local government officers or upon court order.
Purposes for Which Reports May Be Issued: Same as federal law, except credit transactions not initiated by the consumer, if the consumer gives agency written notice withholding consent.[14]
Consumer Access and Disclosure: Within five business days of receipt of request by consumer: 1) Nature and substance of all information in its files, including any credit score; and 2) Written summary of consumer's rights under state and federal law in form substantially similar to Conn. Gen. Stat. § 36a-699a.[15] No charge if requested within 60 days after the consumer is notified of adverse

11 This obsolescence standard was not in effect on Sept. 30, 1996, and therefore it is probably not preempted. *See* § 10.4.4, *supra*.
12 Note that for preemption purposes, this provision was not in effect on Sept. 30, 1996. *See* § 10.4.4, *supra*.
13 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.
14 State provisions concerning prescreened lists are preempted. *See* § 10.4.4, *supra*.
15 State laws regarding the contents of the summary of federal

action taken by a creditor; otherwise $5 maximum charge for first report each year, $7.50 for subsequent reports.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: An agency must correct an inaccuracy upon proof of error. Procedures are the same as under FCRA, but consumer reporting agency must provide consumer with its toll-free number to use in resolving dispute. If consumer reporting agency fails to meet relevant thirty or forty-five day deadline, disputed information must be deleted.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Criminal fine; cease and desist order.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***Child Support Debts*: Conn. Gen. Stat. § 52-362d.** The Department of Social Services shall report to any participating consumer reporting agency any overdue support in the amount of $1,000 or more, unless the court or magistrate makes a specific finding that the amount shall not be reported. Prior to a report, the Department must give the obligor notice and opportunity for a hearing.

***State Credit Repair Statute*: Conn. Gen. Stat. § 36a-700.** There must be a written contract including specific services provided and a description of rights under FCRA. Remedies available under state deceptive practices statute.[16] A credit clinic may not charge a fee or receive any money for performing services specified in the contract until it has fully performed those services.

***State Identity Theft Statute*: Conn. Gen. Stat. § 53a-129a; Conn. Gen. Stat. § 52-571h.**

Definition of Offense: Intentionally, and without authority, obtains personal identifying information of another and uses that information for any unlawful purpose including, but not limited to, obtaining, or attempting to obtain, credit, goods, services or medical information in the name of that person.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Person aggrieved by violation of 53a-129a may bring civil action for greater of treble damages or $1000, plus costs and attorney fees.

Delaware

***Child Support Debts*: Del. Code Ann. tit. 13, § 2217.** Information regarding child support delinquencies shall be reported to consumer reporting agencies, provided that the amount of the delinquency is not less than $500 and the obligor is given notice and a period of twenty days to contest the accuracy of the information.

***State Credit Repair Statute*: Del. Code Ann. tit. 6, §§ 2401 to 2414.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages, but not less than amount paid to the credit services organization, costs, reasonable attorney fees and punitive damages available.[17]

***State Identity Theft Statute*: Del. Code Ann. tit. 11, § 854.**
Definition of Offense: Knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without authority and with intent to use the information to commit or facilitate any crime set forth in this title [theft and related offenses], or recklessly obtains, etc. thereby knowingly or recklessly facilitating the use of the information by a third person to commit or facilitate any crime set forth in this title. (Enhanced penalties if victim is age 62 or over.)
Victim Remedies in Criminal Case: Upon conviction, court must order full restitution for monetary loss, including documented loss of wages and reasonable attorney fees, suffered by the victim.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

District of Columbia

***Child Support Debts*: D.C. Code § 46-225.** Support obligations, of $1000 or more, over thirty days past due shall be reported to consumer reporting agencies, provided that the obligor are given thirty days advance notice and an opportunity to contest in writing the accuracy of the information.

***State Credit Repair Statute*: D.C. Code §§ 28-4601 to 28-4608.** There must be written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[18]

Florida

***Child Support Debts*: Fla. Stat. Ann. § 61.1354.** Information regarding child support delinquencies shall be reported to consumer reporting agencies. Written notice to be given obligor fifteen days in advance, including notice of right to request a hearing to dispute the accuracy of the information. Notice and hearing required only for initial reporting, not for periodic release of updated information.

***State Credit Repair Statute*: Fla. Stat. Ann. §§ 817.7001 to 817.706.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[19]

***State Identity Theft Statute*: Fla. Stat. Ann. § 817.568.**

Definition of Offense: Willfully and without authorization fraudulently uses or possesses with intent to use, personal identification information of another.
Victim Remedies in Criminal Case: Restitution of out-of-pocket

rights which must be disclosed to consumers are preempted. *See* § 10.4.4, *supra*.

16 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

17 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

18 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

19 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

costs, including attorney fees incurred in clearing victim's credit history or credit rating, and costs in any civil or administrative proceeding to satisfy debts, liens or obligations of victim arising from the defendant's actions. Court may issue orders necessary to clear any public record that contains false information given in violation of this section.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Georgia

***State FCRA Statute*: Ga. Code Ann. §§ 10-1-392 and § 10-1-393(b)(29).**

Scope: Covers consumer reporting agencies.
Purposes for Which Reports May Be Issued: No relevant provisions.
Consumer Access and Disclosure: Two free reports per year upon consumer request.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: No relevant provisions.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: No relevant provisions.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***Child Support Debts*: Ga. Code Ann. § 19-11-25.** The Department of Human Resources shall make available information regarding the amount of overdue support by an absent parent to any consumer reporting agency upon request, if amount of overdue support exceeds $1000, and may do so when the amount is less than $1000. Information will be made available only after notice is sent to the absent parent and the absent parent has been given reasonable opportunity to contest.

***State Credit Repair Statute*: Ga. Code. Ann. § 16-9-59.** It is a misdemeanor for any person, other than a 501(c)(3) organization, to operate a credit repair service organization.[20]

***State Identity Theft Statute*: Ga. Code §§ 16-9-121 to -127.**

Definition of Offense: Without authorization, and with intent to appropriate financial resources of another, obtains or records identifying information, or access or attempts to access financial resources through use of identifying information.
Victim Remedies in Criminal Case: Court may order restitution.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.
Other: Administrator of Fair Business Practices Act may investigate complaints, with all the powers granted by that Act.

Hawaii

***Child Support Debts*: Haw. Rev. Stat. § 576D-6(6).** Information regarding child support delinquencies shall be made available to consumer reporting agencies. Delinquent parents must be given notice and the opportunity to contest accuracy of the information prior to reporting.

***State Credit Repair Statute*: Haw. Rev. Stat. § 481B-12.** Remedies are available under the state deceptive practices statute.[21]

Idaho

***State Credit Repair Statute*: Idaho Code §§ 26-2221 to 26-2251.** Must post a bond with the state. Must deal with consumer "fairly, openly and honestly without deception."[22]

***State Identity Theft Statute*: Idaho Code §§ 18-3126 and -3128; §§ 28-51-101 and -102.**

Definition of Offense: Obtain or record personal identifying information of another without authorization, with intent to obtain credit, money, goods or services in the name of that person.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: Credit reporting agency must block information resulting from violation of Idaho Code § 18-3126, and notify furnisher that a block is in place. Agency and furnisher may refuse to block, or rescind, if block is result of misrepresentation by consumer, if consumer agrees block was in error, or if consumer knowingly received goods or services as a result of the blocked transaction.
Private Right of Action: For violation of § 28-51-102 (duties of agency and furnisher) consumer has private right of action for damages, attorney fees, injunction and "other appropriate relief."

***Other State Provisions*: Idaho Code § 41-1843** (effective January 1, 2003). Forbids property or casualty insurers to charge a higher premium, or to cancel, nonrenew or refuse to issue a policy "based primarily upon an individual's credit rating or credit history." The statute applies only to property or casualty insurance (as defined in Idaho Code Ch. 5, title 41) issued primarily for personal, family or household purposes.

Illinois

***Child Support Debts*: 305 Ill. Comp. Stat. Ann. § 5/10-16.4; 750 Ill. Comp. Stat. Ann. § 5/706.3.** Courts finding obligers owing more than $10,000 or an amount equal to at least three months support obligation shall direct the clerk of the court to make the information available to consumer reporting agencies.

***State Credit Repair Statute*: 815 Ill. Comp. Stat. Ann. § 605.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual and punitive damages, reasonable attorney fees and court costs available. Remedies are also available under the state deceptive practices statute.

20 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

21 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

22 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

***State Identity Theft Statute*: 720 Ill. Comp. Stat. Ann. § 5/16G-1 to -25.**

Definition of Offense: Knowingly uses personal identifying document or information of another to fraudulently obtain credit, money, goods, services or other property in the name of that person. Enhanced penalty if victim age 60 or over, or disabled.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Other State Provisions: Solicitations or applications to sell consumer access to reports or government records must disclose that such records and reports are otherwise available free or for nominal cost. **815 Ill. Comp. Stat. Ann. § 505/2B.2.** No person may report adverse information to a credit reporting agency unless the cosigner is notified first that the primary obligor has become delinquent or defaulted, that the cosigner is responsible for payment, and that the cosigner has fifteen days to pay or make arrangements for payment. Violation is an unlawful act and may result in up to $250 in actual damages in addition to attorney fees.[23] **815 Ill. Comp. Stat. Ann. § 505/2S.**

Indiana

***State Credit Repair Statute*: Ind. Code §§ 24-5-15-1 to 24-5-15-11.** There must be a written contract including specific services provided, total payments due and right of rescission. Must disclose rights under FCRA. Must post a bond with the state.[24]

***State Identity Theft Statute*: Ind. Code § 35-43-5-1 and -3.5.**

Definition of Offense: Knowingly uses or intentionally obtains, possesses, transfers or uses the identifying information of another without authorization, and with intent to harm or defraud another.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Iowa

***State Credit Repair Statute*: Iowa Code §§ 538A.1 to 538A.14.** Must be bonded. There must be a written contract including specific services provided, total payments due and right of rescission. Actual and punitive damages, injunctions, reasonable attorney fees and court costs are available for violations.[25]

***State Identity Theft Statute*: Iowa Code §§ 714.16B and 715A.8 and .9.**

Definition of Offense: With intent to obtain a benefit, fraudulently obtains identifying information of another, and uses or attempts to use it without authorization to obtain credit, property, or services.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: In addition to other remedies provided by law, person who suffers pecuniary loss from identity theft has civil action for the greater of treble damages or $1000, plus reasonable costs and attorney fees. Violation of this section is also an unlawful practice under § 714.16 (UDAP).

***Other State Provisions*: Iowa Code § 654.18(4).** A mortgagee shall not report that a mortgagor is delinquent on the mortgage if the mortgagor agrees to an alternative non-judicial voluntary foreclosure procedure. The mortgagee may report that an alternative non-judicial voluntary foreclosure procedure was used.[26]

Kansas

***State FCRA Statute*: Kan. Stat. Ann. §§ 50-701 to 50-722.**

Scope: Same as the federal law.
Purposes for Which Reports May Be Issued: Similar to federal law, except no authorization for provision to potential investors or servicers, or current insurers, in connection with evaluation of the credit or repayment risks associated with existing credit obligations.
Consumer Access and Disclosure: Similar to federal law, except agency only required to disclose non-employment report recipients within previous six months.
Disclosures to Consumers By Users: Similar to federal law.
Restrictions on Content of Reports: Similar to federal law except criminal records more than seven years old or bankruptcies more than fourteen years old.[27] Adverse information (except public record information) from investigative consumer reports may not be used in subsequent reports unless it has been verified while preparing the new report or was received within three months.
Consumer Disputes: Agency must investigate within a reasonable time if informed by consumer of dispute. Must delete if information is inaccurate or no longer verifiable. If dispute not resolved, consumer may file statement, up to 100 words, describing the dispute. If information is deleted, consumer may request agency to inform users who obtained reports within two years for employment purposes or six months for other purposes. Agency must inform consumer of this right.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Civil liability for agencies and users: actual damages plus costs and reasonable attorney fees; punitive damages for willful violations. Criminal penalties also available.
Statute of Limitations: Two years from violation or time of discovery.
Miscellaneous: No relevant provisions.

***Child Support Debts*: Kan. Stat. Ann. § 23-4145.** The Secretary of Social and Rehabilitation Services must make available information concerning support arrearages in excess of $1000 owed or

23 Most state laws concerning the duties of furnishers are now preempted. *See* § 10.4.4, *supra*.

24 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

25 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

26 Most state laws concerning the duties of furnishers are now preempted. *See* § 10.4.4, *supra*.

27 These two definitions of information which may not be contained under Kansas law in a consumer report were in effect on Sept. 30, 1996, and therefore are not preempted, although they regulate the contents of consumer reports and might otherwise be preempted. *See* § 10.4.4, *supra*.

assigned to the Secretary or owed to any person who has applied for services, upon the request of a consumer reporting agency. The Secretary may make information concerning smaller arrearages available. Before making this information available, the Secretary must provide advance notice to the obligor.

***State Credit Repair Statute*: Kan. Stat. Ann. §§ 50-1101 to 50-1115.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Actual and punitive damages, plus reasonable attorney fees, are available, as are remedies under the state deceptive practices statute.[28]

***State Identity Theft Statute*: Kan. Stat. Ann. § 21-4018.**

Definition of Offense: Knowingly and with intent to defraud for economic benefit, obtains, transfers, possesses or uses, or attempts to obtain, transfer, possess or use, an identification document or PIN number of another.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Kentucky

***State FCRA Statute*: Ky. Rev. Stat. Ann. §§ 367.310 and 367.990(16).**

Scope: No relevant provisions.
Purposes for Which Reports May Be Issued: No relevant provisions.
Consumer Access and Disclosures: No relevant provisions.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: Criminal charge in Kentucky court which did not result in conviction.[29]
Consumer Disputes: No relevant provisions.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Civil liability: each violation may result in a fine of up to $200.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***Child Support Debts*: Ky. Rev. Stat. Ann. § 205.768.** Child support arrearages shall be reported to consumer reporting agencies, provided that advance notice is given to the obligor explaining the methods available to contest the accuracy of the information.

***State Identity Theft Statute*: Ky. Rev. Stat. Ann. §§ 411.201, 514.160 and .170, and 532.034.**

Definition of Offense: Theft of identity: Without consent, knowingly possesses or uses identifying information of another to deprive that person of property, obtain benefits to which not entitled, make financial or credit transactions using identity of another, avoid detection, or obtain commercial or political benefit. Trafficking in stolen identities: Manufactures, possesses, transfers, sells or possesses with intent to manufacture, transfer or sell, the personal identity of another for purposes forbidden by theft of identity section. Possession of 5 or more identities is prima facie evidence of possession for trafficking.
Victim Remedies in Criminal Case: Upon conviction, shall pay restitution for financial loss by victim, which may include any costs incurred in correcting credit history, or in any civil or administrative proceeding to satisfy debt or obligation, including lost wages and attorney fees. Victim includes financial institution, insurance company or bonding company that suffers financial loss.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Victim of identity theft or trafficking in stolen identities has cause of action for compensatory and punitive damages.
Other: Attorney General (Financial Integrity Enforcement Division) shall coordinate with the Department of Financial Institutions, the U.S. Secret Service, and the Kentucky Bankers' Association to prepare and disseminate information to prevent identity theft.

Louisiana

***State FCRA Statute*: La. Rev. Stat. Ann. §§ 9:3571.1 and 9:3571.2.**

Scope: Consumer's credit-worthiness, credit standing or credit capacity.
Purposes for Which Reports May Be Issued: A motor vehicle dealer may not request or review a report without consumer's written permission in connection with a test drive, a request to test drive, a request for pricing or financing, or negotiations with a consumer, unless consumer has already applied to lease or finance a vehicle.
Consumer Access and Disclosure: Similar to federal law, but must be made within five days of written request and agency only required to disclose non-employment report recipients within previous six months. Agency may charge $8 fee (unless request made within sixty days of adverse action based on consumer report). Amount of fee may increase annually with increases in consumer price index.
Disclosures to Consumer by User: Name and address of credit reporting agency, if adverse action based wholly or partially on report; notice of right to free report.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: Must investigate and correct or update within 45 days of a consumer's written notification of dispute.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Intentional or negligent violation: actual damages plus reasonable attorney fees, court costs, and other reasonable costs of prosecution.

If denied credit, insurance, or employment on the basis of erroneous or inaccurate information furnished by a credit reporting agency, and the erroneous or inaccurate information was the significant material cause of the denial, and if the credit reporting agency failed to use ordinary care or failed to exercise due diligence in discovering such error (i.e., by not complying with the FCRA, CCPA, or other provision of this section), the credit reporting agency is liable. The consumer is entitled to actual damages in addition to reasonable attorney fees and court costs.

If a person is required to have erroneous or inaccurate information removed from a credit report as a condition to having a credit,

28 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

29 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

insurance, or employment application approved and the erroneous or inaccurate information was a significant material cause of the request for removal, and if the credit reporting agency failed to use ordinary care or failed to exercise due diligence in discovering such error, the credit reporting agency is liable. The consumer is entitled to actual damages in addition to reasonable attorney fees and court costs.

Violations of § 9:3571.2 (requests by motor vehicle dealers before test drive, pricing inquiry or negotiations): civil penalty of up to $2500 per violation.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***State Credit Repair Statute*: La. Rev. Stat. Ann. §§ 9:3573.1 to 9:3573.16.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Actual damages, reasonable attorney fees, plus double damages for willful violations, are available.[30]

***State Identity Theft Statute*: La. Rev. Stat. Ann. § 14:67.16.**

Definition of Offense: Intentional use or attempted use of identifying information of another, without authorization, to obtain credit, money, goods, services or anything else of value.
Victim Remedies in Criminal Case: Court may order full restitution to the victim, or any other who suffered financial loss. If defendant is indigent, a payment plan may be ordered.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Maine

***State FCRA Statute*: Me. Rev. Stat. Ann. tit. 10, §§ 1311 to 1329 (*See also* Advisory Rulings of Bureau of Consumer Protection).**

Scope: Investigative consumer report includes telephone information. Adverse information is deemed to be any information likely to have a negative effect on the ability of the consumer to obtain credit, credit insurance, employment, benefits, goods or services.
Purposes for Which Reports May Be Issued: Same as the federal law, but reports listing a consumer as having been denied credit where the sole reason for denial was insufficient information for the granting of credit may not be issued, unless report states denial was for that reason.[31]
Consumer Access and Disclosure: The consumer has the right to have medical information given to the licensed physician of his or her choice. Only requires agency to disclose users for non-employment purposes within previous six months. Right to receive copy of file. Maximum charge: Actual costs plus $2, unless a copy is requested within 60 days after an adverse consumer determination, in which case it is free. Public record information is the same as federal law. Must disclose to consumer the substance of public record information provided for employment purposes.
Disclosures to Consumers By User: Notice of requests for investigative reports must be delivered three business days prior to the investigation.
Restrictions on Content of Reports: Reporting information which cannot be verified unless the report also contains attempts to verify. Adverse information in investigative reports which is not reverified or received within previous three months. Reporting that a consumer was denied credit if the sole reason for denial is lack of credit information, unless the report states that denial was for that reason.[32] A debt collector may not disclose an overdue debt for medical expenses of a minor child, unless the debtor is the responsible party according to a court or administrative order (provided that the collector has been informed of the existence of the order), and the responsible party has been notified and given an opportunity to pay.
Consumer Disputes: Agency must reinvestigate within twenty-one days; otherwise similar to federal law.[33] In addition, an agency must retain inaccurate information in a separate folder which can only be used as defenses in a civil action. Immediate notice to a consumer if a dispute is considered "frivolous."[34] If information is found to be inaccurate or unverifiable, agency must notify users who obtained reports for employment purposes within 2 years or other purposes within six months.
Duties of Furnishers: May not furnish information it knows or should know is inaccurate. May not furnish information if it is informed by consumer that information is inaccurate, and information is, in fact, inaccurate. One who regularly furnishes information to consumer reporting agency must notify agency of corrections, if any information supplied is later found to be inaccurate. Must notify agency if consumer disputes the information. Regular furnisher must investigate dispute reported by consumer. (No private right of action for violations of these requirements; enforcement only by administrator).
Consumer Remedies: Similar to the federal law for willful noncompliance, but treble damages rather than punitive damages. For negligent violations, in addition to actual damages, minimum damages of at least $100 per violation and each report containing inaccurate or irrelevant information which contributed to an adverse consumer decision. Criminal penalties for obtaining information from a consumer reporting agency on false pretenses, or for unauthorized disclosures by agency officers or employees.
Statute of Limitations: Same as the federal law.
Miscellaneous: Investigative reports must be updated every three months. Reports must be in writing and retained in a file for two years for employment purposes, six months for other purposes. (*See* Equifax Services, Inc. v. Cohen, 420 A.2d 189 (Me. 1980)). If a bankruptcy is reported, must indicate which chapter, if known. If bankruptcy withdrawn by consumer before final judgment, agency must report this. If a credit account is voluntarily closed by consumer, agency must report this along when it reports information about the account.

30 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

31 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

32 These provisions were in effect on Sept. 30, 1996, so although they may regulate the time allowed for an agency to reinvestigate a dispute, or the contents of reports, they are not preempted. *See* § 10.4.4, *supra*.

33 Provision was in effect on Sept. 30, 1996, so although it regulates the time allowed for an agency to reinvestigate a dispute, it is not preempted. *See* § 10.4.4, *supra*.

34 This provision was in effect on Sept. 30, 1996, so although it regulates the time allowed for part of the reinvestigation process, it is not preempted. *See* § 10.4.4, *supra*.

Child Support Debts: **Me. Rev. Stat. Ann. tit. 10, § 1329.** The Department of Human Services, upon the request of a consumer reporting agency, shall make available information regarding the amount of overdue child support owed by any parent. Prior to making the information available to the requesting agency, the Department shall provide the obligor parent with notice of the proposed action. The parent shall be given twenty days prior notice to contest the accuracy of the information. The Department may voluntarily provide this information as well.

State Credit Repair Statute: **Me. Rev. Stat. Ann. tit. 9-A, §§ 10-101 to 10-401.** There must be a written contract including specific services provided and total amount due. Must post a bond with the state. Actual damages, reasonable attorney fees and costs available.[35]

Maryland

State FCRA Statute: **Md. Code Ann. Com. Law §§ 14-1201 to 14-1218; *see also* Md. Regs. Code tit. 9, §§ 09.03.07.01 to 09.03.07.03.**

Scope: Similar to Federal.
Purposes for Which Reports May Be Issued: Similar to federal law, except no authorization for provision to potential investors or servicers, or current insurers, in connection with evaluation of credit or prepayment risks associated with existing credit obligations.
Consumer Access and Disclosure: Upon customer request all information in file except medical information; in addition, an explanation of code or trade language is required. Must provide one free copy per year, may charge up to a $5.00 fee for additional copies. Substance of any public record information reported for employment purposes.
Disclosures to Consumers By User: Same as the federal law. Must inform consumer if an investigative report is being requested. Must disclose to consumer, upon request, the scope of the proposed investigative report.
Restrictions on Content of Reports: Obsolete information: same as federal law except criminal records more than seven years after disposition, release or parole.[36] Adverse information in investigative reports which is not reverified or received within previous three months.[37]
Consumer Disputes: Disputed information must be investigated within thirty days of written notification by a consumer.[38] If found to be inaccurate, the consumer and users must be notified within seven days; if found to be accurate, the consumer must be notified within seven days. Consumer must be notified within seven days if agency considers dispute to be frivolous.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Actual damages, reasonable attorney fees and costs are available for negligent violations, plus punitive damages for willful violations. Violations made unintentionally and in good faith are not actionable. Criminal penalties for obtaining information from agency under false pretenses, or for unauthorized disclosure by officers or employees of agency.
Statute of Limitations: Same as the federal law.
Miscellaneous: Cannot provide prescreened information if the consumer precludes it in writing.[39]

Child Support Debts: **Md. Code Fam. Law § 10-108.1.** Upon request, the Child Support Enforcement Administration shall report child support arrearages of sixty days for longer duration. Written notice and a reasonable opportunity to contest the accuracy of the information must be given to the obligor before the information is reported.

State Credit Repair Statute: **Md. Code Ann. Com. Law §§ 14-1901 to 14-1916.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages plus attorneys fees are available for negligent violations plus treble contract amount and punitive damages for willful violations. Remedies are also available under the state deceptive practices statute.[40] Credit repair organizations are forbidden to help consumers obtain closed end credit which, but for federal preemption of state statute, would violate the usury statute. Closed end credit is defined to explicitly include payday lenders, i.e., an extension of credit for which a payment instrument is held to insure payment.

State Identity Theft Statute: **Md. Code Ann., Crim. § 8-301; *see also* Md. Govt. Code § 6-202.**

Definition of Offense: Knowingly, willfully, without authority, with fraudulent intent obtain or help another to obtain personal identifying information of another, with intent to obtain any benefit, credit, goods, services or other thing of value in the name of another; or knowingly or willfully assume the identity of another to fraudulently obtain any benefit, etc., or evade payment of debt or legal obligation.
Victim Remedies in Criminal Case: In addition to restitution required by other provisions of criminal code, court may order restitution to victim for reasonable costs incurred including attorney fees, in clearing victims credit history or credit rating, and in connection with any civil or administrative proceeding to satisfy a debt, lien, judgment or other obligation arising form the identity fraud.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.
Other: Electronic Transaction Education, Advocacy and Mediation Unit, in the Office of the Attorney General is empowered to investigate and assist in the prosecution of identity fraud, and to provide public education regarding the prevention of identity fraud.

35 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

36 These two definitions of information which may not be contained under Maryland law in a consumer report were in effect on Sept. 30, 1996, and therefore are not preempted, although they regulate the contents of consumer reports and might otherwise be preempted. *See* § 10.4.4, *supra*.

37 *Id.*

38 These provisions were in effect on Sept. 30, 1996, so although they regulate the time allowed an agency to reinvestigate the contents of reports, they are not preempted. *See* § 10.4.4, *supra*.

39 State law provisions concerning prescreening lists are now preempted. *See* § 10.4.4, *supra*.

40 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

Massachusetts

State FCRA Statute: **Mass. Gen. Laws Ann. ch. 93, § 50–68.**

Scope: Same as the federal definitions except the consumer report does not include information communicated by the consumer reporting agency on reputation, character, personal characteristics, or mode of living. Issuance of investigative consumer reports requires the prior written permission of the consumer.
Purposes for Which Reports May Be Issued: Similar to federal law, however business transaction use restricted to transactions where a party transfers interest in real or personal property, pays money or renders services, or becomes obligated to do so; and no authorization for provision to potential investors or servicers, or current insurers, in connection with evaluation of credit or prepayment rules associated with existing credit obligations. Consumers must be given the opportunity, via a toll-free telephone number, to opt-out of prescreened lists.[41]
Consumer Access and Disclosure: Similar to the federal law; in addition, upon customer request, contents of all non-medical information in files must be disclosed. Nationwide agencies must provide one free copy per year, $5 from local agencies; subsequent reports $8.
Disclosures to Consumers By User: Same as the federal law.
Restrictions on Content of Reports: Same as federal law except criminal records more than seven years after disposition, release or parole and bankruptcies over fourteen year old.[42]
Consumer Disputes: Similar to federal law, except that the consumer reporting agency must reinvestigate within thirty days and notify the consumer of the results within a further ten days. If agency determines dispute frivolous, it must notify consumer of specific reasons for decision within five days. Agency must delete information found to be inaccurate within three days and must issue corrected reports within fifteen days of request by consumer.[43] In addition, a consumer reporting agency does not have the right to limit the length of the statement filed by the consumer on the dispute.
Duties of Furnishers: Furnishers of information liable from first for failing to establish reasonable procedures to ensure accuracy of information reported, or for reporting information they know or should know is inaccurate. In addition, furnishers must report voluntary account closures and must include consumer disputes and commencement dates of any delinquencies, when reporting delinquencies.[44]
Consumer Remedies: Fine and/or imprisonment for willful introduction of false information into a file for the purpose of either damaging or enhancing a consumer's credit information or for obtaining information from agency under false pretenses, or unauthorized disclosure by agency personnel. Agencies, users and furnishers are liable for actual damages, reasonable attorney fees and costs, plus punitive damages for willful violations. In addition, remedies in relation to negligent noncompliance are specifically nonexclusive. Failure to comply with any provision is a violation of the state deceptive practices statute.
Statute of Limitations: Two years from date of violation or discovery for willful misrepresentation.
Miscellaneous: Adverse information in an investigative report must be reverified or less than three months old to be included on a subsequent report.[45]

Child Support Debts: **Mass. Gen. Laws Ann. ch. 93, § 52A.** Child support arrearages in excess of $500 must be reported upon request of consumer reporting agency. Fifteen-day advance notice must be given to obligor parent, who has right to contest accuracy of information before it is reported to agency.

State Credit Repair Statute: **Mass. Gen. Laws Ann. ch. 93, §§ 68A–68E.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond. Remedies are available under the state deceptive practices statute.[46]

State Identity Theft Statute: **Mass. Gen. Laws Ann. ch. 266, § 37E.**

Definition of Offense: Poses as another person and uses that persons identifying information without authority to obtain money, credit, goods, or other thing of value, or identifying documents of that person; or obtains identifying information for purpose of posing as that person or enabling another to pose as that person, for purposes listed above.
Victim Remedies in Criminal Case: In addition to any other punishment, court must order restitution for financial loss, which may include costs of correcting credit history and credit rating, civil or administrative proceeding to satisfy debt or other obligation, including lost wages and attorney fees.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Michigan

Child Support Debts: **Mich. Comp. Laws § 552.512.** The office of friend of the court shall report to a consumer reporting agency support information concerning all child support payers with an arrearage of two months or more. Prior to making such information available, the office of friend of the court shall provide twenty-one days advance notice to the payer and a review enabling the payer to object. Any incorrect information reported must be corrected within fourteen days.

State Credit Repair Statute: **Mich. Comp. Laws §§ 445.1821 to 445.1826.** Credit repair organizations may not receive payment in advance or engage in fraudulent or deceptive acts. There must be a written contract specifying services to be provided.[47]

41 State law provisions concerning prescreening lists are now preempted. *See* § 10.4.4, *supra*.
42 These two definitions of information which may not be contained under Massachusetts law in a consumer report were in effect on Sept. 30, 1996, and therefore are not preempted, although they regulate the contents of consumer reports and might otherwise be preempted. *See* § 10.4.4, *supra*.
43 These provisions were in effect on Sept. 30, 1996, so although they regulate the time allowed an agency to reinvestigate a dispute, they are not preempted. *See* § 10.4.4, *supra*.
44 Massachusetts law regarding the responsibilities of furnishers of information is explicitly not preempted by federal law. *See* § 10.4.4, *supra*.
45 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.
46 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.
47 Many provisions of state credit repair statutes are preempted by

***State Identity Theft Statute*: Mich. Comp. Laws § 750.285.**

Definition of Offense: Obtaining or attempting to obtain personal identity information of another without authority, with the intent to use it to: obtain credit, buy or lease property, obtain employment, access medical records, or commit any illegal act.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

***Other State Provisions*: Mich. Comp. Laws §§ 445.271 to 445.273.** No creditor may report adverse information about a cosigner without thirty days notice, or if the cosigner makes satisfactory arrangements in response to a notice.[48]

Minnesota

***State FCRA Statute*: Minn. Stat. §§ 13C.001 to 13C.04; 72A.496 to 72A.505 (insurance investigative reports).**

Scope: Similar to Federal.
Purposes for Which Reports May Be Issued: Same as federal law.
Consumer Access and Disclosures: Detailed requirements for medical information in insurance reports: may be disclosed to named health care provider instead of directly to consumer; if disclosure could create risk of harm to patient or others, must be disclosed only to treating physician. Insurance company must disclose reasons for adverse underwriting decision, including credit scores. Before seeking information, insurer must obtain consumer's written authorization; form must be in plain language, disclose what information is being sought, and authorization must be for a limited time. Agencies must provide one report per year for a charge of not more than three dollars.
Disclosures to Consumer By User: Similar to federal law, however, no one can procure a consumer report for employment purposes without written disclosure to the consumer prior to the preparation of the report; and the disclosure must include a box for the consumer to check to obtain a free copy of the report. This copy must be sent by the agency to the consumer within twenty-four hours of the time it delivers report to the user. If the report requested is an investigative consumer report, must disclose that the report may include information obtained through personal interviews regarding the consumer's character, general reputation, personal characteristics, or mode of living. Disclosure is not required if the report is to be used for employment purposes for which the consumer has not specifically applied, used for an investigation of a current violation of a criminal or civil statute by a current employer, or used for an investigation of employee conduct for which the employer may be liable. Users who request an investigative report for insurance purposes must notify consumer of right to be interviewed during the investigation and the right to request a copy of the report.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: Adverse decisions regarding insurance reports may be appealed to insurance commissioner.
Duties of Furnishers: No relevant provisions.

Consumer Remedies: Actual damages, equitable relief, and costs and disbursements (including costs of investigation and reasonable attorney fees). Violations of insurance information statute treated like violations of government data practices law: actual damages, costs and attorney fees; exemplary damages for willful violation of $100 to $10,000 per violation; injunction also available. Criminal penalties for obtaining data in violation of the insurance statute.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***State Credit Repair Statute*: Minn. Stat. §§ 332.52 to 332.60.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[49]

***State Identity Theft Statute*: Minn. Stat. § 609.527.**

Definition of Offense: Transfers, possesses or uses an identity not one's own, with the intent to commit, aid or abet any unlawful activity.
Victim Remedies in Criminal Case: Court-ordered restitution available, also eligible for crime victims' compensation under Ch. 611A.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Mississippi

***Child Support Debts*: Miss. Code Ann. § 93-11-69.** The Department of Human Services shall make information about child support debts, thirty days or more overdue, available to consumer reporting agencies; fifteen days advance notice and an opportunity to contest the information must be provided to obligers.

***State Identity Theft Statute*: Miss. Code Ann. § 97-19-85.**

Definition of Offense: False statement as to identity, Social Security, credit or debit card number, or other identifying information, with intent to fraudulently obtain goods, services or other thing of value.
Victim Remedies in Criminal Case: Court must order restitution, as provided by § 99-37-1. (General criminal restitution statute).
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Missouri

***Child Support Debts*: Mo. Ann. Stat. § 454.512 (West).** State division of child support enforcement shall periodically report all child support arrearages, the noncustodial parent shall be provided notice and a reasonable opportunity to contest such information before it is reported.

***State Credit Repair Statute*: Mo. Ann. Stat. §§ 407.635 to 407.644 (West).** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual and

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the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

48 Most state laws concerning duties of furnishers of information are now preempted. *See* § 10.4.4, *supra*.

49 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

punitive damages, plus reasonable attorney fees are available, as are remedies under the state deceptive practices statute.[50]

State Identity Theft Statute: **Mo. Ann. Stat. § 570.223 (West).**

Definition of Offense: Knowingly and with intent to deceive or defraud, obtains, transfers, possesses or uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his use.
Victim Remedies in Criminal Case: Court may order restitution to victim, including costs and attorney fees incurred in clearing credit history or credit rating, and in any civil or administrative proceeding to satisfy a debt, lien or other obligation resulting from the identity theft.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Montana

State FCRA Statute: **Mont. Code Ann. §§ 31-3-101 to 31-3-153** *See also* **Mont. Admin. R. 2.61.301.**

Scope: Same as the federal law.
Purposes for Which Reports May Be Issued: Similar to the federal law except no authorization for provision to potential investors or servicers, or current insurers, in connection with evaluation of the credit or prepayment risks associated with existing credit obligations.
Consumer Access and Disclosure: Upon consumer request, the nature and substance of all information, except medical, in its files, and the sources of the information must be disclosed. The request must be written. Response may be over the phone; the consumer pays the toll charge. The agency must notify the consumer if information of public record with an adverse effect on employment has been reported.
Disclosures to Consumers By User: Notice that an investigative report may be requested is required within three days of request, but is not required pursuant to an employment application. If credit is denied or its cost is increased due to information obtained from a person other than an agency, the user must notify the consumer and must disclose the nature of the adverse information if a request is made within sixty days.
Restrictions on Content of Reports: Similar to federal law, except criminal records more than seven years after disposition, release or parole, and bankruptcies over fourteen years old.[51] No adverse information from a prior investigative report unless it is reverified.[52]
Consumer Disputes: False information must be deleted and users must be notified. The consumer must be notified as to which users have the disputed information.
Consumer Remedies: Actual damages, costs and attorney fees, plus punitive damages for willful violations. Civil action for defamation, invasion or privacy or negligence is available against agencies which do not comply with this statute, or wrongfully judge a dispute frivolous or refuse to delete inaccurate information, and against furnishers (except the Department of Public Health and Human Services) who provide misinformation maliciously or with intent to injure. Administrative procedure available for complaints against the Department. Violation of this statute violates the unfair and deceptive practices statute.
Miscellaneous: A credit rating is a property right with full Montana constitutional protection. An agency must maintain a record of all furnishers and users. Credit reporting agencies must warn all furnishers that they are liable to suit if the information they furnish is false, or is furnished with malice or willful intent to injure the consumer. Adverse information in investigative report may not be reused in later report unless it is verified while preparing the new report.

Child Support Debts: **Mont. Code Ann. §§ 40-5-261 & 40-5-262.** The Department of Public Health may make information about child support debts available to consumer reporting agencies; advance notice and an opportunity to contest the information's accuracy must be provided to obligors.

State Identity Theft Statute: **Mont. Code Ann. 45-6-332.**
Definition of Offense: Purposely or knowingly obtains personal identifying information of another, and uses it without authority for any unlawful purpose, including to obtain credit, goods, services, financial or medical information, in name of another.
Victim Remedies in Criminal Case: May include costs incurred by the victim, including attorney fees, for clearing credit record or credit report, or in any civil or administrative proceeding to satisfy any debt, lien or obligation resulting from defendant's actions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Nebraska

State FCRA Statute: **Neb. Rev. Stat. § 20-149.**

Scope: Similar to Federal.
Purposes for Which Reports May Be Issued: No relevant provisions.
Consumer Access and Disclosure: A photocopy or typewritten copy of a report or file information is available for a reasonable fee, if disclosure is required by terms of federal FCRA as it existed on August 26, 1983; otherwise, as required by the federal law.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: No relevant provisions.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Misdemeanor.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

State Credit Repair Statute: **Neb. Rev. Stat. §§ 45-801 to 45-815.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[53]

50 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

51 These two definitions of information which may not be contained under Montana law in a consumer report were in effect on Sept. 30, 1996, and therefore are not preempted, although they regulate the contents of consumer reports and might otherwise be preempted. *See* § 10.4.4, *supra*.

52 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

53 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See*

Nevada

***State FCRA Statute*: Nev. Rev. Stat. §§ 598C.010 to 598C.200.**

Scope: Similar to Federal.
Purposes for Which Reports May Be Issued: Same as the federal law. Consumers must be given the opportunity to opt out of prescreened lists.[54]
Consumer Access and Disclosure: Rights under state FCRA. The nature and substance of a report in the files at the time of the request and disclosure of the name of the institutional sources of information. On request, shall provide a readable copy and the name of each person who has received a report within the preceding two years, if for employment purposes, or the preceding six months if for any other purpose.
Disclosures to Consumers By User: A consumer must be notified if adverse action is taken on the basis of a credit report, and the consumer must be given notice of the name and address of the reporting agency and of the right to obtain a copy of the report from the agency.
Restrictions on Content of Reports: Same as federal law except agencies are forbidden to report criminal proceedings over seven years old and medical information.[55]
Consumer Disputes: Within five days after a consumer disputes the accuracy of any information, agency must notify any institutional sources of the information, and must complete reinvestigation within thirty days.[56] If the information is found to be incorrect, the files must be corrected and the consumer notified. No information that was deleted because of an inaccuracy may be reinserted unless reasonable procedures are used to maximize accuracy, and the consumer is notified within five business days after the reinsertion and offered the opportunity to add a brief statement disputing or adding to the information.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Willful noncompliance: actual damages, punitive damages, costs, and reasonable attorney fees. Negligent noncompliance: actual damages, costs, and reasonable attorney fees.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***Child Support Debts*: Nev. Rev. Stat. § 598C.110.** Reports shall include information concerning delinquent child support payments if they are presented in an acceptable format by the welfare division or district attorney.

***State Credit Repair Statute*: Nev. Rev. Stat. §§ 598.281 to 598.289.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Description of rights under FCRA. Actual and punitive damages, injunctive relief and attorney fees available, as well as remedies under the state deceptive practices act.[57]

***State Identity Theft Statute*: Nev. Rev. Stat. §§ 41.1345, 205.463 and .465.**

Definition of Offense: Obtains personal identifying information [very broadly defined] of another, and uses it to harm that person, or for unlawful purpose, including but not limited to obtaining goods, credit, services or other thing of value in that person's name, or to delay or avoid being prosecuted for any unlawful act. Possesses, sells or transfers any document or personal identifying information, for the purpose of establishing a false identity for self or another.
Victim Remedies in Criminal Case: Court must order restitution, including costs and attorney fees incurred in clearing credit record or credit rating, and in any civil or administrative proceeding to satisfy debt or obligation incurred as a result of the identity theft.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Person injured as proximate result of violation of § 205.463 has private right of action for actual damages, reasonable costs and attorney fees, and such punitive damages as the facts may warrant.

New Hampshire

***State FCRA Statute*: N.H. Rev. Stat. Ann. §§ 359-B:1 to 359-B:21.**

Scope: Same as the federal law.
Purposes for Which Reports May Be Issued: Similar to federal law except no authorization for provision to potential investors or servicers, or current insurers, in connection with the evaluation of the credit or prepayment risks associated with existing credit obligations. Consumers must be given the opportunity via a toll-free telephone number to opt out of prescreened lists.[58]
Consumer Access and Disclosure: Upon consumer request, an agency must disclose the nature and substance of all information, except medical information, in its files. Consumers must pay a reasonable copy fee.
Disclosures to Consumers By User: Similar to federal law.
Restrictions on Content of Reports: Similar to federal law except bankruptcies over fourteen years old and criminal records more than seven years after date of disposition, release or parole.[59]
Consumer Disputes: Similar to federal law, except that the consumer reporting agency must reinvestigate within thirty days and notify the consumer of the results within a further ten days.[60] Agency must inform consumer of right to request description of procedures used to reinvestigate, including name, address and telephone number of person(s) contacted.

Chapter 15, on credit repair *supra*.

54 State laws concerning prescreened lists are now preempted. *See* § 10.4.4, *supra*.

55 These provisions were in effect on Sept. 30, 1996, so even if they could be said to be otherwise preempted by 15 U.S.C. § 1681c, they are not preempted. *See* § 10.4.4, *supra*.

56 This provision was in effect on Sept. 30, 1996, so although it regulates the time allowed an agency for reinvestigation, it is not preempted. *See* § 10.4.4, *supra*.

57 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

58 State laws concerning prescreened lists are now preempted. *See* § 10.4.4, *supra*.

59 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

60 This provision was in effect on Sept. 30, 1996, so although it regulates the time allowed an agency for reinvestigation, it is not preempted. *See* § 10.4.4, *supra*.

Duties of Furnishers: No relevant provisions.
Consumer Remedies: Actual damages, costs and reasonable attorney fees, plus punitive damages for willful violations. Criminal penalties for obtaining information from agency by false pretenses, or for unauthorized disclosures by agency personnel.
Statute of Limitations: Two years from accrual (or from discovery, if delay resulted from willful and material misrepresentations by defendant).
Miscellaneous: Adverse information in investigative reports must be reverified or less than three months old to be included in a subsequent report.[61]

***State Credit Repair Statute*: N.H. Rev. Stat. Ann. §§ 359-D:1 to 359-D:11.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[62]

***State Identity Theft Statute*: N.H. Rev. Stat. Ann. §§ 638:25 to :27.**

Definition of Offense: Poses as another with intent to defraud to obtain money, credit, goods, services or other thing of value, or confidential information about that person not available to the general public; obtains records or personal identifying information of another with intent to pose as that person or enable another to do so.
Victim Remedies in Criminal Case: Court shall order restitution for victim's economic loss.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

New Jersey

***State FCRA Statute*: N.J. Stat. Ann. §§ 56:11-28 to 56:11-41.**

Scope: Similar to Federal.
Purposes for Which Reports May Be Issued: Generally same as federal law, but consumers must give prior written consent for the inclusion of medical information in reports used for employment, credit, insurance or direct marketing purposes, and for the preparation of investigative consumer reports.
Consumer Access and Disclosure: Similar to federal law, but must disclose all information in file. Must provide one free report per twelve month period; subsequent reports $8. Must disclose the dates, original payees and amounts of any checks that are the basis for any adverse characterization. Must disclose requests (for purposes other than a credit transaction initiated by the consumer) within one year.
Disclosures to Consumers By User: Prior to requesting an investigative report must disclose precise nature and scope of investigation and consumer's right to a free copy of the report, and must obtain consumer's prior written consent.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: Similar to federal law, except agency must notify consumer written five business days of determination that dispute is frivolous, including the reasons for its decision.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Negligent violations: actual damages, costs and reasonable attorney fees. Willful violations: actual damages or minimum damages of at least $100 but not more than $1000, punitive damages, costs and reasonable attorney fees. Those who file pleadings in bad faith or to harass liable for prevailing party's attorney fees for responding to that pleading. Criminal penalties for obtaining information from agency under false pretenses.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

***Child Support Debts*: N.J. Stat. Ann. § 2A:17-56.21.** The state Department of Human Services shall report child support arrearages to consumer reporting agencies. The Department must give obligor prior notice and an opportunity to contest the accuracy of the information.

***State Identity Theft Statute*: N.J. Stat. Ann. § 2C:21-17.**

Definition of Offense: Impersonates another or assumes a false identity for purpose of obtaining a pecuniary benefit, or injuring or defrauding another; obtains personal identifying information of another and uses it without authority to fraudulently obtain a pecuniary benefit or services, or avoid the payment of a debt, or avoid criminal prosecution; or assists another person in using the information for these purposes.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

New Mexico

***State FCRA Statute*: N.M. Stat. Ann. §§ 56-3-1 to 56-3-8.**

Scope: A consumer is any natural person seeking credit for personal, family, or household purposes.
Purposes for Which Reports May Be Issued: Credit reports for the granting of credit. Other bona fide business transactions. Employment purposes. No financial information to non-credit granting government agencies except by court order.
Consumer Access and Disclosure: Upon consumer request, an agency must disclose all information in a credit report or rating.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: A credit bureau must delete any derogatory data as soon as practical after ascertaining it can no longer be verified. A credit bureau cannot merge specialized information which is applicable only to personnel investigations.[63] Criminal records over seven years old, convictions if a full pardon is granted, and arrests and indictments if learned no conviction resulted.[64] Bankruptcies over 14 years.
Consumer Disputes: A credit bureau must give a consumer who is examining credit reports forms on which to designate errors. If disputed, an agency must reinvestigate at no cost to the consumer if the consumer is denied credit. If the consumer is not denied

61 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

62 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

63 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

64 These provisions were in effect on Sept. 30, 1996, so even if they could be said to be otherwise preempted by 15 U.S.C. § 1681c, the are not preempted. *See* § 10.4.4, *supra*.

credit, the consumer can be charged up to $5 for the reinvestigation.

Duties of Furnishers: No relevant provisions.

Consumer Remedies: After a credit bureau is given notice of an error, it is liable for any subsequent report which fails to correct the error. It is not liable for damages for an unintentional error prior to receiving notice of its existence. Damages for negligence include actual damages, costs and attorney fees, plus punitive damages for willful violations. Criminal penalties for obtaining information from agency under false pretenses, and for unauthorized disclosures by agency personnel.

Statute of Limitations: No relevant provisions.

Miscellaneous: A credit bureau must require service contracts in which the user certifies that inquiries will be made only for proper purposes; a credit bureau must refuse services to one who will not certify.

***Child Support Debts*: N.M. Stat. Ann. § 56-3-3.** Child Support Enforcement Division may obtain credit reports for use in locating obligors and enforcing obligations. Division must furnish to credit bureau, on request, the judgment or case number for the obligation for which a report is requested.

***State Identity Theft Statute*: N.M. Stat. Ann. § 30-16-24.1.**

Definition of Offense: Willfully obtaining, recording or transferring personal identifying information of another, without authority, and with intent to defraud that person or another.

Victim Remedies in Criminal Case: Out-of-pocket costs, plus expenses incurred, including attorney fees, in clearing credit record or credit report, and in civil or administrative proceeding to satisfy any debt, lien or obligation resulting from the theft. Sentencing court shall issue written findings of fact, and make such orders as are necessary to correct a public record that contains misinformation as a result of the theft.

Special Record-Clearing Provisions: No specific provisions.

Duties of Private Entities: No specific provisions.

Private Right of Action: No specific provisions.

New York

***State FCRA Statute*: N.Y. Gen. Bus. Law §§ 380 to 380-s.**

Scope: Adverse information is any information that is likely to have a negative effect upon the ability or eligibility of a consumer to obtain credit insurance, employment or other benefits, goods or services, or information responsible for increases in charges for credit or insurance.

Purposes for Which Reports May Be Issued: Similar to the federal law, but explicitly authorize use for residential rentals and does not authorize provision to potential investors or servicers, or current insurers, in connection with evaluation of the credit or prepayment risks associated with existing credit obligations. May not issue reports listing credit denial if the denial is only due to insufficient information.[65]

Consumer Access and Disclosure: Similar to federal law, except that all information in files must be disclosed. Medical information only to be disclosed to physician designated by consumer. An agency must inform a consumer upon any contact of the right to receive a credit report. All consumers denied credit must be notified of the right to receive a report within thirty days at no charge. All requests for reports for employment purposes for two years, for other purposes for six months. If medical information, or reasons for an adverse action based on medical information must be disclosed, it should be disclosed to a physician designated by the consumer.

Disclosures to Consumers By User: Similar to the federal law, except that a consumer must be informed in writing that a credit report may be requested.[66] Upon consumer request, a user must tell a consumer if a credit report is actually used, and the source of the report. For an investigative consumer report, the user must obtain authorization in all situations. An authorization must state that the consumer can request a credit report, and that the user may request a report from the agency and, upon request, will inform a consumer whether it has done so. A consumer must be furnished with the reason for the denial of credit (statute refers to Federal Equal Credit Opportunity Act); cannot furnish the report to others without a legitimate business need.

Restrictions on Content of Reports: Similar to the federal law. Judgments over five years old which have been paid. Bankruptcies over fourteen years old. Information known to be incorrect. In addition:[67] information relative to an arrest or criminal charge unless it is still pending or resulted in conviction. Criminal convictions seven years after disposition, release or parole. Information on race, religion, color, or ethnic origin. Drug/alcohol addiction or mental institution confinement information over seven years old. Agencies may not collect or maintain in its files any information related to or derived from a polygraph examination or similar device. For employment purposes only, an agency may report information related to the detention of an individual by a retail establishment if an uncoerced admission of wrongdoing was executed, and the retail establishment notified the individual that it is furnishing information to a reporting agency, and that the individual may dispute the information's completeness or accuracy.

Consumer Disputes: Similar to the federal law. If an item is corrected or can no longer be verified, an agency must mail a corrected copy to the consumer at no charge.

Duties of Furnishers: No relevant provisions.

Consumer Remedies: Actual damages, costs and reasonable attorney fees, plus punitive damages for willful violations. Criminal penalties for obtaining information from agency under false pretenses; for willfully introducing or attempting to introduce false information into file to damage or enhance credit rating; and for unauthorized disclosures by agency personnel.

Statute of Limitations: Two years from accrual (or from discovery, if delay results from willful material misrepresentation by defendant).

Miscellaneous: No adverse information may be included within a subsequent investigative consumer report unless it is reverified or less than three months old.[68]

65 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

66 Scott v. Real Estate Finance Group, 183 F.3d 97 (2d Cir. 1999).

67 Even if these provisions could be said to be otherwise preempted by 15 U.S.C. § 1681c, they were in effect on September 30, 1996 and therefore not preempted.

68 This provision was in effect on September 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

State Credit Repair Statute: **N.Y. Gen. Bus. Law §§ 458-a to 458-k.** There must be a written contract including specific services provided and right of rescission. Must disclose rights under FCRA. Up to three times actual damages, and no less than amount paid to credit services business, plus reasonable attorney fees, available for violations.[69]

North Carolina

State Credit Repair Statute: **N.C. Gen. Stat. §§ 66-220 to 66-226.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Description of rights under FCRA. Remedies also available under state deceptive practices statute.[70]

State Identity Theft Statute: **N.C. Gen. Stat. § 14-113.20 to .23.**

Definition of Offense: Knowingly obtains, possesses or uses personal identifying information of another, without authority, with intent to fraudulently represent self to be that person for purposes of making financial or credit transactions, or avoiding legal consequences. Punishment is enhanced if victim suffers arrest, detention or conviction as a proximate result of the fraud.
Victim Remedies in Criminal Case: If person commits a crime under a stolen name, court records shall reflect that ID theft victim did not commit the crime.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Other State Provisions: Agency, upon written request by married person, must report both separate credit history of each spouse and history of joint accounts, if any. **N.C. Gen. Stat. § 25B-2.**

North Dakota

Child Support Debts: **N.D. Cent. Code § 50-09-08.4.** Enforcement agencies may report past due support amounts provided obligors given notice and a reasonable opportunity to contest the accuracy of the report first.

State Identity Theft Statute: **N.D. Cent. Code § 12.1-23-11.**

Definition of Offense: Uses personal identifying information of another without authority to obtain credit, money, goods, services or anything of value, while representing self to be another or to be acting under that person's authority
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Ohio

State FCRA Statute: **Ohio Rev. Code Ann. §§ 3904.01 to 3904.22.**

Scope: Consumer reports used in connection with a life, health or disability insurance transaction.
Purposes for Which Reports May Be Issued: Life, health or disability insurance transactions.
Consumer Access and Disclosures: Authorization to obtain information must be in plain language, in writing, signed by consumer, indicate what information is sought, be dated, and limited to a specific time. Medical information may be provided to a medical professional designated by the consumer. Disclosure requirements do not apply to certain information gathered in connection with or reasonable anticipation of, civil or criminal proceeding involving the consumer.
Disclosures to Consumer By User: Insurance institutions or agents must disclose that a report may be requested and provide a notice of information practices summarizing consumers' rights under Ohio law. No insurance institution, agent or insurance support organization may procure an investigative consumer report in connection with an insurance transaction without informing consumer of their right to be interviewed for the report and to receive a copy of the report. Upon written request, insurance institutions, agents or insurance support organizations must disclose all recorded personal information to consumer and the sources of such information, and must provide a summary of procedures available to request correction, amendment or deletion of such information. Insurance institutions or agents must notify consumer of reasons for adverse underwriting decision and, if requested within ninety business days, the specific items and sources of information that support those reasons.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: Within thirty days of being informed of dispute, must either correct or delete the information or inform the consumer of its refusal, the reasons, and the right to file a statement describing the dispute. If information is changed or deleted, must notify (at request of consumer) users who have received reports within two years. Must notify insurance support organizations which use the information, or which supplied the information.
Duties of Furnishers: Imposes disputed accuracy procedures similar to those imposed upon consumer reporting agencies by federal law upon insurance institutions, agents and insurance support organizations. Also imposes duties similar to federal law upon insurance institutions, agents and insurance support organizations when furnishing information to others.
Consumer Remedies: Actual damages only available for unauthorized disclosure of information to others, equitable relief available to remedy violations of some other provisions. Costs and reasonable attorney fees available to prevailing party. Criminal penalties for obtaining information from agency under false pretenses. Administrative enforcement by commissioner of insurance, who may issue cease and desist orders, suspend or revoke licenses, and impose civil penalties: up to $10,000 or for violations frequent enough to be a general business practice, up to $50,000.
Statute of Limitations: Two years from date violation is or should have been discovered.
Miscellaneous: No relevant provisions.

Child Support Debts: **Ohio Rev. Code Ann. §§ 3123.91 to 3123.932 (West).** If the court or agency makes a final determination that an obligor is delinquent, it must report this information to at least one consumer reporting agency. If the entire arrearage is paid, the reporting agency may not record the payment until it is

69 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

70 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

confirmed by the child support agency. Any credit reporting agency may request information regarding child support from the child support agency, which may report whether the consumer is obliged to pay child support, the court or agency that issued the order, and whether the order is being administered by the child support agency.

***State Credit Repair Statute*: Ohio Rev. Code Ann. §§ 4712.01 to 4712.99.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Description of rights under FCRA. Actual damages, not less than amount consumer paid credit services organization, reasonable attorney fees and punitive damages available. Remedies are also available under the state deceptive practices statute.[71]

***State Identity Theft Statute*: Ohio Rev. Code Ann. § 2913.49.**

Definition of Offense: Obtains, possesses or uses the personal information of any living or dead individual with intent to obtain credit, property or services, or avoid the payment of any debt, or to aid or abet another to violate this section.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Oklahoma

***State FCRA Statute*: Okla. Stat. tit. 24, §§ 81–86, 147–148.**

Scope: Credit rating book or list published to retail or wholesale businesses.
Purposes for Which Reports May Be Issued: Oklahoma law regulates the business of credit rating.
Consumer Access and Disclosure: Similar to federal statute. Before giving an opinion upon any consumer's credit standing to a retail merchant, an agency must mail a copy of the opinion to the consumer.
Disclosures to Consumers By User: Anyone having a rating book or list must show a consumer his/her rating upon request. Similar to Federal statute; when a report is requested for employment purposes, consumers must be given the option to receive a copy.
Restrictions on Content of Reports: Tax liens may not be disclosed unless the information is obtained directly from the state tax commission, and the reporting agency uses due diligence in updating the status of the liens.
Consumer Disputes: No relevant provisions.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Anyone who knowingly publishes a false opinion in a book or list and circulates it to retail or wholesale business concerns is liable for the amount of injuries in addition to exemplary damages, as determined by a jury. Fine for failure to show a consumer rating upon request. Criminal penalties for introducing false information to damage or enhance credit rating, or for willfully circulating false report.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

71 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

***State Credit Repair Statute*: Okla. Stat. tit. 24, §§ 131–147.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages, not less than amount consumer paid to credit services organization, reasonable attorney fees and punitive damages available.[72]

***State Identity Theft Statute*: Okla. Stat. tit. 21, § 1533.1.**

Definition of Offense: Willfully and with fraudulent intent obtain the personal identifying information of another with intent to use, sell, or allow another to use or sell it, to obtain or attempt to obtain credit, goods, property or services in the name of another; or offer another the use of one's own personal identifying information for the purpose of obtaining a false identifying document.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

***Other State Provisions*:** Before rating, a consumer agency must attempt to obtain from the person to be rated a statement of assets and liabilities. **Okla. Stat. tit. 24, § 81.**

***Child Support Debts*: Okla. Stat. tit. 56, § 240.7.** Department of Human Services shall report child support arrearages to consumer reporting agencies. Obligers must be notified prior to the release of the information and be given a reasonable opportunity to contest the accuracy of the information.

Oregon

***Child Support Debts*: Or. Rev. Stat. Ann. § 25.650.** The Department of Justice shall provide information on child support arrearages to consumer reporting agencies, but first both obligor and obligee parents must be notified and given opportunity to contest accuracy of information. Department of Justice shall promptly notify agency when obligor pays off previously reported arrearage.

***State Credit Repair Statute*: Or. Rev. Stat. Ann. §§ 646.380 to 646.396.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA.[73]

***State Identity Theft Statute*: Or. Rev. Stat. § 165.800.**

Definition of Offense: With intent to deceive or defraud, obtains, possesses, creates, utters, or converts to person's own use the personal identification of another person.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Pennsylvania

***Child Support Debts*: 23 Pa. Cons. Stat. Ann. § 4303.** State shall

72 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

73 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

report any child support arrearages provided that obligor is given notice and a period of up to twenty days to contest the accuracy of the information.

State Credit Repair Statute: **Pa. Stat. Ann. tit. 73, §§ 2181–2192.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages, not less than amount of contract, plus attorney fees and punitive damages are available, as are remedies under the state deceptive practices act.[74]

State Identity Theft Statute: **18 Pa. Cons. Stat. § 4120 and 42 Pa. Cons. Stat. § 9720.1.**

Definition of Offense: Possesses or uses identifying information of another without consent to further any unlawful purpose. Enhanced penalty if victim aged 60 or above.
Victim Remedies in Criminal Case: Court may order restitution for all reasonable expenses incurred by or on behalf of the victim to investigate the theft, bring or defend criminal actions related to the theft, correct victim's credit record or negative credit reports resulting from the theft; reasonable expenses include attorney fees, fees or costs imposed by credit bureaus or incurred in private investigations, court costs and filing fees.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Rhode Island

State FCRA Statute: **R.I. Gen. Laws §§ 6-13.1-20 to 6-13.1-27.**

Scope: Same as the federal law.
Purposes for Which Reports May Be Issued: Same as federal law.
Consumer Access and Disclosure: Similar to federal law. Upon consumer request, an agency must disclose within four business days of the request all information in its files that pertains to the consumer at the time of the request. Any charge is not to exceed $8 per report, although the charge may increase with the Consumer Price Index. Must disclose to the consumer that the consumer has the right to request that corrected credit reports be sent to employers within two years, and to any other person within six months, when the agency has corrected information contained in the report.
Disclosures to Consumers By User: A consumer must be notified that a credit report may be requested before a report is requested in connection with an application for credit, employment, or insurance. Otherwise similar to federal law.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: Once a credit bureau receives notice of a dispute, it has thirty calendar days to reinvestigate the status of the information unless it has reason to believe that the dispute is frivolous or irrelevant.[75] If it is inaccurate, it must be deleted promptly. If reinvestigation does not resolve the dispute, the consumer may file a brief summary of the dispute. The bureau must then include that summary or a summary of its own with any subsequent credit report that it issues. The bureau must furnish free of charge a copy of any corrected credit report to the consumer, and if the consumer requests, furnish a copy of the corrected report to any person designated by the consumer who has received a credit report within the past two years, if for employment purposes, or within the past six months for any other purpose.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Violations constitute a deceptive trade practice for enforcement purposes. Negligent noncompliance: three working days to correct after being notified of the noncompliance or liability for $10 a day for each day in noncompliance in addition to actual damages, costs, and reasonable attorney fees.
Statute of Limitations: No relevant provisions.
Miscellaneous: Agencies must register with the office of the Secretary of State. Consumers have right to furnish a statement concerning any lapse in employment to agency, at no charge, which must be included in agency's file.

Child Support Debts: **R.I. Gen. Laws § 15-25-1.** The child support enforcement agency shall inform reporting agencies of child support arrearages, unless it determines release of information inappropriate in a particular case. Obligor must be given ten days prior notice and an opportunity to contest the accuracy of the information. State child support enforcement agency must give consumer ten days notice prior to requesting report, must make report available to consumer, and must use report solely to establish consumer's capacity to make child support payments. Department must "periodically" report to credit reporting agencies if overdue support is paid, or amount of support due is amended.

State Identity Theft Statute: **R.I. Gen. Laws § 11-49.1-1 to -5.**

Definition of Offense: Deals primarily with producing, selling or using false ID documents, but also includes knowingly transfers or uses with intent to defraud, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal, state or local law.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

South Carolina

Child Support Debts: **S.C. Code Ann. § 43-5-585.** Department of Social Services shall inform agencies of child support arrearages greater than $1000. Obligors must be given notice and an opportunity to contest accuracy of the information.

State Identity Theft Statute: **S.C. Code Ann. §§ 16-13-500 to -530.**

Definition of Offense: With intent to appropriate the financial resources of another for self or a third party, obtains or records identifying information which would assist in accessing financial records of another, or accesses or attempts to access the financial resources of another by use of identifying information.
Victim Remedies in Criminal Case: Court may order restitution pursuant to § 17-25-322. [general criminal restitution statute].
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

74 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

75 This provision was in effect on Sept. 30, 1996, so although it regulates the time allowed an agency to reinvestigate, it is not preempted. *See* § 10.4.4, *supra*.

South Dakota

***State Identity Theft Statute*: S.D. Codified Laws 22-30A-3.1 to -3.3.**

Definition of Offense: Obtains, transfers, uses, attempts to obtain or records identifying information not lawfully issued for that person's use; accesses or attempts to access the financial resources of another through the use of identifying information.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Tennessee

***Child Support Debts*: Tenn. Code Ann. § 36-5-106.** The Department of Human Services shall report child support arrearages to agencies and also those who are current with their payments. Must provide obligor with notice and an opportunity to contest accuracy of information before release.

***State Credit Repair Statute*: Tenn. Code Ann. § 47-18-1001 to 47-18-1011.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages available for negligent violations. Actual damages or amount paid to the credit repair business, whichever is greater, plus punitive damages, available for willful violations. Remedies are also available under the state deceptive practices statute.[76]

***State Identity Theft Statute*: Tenn. Code Ann. §§ 39-14-150, 39-16-303, 47-18-2101 to -2106.**

Definition of Offense: Knowingly transfers or uses without authority a means of identification of another, with intent to permit, promote, carry on or facilitate any unlawful activity (means of identification broadly defined) § 39-14-150. With intent to injure or defraud another, assumes a false identity § 39-16-303. Obtains, transfers, possesses or uses, attempts to obtain, possess, transfer or use, for unlawful economic benefit, one or more identification documents or personal identification numbers of another, or otherwise obtains, transfers, possesses or uses, or attempts to obtain, transfer, possess or use, one or more financial documents of another. § 47-18-2102. Engages in any unfair, deceptive, misleading act or practice for the purpose of engaging in identity theft. § 47-18-2102.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Private right of action for damages, costs, attorney fees, and "such other relief" as court considers necessary. Treble damages for willful and knowing violation. Declaratory judgment and injunction available. Plaintiff must send copy of complaint to attorney general. Violation of identity theft statute also violates the Consumer Protection Act.
Other: Attorney general may sue for violation of this section, seeking restitution for ascertainable loss (plus interest) suffered by consumers, as well as for injunction, asset freeze, civil penalties, court costs, and reasonable expenses of the investigation. Restitution under this section is a set-off against any judgment obtained in private civil action.

Texas

***State FCRA Statute*: Tex. Fin. Code Ann. §§ 391.001 to 391.002 & 392.001 to 392.404.**

Scope: Applies to credit reporting bureaus, i.e. persons who assemble or report credit information about individuals, for purposes of furnishing that information to third parties.
Purposes for Which Reports May Be Issued: No relevant provisions.
Consumer Access and Disclosure: All information in agency files must be disclosed to consumer within 45 days.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: Agency must provide consumer with form to report inaccuracies and, if requested, provide consumer assistance completing the form. Within thirty days, agency must send consumer a written notice of the results of its reinvestigation or a statement that there has been insufficient time to finish investigation. If disputed item inaccurate or investigation incomplete, agency must correct inaccuracy or claimed inaccuracy within five business days and send a corrected report to every user who received an incorrect or potentially incorrect report.[77]
Duties of Furnishers: No relevant provisions.
Consumer Remedies: No liability for bona fide errors which result despite agency maintaining reasonable procedures to avoid errors. Injunctive relief, actual damages, statutory damages of $100 per violation of provisions concerning disputed accuracy, reasonable attorney fees and costs available. Fine of $200 for knowingly furnishing false information about a person's credit record. Remedies are also available under the state deceptive practices statute.
Statute of Limitations: No relevant provisions.
Miscellaneous: Credit bureau must post bond for $10,000 and file copy with secretary of state before doing business in Texas.

***Child Support Debts*: Tex. Fam. Code Ann. § 231.114.** Amount of child support owed and amount paid shall be reported to consumer reporting agencies, after thirty days notice and an opportunity to contest the accuracy of the information is given to the obligor.

***State Credit Repair Statute*: Tex. Fin. Code Ann. §§ 393.001 to 393.505.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with state. Must disclose rights under FCRA. Injunctive relief, actual damages (not less than amount consumer paid to credit services organization), punitive damages, reasonable attorney fees and costs available. Remedies are also available under the state deceptive practices statute. Credit services organizations must register annually with the Secretary of State.[78]

76 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

77 This provision was in effect on Sept. 30, 1996, although it was recodified at a new location in 1997. Therefore, although it regulates the time allowed agency for reinvestigation, it is not preempted. *See* § 10.4.4, *supra*.

78 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

State Identity Theft Statute: **Tex. Penal Code Ann. § 32.51.**

Definition of Offense: Obtains, transfers, possesses, or uses identifying information of another without consent and with intent to harm or defraud another.
Victim Remedies in Criminal Case: Court may order restitution, including lost wages and other expenses—except attorney fees—incurred as a result of the offense.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Utah

State FCRA Statute: **Utah Code Ann. § 70C-7-107.**

Scope: Applies to creditors who furnish negative information to credit reporting agencies.
Purposes for Which Reports May Be Issued: No relevant provisions.
Consumer Access and Disclosures: No relevant provisions.
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: No relevant provisions.
Consumer Disputes: No relevant provisions.
Duties of Furnishers: Notice of negative credit report to be sent in writing by mail, or given in person, to last known address within thirty days after transmission of the information to the reporting agency.[79]
Consumer Remedies: Actual damages, court costs, and attorney fees for failure to provide notice of a negative credit report. Punitive damages of no more than twice actual damages for willful violations. Maintenance of reasonable procedures to avoid errors are a defense to liability.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

State Credit Repair Statute: **Utah Code Ann. §§ 13-21-1 to 13-21-9.** There must be written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Description of rights under FCRA. Actual damages, not less than amount consumer paid credit services organization, punitive damages, reasonable attorney fees and costs available.[80] May not charge or receive any consideration until services fully performed.

State Identity Theft Statute: **Utah Code Ann. §§ 76-6-1101 to 1104; see also § 13-11-4.5.**

Definition of Offense: Knowingly or intentionally, without authorization, obtains personal identifying information of another and uses or attempts to use it with fraudulent intent, including to obtain credit, goods, services, other thing of value, or medical information, or employment, in the name of another without consent.
Victim Remedies in Criminal Case: If thief commits a crime under a false name, court must make "appropriate findings" that theft victim did not commit that crime.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Violation of this section violates the Consumer Protection Act.
Other: Division of Consumer Protection, as well as law enforcement agencies, may investigate violations.

Other State Provisions: **Utah Code Ann. § 31A-22-320.** Motor vehicle insurers may not use credit report or credit score [defined—does not include driving record or insurance claims history] to determine renewal, non-renewal, termination, eligibility, underwriting or rating, of motor vehicle related insurance, or eligibility for certain statutory discounts.

Vermont

State FCRA Statute: **Vt. Stat. Ann. tit. 9, §§ 2480a–2480g; Vermont Attorney General Consumer Fraud Rule CF 112.**

Scope: Same as the federal law.
Purposes for Which Reports May Be Issued: Only purposes consented to by the consumer. No exception made for sharing of information between affiliates.[81]
Consumer Access and Disclosure: All available information including credit score or predictor. Free once per year; $7.50 maximum for each additional copy. Written summary of consumer's rights under Vermont law. Agencies must be listed in the white and yellow pages under "Credit Reporting Agency."
Disclosures to Consumer by User: No relevant provisions.
Restrictions on Content of Reports: No disclosure without consumer consent. No exception made for sharing of information between affiliates.[82]
Consumer Disputes: Notice to provider of information within five days of consumer dispute; reinvestigation complete within thirty days.[83] May not reinsert disputed information, if deleted, without a separate affirmation from the provider.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Injunctive relief, actual damages or $100, whichever is greater; punitive damages if willful; costs and attorney fees.
Statute of Limitations: No relevant provisions.
Miscellaneous: No relevant provisions.

Child Support Debts: **Vt. Stat. Ann. tit. 15, § 793.** Arrearage equal to at least one-quarter of the annual child support obligation may be reported if the obligor is given notice by first class mail or other means likely to give actual notice and given a period not to exceed twenty days to contest the accuracy of the information. Office of child support must immediately report increases or decreases in the account balance of previously reported accounts.

Virginia

State Credit Repair Statute: **Va. Code Ann. §§ 59.1-335.1 to 59.1-335.12.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages, plus punitive damages for willful violations, are

79 Most state laws concerning the duties of furnishers of information are preempted. *See* § 10.4.4, *supra*.

80 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

81 This provision of Vermont law is explicitly not preempted. *See* § 10.4.4, *supra*.

82 This provision of Vermont law is explicitly not preempted. *See* § 10.4.4, *supra*.

83 This provision was in effect on Sept. 30, 1996, so although it regulates the time agency allowed for reinvestigation, it is not preempted. *See* § 10.4.4., *supra*.

available. Remedies are also available under the state deceptive practices statute.[84]

***State Identity Theft Statute*: Va. Code Ann. § 18.2-186.3.**

Definition of Offense: Without authority and with intent to defraud, for own use or that of a third person: obtains, records or accesses identifying information not available to the general public, that would assist in accessing financial resources, or obtaining benefits or identification documents of another; obtains goods or services by use of identifying information of another; obtains identification documents in the name of another. Penalty enhanced if victim is arrested or detained.
Victim Remedies in Criminal Case: Court must order restitution, which may include actual expenses incurred in correcting errors in victim's credit report or other identifying information.
Special Record-Clearing Provisions: At victim's request, Attorney General will assist victim in obtaining information necessary to correct inaccuracies or errors in credit report or other identifying information.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Washington

***State FCRA Statute*: Wash. Rev. Code §§ 19.182.005 to 19.182.902.**

Scope: Similar to Federal.
Purposes for Which Reports May Be Issued: Similar to federal law, except no authorization for provision to potential investors or servicers, or current insurers, in connection with evaluation of the credit or prepayment risks associated with existing credit obligations. In addition, if a report is procured for employment purposes, the consumer must be an employee at the time it is procured unless there is written disclosure that the report will be used in consideration for employment, or unless the consumer authorizes.
Consumer Access and Disclosure: All information in file, but only required to reveal medical information to consumer's health care provider. Otherwise similar to federal law. Must provide consumer with summary of rights under Washington FCRA. Must disclose all users who obtained report for employment purposes within two years, or for any other purpose (including a credit transaction not initiated by consumer) within six months. May charge $8 (to be adjusted for CPI) for disclosure of consumer's file, unless consumer has been subject to adverse action within sixty days, in which case disclosure is free.
Disclosures to Consumers By User: Employers must disclose in writing that consumer reports may be used for employment purposes. Prior to any adverse action based on a report, an employer must provide the name, address, and telephone number of the reporting agency; the description of consumer rights under Washington law pertaining to consumer reports for employment purposes; and a reasonable opportunity to respond to any information in a report that is disputed by the consumer. If adverse action is taken by any user, the consumer must be provided with written notice and the name, address, and telephone number of the reporting agency. Verbal notice may be given involving businesses regulated by state utilities and transportation commission, or involving an application for rental or leasing of residential real estate if it does not impair a consumer's ability to obtain a credit report without charge, and the consumer is provided with the name, address, and telephone number of the consumer reporting agency. Must inform consumer of intent to obtain an investigative consumer report. On consumer's request, must disclose the scope of the proposed investigation.
Restrictions on Content of Reports: Same as federal law, except criminal records more than seven years after date of disposition, release or parole.[85] If consumer provides copy of police report regarding identity theft, agency must notify furnisher of information, and block information resulting from the theft.
Consumer Disputes: If the accuracy of an item is disputed by a consumer, the consumer reporting agency must reinvestigate and record the status of the disputed information before the end of thirty business days with no charge.[86] If agency determines the dispute is frivolous it must notify consumer in writing of its reasons within five days. Before the end of five business days after notice of a dispute by the consumer, the agency shall notify any person who provided an item of information in the dispute. If the information is found to be inaccurate, it must be deleted promptly. If reinvestigation does not resolve the dispute, the consumer may file a brief statement of contentions. The agency must inform the consumer of the right to request a corrected notification to all users within six months, and employers within two years; notification must be within thirty days at no charge. If the agency operates on a nationwide basis, it must have a toll free telephone number that the consumer can use in case of a dispute.
Duties of Furnishers: No relevant provisions.
Consumer Remedies: Knowingly and willfully obtaining information under false pretenses: fine of up to $5000, imprisonment for up to one year or both. Violation is an unfair or deceptive act in trade or commerce and an unfair method of competition under state deceptive practices statute. Remedies available for negligent violations: actual damages, costs, and reasonable attorney fees. For willful noncompliance: actual damages, $1,000, costs, and reasonable attorney fees.
Statute of Limitations: Two years from violation or time of discovery.
Miscellaneous: Every agency must maintain reasonable procedures to avoid misuse of reports; agencies must require prospective users to identify themselves, to certify the purposes for which information is sought, and to certify that the information will be used for no other purpose. Agencies must also use reasonable efforts to verify the identity of a new user. If an agency has reasonable grounds for believing that a consumer report will not be used for the above purposes then it is prohibited from furnishing the report. May issue consumer's name, address, former addresses, places of employment or former places of employment to a governmental agency. Cannot provide prescreened information if the consumer precludes it in writing.[87]

84 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

85 This provision was in effect on Sept. 30, 1996, so even if it could be said to be otherwise preempted by 15 U.S.C. § 1681c, it is not preempted. *See* § 10.4.4, *supra*.

86 This provision was in effect on Sept. 30, 1996, so although it regulates the time agency allowed for reinvestigation, it is not preempted. *See* § 10.4.4, *supra*.

87 State law provisions concerning prescreening lists are now

***State Credit Repair Statute*: Wash. Rev. Code § 19.134.010 to 19.134.900.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages, not less than amount paid to credit services organization, punitive damages, reasonable attorney fees and costs are available. Remedies are also available under the state deceptive practices statute.[88]

***State Identity Theft Statute*: Wash. Rev. Code §§ 9.35.001 to .902, § 19.182.160.**

Definition of Offense: Uses false statement, or fraudulent or fraudulently obtained document to obtain financial information of another from various sources (financial institution, merchant, etc.). Obtains, possesses, uses or transfers, financial information or means of identification of another with intent to commit, aid or abet any crime. Uses means of identification or financial information of another to solicit undesired mail for purposes of harassing another.
Victim Remedies in Criminal Case: If means of identification or financial information used without authority to commit a crime, court shall issue necessary orders to correct any public record which contains false information resulting from identity theft.
Special Record-Clearing Provisions: An identity theft victim may request that his or her fingerprints be filed, along with a statement about the theft. (Law enforcement agency may charge $5 for this service) A copy the statement may be presented to businesses when the victim requests copies of application, etc. records. (See Duties of Private Entities, above).
Duties of Private Entities: Entity (merchant, financial institution, financial information repository, etc.) that deals with thief must, upon victim's request, provide all relevant transaction and application information. Violation of this section violates the Consumer Protection Act. Credit reporting agency must permanently block information added to credit report as a result of identity theft within thirty days of receiving copy of police report. May unblock only if block resulted from fraud by consumer, or consumer agrees block was erroneous, or consumer knowingly received goods or services as a result of the blocked transaction.
Private Right of Action: Improperly obtaining financial information – greater of $500 or actual damages plus reasonable attorney fees. Identity theft—same, including costs incurred to repair credit record. Identity crime violates the Consumer Protection Act, and these provisions for private action do not limit a victim's ability to seek treble damages under the act.
Other: State has banned the use of Social Security Numbers as college ID numbers. Legislative findings note that this was done because identity theft is becoming more common, and widespread use of Social Security numbers facilitates the crime.

West Virginia

***Child Support Debts*: W. Va. Code § 48A-2-31.** Those in arrears for child support payments must be provided procedural due process, including notice and a reasonable opportunity to contest accuracy of information, prior to state reporting such arrearages to consumer reporting agencies. State child support enforcement agency must give consumer ten days notice prior to requesting report and must use report solely to establish consumer's capacity to make child support payments.

***State Credit Repair Statute*: W. Va. Code §§ 46A-6C-1 to 46A-6C-12.** There must be a written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Actual damages not less than amount consumer paid to credit services organization, punitive damages, costs and reasonable attorney fees are available. Remedies are also available under the state deceptive practices statute.[89]

***State Identity Theft Statute*: W. Va. Code § 61-3-54.**

Definition of Offense: Knowingly takes the name or other identifying information of another, without authority, in order to fraudulently represent self as that person, for purpose of making financial or credit transactions in that person's name.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: No specific provisions.

Wisconsin

***Child Support Debts*: Wis. Stat. § 49.22(11).** Department of Public Assistance shall report child support arrearages, but must give twenty business days prior notice to obligor and disclose methods available to contest accuracy of information. Department must report any errors or payments within thirty days and reporting agency must correct consumer files within thirty days.

***State Credit Repair Statute*: Wis. Stat. §§ 422.501 to 422.506.** There must be written contract including specific services provided, total payments due and right of rescission. Must post a bond with the state. Must disclose rights under FCRA. Violations void the transaction.[90]

***State Identity Theft Statute*: Wis. Stat. §§ 943.201 and 895.80.**

Definition of Offense: Uses or attempts to use any personal identifying information or personal identification document of another, without authorization, to obtain credit, goods, money, services or anything of value by misrepresenting self as that other person, or as acting with that person's authority.
Victim Remedies in Criminal Case: No specific provisions.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Civil action for treble damages, plus all reasonable costs of investigation and litigation. Criminal conviction not a prerequisite.

***Other State Provisions*: Wis. Stat. §§ 186.53, 214.507, 215.26(8)(a)(3), 224.26.** A customer, loan applicant or credit applicant of a bank, credit union, savings and loan or other banking institution may request a free copy of any written credit report on them held by the institution, for which a fee was imposed.

preempted. *See* § 10.4.4, *supra*.

88 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

89 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

90 Many provisions of state credit repair statutes are preempted by the comprehensive Federal Credit Repair Organizations Act. *See* Chapter 15, on credit repair *supra*.

Wyoming

State Identity Theft Statute: **Wyo. Stat. Ann. §§ 1-1-128 and 6-3-901.**

Definition of Offense: Willfully obtains personal identifying information of another and uses it without authority for any unlawful purpose, including to obtain money, credit, goods, services or medical information in the name of the other person.
Victim Remedies in Criminal Case: May include any costs incurred by victim, including attorney fees, in clearing credit rating or credit history, or in any civil or administrative proceeding to satisfy debt, lien or other obligation resulting from the theft. If thief commits another crime under victim's name, court records shall reflect that victim did not commit that crime.
Special Record-Clearing Provisions: No specific provisions.
Duties of Private Entities: No specific provisions.
Private Right of Action: Civil action for damages, costs and attorney fees. Injunction may also be available. Criminal conviction not a prerequisite.

Exhibit 2

ECONOMIC INDICATORS IN STATES WITH EXEMPTIONS FROM THE 1996 FCRA AMENDMENTS

ECONOMIC INDICATORS IN STATES WITH EXEMPTIONS FROM THE 1996 FCRA AMENDMENTS[1]

		Non-commercial Bankruptcies [2]		Mortgage Loan Rates[3]		Auto Loans Rates[4]	
	Statute	Households Per Filing	Rank [5]	Effective Rates	Rank	Rate	Rank
California	§§1785.1 – 1787.3	80	27	6.25	51	5.30	31
Massachusetts	Ch. 93, §50-68	142.8	49	6.43	46	5.36	24
Vermont	Tit. 9, §2490a–2480g	143.7	50	6.59	26	4.86	50

[1] The information on bankruptcies is from the American Bankruptcy Institute, the information about mortgage loan rates is from the Federal Housing Finance Board, and the information about auto loan rates comes from Bankrate.com.
[2] For the 12 months ending June 30, 2002.
[3] For 2002.
[4] As of May 30, 2003.
[5] Each state is ranked in comparison to the other 49 states and the District of Columbia.
In the category of bankruptcy, the state ranked #1 had the highest level of consumer bankruptcies, and the state ranked 51 had the lowest level of consumer bankruptcies.
In the categories of mortgage loans and auto loans, the states ranked #1 had the highest loan rates, and the states ranked 51 had the lowest loan rates.

Exhibit 3

Sample of Credit Advertisements, Vermont, May 19-29, 2003

Free business checking?

"yes!"

That will be your reaction when you come to KeyBank and discover financial solutions to your small business needs, such as free checking with a $500 minimum daily balance. Key is committed to helping you focus on your business, while we focus on ways to make you even more successful. Isn't that what a banking relationship should be all about? Yes, indeed. **The Solution is Key.**

Free business checking*

Plus, you'll get even more savings with a Small Business MasterCard.®

0% APR for the first six months and no annual fee.

KeyBank

Open an account at any KeyCenter, call 1-888-KEY4BIZ,® or go to Key.com/smallbiz.

Achieve anything.

*Free checking offer applies to new Business Basics Checking accounts. Monthly maintenance service and transaction charges waived when certain minimum balance requirements are maintained and when transaction limits are not exceeded. If account is closed within 180 days of opening, a $25 fee will apply. Other charges may apply. Business Basics Checking accounts require a $250 minimum deposit to open. Credit products subject to credit approval. Credit

mark of KeyCorp.

Member FDIC SBA Preferred Lender

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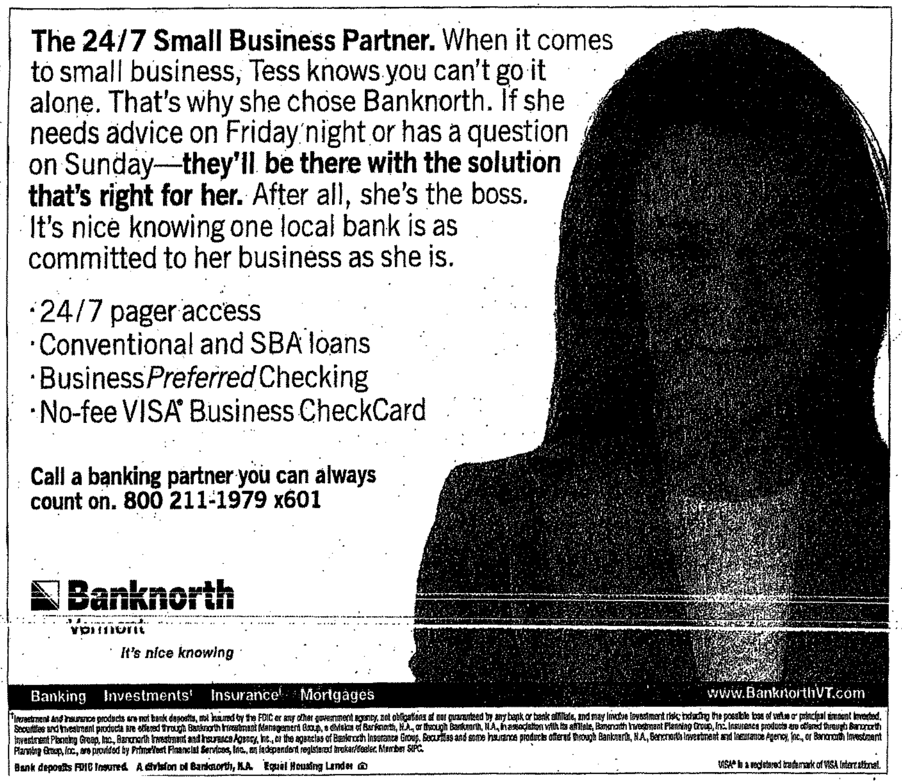

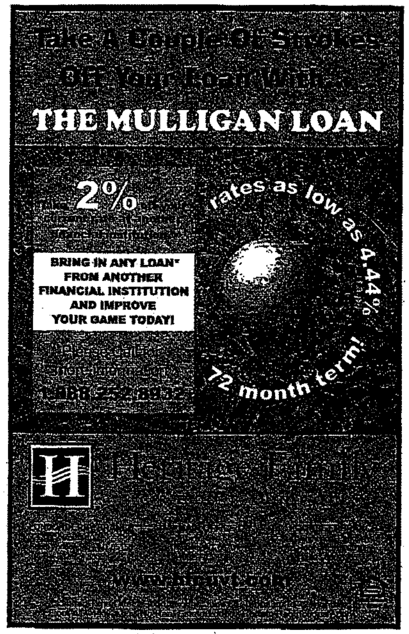
Take A Couple Of Strokes Off Your Loan With...
THE MULLIGAN LOAN
2%
BRING IN ANY LOAN* FROM ANOTHER FINANCIAL INSTITUTION AND IMPROVE YOUR GAME TODAY!
rates as low as 4.44%
72 month term!

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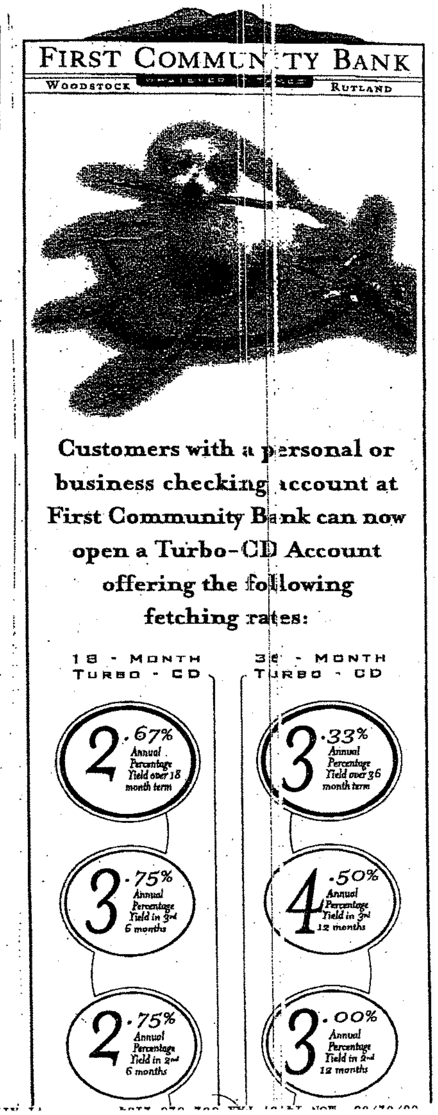
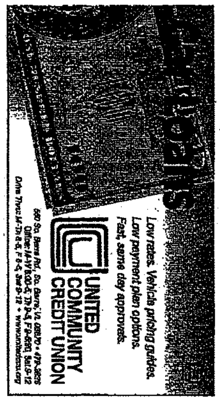

FIRST COMMUNITY BANK
WOODSTOCK
RUTLAND
Customers with a personal or business checking account at First Community Bank can now open a Turbo-CD Account offering the following fetching rates:
18 - MONTH TURBO - CD
36 - MONTH TURBO - CD
2.67% Annual Percentage Yield over 18 month term
3.33% Annual Percentage Yield over 36 month term
3.75% Annual Percentage Yield in 3rd 6 months
4.50% Annual Percentage Yield in 3rd 12 months
2.75% Annual Percentage Yield in 2nd 6 months
3.00% Annual Percentage Yield in 2nd 12 months

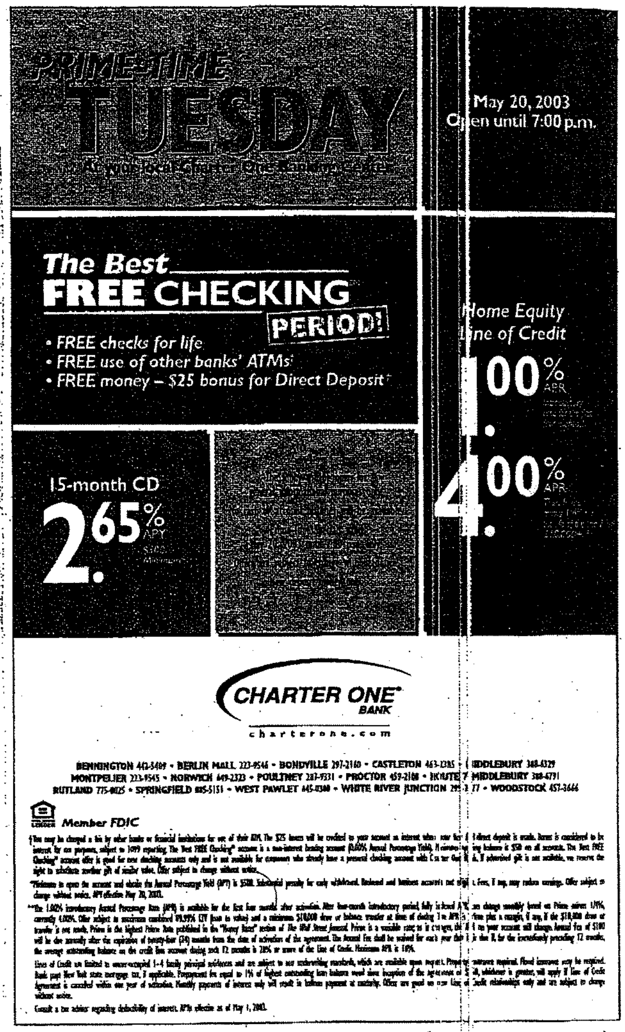
[illegible]

TA 5/18/03 E7

TA 6/3/03 A5



Low rates. Vehicle pricing guides.
Low payment plan options.
Fast, same day approvals.
UNITED COMMUNITY CREDIT UNION



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1.00% APR
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2.65% APY
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RH 5/17/03 A9

Weekly Mortgage Rate Reference

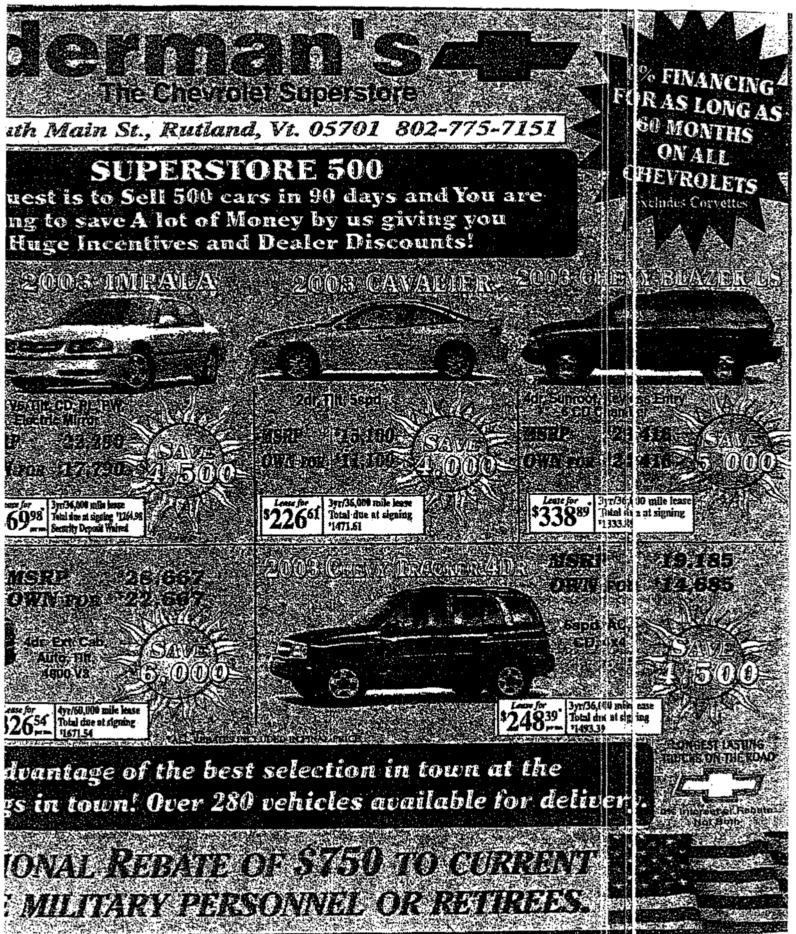
Financial Institution	Type	Rate	APR	Term	Points
Merchants Bank 800-322-5222	Fixed	6.125	6.125	30	0
	Fixed	5.625	5.810	30	2
	Fixed	5.250	5.250	15	0
	Fixed	4.750	5.056	15	2
	1Yr. Adj	4.000	4.357	30	1.5
Mortgage Financial 866-322-1212	Fixed	5.750	5.970	30	2
	Fixed	6.125	6.150	30	0
	Fixed	5.125	5.350	15	2
	Fixed	5.500	5.520	15	0
Mortgage Solutions 802-297-2361	Fixed	5.375	5.402	30	0
	Fixed	5.250	5.296	15	0
	Fixed	4.875	4.990	30	1
	Fixed	4.750	4.948	15	1
Vt. State Credit Union 800-371-5162 ext. 3204	Fixed	5.625	5.640	30	0
	Fixed	5.375	5.480	30	1
	Fixed	5.000	5.020	15	0
	Fixed	4.875	5.050	15	1
Factory Point 802-362-2424	Fixed	6.125	6.157	30	0
	Fixed	5.625	5.842	30	1
	Fixed	5.500	5.553	15	0
	Fixed	5.000	5.359	15	1
Heritage Family Credit Union 802-775-4930	Fixed	5.625	5.625	30	0
	Fixed	5.250	5.431	30	2
	Fixed	5.000	5.000	15	0
	Fixed	4.500	5.804	15	2
Springfield Savings and Loan 1-888-892-9500	Fixed	4.75	4.75	15	0
	Fixed	5.25	5.25	20	0
	Fixed	5.50	5.50	30	0
	1YR ARM	3.375	3.78	30	0
Charter One Bank 1-877-888-6521	Fixed	5.500	5.629	30	0
	Fixed	5.250	5.429	30	1
	Fixed	4.750	4.948	15	0
	Fixed	4.500	4.855	15	1
Home & Loan Center 802-773-9050	Fixed	5.250	5.280	30	0
	Fixed	4.875	5.082	30	3
	Fixed	4.750	4.780	15	0
	Fixed	4.250	4.582	15	3
Pinnacle Morgage Corp. 1-802-824-9400	Fixed	5.000	5.090	15	1
	Fixed	5.250	5.290	15	0
	Fixed	5.625	5.720	30	1
	Fixed	5.875	5.879	30	0
Banknorth Mortgage 1-800-358-2651	Fixed	5.000	5.348	30	3
	Fixed	5.625	5.703	30	0
	Fixed	4.375	4.965	15	3
	Fixed	5.125	5.255	15	0
First Community Bank 1-802-773-1119	Fixed	5.00	5.311	30	3
	Fixed	5.375	5.427	30	0
	VHPA	5.550	5.550	30	0
	Fixed	4.500	4.890	15	2
	Fixed	4.875	4.961	15	0
First Brandon Nat'l. Bank 1-802-247-5771 1-800-247-5144	Fixed	5.375	5.5030	30	1
	Fixed	5.625	5.6625	30	0
	VHFA	5.550	5.5873	30	0
	Fixed	4.750	4.9647	15	1
	Fixed	5.000	5.0624	15	0
State Farm Bank 877-734-2265	Fixed	5.750	5.843	30	0
	Fixed	5.125	5.279	15	5.153
	Fixed	N/A	N/A	15	1
	Fixed	N/A	N/A	15	2
Amortgagesearch.com	Fixed	5.375	N/A	15	0

TA 5/25/03 B4

MORTGAGE RATES

A	B Type	C Rate	D APR	E Term	F Pts	G [illegible]	H [illegible]
Adirondack Mortgage May 8, '03 [illegible]	Fixed	5.125	5.407	30 Years	2	[illegible]	n/a
Banknorth Mortgage May 15, '03 1-800-358-2651	Fixed / 1 Yr. ARM	[illegible]	[illegible]	30 Years / 30 Years	[illegible]	[illegible]	n/a / [illegible]
Chittenden Bank May 15, '03 [illegible]	Fixed / 1 Yr. ARM	5.125 / [illegible]	[illegible]	30 Years / 30 Years	2 / 1	[illegible]	n/a / [illegible]
Granite Hills Credit Union May 15, '03 [illegible]	Fixed / 1 Yr. ARM	[illegible]	[illegible]	30 Years / 30 Years	2 / [illegible]	[illegible]	n/a / [illegible]
Merchants Bank May 14, '03 802-322-5222	Fixed / 1 Yr. ARM	[illegible] / 4.000	[illegible]	30 Years / 30 Years	[illegible] / 1.5	[illegible]	n/a / [illegible]
Northfield Savings Bank May [illegible], '03 [illegible]	Fixed / 1 Yr. ARM	5.125 / [illegible]	[illegible]	30 Years / 30 Years	2 / [illegible]	[illegible]	n/a / [illegible]
VSECU May [illegible], '03 800-371-5162	Fixed / 1 Yr. ARM	5.250 / [illegible]	5.44 / 4.01	30 Years / 30 Years	2 / [illegible]	[illegible]	n/a / [illegible]
VHFA May [illegible], '03 [illegible]	Fixed	5.25	5.43	30 Years	2	[illegible]	n/a
Wells Fargo Home Mortgage April [illegible], '03 1-800-[illegible]	Fixed / 1 Yr. ARM	[illegible] / 2.50	[illegible] / 2.74	30 Years / 30 Years	2 / 2	[illegible]	n/a / [illegible]

TA 5/22/03 D5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60 MONTHS
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SAVE $4,000
SAVE $5,000
MSRP $15,180
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$338.89
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4dr Ext Cab
SAVE $6,000
MSRP $19,185
OWN FOR $14,685
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s in town! Over 280 vehicles available for delivery.
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MILITARY PERSONNEL OR RETIREES.

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Sunday, May 25, 2003 RFP 176

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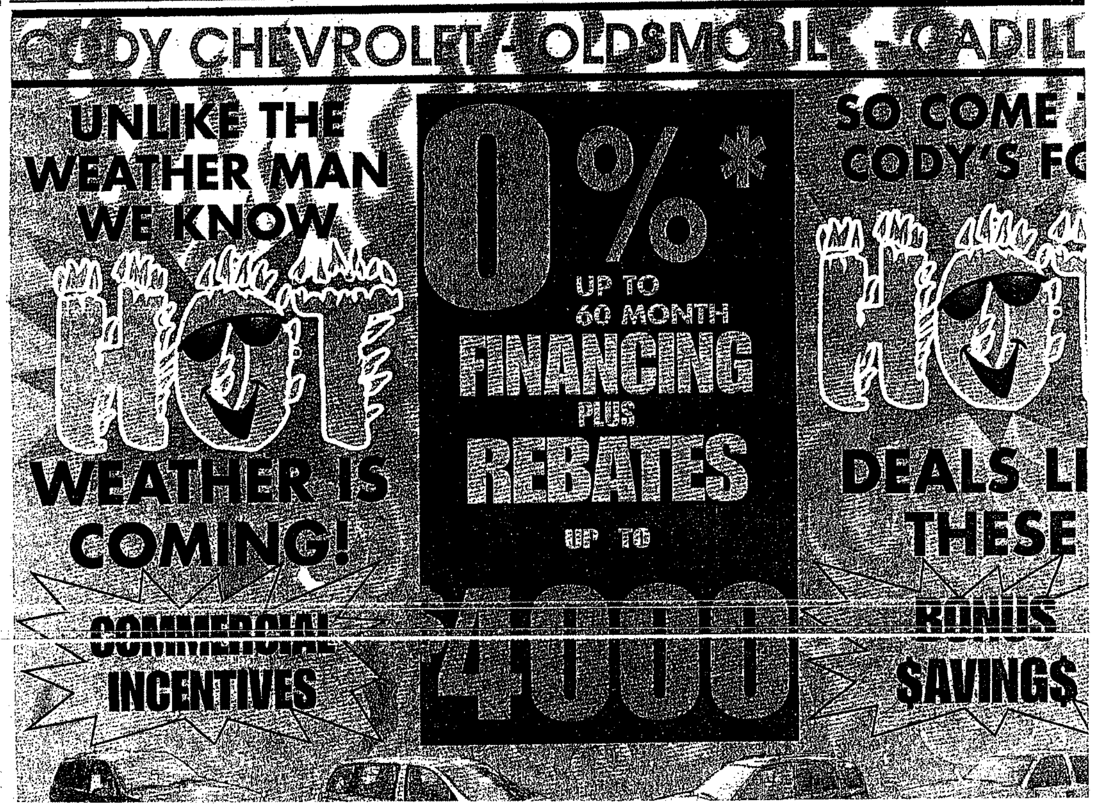
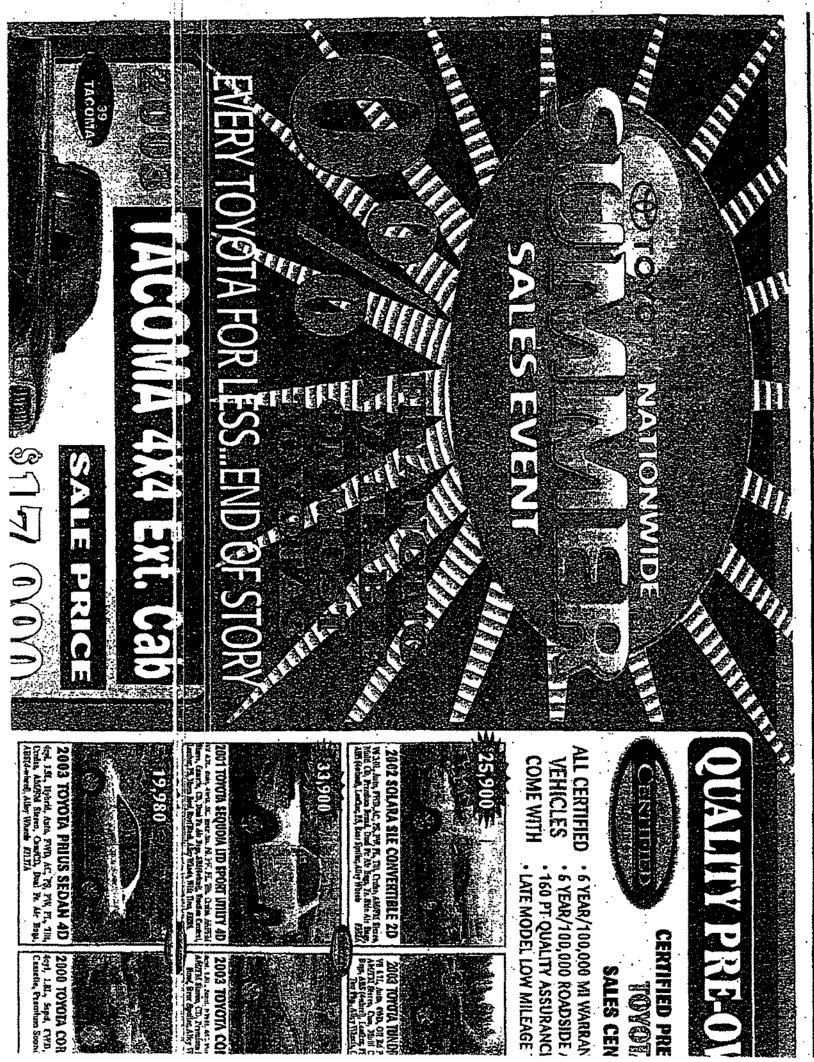
C12 B The Sunday Rutland Herald **Classified** The Sunday Times Argus Sunday,

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33,900
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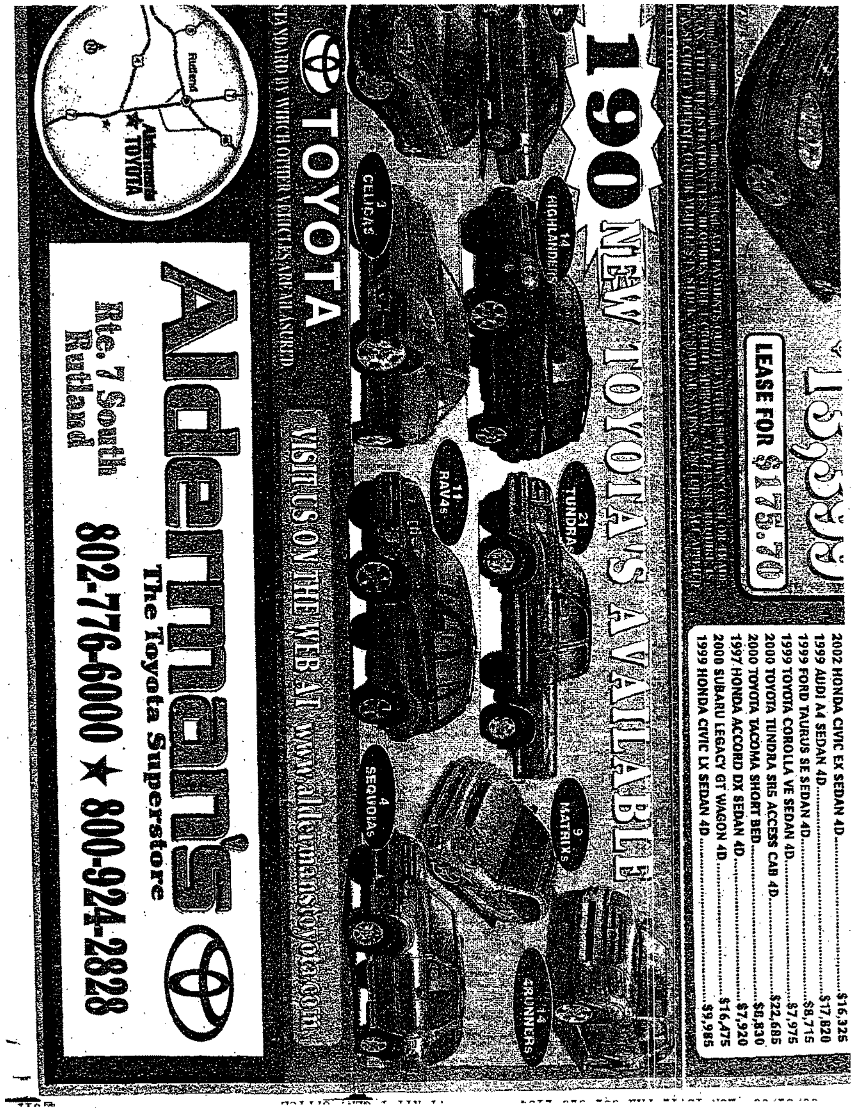

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FINAL PRICE: $25,950

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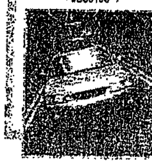

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or finance @ 0.9% for 60 mos

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MSRP $32,085
Paquin's Discount .... -$1,090
FINAL PRICE: $30,995

CD, A/C, PW, PL
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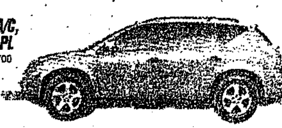

03 NISSAN XTER

MSRP $23,474
Paquin's Discount .... -$779
Nissan Rebate .... -$1,500
FINAL PRICE: $21,195

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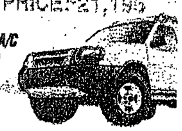

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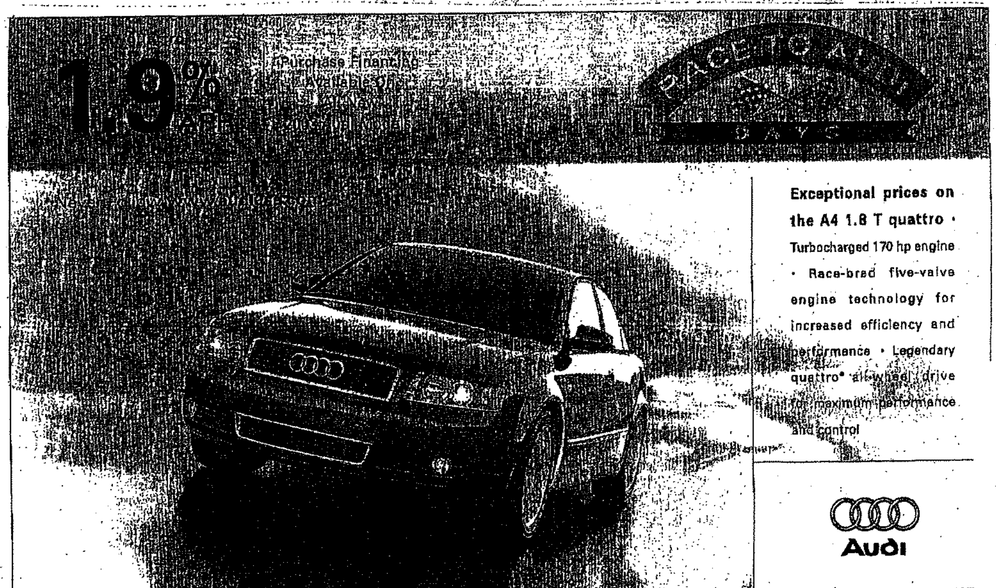

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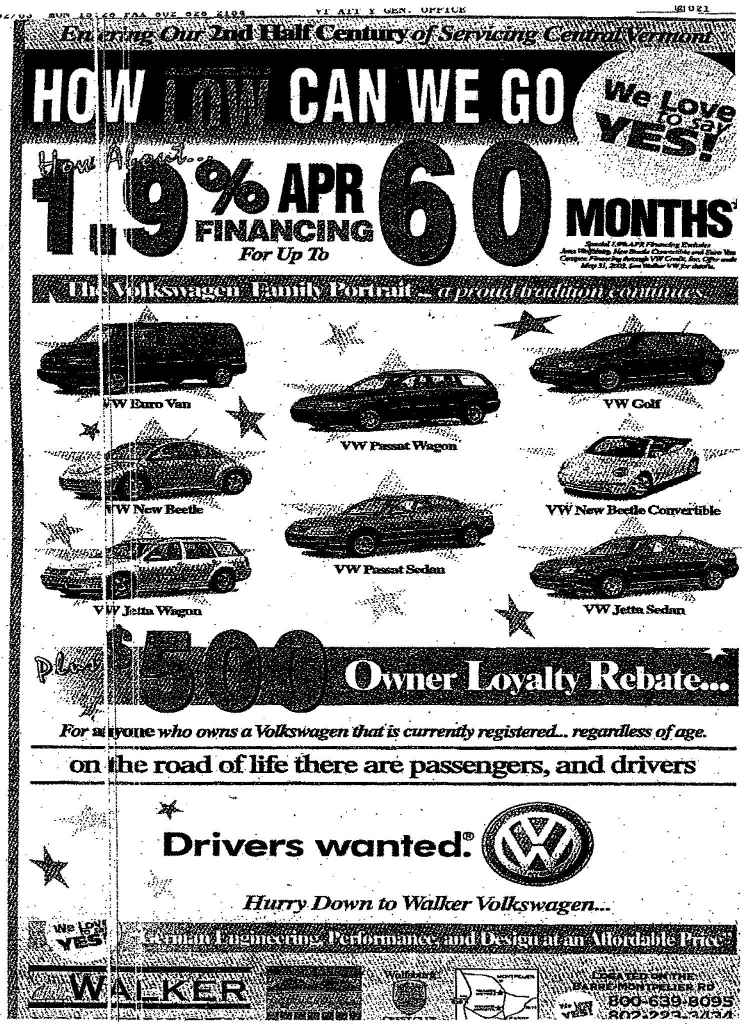
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TESTIMONY OF WAYNE T. BROUGH

CHIEF ECONOMIST

CITIZENS FOR A SOUND ECONOMY

before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

June 4, 2003

Good morning. Mr. Chairman and Members of the Committee. Thank you for inviting me here today to discuss the Fair Credit Reporting Act (FCRA) and the importance of uniform national standards for sharing financial information. Citizens for a Sound Economy is a nonprofit, nonpartisan organization with approximately 280,000 members. Our mission is to educate citizens on, and to promote the adoption of, free-market policies, which we believe inure to the benefit of consumers and citizens generally. Within the framework of FCRA, the United States economy has developed an efficient and highly integrated system of sharing information that allows businesses to provide consumers a wide array of financial services and products at competitive prices. On behalf of the members and supporters of Citizens for a Sound Economy, I urge Congress not to ignore the importance of the national uniform standards and the need to extend FCRA amendments adopted in 1996.

That there are economic benefits for both producers and consumers from efficient information sharing cannot be disputed. However, that same information sharing raises important concerns about privacy. FCRA establishes a framework to address these concerns while acknowledging the benefits of information sharing. As markets changed and technology improved, FCRA was revised to address new concerns. The 1996 amendments provided new opportunities in the marketplace while establishing guidelines to protect the privacy of individual consumers.

Advances in technology only make these protections more important. In the last decade we have witnessed an enormous explosion in the amount of information and tracking of individuals in the United States, due mainly to two factors: technology and the commercialization of data. The explosion of computers, cameras, location-sensors, wireless communication, biometrics, and other technologies is making it much easier to track, store, and analyze information about individuals' activities. In addition, corporations have discovered that detailed information about consumers is extremely valuable, and are in the process of identifying ways to use this information profitably. Consumers, on the other hand, benefit from increased access to financial services and products. FCRA attempts to strike a balance between these competing interests. Ultimately, the power of choice rests with every consumer—the power to shop, the power to ignore, and the power to purchase based on individual needs.

FCRA HISTORY

From its origins in 1970, the role of FCRA has been to facilitate the exchange of information among businesses while protecting consumer privacy. Importantly, the goal was not to abolish the flow of information, because it was widely recognized that the use of this information provided benefits to consumers and to the economy as a whole. FCRA created uniform standards and practices for the credit reporting industry and established parameters for the growing market for credit. Prior to its enactment, credit reporting was developing in an ad hoc manner where consumers had little control or knowledge of how their credit information was being used.

Along with providing consumer protections, FCRA also allowed a national market for credit to emerge, which generated real benefits for consumers. Previously, consumers were limited in their options when seeking credit. The market was highly localized and the independent evaluations by loan officers drove the decision-making process. By standardizing and facilitating the exchange of information, FCRA allowed consumers to access a wider array of financial services and products while at the same time increasing competition among providers of those products.

Advances in technology only made the process more competitive, with consumers now having access to everything from instant credit to mortgages through the Internet. As noted by the Federal Trade Commission, today's credit reporting market is dominated by three credit bureaus, which have data on 190 million individuals and 1.5 billion credit accounts. These credit bureaus use this data to compile a credit score for individuals who are seeking loans and other financial services.

In light of the growing importance attached to these credit scores and the exponential increase in consumer information amassed in these databases, FCRA was amended in 1996 to include additional provisions clarifying the use of this information. Again, the role was not to limit the flow of information; it was to ensure uniform standards while safeguarding individual privacy. The allowed uses of credit information were expanded, and safeguards were included to increase the accuracy of this information. Finally, consumers were granted the ability to limit certain uses of the information by opting out of certain transactions.

INFORMATION SHARING IN THE PRIVATE SECTOR

In the private sector, companies with an incentive to generate profits collect information. To generate profits, firms in a competitive market must compete to provide better services and products to individual consumers. Better information offers a way for firms to better meet the needs of individuals. In fact, information is a critical component of a dynamic marketplace that serves consumers well. Beyond the "mass customization" that better information allows, it also reduces fraud, lowers costs to consumers, and reduces marketing costs through more specialized information that allows more targeted marketing.

In addition, consumers have a choice in the private sector. Whether on the Internet or dealing with a private company, consumers can choose to do business based on privacy policies. Privacy is valued by consumers, which forces firms in the marketplace to compete for customers by offering the appropriate privacy policy. Markets tend to create incentives that constrain the role of data mining and incursions into individual privacy.

Even in those instances where markets are not competitive or are heavily regulated, actors in the private sector are constrained by legislation and regulation with respect to privacy policy and information sharing. Laws have been established to protect individual privacy. Congress has examined the issue with respect to financial services deregulation, and policies have been established to protect individual privacy.

In the end, it is consumers who protect individual privacy by exercising choice. Federal attempts to constrain private sector information practices should consider the benefits consumers enjoy through information sharing. Laws and regulations that restrict the flow of information can have detrimental effects on consumers. In fact, FCRA was enacted not to stop the flow of information, but to facilitate information sharing while establishing safeguards for to protect the privacy of consumers.

Under the framework of FCRA, the United States has developed one of the most sophisticated credit markets in the world. One study estimates that 75 percent of all households participate in consumer credit or mortgage markets. The ability to share information and determine potential risks has increased consumer access to credit, while increasing competition.

THE USE OF CREDIT IN INSURANCE MARKETS

Information contained in credit reports is also used by insurance companies as a risk characteristic. Insurers have begun using credit histories in their scoring models to help them predict the costs of future losses. Insurance companies classify risk and price coverage accordingly in order to stay in business. Accurately classifying risk allows companies to cover their costs while providing a wide array of insurance products. Risk classification allows insurers to divide individuals into groups with similar anticipated claims so coverage can be priced based on probability of future loss. Insurers rely on a wide variety of characteristics when classifying risk, such as driving history, age, gender, and so forth. Increasingly, insurance scores have been found to be a more reliable predictor of future risk. Insurers take these scores under consideration and factor them into the underwriting process.

The exact reasons for the correlation between credit history and loss is unclear. Some suggest that that a strong credit score indicates risk adverse behavior that translates into safer driving habits. While there are many theories as to why credit scores correlate with loss, no specific causal link has been identified. Nonetheless, a strong statistically significant correlation exists, making credit history a useful tool when classifying risk. The Risk Classification Subcommittee of the American Academy of Actuaries, in its review of recent studies on this topic noted, "the subcommittee believes that credit history can be used effectively to differentiate between groups of policyholders and therefore it is an effective tool" (The Use of Credit History for Personal Lines of Insurance: Report to the National Association of Insurance Commissioners, November 15, 2002). Moreover a rating variable does not require a causal link; statistical correlation can make its use valid. If insurers ignore or abandon variables that can accurately assess risk, consumers are harmed because the costs of insurance are unnecessarily higher than they otherwise would be.

Moreover, when consumer credit histories are used as an underwriting criterion, they tend to increase the fairness and accuracy of risk classification. This means credit reports can help people acquire insurance policies when they might otherwise be denied. With the ability to classify risk more accurately, insurers gain the ability to provide a wider array of products that can be offered to customers they otherwise could not serve. Ultimately, the competitive forces of the market will do a far more effective job than regulators in determining whether credit reports are an efficient means of selecting and classifying risk.

Opponents of the use of credit reports in underwriting believe they are a suspect tool for selecting and classifying risks. They do not believe a correlation between credit history and the risk of loss has been adequately established. However, in an open and competitive market, insurers would abandon any risk classifiers that were poor predictors of future loss. Critics also claim that the information that comprises the credit score is often erroneous. However, if the data were that poor, it is unlikely that the strong statistical correlation would continue to exist over time. Finally, some critics contend that the use of credit reports in underwriting may have a disparate impact on certain protected classes. However, to date, no statistical studies have conclusively proved such an effect.

Imposing restrictions upon the use of risk classifications, such as credit history, can have a significant impact on the ability of insurers to operate within a given market. Risk classification restrictions impose limits on the information insurers can use to assess the risk of loss for different consumers. For example, there may be restrictions that prohibit distinctions between young and old drivers, or distinctions between urban and rural customers. From an economic perspective, such restrictions are clearly inefficient. To be competitive, insurers must determine loss ratios as accurately as possible, based upon as much information as possible. Limiting the use of information hampers the ability of insurers to make the best decision. Ultimately, it will be consumers who bear the costs of these mistakes.

If there are concerns over the price of insurance, the best solution is competition, not restrictions on the flow of information. A more open and competitive market would help state insurance regulators achieve their goal of "adequate, not excessive, and not unfairly discriminatory" rates. If insurance regulators focused more directly on questions of adequacy to address concerns of insolvency, competition would provide consumers rates that are neither excessive nor unfairly discriminatory. By definition, insurance that is priced based upon a careful assessment of all information generated in the market cannot be discriminatory. Loss ratios would accurately depict the risk. In this case, competition between insurers would enhance the accuracy of the information used to forecast loss ratios, while at the same time eliminating excess profit. Regulatory barriers that make transactions less efficient offer little assistance to consumers.

CONCLUSION

FCRA has provided important policies that govern the flow of private consumer information between businesses in our economy. These rules have created a strong market for credit and established the foundation for risk-based lending in the United States. Consumers have benefited from these guidelines due to reduced risk premiums and increased availability of financial services and products. From short-term retail credit to long-term mortgages, consumers have seen the benefits of FCRA. The ability to share information more efficiently also provides benefits in others markets. Consumers of insurance are also beneficiaries of the 1996 amendments to FCRA.

Consumers can benefit from credit scoring and other cost effective tools used by insurance companies to lower the price of premiums or facilitate the inclusion of consumers who otherwise would be too expensive to underwrite.

Legislators and regulators should not be skeptical of the development of better and more efficient underwriting tools, nor should they create barriers for their use. This is especially true of credit reports, which have passed the test of time and competition and have been shown to be a cost-effective, accurate underwriting tool for insurance companies. Restricting credit history information as an underwriting tool would result in higher costs for insurers and higher premiums for policyholders.

If consumers, legislators and regulators want to improve the affordability and availability of insurance, they should encourage the use of instruments that help insurers make more accurate underwriting decisions. The use of credit history in insurance underwriting is one such tool. State-level legislation addressing privacy and credit scoring threaten to balkanize insurance practices, raising costs and harming consumers in the process.

WRITTEN STATEMENT OF JOHN A. FORD
CHIEF PRIVACY OFFICER
EQUIFAX INC.
ATLANTA, GEORGIA

BEFORE THE

HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
SPENCER BACHUS, CHAIRMAN

JUNE 4, 2003 HEARING:
"FAIR CREDIT REPORTING ACT:
HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY"

I. INTRODUCTION

Mr. Chairman, ranking member Sanders, and members of the Subcommittee, I am John Ford, Chief Privacy Officer for Equifax. I commend you, Mr. Chairman, and the members of your subcommittee and its excellent staff for the thoughtful and thorough manner in which your Committee is reviewing uniform national standards under the Fair Credit Reporting Act (FCRA).

In this statement, I begin with a brief description of Equifax, our core business, and our commitment to fair and ethical information use and to protecting consumer privacy. I then provide an overview of how the consumer reporting system operates and how that system benefits the national economy, our business customers, and individual consumers. Next, I discuss the many consumer protections that the FCRA provides for consumers, as it was originally enacted and as it was amended in 1996. Finally, I discuss the importance of permanently retaining the uniform national standards in § 624 of the FCRA.

II. ABOUT EQUIFAX

At the outset, I think it is helpful to understand who and what Equifax is and our philosophy regarding information management and treating consumers as valuable customers. Founded in 1899, Equifax is a publicly-traded corporation and the oldest and largest of the companies that provide consumer information for credit and other risk assessment decisions. We are a catalyst for commerce by helping business and consumers do business together. For 104 years, we have provided reliable information, products and services to our customers so that they, in turn, can make reliable and profitable risk decisions.

For consumers, we also have a comprehensive suite of credit solutions to help them better manage their fiscal health and to combat identity theft.[1] Equifax treats consumers as valued customers; in fact, one of our fundamental operating principles is

[1] For additional information about Equifax products and services please see Attachment A.

that by enlightening, enabling and empowering consumers to better manage their credit health, consumers win, business wins, and our economy wins. Our core competencies are collecting, protecting and effectively managing information to be used primarily for decisioning purposes. As an example of the sheer size and complexity of our credit reporting business, our credit database contains files on 210 million adult consumers, and we make more than 1.6 billion updates to those files monthly.

Our reputation as a responsible steward of information has been earned by our solid performance in delivering reliable information to consumers, to government agencies, and to our business customers, while protecting the privacy of sensitive information. We believe we do it very well.

Our reputation is very important to us, and we work diligently to continue to earn credibility and consumer trust. What we call "The Equifax Difference" embodies our corporate culture – who we are, what we do, how well we do it, and what we stand for. This difference reflects itself – not just in the quality of our products and services, or in our precise data usage, or best practices privacy policy – but in the attitude, integrity, professionalism and passion of our people and in the way we demonstrate the courage of our convictions.

At Equifax, we believe that responsible management of information and protecting consumer information privacy are key catalysts of consumer trust – a critical component to our nation's economic growth. More than 15 years ago, Equifax was one of the first companies to develop and adopt a meaningful privacy policy – a policy that acknowledged consumer rights regarding the information we maintained about them. At the risk of sounding flippant, we were privacy before privacy was cool.

The consumer rights portion of our privacy policy has evolved into a policy that embraces data use ethics, the highest integrity in our business practices, and a stringent set of fair information principles. These principles include providing consumers with appropriate: NOTICE, CHOICE, ACCESS, SECURITY, and ACCOUNTABILITY regarding our information collection and use, both online and offline. Our adherence to these fair information principles empowers consumers to have more control over how information about them is used.

Equifax also has been a corporate privacy pioneer in other ways. For example, with the continued consultancy of renowned privacy expert Dr. Alan F. Westin, since 1988 we have conducted privacy audits of our information products and services to ensure that they meet our privacy standards before going to market. Beginning in 1990, we commissioned a series of public opinion polls to gauge consumer privacy sentiments on a wide variety of privacy issues. In addition, Equifax was one of the first ten companies in the world (and the first in our industry) to qualify for the Better Business Bureau's online privacy seal. We also participate actively in self-regulatory organizations and coalitions such as the Online Privacy Alliance, Privacy & American Business, the Consumer Data Industry Association, and the Coalition for Sensible Public Records Access. Finally, we actively engage in public policy dialogue at the federal and state level.

Our bottom line is really very simple – as a steward of sensitive financial information about virtually every adult American – Equifax must adhere to high standards for protecting privacy; for accuracy, completeness, and timeliness; and for customer service. Anything else is not just unsatisfactory; it is a threat to our very mission and success.

III. THE STRUCTURE AND IMPORTANCE OF THE CONSUMER REPORTING INDUSTRY

A. The Structure of the Consumer Reporting System

1. Evolution and Competitive Nature of the Industry

In 1970, the credit reporting industry comprised more than 2500 independent, local and regional credit bureaus across the country. As the customer base for the industry began to grow in size, expand geographically, and evolve from local to regional to national organizations, so too did the industry begin to adapt to meet the demands of its business customers and the needs of an increasingly mobile population. This evolution of the industry was characterized by consolidation and computerization – moving from local or retail merchant credit bureaus using paper and pencil to capture consumer payment data to today, where there are three nationwide credit reporting companies, offering services to businesses and consumers online and offline. And these three companies engage in real competition – competing on price, on data quality and depth of information, on value-added services designed to make the risk assessment process much more efficient and reliable and on direct-to-consumer services. This competition works to help promote a robust, healthy marketplace and to provide consumers with appropriate protections, knowledge, and convenient and timely access to the goods and services they want.

2. Information Flows in the Consumer Reporting System

Next, a brief discussion of the flow of credit data. It is important to understand that inherent in the U.S. credit reporting system is the **voluntary** nature of reporting by data furnishers who report positive and negative consumer credit data. Banks, retailers, and other information furnishers are not required to participate in the system, but most do because they understand the benefits to doing so, both for their business and for the ability to satisfy their customers. It is the voluntary nature of this system that drives the need for balance when it comes to regulation. Marketplace incentives to report data voluntarily can be offset or overshadowed by overly aggressive regulatory, statutory or case law incentives. Maintaining a "full file" system that is complete and current is crucial to our economy. Ultimately it is this type of "full-file" credit reporting system allows lenders to obtain a reliable, comprehensive and objective picture of a consumer's credit history, whether that consumer is a current customer or a prospective customer, local resident or not, known personally or not.

Credit reporting agencies receive from data furnishers approximately 2 billion data elements on about 1.5 billion accounts for more than 210 million consumer files each month and issue close to 3 million consumer credit reports every day. We only do business with reputable companies whose business practices we closely scrutinize and validate before qualifying them as legitimate subscribers with a permissible purpose.

The typical data flow process is straightforward. Consumers provide requisite application data to businesses who then request a credit report for use in decision making. Once the consumer is approved and an account has been opened, the credit granter has a choice. It may provide the bill paying history of the consumer to none or one or more of the nation's credit reporting companies. These data are generally on a monthly basis. As credit reporting companies receive this information from data furnishers, they update each consumer file accordingly. Credit reporting agencies and credit granters have developed format and content standards for the reporting of credit information. These data processing standards help ensure that information is reported and updated efficiently and accurately. Credit reporting agencies also maintain well-trained data acquisition and auditing teams to provide additional data quality review and foster accurate updating of consumer files.

3. Content of Consumer Reports

An important ingredient to the debate about national standards is an understanding of just what is and is not contained in a credit report. Simply stated, a credit report contains several categories of information:

- Identification Section: information such as name, address, date of birth, and Social Security number.
- Inquiry Section: identifies the organizations that have requested a credit report, as well as a listing of promotional inquiries, portfolio review inquiries or internal audit inquiries. Inquiries related to prescreening and account review and other "audit-related" inquiries are only listed on the credit disclosure to the consumer, not to businesses. Further, those inquiries are NOT included in credit score calculations.
- Public Record Section: lists such public record entries as bankruptcies, judgments, and liens. For Equifax, it does not include criminal history data.
- Trade Line Section: A trade line is an industry term that refers to the set of data provided by a data furnisher (e.g., creditor) about a particular account and which is then reflected on a consumer's file. Trade lines are essentially catalogues of the bill paying history of consumers on their various credit accounts such as credit

cards, installment loans, mortgage loans, student loans, etc. It does not contain, nor does Equifax know, the items a consumer purchases as part of a credit card transaction nor does it contain check writing transaction data. Also, the credit report does not contain any medical history information.

- Collection Account Section: contains information provided by collections companies on the amount the consumer owes on financial obligations.

4. Accuracy of Consumer Reports

We at Equifax have a critical interest in the accuracy and integrity of our credit database. So do our competitors. And so do lenders whose ability to make informed decisions depends on reliable data. If we provide inaccurate and unreliable data, we risk losing business to our competitors. As with any industry, competition drives product quality and service levels and is a key to our industry's success in a range of markets. As a publicly traded company, we have financial performance obligations to our stockholders, quality data delivery obligations to our customers, and responsibilities to consumers that we must meet to assure success. As a company that takes pride in its performance and in maintaining a reputation for trustworthiness with the public, we also embrace a commitment for fair and ethical data use. The nature of the competition within the credit reporting industry contributes to increased data accuracy.

It is a testament to the extent of accuracy and reliability in the U.S. credit reporting system that lenders are willing to risk their capital with only an application and a copy of a consumers' credit report. Long gone are the days when a loan required a face-to-face meeting with a lender and days-long decision making processes. In fact, companies are able to so finely tune risk that reliable credit decisions are often made in a matter of minutes.

In discussing credit report accuracy, it is vital to understand the distinctions between:

- Actual errors versus updates
- Cosmetic inaccuracies versus inaccuracies critical to the risk decision
- Anecdotal versus scientific research

Errors versus Updates:

In the media and elsewhere it has been suggested if credit reports on the same consumer from the three national credit reporting companies do not all have exactly the same data, then an error has occurred. Not so. These are simply differences, not errors. Many differences are accounted for because not all lenders report to all three companies. The top 100 lenders all consistently report data to the credit reporting system; however, some small or local or regional lenders do not contribute to each of the credit reporting companies. In addition, loans extended by employers, insurance companies, margin loans on brokerage accounts, and foreign entities are typically not reported to all three credit reporting agencies. For this reason some credit reports may not contain certain information on certain credit accounts; however, it is incorrect to conclude that the report itself is "inaccurate."

Also, for quality control reasons, the timing of file updates may vary slightly among the three companies, making the "error" simply a matter of difference in the timing of the file update. For example, the credit report of a woman who recently married and changed her name will reflect the maiden name until some point in the future when the consumer applies for credit or notifies her creditors of her name change and the business reports the new name to the credit reporting company. This is not an error but an update issue. Similar timing issues affecting updates occur in the reporting of judgments being satisfied, liens being paid, etc. The important point here is that, contrary to what some critics have argued, differences in credit report content are not necessarily errors.

<u>Cosmetic "Errors" versus Critical Errors:</u>

Some consumer group reports include as errors even inconsequential variances in how data is reported and some leave the reader with the implication that these variances are very consequential. The average consumer has more than ten active credit accounts. Consumers can use a nickname on one application for credit and a full name on another and this will lead to some variances in data on that consumer's file. A single transposed digit in a consumer's address can result from poor handwriting or a mistake in entering the data in the first place. This will lead to one lender reporting a slight variance in address data, but there may be nine other lenders reporting the precise home address of the consumer. Where a consumer doesn't immediately change an address for a credit card bill, the old address will still be reported by the lender until the new address change has been made. Do variances in addresses or names lead to consequences? We don't believe this is the case. If a credit report has a transposed digit or letter in the address or a missing middle initial, for example, these are cosmetic errors, data that is not critical to the risk decision. This is not to say that this information should not be corrected or updated, but claims by some critics about extraordinarily high inaccuracies in credit reports deflate when one understands the insignificant role such cosmetic data plays in risk decisions. The claims of such incredibly high error rates are simply and totally disproportionate to the reality being experienced by credit granters and consumers in the marketplace every day.

Anecdotal versus Scientific Research:

Said another way, error rates of the scope touted by anecdotal, non-scientific research simply are not supported by the millions of highly efficient and predictive risk assessment decisions made in the market place every day. To generalize from sample sizes of 50 or 150 to a population of 210 million is to commit egregious errors in logic. Those error rates are certainly not supported by the low level of complaints to the FTC or to state attorneys general. In fact, the only scientific study of credit report accuracy and reliability was conducted in 1991.[2] Based on scientific sampling involving more than 15,000 actual credit reports, the study revealed that, depending upon the various samples used in the study, risk decision changes ranged from less than 0.2% to 3.0%.

And to begin to sum up this discussion of credit report accuracy, let me assure you that Equifax and our industry care very much about the integrity and reliability of our databases. We have invested millions of dollars in advanced technology and in skilled employees with an objective of putting the right information into the right file 100% of the time. Are we making great progress? Absolutely yes. Are we perfect? Absolutely not. In 1970, Congress recognized the complexity of the data management process and the billions of data elements involved and included in the FCRA a process that provides consumers and business and credit reporting agencies an efficient and straightforward capability to address errors and updates in a timely and fair way.

Consumers are provided the opportunity to know the information in their credit file. The FCRA takes this into account and gives consumers the means to be pro-active in managing their credit file. The act provides consumers with important tools in this area: 1) the right to see the contents of the their consumer file; 2) the right to immediate notification if information contained in the report led to an adverse action by the user of the report as well as the right to receive a free disclosure of their credit file; 3) the right to dispute inaccurate or incomplete information with the credit reporting agency (and by

[2] Credit Report Reliability Study (Feb. 4, 1992) conducted by the ACB Consumer Information Foundation.

extension with the furnisher of the data) and to receive a response within 30 days; and 4) the consumer has the right to have inaccurate information corrected or deleted. In short, the FCRA gives consumers the ability to ensure that their consumer files are accurate.

B. The Consumer Reporting System Benefits Consumers

The U.S. credit reporting system and standard of living are the envy of the world. Through the information processes used by the credit industry, millions of consumers every day are able to purchase a car over their lunch hour, pre-qualify for a mortgage loan in less than 15 minutes, and buy on credit other products and services almost instantaneously. Congress has long recognized that the consumer reporting industry plays "a vital role in assembling and evaluating consumer credit and other information on consumers" and that the "banking system is dependent fair and accurate credit reporting."[3] The fact is that the US national credit reporting system makes consumer credit more widely available and less costly for all Americans.

Federal Reserve Chairman Alan Greenspan has observed that "it's not that long ago when going into a bank and trying to get a consumer loan was just never conceived as an appropriate thing to do. You went to a pawn broker. You didn't go to a bank. They didn't make consumer loans. That has changed, and it...has a dramatic impact, I think, on consumers and households and their access to credit in this country at

[3] 15 U.S.C. § 1681(a)(1),(3).

reasonable rates. [The credit economy] cannot function without . . .the credit histories of individual borrowers. And I should certainly hope that it is maintained."[4]

FTC Chairman Timothy Muris has called the timely access to credit "a miracle [that] is only possible because of our [nation's] credit reporting system."[5]

The availability of low cost, convenient credit is directly related to the availability of complete and reliable credit histories, regulated by the national uniform standard currently provided by the federal FCRA. The modern credit system benefits individual consumers, as well as the economy as a whole in a number of quantitative and qualitative ways:

- Compared to other countries, mortgage interest rates in the US are lower by up to 200 basis points (2%) because of the reliability of consumer credit information provided by the credit reporting industry.[6]
- Availability of single family housing ownership is at an all time high.[7]

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[4] Federal Reserve Chairman Alan Greenspan, Before the House Committee on Financial Services, Hearing to Receive the Testimony of the Chairman of the Federal Reserve Board of Governors on Monetary Policy and the State of the Economy, (Feb. 12, 2003) (Response to Question from Rep. Spencer Bachus (R-AL)).
[5] Timothy J. Muris, "Protecting Consumers' Privacy: 2002 and Beyond," Remarks at the Privacy 2001 Conference (Cleveland, Ohio: Oct. 4, 2001).
[6] Walter Kitchenman, "US Credit Reporting: Perceived Benefits Outweigh Privacy Concerns" (The Tower Group, 1999), p. 7.
[7] Department of Commerce, Bureau of the Census, "Census Bureau Reports on Residential Vacancies and Home Ownership," (Apr. 24, 2003) (Table 4).

- Credit reports are an EZ-Pass on the national credit highway. Transactions that once typically took days can now be accomplished in a matter of minutes. 84% of consumers, for example, obtain an auto loan within 1 hour; 23% in under 10 minutes. Most retailers can provide consumers with a credit card in less than 2 minutes.[8]
- Two thirds of the U.S. economy is fueled by consumer credit.[9]
- Consumer credit is wide-spread:
  - 67% of homeowners hold mortgages;
  - 73% of consumers hold general purpose credit cards; and
  - 33% of consumers hold auto loans or leases.[10]
- Credit reports help credit grantors pierce the "fog of uncertainty," keeping delinquencies down. Only 2.8% of mortgages are delinquent over 30 days, while 4.6% of credit cards are delinquent more than 30 days.[11]

IV. THE FCRA PROVIDES IMPORTANT CONSUMER PROTECTIONS

Congress passed the FCRA in 1970 to legally mandate confidentiality, relevancy, and accuracy standards for the consumer reporting industry and to authorize the use of credit reports for credit and other consumer and household purposes.[12] In order to protect the confidentiality of covered information about a consumer's credit worthiness, credit

[8] Fred H. Cate, Robert E. Litan, et. al., "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining The Balance" AEI-Brookings Joint Center For Regulatory Studies (March 2003) at p. 13.
[9] *Id.*
[10] *Id.* at p. 8.
[11] *Id.* at p. 10.
[12] *See*, 15 U.S.C. § 1681(b).

standing, credit capacity, character, general reputation, personal characteristics or mode of living, the original FCRA required (and still requires) consumer reporting agencies to disclose such information only if the recipient has one of the permissible purposes enumerated in the statute. The 1970 FCRA also established relevancy requirements for the content of consumer reports, requiring that consumer reporting agencies exclude information from their reports if the event that gave rise to the information predated the report by a specified number of years (which varied depending upon the type of information involved). The 1970 FCRA also addressed accuracy and access issues, imposing accuracy obligations on consumer reporting agencies; requiring report users to notify consumers if the report resulted in an adverse credit action against the consumer; and established procedures by which consumers could obtain a copy of their consumer report and seek corrections of inaccurate data.

In the late 1980s, Congress began considering and deliberating possible FCRA reforms necessary to reflect the increasingly national nature of the financial system and other societal and technological changes that had occurred since 1970. These efforts culminated in the adoption of an extensive FCRA reform package in 1996. As a result of the 1996 amendments, for the first time:

- Furnishers of information were obligated to reinvestigate and correct information they submitted to consumer reporting agencies;
- Notices were required for all adverse actions (which was re-defined more broadly than in the 1970 act) based in whole or in part on the contents of a consumer report;

- The fee a consumer could be charged to obtain a consumer report was capped;
- Consumers were guaranteed the right to opt-out of the use of their consumer reports for firm offers of credit or insurance (prescreening);
- Special protections were instituted when consumer reports are used for employment purposes; and
- Medical information could only be included in a consumer report with the consent of the consumer to whom the information pertained.[13]

Having greatly strengthened the consumer protections afforded by the FCRA, Congress also elected to establish uniform national standards by preempting state authority with respect to carefully selected FCRA provisions.

V. THE IMPORTANCE OF UNIFORM NATIONAL STANDARDS

A. The Scope of the Uniform National Standards at Issue

Key provisions of the FCRA currently set to expire at the end of this year apply to a limited but critical number of provisions of the act. These provisions establish uniform national standards regarding three key goals that Congress addressed in the 1996 FCRA amendments:

[13] For additional information about the FCRA's consumer protections, please see Attachment B.

- Encouraging furnishers of information to continue voluntarily providing information and other provisions to promote a full and complete credit file;[14]
- Assuring uniformity in notices and summaries of consumer rights for consumer clarity and convenience;[15] and
- Protecting provisions of the FCRA which promote the economy.[16]

In addition, the 1996 amendments made clear that state attorneys-general have the ability to enforce the FCRA's requirements in any court of competent jurisdiction.

B. Preservation of Uniform National Standards is Essential

In Equifax's view, preservation of national standards in these areas is essential. Consumer reports are an integral part of the U.S. credit system, a national activity essential to efficient interstate commerce. This is truer than ever with the growth of E-commerce. Permanent extension of these provisions would not eliminate any existing consumer protections or rights and would preserve a strong privacy and consumer

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[14] In support of this goal, Congress preempted state activity regarding:
- The time periods for retaining information in consumer reports;
- The time periods for reinvestigation by information furnishers; and
- Information furnisher liability for the accuracy of reported information.

[15] In support of this goal, Congress preempted state activity regarding:
- Uniform notice and free report when users take adverse action based on report;
- Uniform summary of consumer rights; and
- Uniform prescreen notices.

[16] In support of this goal, Congress preempted state activity regarding:
- Prescreening: Use of credit report information for purpose of making a firm offer of credit or insurance. Consumers have the right to opt-out of such use.
- Affiliate Sharing: Sharing of information among affiliates is also allowed by the FCRA. Consumers also have the right to opt-out of such affiliate sharing.

protection system that is working well. Many members of Congress worked diligently for more than 7 years to reach consensus by both parties for the 1996 amendments to the FCRA. Unless Congress acts, the national standards that are so beneficial to consumers and business will fade into the sunset at the end of this year.

Congress made a carefully considered judgment in 1996 that all of the provisions protected by Section 624 should be subject to preemption. The overall experience of the past seven years is that this judgment is still sound. There are no compelling reasons to allow national standards to lapse. All of the existing national standards are economically important to credit grantors and the credit reporting industry; contribute to the availability of cost-effective and convenient credit for consumers; and are equally appropriate in terms of preserving uniform national standards.

Excerpts from legislative history relative to the 1996 amendments to the FCRA reflect bipartisan support of national standards for credit reporting. For example, Senate Report No. 104-185 states that inclusion of the uniform national standard "recognizes the fact that credit reporting and credit granting are . . . national in scope and that a single set of Federal rules promotes operational efficiency for industry, and competitive prices for consumers." Similarly, the statement of Senator Donald Riegle (D-MI), in 140 Cong. Rec. S5029 dated May 3, 1994, stated that the addition of the national uniform provision "reflects a reasonable compromise between the need for uniformity and the maintenance of effective consumer protection and credit reporting." And as a final example, House Report Rep. No. 102-692 states, "In general, we agree that matters of a state and local nature should be legislated at the state and local level. However . . . credit reporting companies operate on a nationwide basis. A uniform national standard as it relates to credit reporting will benefit consumers and will enhance the free flow of interstate commerce."

These uniform national standards reflect the national nature of the consumer reporting system, the financial system, and consumer financial behavior. As noted earlier, the consumer reporting system in 1970 consisted primarily of thousands of small, local credit bureaus; while a few independent credit bureaus remain, most of the work of the consumer reporting system is performed by three national credit reporting agencies and their affiliates. Financial institutions offer their products and services on a national scope far beyond what could occur in 1970. Safely conducting online banking, online bill paying, online stock transactions, qualifying for credit cards and home mortgages over the Internet and all with national lenders operating on a national basis – none of these activities were possible in 1970, many not even possible in 1996.

Why else should the national standards prevail? Add to the lengthening list of reasons the fact that consumers are highly mobile and often have a presence in multiple states today. Forty-two million Americans move every year.[17] Six million Americans have second or vacation homes, many in a different state from their primary residence.[18] In addition, millions of Americans, including many in this area, live in one state but work in another state. In short, consumers have a multi-state presence; lenders have a multi-

[17] Fred H. Cate, Robert E. Litan, et. al., "Financial Privacy, Consumer Prosperity, and the Public Good: Maintaining The Balance" AEI-Brookings Joint Center For Regulatory Studies (March 2003) at p. 15.

state presence; and credit histories must reflect multi-state activity – and do so uniformly so as not to disadvantage consumers.

The view that preservation of key national standards under FCRA is vitally important is held by many. Federal Reserve Board Chairman Greenspan, for example, stated that he "would support making permanent the provision currently in the Fair Credit Reporting Act that provides for uniform federal rules [...] and would not support allowing different state laws in this area."[19] As you know, Mr. Chairman, Mr. Greenspan recently reiterated this point in response to a question raised during his testimony before the full Financial Services Committee. He said that he has "been in favor of national standards here for reasons which are technically required. If you have very significant differences state by state, it would be very hard to maintain as viable a system as we currently have."[20]

Similarly, Treasury Secretary John Snow recognizes the importance of FCRA preemption: "It's awfully important that we get this [preemption] done and we have a national standard,"[21] because "ready and quick access to low-cost credit" is supported by information sharing on a national basis.

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[18] *Id.*

[19] Federal Reserve Chairman Alan Greenspan, Before the House Committee on Financial Services, Hearing to Receive the Testimony of the Chairman of the Federal Reserve Board of Governors on Monetary Policy and the State of the Economy, (Feb. 12, 2003).

[20] Federal Reserve Chairman Alan Greenspan, Before the House Committee on Financial Services, Hearing on United States Monetary and Economic Policy (Apr. 30, 2003) (Response to Question from Rep. Paul Gillmor (R-OH)).

[21] Rob Blackwell, "Treasury Chief Backs Preemption Renewal," American Banker (Mar. 12, 2003) (quoting Secretary of the Treasury John Snow).

Even some organizations usually hostile to federal preemption of state activity have voiced support of preserving FCRA preemption. In March 2003, the Conference of State Bank Supervisors, generally strongly opposed to federal preemption, voted to support renewal of FCRA preemption because it recognized the "importance to the economy" and "benefits to consumers" provided by preemption.[22]

International evidence also supports uniform national standards as well. On May 30, 2003, the European Commission issued its first assessment of the 1995 European Union Data Protection Directive.[23] In part of the report, the Commission stated that it is facing a major obstacle from EU member states themselves which have allowed "discrepancies" to creep into the Europe-wide data protection framework. Internal Market Commissioner Frits Bolkestein said, "Without the free movement of data across borders, Europe's economy cannot work properly."[24] Speculation is that these differences and discrepancies make information use more or less restrictive in different EU states. Such differences across the EU can easily translate into discordant protections for consumers, much like eliminating national credit reporting standards in the United States and leaving the field to the states could adversely affect American consumers in our national economy.

[22] Statement by Neil Milner, CAE, President and CEO, Conference of Bank Supervisors (Mar. 17, 2003).
[23] European Commission, "Report From the Commission: First report on the implementation of the Data Protection Directive" (May 15, 2003).
[24] European Commission Press Release, "Data Protection: Commission report shows that EU law is achieving its main aims" (May 16, 2003) (quoting Internal Market Commissioner Frits Bolkestein).

If preemption lapses and state laws proliferate, determining which state laws apply in the event of a conflict would be difficult, if not impossible. Jurisdiction might turn on the location of the consumer reporting agency; the location of the consumer; the location of the information furnisher; or the location of the report user. Sorting out the jurisdictional issues would be expensive, resulting in higher costs for credit reports and higher costs for consumers. This simply would be an unnecessary level of cost, confusion and chaos that would serve neither consumers nor businesses well.

Uniformity is of vital importance to the credit industry where millions of transactions are posted from locations nationwide. If federal uniform standards were to lapse, it is possible that the most stringent state law from a large state would likely become the de facto national standard. In an effort to achieve as much uniformity as possible, to protect against legal liability and to reduce the costs of programming technology, consumer reporting agencies would likely apply the most stringent law from a large market to transactions nationwide. It makes little sense to have one or a few states dictate the future of a nationwide credit system which is important to every citizen of this country and not just those of a particular state. As a result, New York State or California, for example, might in effect set national consumer reporting policy rather than the Congress. Even further, given recent activity in California, without subsequent state preemption, national policy conceivably could be dictated by individual states or even smaller jurisdictions similar to San Mateo County. One wonders what logic the states would consider assuming they wanted to preclude a proliferation of city and county ordinances governing credit reporting?

Of course, even adopting the most stringent state rules may not preserve the national scope of the consumer reporting system, because new laws in some states may irreconcilably conflict with the laws of other states, in which case the consumer reporting system could become balkanized. The unfortunate result of such an inconsistent, possibly conflicting, patchwork quilt of laws has great potential to:

- Destabilize our economy, producing unnecessary economic disarray,
- Jeopardize consumer access to credit,
- Render impossible fair and objective credit reporting and risk assessment,
- Cause less credit extension, granted unevenly and unfairly,
- Generate higher costs for all, and
- Create a system where creditworthiness is a function of the state in which one lives rather than one's history of establishing good credit.

In closing, Mr. Chairman, I reiterate our position that retention of the current national standards in the FCRA is absolutely essential. The system works well and to open the door for 50 different state laws would only serve ultimately to harm consumers, our national economy, and balkanize a credit reporting system that is the envy of the world. It truly is difficult to see how any consumer protections in credit reporting would be enhanced by an inconsistent, perhaps conflicting and potentially confusing set of state and local rules to a degree sufficient to overcome the benefits of retaining our current uniform national standards. Our banking system is national; our credit reporting system is national; our economy is national; our enforcement and interpretive framework via the Federal Trade Commission is national; so should our governing law be national.

And finally, I would also like to urge the Committee to exercise particular care in considering suggestions that the preservation of uniform national standards in the FCRA be tied to other public policy issues. There are any number of consumer reforms relating to the FCRA and other consumer protection statutes that have been suggested. Equifax certainly understands the diversity of views on reform and stands ready to participate in discussions of these issues. We are deeply concerned, however, about linking reforms to this discrete reauthorization issue. Many reform issues are complex and may require extensive congressional consideration. Congress took more than 7 years to fully consider deliberate, debate and ultimately agree to adopt the extensive package of FCRA reforms that were included in the 1996 amendments. These other public policy issues are important and deserve full assessment on their own merits, not tied to a fully functioning and well performing law whose preemption provisions are set to expire in less than seven months.

ATTACHMENT A:
EXAMPLES OF EQUIFAX CONSUMER PRODUCTS

Equifax Credit Watch™
Monitor your credit and protect against identity theft plus access to your credit report and score. Equifax Credit Watch™ delivers the peace-of-mind you deserve - quickly and easily! Try it FREE for 30 days. Now with Identity Theft Insurance.

3-in-1 Credit Report
A comprehensive credit report containing credit information from all three of the major credit reporting agencies.

Score Power®
Wonder how lenders view you? Get your FICO® credit score - the score lenders use most to qualify you for credit, plus your current Equifax Credit Report™. Now featuring the FICO Score Simulator to show what factors most affect your score.

Equifax Credit Report™
Need a quick view of your report before walking into that car dealership? The Equifax Credit Report provides instant access to your credit information online.

Auto Insurance Score
Need insurance on your new car? See what many insurance companies see. Get your ChoicePoint Attract™ Auto Insurance Score and your Equifax Credit Report instantly!

Homeowner Insurance Score
Need insurance coverage for your new home? See what many insurance companies see. Get your ChoicePoint Attract™ Homeowner Insurance Score and your Equifax Credit Report instantly!

ATTACHMENT B

CDIA

CONSUMER DATA INDUSTRY ASSOCIATION

Empowering Economic Opportunity

FCRA CONSUMER PROTECTIONS

The following summarizes the wide range of consumer protections included in the Fair Credit Reporting Act (FCRA). The protections outlined below do not include the many voluntary consumer protection initiatives that have been instituted by the consumer reporting industry since the enactment of the last major amendments to the Act in 1996.

Definition of a "consumer report":
A consumer report is broadly defined by the FCRA as the communication of information by a consumer reporting agency bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for certain limited purposes. This broad definition is a trigger for extensive disclosures and protections for consumers.

Can anyone see a consumer's report?

No. Consumer reports may be provided and used for only the following permissible purposes: credit transactions involving the extension of credit or collection of an existing account; account reviews (for safety and soundness); employment purposes; insurance underwriting; license eligibility; child support and other judicial inquiries. Users of consumer reports are required to identify themselves, certify the purposes for which the report is sought, and certify that it will be used for no other purposes. Criminal sanctions result from fraud and misuse.

Consumers can opt-out of prescreened offers of credit with a toll-free call.
The FCRA codified the practice of direct mail offers of credit and insurance in the 1996 amendments. However, recognizing consumers' privacy interests, the Act provides consumers a single toll-free number for all nationwide credit reporting systems to opt-out of all prescreened offers of credit or insurance for either two years or permanently.

Can prospective employers use consumer reports without the consumer's knowledge?

No. If an employer intends to use a consumer report for employment purposes, which is permitted by the FCRA, the employer must give notice of this intent. The consumer then must determine whether to provide permission to use his/her report.

How is data accuracy ensured?

Credit reporting agencies are subject to liability unless they follow reasonable procedures to assure the maximum possible accuracy of the information regarding the consumer. Also, competitive marketplace forces among the consumer reporting agencies provide a strong institutional incentive to maximize accuracy.

Consumers always have a right to their file.

At any time, a consumer may obtain a copy of his or her entire file from an agency. The report must be provided at a low cost capped by the FCRA (at time of enactment, $8.00, currently, based upon CPI indexing, approximately $9.00). The agency must include in such disclosure a summary of the extensive consumer's rights under the FCRA. Consumers also always have a right to be notified of all persons who have requested a copy of their files.

What happens when a user of a report takes an adverse action based on the report?

If any adverse action is taken with respect to a consumer based upon a consumer report (*e.g.*, a denial of credit or employment), the person taking the action must notify the consumer and identify the name, address and toll-free telephone number of the agency that issued the report. If there is an adverse action, the consumer is entitled, upon request, to a free consumer report from the agency that issued the report.

What happens when a consumer feels information in a report is inaccurate?

Any time a consumer disputes the accuracy of any information contained in the agency's file, the agency must within 30 days either reinvestigate the information free of charge and note the dispute in the file or delete the information from the file. The agency must give the consumer notice of the results of the investigation within 5 days of its conclusion. If the agency finds that the information is either inaccurate or not verifiable after the reinvestigation, it must delete the information from the file.

Who has enforcement authority over the FCRA?

The provisions of the FCRA are enforced vigorously by the Federal Trade Commission, federal banking regulators and the states attorneys general. Additionally, consumers have private rights of action against users, data furnishers and consumer reporting agencies for certain noncompliance with the Act (see below).

Consumers have private rights of action against users, data furnishers and consumer reporting agencies?

A consumer has a right to sue users, furnishers and reporting agencies under the FCRA for noncompliance with the Act if reinvestigation procedures are violated. While a plaintiff can recover actual damages (including non-economic damages) as well as attorneys' fees, he or she need not prove actual damages because the FCRA provides for liquidated damages in cases where there has been a violation.

TESTIMONY
OF
FLORA "GRANDMA" GREEN
NATIONAL SPOKESPERSON
ON BEHALF OF THE SENIORS COALITION
BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
HEARING ON "FAIR CREDIT REPORTING ACT: HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY"

JUNE 4, 2003
WASHINGTON, DC

Chairman Bachus, Ranking Minority Member Sanders, and distinguished Subcommittee members, my name is Flora Green, but most everyone knows me as Grandma Green. I am the national spokesperson for The Seniors Coalition. I commend you, Mr. Chairman, for your leadership in convening this hearing. On behalf of The Seniors Coalition, I appreciate the opportunity to present seniors' views on the national credit reporting system that has evolved under the Fair Credit Reporting Act and how it serves consumers and strengthens our economy.

The Seniors Coalition is the nation's leading free-market senior education and advocacy organization. We are four million strong and are growing stronger every day. Our mission is to empower seniors to speak with a united voice and significantly impact policies and decisions at the federal and state level that affect their healthcare, financial, and retirement security. By leveraging the combined strengths of grassroots organization, education, action, and communication, our members are driving positive policy changes at every level of government that improve their lives and benefit the nation as well.

Our National Credit Reporting System Serves Consumers and Strengthens the Economy

It's no coincidence that we have the strongest economy in the world, even though it's not performing as well as we would all like. There are two reasons for this. One is our entrepreneurial spirit. We Americans are a bunch of practical dreamers and optimists who are willing to invest, take risks, and work hard to create something of value. My father was a farmer and businessman, so I understand how important this spirit is. The other reason for our strong economy is access to affordable credit. This includes the ability to obtain credit quickly at affordable rates to invest in and grow a business. But it also means ensuring that consumers can get the credit they need instantly and at a reasonable cost to buy the goods and services they want. Together, business creation and credit access have helped build an economy that is still the envy of the world. We all want to keep it that way – and renewing the expiring national standards under FCRA will help ensure that we do.

There's no question that the strong, efficient national credit reporting system we have today is the direct result of the Fair Credit Reporting Act which Congress enacted in 1970 and strengthened in 1996. This law strikes a balance between the interests of consumers and business. Since it helps ensure the orderly and efficient functioning of our national credit reporting system, it is essential to the health and growth of our economy and provides other benefits as well.

The experts tell us that all the available evidence points to the fact that our system is working as intended. As a result, seniors and other consumers have convenient access to affordable credit to buy appliances, clothes, cars, and homes, and countless other items they need and want. When you consider that consumer spending last year accounted for two-thirds of our Gross Domestic Product and most purchases are made on credit, it's clear just how important our national credit reporting system truly is.

The Fair Credit Reporting Act Protects Seniors and Other Consumers

The Fair Credit Reporting Act is not just vital because it has helped create a national credit reporting system that underpins our economy and ensures that it functions with maximum efficiency. It is also vital because it ensures that all Americans – regardless of their age, income, ethnicity, and gender – can obtain access to the same opportunities that credit makes possible. What's more, it provides consumers with some of the most important protections. I want to focus on a few of these protections and why it is critical that Congress preserve them as part of the FCRA reauthorization.

Furnisher Responsibility

The current credit reporting system protects consumers because it requires credit furnishers to adhere to uniform standards. Only when credit providers voluntarily report information that allows credit reporting agencies to create an accurate financial picture of consumers do consumers benefit. When this happens, consumers can obtain the best deal on credit at the most favorable rates.

That's why it's crucial that credit providers continue to report information. But some have suggested removing the current limits on credit providers' liability and creating new private rights of action that they believe will help protect consumers. The truth is, this would have the opposite effect. It would cause many credit furnishers to stop voluntarily reporting the information they have collected because they fear legal action based on negative information reported. Without adequate or complete information to assess the risks of extending credit to a consumer, many credit providers would simply not approve credit in borderline cases or charge more to cover the higher risk. In either case, many seniors and other consumers would lose out by not obtaining the credit they need or at rates they could afford.

The Seniors Coalition favors renewal of the furnisher responsibility provision without changes.

Reinvestigation Time Frames

Errors in consumers' credit reports can result in diminished or lost access to credit or higher costs to borrowers. While the reported error rate is well under one half of one percent, errors do creep into credit reports. The FCRA requires that errors in reports be corrected at the consumer's request within thirty days. This ensures that errors are erased in a timely manner.

Some have suggested that states reduce this mandatory error correction time to twenty, fifteen or even ten days. But this could result in consumers being treated differently by credit providers in different states. In some cases, the full thirty-day period is needed to correct complicated errors. What would happen to credit if a major dispute had to be resolved in ten days instead of the current thirty days and could not be resolved? Surely, this could result in accurate information being deleted due to lack of sufficient time for proper investigation. This would reduce the value of the credit report and national credit reporting for all consumers, increasing costs. The Seniors Coalition supports maintaining the current reinvestigation time frames to protect consumers.

Affiliate Sharing

Allowing affiliates to share information about customers, in many cases, has helped customers in low and middle income households with less-than-perfect credit scores obtain credit when they need it. Without this provision, many of these customers would be denied access to credit.

This information sharing also helps combat and foil identity theft. Seniors, in particular, are frequent targets and victims of identity theft. By requiring a customer to present a current, valid picture ID (such as a driver's license or passport) and checking that information against information contained in the credit bureau report, many attempts at identity theft are thwarted. Even when perpetrators of identity theft elude detection and credit is approved, affiliates can still help catch these criminals. By looking for changes in purchasing patterns – such as a change from small purchases to a spending spree – affiliates can often expose identity thieves.

The Seniors Coalition favors renewing this provision to ensure the availability of credit for customers with less-than-perfect credit and to protect seniors, consumers, and companies from losses due to identity theft.

Congress's Failure to Renew FCRA's Expiring National Standards Would Hurt Seniors and Other Consumers

Renewal of the expiring national standards of the Fair Credit Reporting Act should be a top and immediate legislative priority of this Committee and the Congress over the coming weeks and months. This is imperative to ensure that seniors and other consumers can continue to obtain the credit they need at rates they can afford to purchase clothes, appliances, car, homes, and a host of other goods and services.

Frankly, I doubt that many seniors – or other Americans for that matter – know that our national credit reporting system exists or works so well. Like the sun rising, turning on the light or water, we tend to take for granted those things that work well. It's only when they break down or give us trouble that we truly are aware of and appreciate them. Our national credit reporting system is like that. It's like the Maytag washer in those old commercials, never needs repair because it never breaks down. Its hallmarks are dependability, efficiency, stability, and performance.

The only way that most Americans will ever know that the national credit reporting system exists at all is if this Committee and Congress fail to renew expiring provisions of the FCRA. If that happens and states write their own rules, consumers who know little or nothing about FCRA will demand to know why Congress did nothing to avert the financial chaos and disruptions in the economy that will result from legislative inaction. They will demand to know why they can't get credit as easily as before or why they are paying more for it.

Mr. Chairman, I ask you and your colleagues on this Committee and in Congress to renew the FCRA national standards as soon as possible to preserve our national credit reporting system and the benefits it provides to consumers, businesses, the economy, and the nation. We are all counting on you.

Thank you.

TESTIMONY OF RICHARD F. LE FEBVRE

On Behalf of AAA American Credit Bureau Inc.

Before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Financial Services Committee

United States House of Representatives

June 4, 2003

Good morning, Chairman Bachus and distinguished members of the Subcommittee on Financial Institutions and Consumer Credit. My name is Richard Le Febvre and I am President and CEO of AAA American Credit Bureau, Inc. (AAA), which is a national credit-reporting agency (CRA/reseller) in Flagstaff, Arizona. I have worked in the credit reporting industry for over twelve years. My responsibilities have included running AAA's day-to-day operations and supervising all types of consumer disputes, including low credit scores. AAA has a national reputation and has recalculated a tremendous number of consumers' credit scores with great success, and is considered one of America's foremost credit re-scoring companies *(Washington Post 7/01)*. I have attached as Exhibit A an article from the July 14, 2001 *Washington Post* that provides a good summary of what we do.

On behalf of AAA, I thank you for the opportunity to testify before you here today on an issue that is fundamentally important to the American economy as a whole and to individual Americans. The American Dream of owning a home, an automobile, or obtaining credit, insurance, or any other valuable asset now involves the creditors' use of a "consumer report," also known as a "credit report." Almost every credit report is a "consumer report", but not every "consumer report" is a credit report. A consumer report is virtually any written communication which bears on a consumers credit worthiness, character, credit capacity, etc and is given to a third party.

Three national repositories compile credit information and prepare consumer reports on a huge number of consumers. The national credit bureaus or "repositories" (Experian, Equifax, TransUnion) are well known to the Subcommittee. But for purposes of the Fair Credit Reporting Act ("FCRA"), the term "credit reporting agency" encompasses a far broader group of businesses that compile information about consumers and provide their "consumer reports" to third parties.

BACKGROUND ON AAA CREDIT

AAA has specialized in re-scoring consumers' credit scores, no matter the vendor and/or scoring model used. We have re-scored many consumers' files over the past 5+ years, when the lender or consumer has reason to believe that the credit files contain errors, inaccuracies and/or incomplete information resulting in inaccurate credit scores. An extremely low credit score often may be a red flag that the credit files contain inaccurate information. Re-scoring is "not" credit repair. Re-scoring is an accepted practice that two of the three-credit repositories now offer for a "price." Corporate Experian itself does not offer re-scoring but allows a selected few of its affiliates to do so. AAA has received requests for re-scoring from lenders, brokers, and consumers.

Sometimes credit scores can provide a false representation of a consumer's overall credit risk and credit worthiness. Re-scoring often results from, but is not limited to, any of the following reasons:

- Updating of credit information
- Updating account balances
- Deleting/updating inaccurate tradelines
- Deleting obsolete tradelines
- Updating/deleting public record data
- Deleting inaccurate late payments
- Updating incomplete and/or missing data

Every day, these errors can and do cost consumers money and/or result in denials of credit. The errors cost consumers money by causing increased interest charges and/or less favorable credit terms. I have seen and heard the frustration of consumers who learn of these problems.

I have analyzed a large number of consumer credit reports and have compared the consumer credit information from each of the main three national credit repositories, attempting to determine whether the information was current, complete, and accurate. I have also analyzed how that information impacted the consumer's credit scores, overall credit worthiness, and credit availability. I am familiar with both the Metro and Metro II reporting formats and other reporting access techniques and data fields present in credit reports, consumer reports, and credit files.

If we detected significant differences in the credit reports, inaccurate credit information, or other information that would affect the consumer's credit, we worked with consumers and all parties to correct the inaccurate and/or incomplete information. This in turn creates a new credit score.

I have created, developed and programmed a scoring system called the AAA credit score and a sample is attached as exhibit B. This "tool" checks the accuracy of credit scores, helps all parties understand how many errors if any, are within the credit files, flaws within the credit scoring models, and other credit information issues. Our AAA credit score was run on every credit report generated through our ACB credit database and returned back to lenders and brokers along with the consumers credit report.

In short, I have particular expertise with understanding and analyzing credit reports, credit scores, and the codes and documents used by credit reporting repositories and lenders in connection with determining a consumer's eligibility for credit, credit risk, and credit worthiness. Although not an attorney, I have become very familiar through my work with issues under the FCRA and the Fair Debt Collections Practices Act ("FDCPA"). I am also familiar with how credit reports can affect creditors' decisions in the insurance, credit cards, real estate, and banking industries. I am familiar with the formats and documents used by information furnishers, and how the credit reporting repositories communicate credit information to creditors. I am also familiar with how inaccurate credit information can affect a consumer's credit score(s), credit risk, and credit worthiness as it relates to a consumers financial needs.

I have personally experienced how inaccurate credit data can affect consumers emotionally. I have observed their frustration and pain during my 12+ years of owning a consumer-reporting agency and handling their disputes. AAA and other CRA/resellers see and hear consumers' anger when they feel victimized by inaccurate credit reports. Almost daily, I heard the stories told by many consumers about how credit furnishers and the three national credit bureaus can ruin their lives. Many times consumers break down over the phone and in person and AAA has to become their emotional counselor. AAA let consumers know that we would do everything reasonably in our power under the FCRA.

Credit reporting and credit scoring are not clearly understood by most consumers. They often learn "the hard way" after a creditor declines credit or offers onerous credit terms. Consumers want reassurance that someone cares, will listen to their side of the story, and correct injustices. This is not meant to say that all reports have inaccuracies that significantly reduce credit scores. I also hear and deal with consumers that are pleased and satisfied with the credit reporting industry, including AAA. But inaccurate information in credit reports is a recurring and troubling problem that, under current practices in several huge industries, now directly affect many facets of Americans' lives.

I have served as an expert in the fields of fair credit reporting, credit scoring, analyzing credit reports, the impact of credit scoring on automated underwriting for mortgages, and insurance underwriting decisions for public interest groups, consumer groups, and state and federal government agencies. I have previously testified by affidavit, report and/or deposition before the Oregon, Minnesota, Louisiana, Arizona, and Georgia Insurance Commissioners' offices on the topic of insurer use of financial responsibility information, credit reports and credit scores, in insurance underwriting and the rating of consumer risk.

I have been asked by many consumer groups including the Consumer Federation of America ("CFA"), the National Community Reinvestment Coalition ("NCRC"), the National Association of Consumer Advocates ("NACA"), and the National Association of Realtors ("NAR") to speak at their annual conventions on topics including credit, error rates within credit reports, credit scoring, and the impact of AU/Scores on certain low/moderate income consumers.

I am a Certified Consumer Interviewer on the 1997 Amended Fair Credit Reporting Act by the Associated Credit Bureaus, Inc. ("ACB/CDIA"). I am also a past member of the Associated Credit Bureau ("ACB") now known now as the Consumer Data Industry Association ("CDIA"), the National Credit Reporting Association ("NCRA"), and National Association of Mortgage Brokers ("NAMB").

SUMMARY

By the 1990s, Congress knew that the 1970 FCRA needed to be updated and improved because of changes in the American economy, including automated credit underwriting. Also, changes were needed because of the growing use of credit scoring, the growing number of consumer complaints regarding accuracy, and finally the grave need for consumer privacy. These improvements became the goal of the changes that were made in the 1996 FCRA amendments. In my opinion, the 1996 amendments fell short in providing consumers with transparency in how credit reports every day affect their lives and in providing tools for correcting inaccurate information. Meanwhile, credit furnishers and other industries are using credit reports to make lightening-speed "automated evaluations" that vary from lender to lender, insurance company to insurance company, from AU system to AU system, credit grantor to credit grantor. Most of the automated systems have this in common: they live and die on the use of credit scoring.

Many consumers benefit from automated underwriting systems and credit scoring. Many consumers have been helped by the use of these scoring models, but the models are only as good as the underlying data being graded. I will be outlining my grave concerns about the FCRA and my recommendations on how to make it even stronger for all parties, while giving back the consumers the protection that seems to have been intended.

Credit Furnisher Liability – 15 U.S.C. §1681s-2(b)

The FCRA sought to improve the accuracy of consumer reports by placing certain duties on credit furnishers for the first time, and the FCRA gave consumers a private right of action if furnishers didn't perform a reasonable investigation. This burden only began when a consumer exercised his or her right for a reinvestigation and/or disputed under 1681i of the FCRA with "any" consumer- reporting agency not just the three main credit repositories.

Accuracy & Completeness - 1681e(b)

The FCRA requires all CRA's to investigate the "completeness or accuracy of *any item* of information within a consumers credit file". This subsection of the FCRA applies not only to the three national credit bureaus it also applies to all credit reporting agencies. This is very important in today's world of the Internet and automated evaluations with little or no human involvement in most situations. I believe an important factor of the FCRA is 1681e(b): "Accuracy of report; if a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy when generating a consumer report."

Reinvestigation - 1681i

The FCRA requires a higher standard by both the furnisher of credit information and the consumer reporting agencies after consumers exercise their rights under the 1681i of the FCRA. It is my belief that this is/was the main foundation behind the FCRA. After reinvestigation, a consumer reporting agency shall follow reasonable procedures to assure maximum possible accuracy when generating a consumer report to a third party.

Adverse Action Notice under FCRA – 1681m

Another very important part of the FCRA is the requirement of "ALL" users and/or any person that makes, participates in, or arranges extensions of credit for consumer purposes must give adverse action notice if the offer is adverse to the interest of the consumer.

Credit Scores – 1681g(a)(1)

In 1996, Congress appeared to recognize that credit score disclosure would confuse many hard working Americans, but Congress apparently did not anticipate how pervasively credit scores would affect consumers' lives—including employment, insurance, utilities, homeownership, and the list goes on and on. My understanding is that all three repositories, by contract, and by Fair Isaac prohibit other CRA's and resellers from disclosing to consumers any information concerning credit scores or any other risk scores, except where state laws now require such disclosures, such as in California.

Risk Based Pricing

Risk-based pricing is how credit grantors and others (credit users and/or any person that makes, participates in, or arranges extensions of credit for consumer purposes) price their products/services based on an assessment of credit risk and/or layering of risk regarding a consumer. The foundation of almost every risk-based model is a consumer report/credit score. This means if there are errors, problems, or issues within a consumers report then that leads to an "infected" score and an "infected" credit risk for the lender, which could be either positive or negative.

Account Review – 1681b(3)(F)(ii)

Congress also saw a need to allow furnishers/grantors to check consumers' position at any time as long as the consumer had an open account with that furnisher/grantor. It was a way in which creditors could monitor the credit worthiness of their consumers with other creditors, grantors, and furnishers.

CRA/Resellers – 1681a(f)

Industry clearly states on the record, that all CRA/resellers are to do is just provide a consumer report to a third party with no legal liability for accuracy. This clearly goes against case law and the FTC's opinion letters over the last 10 years. CRA/resellers have the same legal liability as the three national credit repositories Experian, TransUnion, and Equifax.

Privacy

The FCRA is to ensure fairness and privacy by giving individuals reasonable care and control over their personal information. When CRA's and others under the jurisdiction of the FCRA fail to comply with the law, it can cause tremendous hardship to innocent consumers in terms of their credit standing, privacy, loss of reputation, loss of time, loss of opportunity, personal relationships, and their overall emotional well being.

HOW A CONSUMER REPORT IS GENERATED BY THE CREDIT INDUSTRY

The relationship between the three national repositories Experian, TransUnion, Equifax, their affiliates (the few that are left), and CRA/resellers is one of a contractual nature. This means that some bureau affiliates own and/or have certain legal rights, via contract, to consumer files within a geographical area and/or zip code within each of the repositories networks. Both affiliates and CRA/resellers need permission and a valid contract to access these networks to sell consumer reports to users and consumers.

Individual items such as trade lines, inquiries, and public record data are maintained in these network databases. Much of the servicing and/or consumer relations is being centralized and controlled by the three national databases. The three national repositories and some affiliates are paid a fee by subscribers/users who access their databases. These legal accesses are called inquiries. During the process of inquiries a credit report is compiled "on the fly" and in many instances a credit score is also compiled "on the fly" and both a consumer report and a credit score are sent back to subscribers/users. In other words, it's like having all American consumers data in a big barrel and based on name, address, and in most cases a social security number the data is picked out by Experian, TransUnion, and Equifax's network software and both a credit report and a credit score are born for that subscriber/user only. After the report is delivered back to that subscriber/user the credit score is lost forever within the repositories networks and "no way" to recreate that score for the consumer.

All three repositories use "unique identifiers" to store the billions of pieces of data received from their credit furnishers and indexed in what is called "header data". When data is sent from a credit furnisher to all three national repositories they store all the bits and pieces of data using unique identifiers to distinguish what belongs to each consumer.

In many cases, reports can vary, based on inquiry input and date based on many factors, but here are the two most common factors: First, wrong input info from subscriber/user; Second, since data changes almost daily, the information one user gets on their credit report may differ greatly from what another user gets on theirs, based on the time the reports were pulled. I have seen reports differ significantly including credit scores from day to day.

GENERAL OPINION ON THE ENTIRE INDUSTRY

In my twelve plus years of working in the credit reporting industry and dealing directly with consumers by handling their disputes, hearing their war stories, and problems with their credit files, I have found that consumers rate the dispute process with the repositories and furnishers up there among their non favorite things to do in life. Among the comments I have heard over my 12+ years in business has been the dispute process is just like having an IRS audit, brain surgery, getting a tooth pulled, or going to your own funeral just to name a few. Consumers suffer legitimate emotional damage, extraordinary aggravation, and feelings of helplessness, embarrassment, and loss of control of their financial structure. Victims/consumers have no physical or financial control over the repositories or their subscribers. The repositories cater to their customer/furnishers because it's the furnishers that give them a product to sell. Correcting credit-reporting errors for consumers based on my 12+ years of hearing their complaints is a very difficult process not to mention time consuming and I concur from a professional standpoint.

Based on my knowledge, consumers legitimately fear continued actions by the industry and personal financial harm. That is particularly true where the victim has no ability to control the "its not my job" and the "technically accurate" attitude of furnishers and consumer reporting agencies. The fear of repeated damage is ever present and on the mind of many consumers.

In the credit reporting industry we always have to do a balancing act with consumers because as in life some consumers want to get out of paying their bills and other consumers have to pay for that scam. Some consumers search out "credit repair" companies because they promise to whip away all your legitimate bad debt and still others claim identity theft in order to defraud their creditors.

Many furnishers and the repositories hang their hat on that they didn't do anything wrong and that its "technically accurate", but I have to disagree strongly on that position. Sometimes in the credit reporting industry including furnisher liability, only a piece of paper, pencil, and good old sense of fairness and common sense has to apply. The credit industry including furnishers are not the trier of facts, but we as an industry have to let consumers who have been defrauded off the industry merry-go-round and make judgment calls that make sense and we as an industry do that every day. We can't always believe that **"BUYERS ARE LIARS"** every day and within every transaction we have with consumers. Sometimes and in many cases they are just victims.

I must clearly state for the record, that a good credit rating and acceptable credit score is not a birth right, but a very frustrating on going and sometimes full time job if you're a victim of identity theft, an inaccurate credit report, and inaccurate credit scores. It takes very little effort to mar a good/excellent credit rating and/or credit score that you worked all your life to obtain. This marring could be a result of the consumer, credit grantor, repository, or just the system. A good credit rating is a valuable tool and necessary in this day and age. Credit reports and credit scores control consumers ability to obtain a job, insurance, utilities, a car, a credit card, an apartment, or the American dream of home ownership just to name a few.

AAA's Personal Dealings and Opinions on the Following Issues Based on 12+ Years of Experience and Expertise

CREDIT FURNISHER LIABILITY – 1681s-2(b)

It is clear to me that based on the number of consumer disputes that we have handled over my 12+ years that credit furnishers know many times that something in their systems are creating problems for the consumers. Many times it could be as easy as just changing from the Metro format to the new Metro II reporting format. Many times furnishers have some emergency actions that they could do, but many furnishers choose to put consumers through what I call the "Ring-a-round the Rosie" wild goose chases and consumers get very frustrated and angry.

Many times furnishers report the same status on an account to all three repositories. Then they verify that an account they reported to both TransUnion and Experian was "accurate". On the other hand they reported and verified the same account to Equifax as "inaccurate" or any variation of bureaus listed above. On its face this violates the Fair Credit Reporting Act ("FCRA"). The reporting of "two" sets of data undermines our banking system, which is dependent upon fair and accurate reporting by furnishers. Inaccurate reporting by furnishers after a consumer exercises his/her rights under reinvestigation directly impairs the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of our banking system.

Under the Fair Credit Reporting Act ("FCRA") it is my belief, based on my experience within the credit industry, which is also backed up, by the FTC and case law that Congress intended the word "Maximum" not to mean technically accurate. While it may be technically accurate, but if it gives a false representation of the credit worthiness of a consumer then the furnisher fails their duty as required under furnisher liability.

The definition of inaccurate information in a consumers report means any misleading, incomplete, and/or outdated data, which fails to convey the full and true picture of a consumers credit reputation, credit risk, and credit worthiness.

Sometimes as professionals who know the system, we have to allow the consumer to get off the merry-go-round and do what's right instead of just quoting company policy and procedure. The burden of proof falls directly on the furnisher of the information. The FCRA requires reasonableness during the reporting of data and then puts a higher standard on all players after the consumer exercises their rights under reinvestigation. Many cases clearly cross over the line on the issue of reasonableness. Many times furnishers do the following:

- Failed to properly notify all three repositories that the information they reported was inaccurate;
- Reported information again after notice and confirmation of errors and lead consumers to believe they will correct their errors;
- Failed to provide notice of dispute to all three repositories after the consumer notified the furnisher of the dispute;
- Failed to conduct an adequate investigation with respect to the disputed information brought to their attention by both the consumer and the three repositories;
- Failed to review all relevant information provided by the consumer;
- Failed to report the results of their investigation to "all" consumer reporting agencies;

ACCURACY & COMPLETENESS – 1681e(b)

While errors of omission of credit data is still a major problem within the credit reporting industry and negatively affects a consumers credit risk, credit worthiness, and credit scores a larger and bigger problem is the errors of co-mission. Our current credit reporting system is still strictly voluntary which means that credit furnishers don't have to report their credit data if they don't want to. Errors of co-mission are still the driving force behind most credit denials issued by credit grantors and/or the major reason behind a consumer paying higher fees and costs.

In my 12+ years of running a consumer-reporting agency it astonishes me to this day how the same credit furnisher can report acct #12345 to Experian as 1x30, TransUnion as 5x30, and to Equifax as 3x30. I also see many times where the same credit furnisher will report acct#12345 for Fred Flintstone as stated above, but for Wilma Flintstone a totally different set of status codes and/or lates in the 24 month grid.

1.6 million consumers (and growing) and may reach as many as 3 million consumers who may have this "included in bankruptcy" issue that is the subject of the first ever-certified class action case against all three repositories [1]. The old Metro format verses the new Metro II format is the main issue in this case. This older version of the Metro format has a major flaw. This flaw is reporting joint accounts that are included in bankruptcy when the co-borrower didn't file for bankruptcy. I have brought this flaw up to all three national repositories Experian, TransUnion, and Equifax many times over the past four years.

The older version of the Metro format does not have the ability to attach to its base segment an additional segment rating taking into account that the co-borrower did not file the same bankruptcy as reported in the base segment. In other words, the comment "included in bankruptcy" attached to the base segment would also be attached to the attached segment of the co-borrower. In addition to this comment, the account status field in the base segment would show the non-filing consumer as "bankrupt". All three repositories are currently working to fix this flaw, which shows a willingness to help consumers, but it took a lawsuit to make that happen.

By way of background for the committee, each credit furnisher has their own software/computer systems that they may or may not have designed themselves, and in many cases could have purchased from a third party vendor. In addition, those same furnishers may use Metro or Metro II. In other words, you have furnishers with many, many different types of processing software, many different types of software vendors, some using Metro, some using Metro II, and furnishers all trying to "interface" with all three repositories and the three repositories themselves all have different ways in which they format the receiving data.

REINVESTIGATION - 1681i

[1] United States District Court, District of South Carolina Anderson Division 8-00-CV-1217-1218-1219-24 2001/2003

In the industry of credit reporting all three national repositories have been over the years trying to convert all their customers/furnishers over from the old Metro format to the new and improved Metro II format. Many of the customer/furnishers have been refusing to convert to the new Metro II for many reasons, which include, but are not limited to cost, education, teaching an old dog new tricks, profit, and the list goes on and on. Since all three national repositories depend on their customer/furnishers for data in order to have a product to sell it's kind of like having "the fox guarding the hen house". Putting it in simpler terms, the three national repositories have really no control over, which customers convert and which customers don't.

I'm insulted as an owner of a consumer-reporting agency with the "He said – She said" attitude of reporting adverse data on a consumer. It's clear to me that the furnisher's database is always right and everyone else is wrong from consumers, resellers, and the repositories. The human factor during the credit reporting process cannot be under estimated. Throwing technology at a problem "credit reporting errors" does more harm, when sometimes only a human can protect consumers against inaccurate reporting no matter who's at fault. In my experience of handling thousands of consumer disputes under the FCRA sometimes only a piece of paper, pencil, and a telephone call can assure the maximum possible accuracy as required under the FCRA. Based on my experience in the industry and talking with many representatives from the three national repositories and depositions that I have read over the last two years that the average consumer relations person at the repositories has to generate and complete 10 – 15 consumer disputes per hour. As a CRA/reseller, handling consumer disputes, our average time "per disputed tradeline" is 30-45 minutes some lasting much longer; the dispute quality coming from the repositories must be questioned at an average time of one consumer every five minutes per customer service representative.

It is my opinion that the repositories do an overall fair/good job, but when the dispute is more sophisticated requiring more then basic thought then they fail their responsibilities under the FCRA for not following reasonable procedures based on the following reasons:

- The repositories failed to properly notify credit furnishers within 5 days of dispute;
- The repositories failed to include all relevant information regarding the consumers dispute with the credit furnisher;

- The repositories failed to understand clearly many consumers disputes with their credit furnishers and the repositories many times never take reasonable procedures to clarify and understand consumer disputes;
- The repositories failed, to before the end of the 30-day period from the consumers dispute, complete their reinvestigation process with their furnishers;
- The repositories failed to have reasonable procedures in place to assure maximum possible accuracy regarding the consumers dispute with their creditors;
- The repositories failed to follow reasonable procedures to stop the furnishers reinsertion of previously deleted material;
- The repositories failed to have reasonable procedures in place to avoid allowing furnishers to report inaccurate information;

Within the industry I see daily the "pass the buck" attitude between the furnishers and all three national repositories. It's always the repositories fault, per the furnisher and it's always the furnisher's fault, per the repositories. This attitude comes from a very simple concept "profit". Meaning the dispute process for both furnishers and repositories is a "lost profit center" for both industries. So in fact little time is put into the dispute process other than the bare bones minimum.

Over the past five years of "re-scoring" we have been allowed to update the repositories database but, of course our, documentation must meet the repositories guidelines. We have seen, over the years, our updates on consumers credit files being deleted at the bureau level based on the furnisher who gave us the UDF (universal data form), letter of deletion, or other acceptable documentation. The furnisher never corrected their tape that was sent to each of the repositories. So in other words, it's here today, gone tomorrow, and back on sometime down the road. This is an issue of the furnishers dispute staff not working with the staff that handles the monthly reporting to the repositories and/or software issues. Many times tapes override manual updates and/or automated updates. Many times the repositories give their customers/furnishers a certain number of days to get their "act together" and update their systems/tapes after a manual and/or automated update. After this time frame the repositories then allow tape updating. This time frame differs from repository to repository and from furnisher to furnisher. I see these problems all the time.

NEW PROFIT CENTER FOR ALL THREE REPOSITORIES

All three repositories have began dipping into the internet for more sources of income by selling direct to the consumer reports, allowing certain CRA/resellers to sell direct to the consumer via the internet, re-scoring services themselves direct to the consumer, selling new scoring models direct to the consumer, charging and setting "high" pricing for resellers so they can re-score the reports they generated, and last but not least monitoring services. The following websites are owned and operated and/or affiliated with the three national repositories, but there are many more not listed that have broker agreements that market for the big three:

- Consumerinfo.com
- Freecreditreport.com
- Creditexpert.com
- Qspace.com
- Myfico.com (All three through Fair Isaac)
- 3bureaureport.com
- Truecredit.com
- Creditreports.com
- Econsumer.com

The three repositories and Fair Isaac have started "scare" tactics against consumers in order to get consumers to order reports and scores from their multiple masters of disguise websites creating a "new profit center" for themselves. I receive on average 5 - 10 scare tactic emails a week, which range from any of the following comments:

- Do you know who is looking at your credit file?
- Maybe you were forced to put down a big deposit when you got phone service?
- Are you a victim of identity it's the largest crime today?
- You might have ended up paying extra high rates for auto insurance despite a flawless driving record
- Is a collection agency after you if your not sure order your report?
- Maybe you suddenly had trouble finding homeowner's insurance?
- You better know what your credit report says about you because your creditors do

The three repositories have been buying back all their affiliates for the past five years and at their current rate they will complete their total takeover within the next 2-3 years. The three repositories have been price fixing the cost of credit reports and re-scoring services to resellers who complete with them for the past 3+ years. This unfair practice has created many resellers to be driven out of business in large numbers creating a lack of consumer choice in the credit reporting industry.

CRA/RESELLERS – 1681a(f)

Back over 20+ years ago both Fannie Mae and Freddie Mac realized that consumer and lenders needed some kind of protection against all the errors they were noticing in consumer credit reports and created a new industry called "resellers". This new industry was to be a neutral/independent third party who had "no" financial interest in whether the mortgage transaction closed or not. The reseller's job was to make sure the credit report they created and merged was done to the standard of the "maximum possible accuracy" and generated quickly, protecting both the consumer and lender. Consumers, lenders, and brokers all have some sort of financial interest on whether the mortgage transaction closes or not based on either ownership interest or commissions.

The CRA/reseller has all the same legal responsibilities as Experian, TransUnion, and Equifax as long as the CRA/reseller generated a report to a third party. Please review the FTC's consent order with Credco of 1998 [2]. This consent order clearly spells out in detail what "any" CRA/resellers legal responsibilities are under the FCRA. It is my opinion that a CRA/reseller has as high a standard of care as any of the three national repositories because we the CRA/resellers get to see how the same furnisher reported the same account to all three repositories. Since many CRA/resellers are only allowed to resell reports during the mortgage process, which is many times the biggest item a consumer will buy in their lifetime we have a stronger and higher standard to live up to.

This is changing drastically because with all the new technology some consumers who have excellent and accurate credit files don't need our dedicated service. In today's risked based pricing by parties from the GSE's, lenders, and insurance companies consumers need the specialized attention that CRA/resellers give. Consumer choice is being destroyed by both the GSE's and the repositories because they both are forcing

[2] http://www.ftc.gov/os/1998/9810/9523267agr.htm of 1998

consumers to check their credit files in advance or "buyer beware" and/or be ready to pay extremely high fees to re-score. It's a position consumers should not have to face because for an average price of $50.00 CRA/resellers had to do all the following with no other charges:

- Verify employment
- Verify two years residence
- Interview the consumer
- Send the consumer a copy of their report
- Verify any out dated tradelines
- Verify balances on accounts when needed
- Verify any open collection and charged off accounts
- Verify any and all public records
- Verify anything the consumer brings to our attention is inaccurate.

ADVERSE ACTION NOTICE UNDER FCRA – 1681m

One of the most important sections of the FCRA and the one that gives consumers a heads up that something is wrong causing them financial hardship is "notice of an adverse action". Any user and/or person that makes, participates in, or arranges extensions of credit for consumer purposes is required to give the consumer an adverse action notice if they used in whole or in part a consumer report and their decision was adverse to the interest of the consumer.

In today's information super highway world of automated evaluations, automated underwriting of insurance and mortgages these systems deny consumers the right to see their consumer reports that were used in their evaluation. It is extremely unfair to consumers today with all the "risk based pricing" adjustments the GSE's, lenders, and insurance companies are using to surcharge consumers not to give the consumer their "mandatory" adverse action notice.

"CONSUMERS CAN'T FIGHT WHAT THEY CAN'T SEE"

The higher the credit scores the better the rates and terms and in many cases a point up or down could be the difference between getting your application accepted or rejected and many times it could be the difference between a prime or sub-prime loan, accept or referred mortgage, leveling risk from 1-5, and preferred or mid-market pricing on auto and homeowners insurance.

CREDIT SCORES – 1681g(a)(1)

By the way of background, a credit score is generated on the fly and is based on the credit data in the consumer's credit file at the time the credit grantor checks the consumers credit file. The score generated is based on a mathematical formula that looks at each individual trade line, comments, inquiry, and public records sections within each repositories database and calculates a number called a credit score. Today credit scoring is the preferential choice of lenders as it provides a quick way to grant or deny credit. The credit score gets points added for numerous positive items and gets points deducted for negative items such as late payments, collections, accounts listed in bankruptcy, charge offs, and high balances on credit cards just to name a few. There are many different types of credit scores created by many different vendors such as Fair Isaac and each of the three national repositories just to name a few.

While each lender has different credit criteria, there are several basic rules of thumb in scoring that apply to all credit scoring models. Each version is slightly different based on criteria set by each of the separate three national repositories, Fair Isaac, and credit grantors. In the mortgage arena primarily, scores below 620 are usually viewed as too risky by lenders, and will cause the consumer to be denied, suffer sub-prime rates, or other adverse terms. Additionally, past payment history is perhaps the largest factor considered by scoring models. The Fair Isaac scoring models are the "Industry Standards", but there are many, many other scoring models used today that were created by credit furnishers, credit grantors, the three national repositories, and other third party vendors. While scoring models differ quite tremendously on the points added, subtracted, and weight assigned, almost all scoring models use the same underlying data fields, which are contained within each credit repositories database.

There is a lot of false propaganda spilled across the airwaves that both confuse consumers and legislators. Miss statements seem to be the normal tactics of most credit scoring modelers. When people in the industry start punching holes in the armor of credit scoring and proving that the scoring system is "flawed". The scoring modelers seem to change their minds when there is a threat of federal legislation or there is money in it for them by "charging consumers for the combination" to open their credit scores. If their algorithm is robust enough to handle inaccurate or missing information [3] then why are resellers like AAA in the newspaper so often getting consumers 100-200 point increases?

[3] American Banker "Loan Decision Process called too Automatic" April 9, 2001

SCORE – EXAMPLES (ACTUAL FILES)

Example#1 - Based on one $10 missed payment (that was not late) they had a 3-year credit history with no lates.
Mr. & Mrs. Hispanic
Mid Fico score - **731** – 6/7/99
Mid Fico score - **587** – 7/9/99 **(after one missed $10 payment)**
XPN - **72** points **(average drops per bureau after one missed $10 payment)**
TU - **121** points
EFX - **178** points

Example#2-had 21 collection/charged off accounts that did not belong to him, but another with common name
EFX – **520**, XPN – **541**, TU – **506**

Example #3 - Based on errors by Macy's 1x30, 1x60, 1x90, 1x120, 1x150
Retired Female
EFX - **611** - 11/09/00 **(before re-scoring)**, TU – **617**, XPN – **674**

EFX - **743** - 11/15/00 **(after re-scoring)**, TU – **744**, XPN – **733**

Example #4
Consumer has 2 foreclosures with scores of
726, 732, 735
Co-borrower with no foreclosures
655, 696, 680

Example #5
Consumer with multiple bankruptcies filed within the same 2 years and within the last 36 months and multiple Fed Tax Liens and many collections and charged off accounts, but have the following scores:

EFX – **672,** XPN – **642**, TU – **636**
It just goes to show that everything is not what it appears!

Example#6-Six months history, higher then avg scores and no track record, consumer has 1 acct opened 12/99
EFX - last reported 08/00 - months reviewed - 8
XPN - last reported 05/00 - months reviewed - 6
TU - last reported 07/00 - months reviewed - 24

XPN – **700,** TU – **687**, EFX – **702**

INSURANCE CREDIT SCORES

Currently, 90 percent of property insurers use credit scoring as a determining factor in their approval process and as a means to derive rates. However, according to Consumer Reports, 70 percent of credit reports contain factual errors and 29 percent have at least one major miscalculation that could greatly tarnish an individual's ability to obtain reasonable insurance rates or cause them to be completely denied coverage.

Many insurance scores start with the base foundation of a "credit report" and either use the Fair Isaac foundation or similar variation created by Fair Isaac, which can and does vary based on each insurance company, so insurance scoring has many, many different variations.

Which bureau will the insurance company use? What happens if the bureaus return "file variations" on the same consumer? Will the insurance company use the lower score or the higher score? Who will know? Scores change almost daily and should not be a gamble based on the time of month you buy your home or the time of the month your insurance renews? A few points up or down could be the difference between preferred or standard rates or a flat out insurance rejection.

There has been "no" evidence presented in any hearing I have attended, participated in, or reviewed that shows a "correlation", but the insurance industry and scoring modelers just want us to believe that there is a correlation. Credit scores vary from insurance credit scores slightly, but the base data is still the credit file. While industry states that credit card balances are not a factor, but if those credit card balances carry a delinquency then it is a major factor. Insurance credit scores will still have "infected" scores based on "infected data" no matter how the insurance and modeling industry want to spin it.

RISK BASED PRICING

In today's information super highway world of automated evaluations, automated underwriting of insurance and mortgages these systems live and die on the use of credit scoring. The higher the credit scores the better the rates and terms and in many cases a point up or down could be the difference between getting your application accepted or rejected and many times it could be the difference between a prime or sub-prime loan, accept or referred mortgage, and preferred or mid-market pricing on auto and homeowners insurance. Many if not all mortgage rate sheets show rates and terms based on minimum score requirements. In many cases consumers can't even apply for certain types of "prime" mortgage loan programs without meeting the minimum score requirements. These minimum score requirements are set by a number of industry leaders from Fannie Mae, Freddie Mac, Prime lenders, and Sub-Prime lenders. So if a consumer has an infected score based on many factors that I have outlined in my prepared statement then consumers "credit risk" is also "infected".

Calculating a credit score and knowing the exact numeric number assigned before and after the removal of the infected data and/or reporting it correctly would be hard to judge. Based on all the different types of scoring models on the market today there is one clear cut foundational basis that I will use and that's the current status of the account.

I can conclude that having a "major" derogatory reported would have the most negative effect (drop in points) on an average credit score and the more recent the "major" derogatory the more the negative effect on a consumers credit score. This would create a false light, misrepresentation, or similar effect on consumers overall credit worthiness creating many, many loan denials and/or adverse action notices. Many consumers would be put in a sort of double jeopardy because many automated underwriting systems would first, deduct for a low credit score and second, would deduct and/or decline for the presence of a "major" derogatory item.

Decisions to deny credit may have more than one cause and usually do. For example, in some instances the inaccurate information and another factor may each, considered separately, be insufficient to have caused the denial of credit, but when taken together are sufficient. Accordingly, each may then be considered a substantial factor in bringing about the denial of credit.

ACCOUNT REVIEW – 1681b(3)(F)(ii)

The credit card industry's use of credit reports during the account review process is a crucial provision of the Fair Credit Reporting Act, which expires this year. Since 1996 amendments, this provision has barred states from enacting tougher versions of the federal law.

In many cases, that I'm called in as an expert I have discovered that the interest rates on many consumer credit cards have been increased tremendously and in some cases they have doubled and nearly tripled. In some cases the credit furnisher has decreased the consumers credit limits while at the same time increasing their interest rates. Most if not all credit card agreements now have built in small print that allows the companies to reset anyone's interest rate or change limits based on the layering of risk. Most credit card furnishers use a credit score that may or may not have been created by that credit card company or a spin off of the base Fico score. Most credit card companies check their customers' data regularly and many times monthly and if they detect lower scores the furnisher in many cases will raise their rates and decrease their limits even though they have never missed a payment with that furnisher.

Card companies say they are taking prudent action to increase the rates of cardholders who show signs of financial strain. They still look mainly at customers' payment records with them, they say,[4] but I would have to disagree strongly with that comment based on the cases I have reviewed and was called in as an expert on.

I strongly question the logic of resetting consumers rates during a consumers financial crisis and/or if the consumer is a victim of errors in their file. I truly believe it only puts them further into debt, which they can't afford and many times push them into bankruptcy.

PRIVACY

As noted above, the 1996 amendments to the FCRA sought to improve consumer report accuracy by placing a larger burden on credit furnishers to report information accurately. Many times furnishers utterly fail to meet their duties under the FCRA, indicating that the furnisher fails to adopt the necessary procedures to comply. Many times consumers dispute the information with both the CRA's, and with furnisher directly.

The sale to a collection agency by furnishers of inaccurate information about consumers is the kind of egregious invasions of privacy the FCRA was intended to prevent. These actions by furnishers in turn lead to additional, severe privacy invasions in the form of collection agencies calling and writing to consumers at work and at home. This type of invasion of privacy goes up tremendously when the consumer is a victim of identity theft where a number of furnishers and consumer reporting agencies believe that the victim is "guilty until they prove themselves innocent instead of innocent until proven guilty".

Again, a central purpose of the FCRA is to protect consumers by ensuring accuracy and giving individuals reasonable control over their personal information. Many furnishers, have websites with a frequently asked questions section like "Good Credit and How to Get There" along with many tips and hints on improving your credit record, challenging a blemish on your credit file, what to do if you have been turned down because of bad credit, and what factors contribute to your credit score. It is time for furnishers to be accountable for its multiple invasions of consumers' privacy.

CONCLUSION

In today's information super highway world many credit grantors use automated evaluations, which vary from lender to lender, and these automated systems live and die on the use of credit scoring. Consumers are judged within seconds based principally on a credit score. In many cases it's a PASS or FAIL decision, but if the consumer passes the score test many

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[4] New York Times "Surprise Jumps in Credit Rates Bring Scrutiny" May 29, 2003

credit grantors software have built in check and balance systems. These systems scan the credit file looking for bankruptcy's, charge off's, collection accounts, and other derogatory accounts and/or comments attached to tradelines and/or public records. The higher the credit score the better the rates and terms and in many cases a point up or down could be the difference between getting your application accepted or rejected.

Scores change almost daily and the American Dream of homeownership and the consumers right to obtain auto and homeowners insurance should not be a "gamble" based on the time of the month you buy a home, refinance your home, and the month your insurance renews. A few points up or down could make a big difference. No matter how industry spins it if you're a victim of identity theft the largest crime we have today, errors in your credit file, merging your file with someone with a common name, or your have multiple files with the same bureau, and the list goes on, you will still have an "infected" credit score which leads to higher rates and terms. It also leads to an increased credit risk for new lenders, lowering of consumers credit worthiness, and lowering the overall credit reputation harming both the consumer and the lender who lost a chance to make a good loan.

Scores are based on groups, but what if the consumer is placed into the wrong group based on errors within their credit file? The CFA/NCRA study [5] concluded that, 500,000 reports in a study, 1 in 3 consumers had point variations of 50+ points, 1 in 20 had 100+ point variations, but the average point variation was 43 per credit file. 1.6 million consumers (and growing) and may reach as many as 3 million consumers who may have this "included in bankruptcy" issue, which also affects the consumers credit score, credit worthiness, credit risk, and overall credit reputation.

RECOMMENDATIONS

Strengthen the FCRA by

1) Federal credit score disclosure by consumer reporting agencies
2) Allow CRA/resellers to participate in more types of credit transactions
3) Allow all CRA/resellers to perform to the standards set out by the FCRA and the FTC's consent order with Credco. No user and/or person that makes, participates in, or arranges extensions of credit for consumer purposes that are to be secured by a dwelling and that uses credit scores should deny "any" CRA/reseller from correcting

[5] http://www.ncrainc.org/documents/CFA%20NCRA%20Credit%20Score%20Report.pdf December 17, 2002 CFA/NCRA study

errors they see under their legal obligation when preparing a consumer report to the "maximum possible accuracy" and/or from doing a reinvestigation when the consumer brings errors to the attention of the CRA/reseller. The user and/or person that makes, participates in, or arranges extensions of credit "must" except the verified accurate report that meets the requirements under the FCRA of all CRA's.

4) Not allowing the GSE's and lenders to penalize consumers who don't fit into their "black box" of automated underwriting. Many times consumers have different credit tendencies then others, (i.e.) the self-employed, minorities, or consumers with errors in their credit file and they don't fit their perfect model.
5) Requiring the end-user and/or CRA/reseller, during the mortgage process that is to be secured by a dwelling and that uses credit scores and/or insurance credit scores for insurance underwriting, shall be required to provide to the consumer a copy of the users consumer report and/or credit report, credit score, or insurance credit score within 5 business days after such use
6) Requiring all credit furnishers to use the new Metro II format
7) Requiring all users, and any person that makes, participates in, or arranges extensions of credit for consumer purposes to give consumer's adverse action notice when they have taken action that is adverse to the interest of the consumer.
8) Not allowing credit card vendors to raise consumers' interest rates when there is higher layering of credit risk. Instead just suspend the consumers credit privileges until they meet the furnishers base requirements again.
9) Requiring all repositories to apply more safeguards, appoint a task force to check that new safeguards are in place when receiving credit data from their credit furnishers.
10) Enforce the requirement that all CRA's provide furnishers with the documentation provided by the consumer.
11) Require all furnishers to respond to disputes on behalf of consumers through resellers
12) Have the three national repositories work together with the CRA/resellers as a "team" to help correct the errors within the consumers credit file since both industries have the same legal liability under the FCRA. At no cost to the reseller and/or consumer.

I thank you, Mr. Chairman, for this opportunity to testify and present my views and the views of AAA American Credit Bureau. I will be happy to answer any questions you may have.

EXHIBIT A

washingtonpost.com

Bad FICO Mark? Rescore Your Credit

By Kenneth R. Harney

Saturday, July 14, 2001; Page H01

First of two articles

You've probably heard that American mortgage applicants now have ready access to those once-secret, triple-digit numbers that pigeonhole them as good financial risks or bad -- their credit scores.

But you might not have heard of a fast-growing service that can dramatically improve your loan prospects almost overnight: "rapid rescoring." This is a service now offered by dozens of local credit-reporting agencies around the country; it allows mortgage loan officers to request a rescoring of applicants' credit files at each of the three giant credit repositories -- Equifax, Experian and Trans Union.

At the request of the loan officer, a local credit-reporting agency analyzes an applicant's files, obtains written corrections from creditors of any mistaken information in the files, and advises the applicant on how to restructure certain open credit lines to raise credit scores. Sometimes scores can be boosted by 40 to 100 points or more in less than a week -- all fully within the law and with the cooperation of the credit repositories themselves.

With a higher score, borrowers may qualify for lower mortgage rates, lower loan fees and better terms overall. Corrective rescoring can save consumers tens of thousands of dollars in long-term debt, and alert them to negative information sitting in their credit files.

Consider the case of Alexandria C. Phillips, a lawyer who lives near Los Angeles. She recently sought to refinance a condominium she owns in Newport Beach and to buy a new house in Laguna Beach. Her idea was to pull money out of the condo and use it to help with the down payment on the house.

When she applied for mortgage money through a local broker, however, she was told that her "credit scores don't look too good." Phillips was tied up with a heavy courtroom schedule and didn't ask what her scores were or why they were low. She asked the broker to get the best terms she could get under the circumstances to buy the house and refi the condo.

The credit scores the broker referred to were "FICO" scores, the predominant quick-reference credit-analysis tool used by mortgage lenders, credit card issuers and others. FICO stands for Fair, Isaac and Co., the developer of the scoring models that ranks applicants in terms of their relative likelihood to pay their debts on time.

FICO scores are generated by proprietary computer programs licensed by Fair, Isaac and housed at Equifax, Experian and Trans Union. Individuals' full, electronic credit files are run through the software and evaluated for risk patterns by the statistical models. Though long kept secret from consumers by contractual requirements, FICO scores are now easy to obtain. Fair, Isaac and Equifax provide them on the Internet for a nominal charge (www.myfico.com), and the other repositories provide proprietary-scoring advisory information as well.

In Phillips's case, her scores when pulled on May 23 were 597 (Experian), 569 (Trans Union) and 580 (Equifax). Scores at the three repositories usually differ because of different creditor information in their files.

Phillips's scores were, in a word, horrible. To qualify for the best loan quotes, borrowers generally need scores of 700 or better. Scores under 620 are "sub-prime" -- and produce significantly higher quotes on interest rates and fees. Phillips's broker referred her application to a lender specializing in sub-prime, damaged-credit mortgages. The lender, in turn, sent Phillips's files to one of the country's most prominent rescoring experts, Richard Lefebvre, president of AAA American Credit Bureau in Flagstaff, Ariz.

Lefebvre immediately began checking out the negatives ("derogatories" in credit lingo) in Phillips's file. One by one, with Phillips's help, the derogatories turned out to be long-standing errors on her credit files: an incorrect report of a delinquent payment on a credit card; a Mercedes listed as "repossessed" in her file that actually belonged to someone else; an incorrectly listed "collection" action against her for $1,054 in 1995. After requests from Lefebvre, all were corrected by fax and sent directly to the repositories.

Lefebvre also noticed that Phillips routinely put bills from her law office onto several credit cards. But the balances outstanding when the FICO scores were pulled were nearly at the limit on the cards. High credit balances relative to card limits are a major no-no for FICO scores: When your limit is $10,000 and you've got a $9,800 balance, your score takes a hit. So Lefebvre had Phillips pay off or redistribute balances so that no card or credit line had a balance near the limit.

The result? Within five days, Phillips's FICO scores jumped 200 points -- taking her from a 580 to a 780, and from a high-risk mortgage applicant to an A-plus cream puff.

Next week: Rescoring dos and don'ts.

Harney's e-mail address is kenharney@aol.com.

EXHIBIT B

AAA CREDIT SCORE!

Please be advised that your client: **FLINTSTONE, FRED and FLINTSTONE, WILMA**
(report #49197) is a Candidate for ADVS/CDVS and may have their Fico score Recalculated

The overall AAA Credit Score is: POOR
(excellent, good, fair, poor, fail)

ADVS (B) score is: **91** **and is a: A** on our *"ADVS"* grading system.
CDVS (B) score is: **79** **and is a: C** on our *"CDVS"* grading system.
ADVS (CB) score is: **57** **and is a: F** on our *"ADVS"* grading system.
CDVS (CB) score is: **63** **and is a: D** on our *"CDVS"* grading system.

The Breakdown between Borrower and Co-Borrower per Bureau for ADVS is as follows:

XPN"B": **HIGH** XPN "CB": **LOW**
TU "B": **MED** TU "CB": **MED**
EFX "B": **HIGH** EFX "CB": **LOW**

The following are reason codes for our AAA Credit Scoring model & ADVS/CDVS grading system:

A: Last reporting dates differ by standard on Rev/Opn
B: Last reporting dates differ by standard on all acct's
C: Known creditors, that effect a consumers Fico scores and meets standard
D: Credit limits on Rev/Opn acct's differ by standard
H: Paying record differs by more than standard and late's within guidelines
J: ECOA codes that meet standard
L: Consumers have BK tradeline and meet standard on trade lines
M: Trade lines show past due status and meet standard
N: Consumers don't show Bankruptcy in PB and differs by standard
Q: Consumers have more file var's than standard
T: Rev/Opn acct's above standard and balance ratio above standard

REMEMBER: *Our AAA Credit Score model and ADVS/CDVS grading system does not take into consideration error's that our AAA scoring model can't see or does not know are inaccurate without the help of the consumer. Our scoring model is designed to provide Mortgage Lenders and Consumers a way to check the accuracy of the Fico score and determine what if anything needs to be done on behalf of your consumer. While this score is to be used only as a "GUIDE" only to test the validity of the Fico score. Please keep in mind "WE CAN NOT" predict the final outcome of your consumers Fico score due to "FAIR ISAAC'S" proprietary practices.*

TESTIMONY OF DAVID C.LIZARRAGA, CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF THE EAST LOS ANGELES COMMUNITY UNION (TELACU) BEFORE THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT ON JUNE 4, 2003

Good morning Mr. Chairman and Members of the Subcommittee, I am David C. Lizarraga. I am the Chairman and CEO of The East Los Angeles Community Union (TELACU), a Los Angeles based non-profit community development corporation founded in 1968. I have led this organization for nearly thirty years. TELACU has become one of the nation's largest community development corporations with more than $350 million in assets. We are now the largest Hispanic company in Los Angeles County, the fourth largest in California and the 22nd largest in the nation.

TELACU was born out of a community's deep desire to improve the lives of its people.

In the 1960's, East Los Angeles was abandoned by the major companies that had for generations been the lifeblood of the community. Our community fell into a devastating economic decline. The greatest toll, however, was human, not economic. As a young man walking the streets of my neighborhood I saw much more than empty buildings. I saw despair on the faces of parents who had lost the means to provide for their families and who held out little hope for the future for their children. This despair in our neighborhoods brought together a dedicated group of community leaders to form TELACU. Our challenges were great but our approach was straightforward: to provide people with the tools for self-sufficiency and with the opportunities to use those tools

TELACU's successful strategy is implemented through its wholly owned for-profit subsidiary, TELACU Industries, which provides the economic means to fulfill TELACU's mission. Through its businesses, services and partnerships, TELACU creates dynamic opportunities to rebuild and enhance the communities it serves. TELACU's mission of providing greater opportunities continues to be realized through the creation of new jobs, responsive financial institutions, expanding businesses, quality affordable housing, and educational opportunities for young people and veterans. TELACU brings together the private and public sectors in profitable business ventures that fulfill TELACU's mission. Each of our main divisions and subsidiaries is designed and managed to maximize our continued financial strength while optimizing our ability to benefit our communities.

From the building of hundreds of quality, affordable homes, to the creation of thousands of quality jobs, to the lending of millions of dollars to families and small businesses, our business philosophy is inseparable from our social philosophy. There is no more viable business venture than one that is economically sound, enhances the community, and positively impacts people's lives. That is the TELACU approach.

The refusal of credit to those in traditionally underserved communities had locked businesses, families and neighborhoods in our communities into financial stagnation that has lasted for generations. In 1976, to begin reversing this trend, TELACU chartered its own bank. Community Commerce Bank, a Community Development Financial Institution, was designed for the expressed purpose of serving the credit needs of people in our neighborhoods and communities. I am honored to serve as Chairman of the Board of Directors for our bank. Community Commerce Bank offers FDIC-insured Statement and Term accounts, and uses these deposits to make loans to families and small business owners. With experienced management and a dedicated staff, the bank has extended its services to communities in need with branches throughout California. The success of our bank is a testament to the viability of inner city lending. Since 1976, we have loaned \$1.5 billion to our previously "un-banked" customers. For example, in 1996, we took a chance on a local Hispanic realtor, with limited credit and assets, and made him a loan to purchase and rehabilitate a house that had been foreclosed upon by HUD. This businessman restored the property, which was located in a low-income neighborhood, and re-sold it. Over the years we have made 35 loans to this individual for approximately \$3 million, all of which were to rehabilitate properties. These loans not only helped increase this man's standing in the community, as well as his personal wealth and stability, they also put 35 affordable homes back into the severely limited housing market of Los Angeles.

Community Commerce Bank is one of the most successful and profitable financial institutions of its kind in the nation. Currently, we lend approximately \$10 million per month with the majority of that lending volume in low income and minority neighborhoods. While some banks struggle to meet their community reinvestment commitments, Community Commerce Bank remains a dependable financial partner in the low income and minority communities we serve.

Our bank primarily provides real estate loans from five locations in the Los Angeles area as well as our locations in San Diego, Oakland and Sacramento. Our main branch and administrative offices are located in the heart of East Los Angeles. The communities we serve often require that our loan underwriting be non-traditional. But we are highly profitable, we have an enviable delinquency rate, we are highly rated by our state and federal regulators, and we have been recognized by the U.S. Small Business Administration as one of the best small business lenders.

The services of our bank are available to all of our local customers – white, black, Asian and Hispanic. But our focus is on the low income and minority neighborhoods in our communities and our original customer base and the great majority of our current minority customer base is Hispanic. We in the banking industry recognize that, as the baby-boomers reach age 65 and beyond, they are less likely to use consumer credit than younger consumers who are forming families and furnishing their homes. As this occurs, financial institutions will have to recognize that credit programs reaching the fast growing young Hispanic population in this country will be necessary. The U.S. native and non-native Hispanic population is expected to reach 53 million by 2020. Hispanics under the age of 18 will account for much of that growth. Currently, 16 percent of all residents under the age of 18 are Hispanic, but 22 percent of our 18-year olds in 2020 will be Hispanic. By 2020, the median age of Hispanics will be 28.8, versus 37.6 for the total population. When one adds the residents of Puerto Rico to the U.S. population count, the Hispanic community represents 42.6 million people. The annual purchasing power of Hispanics in the United States, including Puerto Rico, is now estimated to be $630 billion. In today's U.S. civilian labor force, including Puerto Rico, Hispanics are the second largest segment and also represent 10.3 percent of the private sector workforce. According to a 2001 report, Hispanic-owned firms now account for nearly 6 percent of all businesses in the United States.

Because the growth of the U.S. Hispanic population is surging in most states and regions, it is essential to the future growth and productivity of our nation that credit and other financial services be available everywhere in the U.S. to this fast growing portion of our population

The consumer credit reporting industry is a $6 billion industry that provides information about consumers to a wide variety of businesses everywhere in the United States. The service this industry provides is essential to our bank, to the entire financial services industry and to most businesses and nearly all consumers.

Accurate data and information are essential for robust competition in the marketplace. That's one reason that consumer advocates and community development financial institutions like ours argue on behalf of accurate information in credit reporting. It is also a reason we work hard to educate consumers – so that they can take advantage of their rights to ensure accuracy in what is collected and reported about them and to proscribe with whom it is shared. But it is also a reason for advocates of market driven opportunities and solutions, like me, to support laws requiring businesses to collect and use only accurate information about consumers and to protect that information from improper use.

This can be particularly important to low-income and minority consumers. Accurate credit data collection and reporting can help non-traditional borrowers overcome barriers that have artificially constrained economic growth in minority neighborhoods. If a non-traditional borrower retains a satisfactory credit record that is properly reported, it will be much more difficult for a lender or business to defend a decision to deny credit. For instance, a case has been made that the availability of reliable, accurate and standardized credit data has contributed to the rapid increase in the availability of bankcard credit to low income and minority consumers in recent years.

One of the major goals of the Fair Credit Reporting Act (FCRA) has been to promote accuracy in credit reporting by Credit Reporting Agencies (CRAs). The 1996 amendments to FCRA made substantial improvements in this area. These amendments were quite favorable to the interests of consumers. Obtaining or using consumer credit reports without a purpose authorized by FCRA is now prohibited. Also, businesses that get reports from CRAs for the purpose of reselling the information are now required to certify to the CRA the identity and permissible purpose of each person or entity to which the reports are resold; and as of July 1st of this year, consumers will have the opportunity to "opt-out" of some of this information reselling. Creditors who furnish information to CRAs now must provide accurate information. Creditors must now inform CRAs when a consumer voluntarily elects to close a credit account. Creditors also must now investigate information when notified by a CRA that a consumer has disputed information provided by the creditor. The results of this investigation must be reported back to the CRA within 30 days. If the creditor's investigation reveals that the information was incomplete or inaccurate, the creditor must also report these results to all other CRAs to which it has provided this information. When a consumer requests to see the contents of his file and provides proper identification, CRAs are now required to provide the consumer with copies of all information contained in the file, including the sources of that information. CRAs also must inform the consumer of all persons or businesses who have obtained reports regarding this consumer within the past year (or the past two years, if obtained for employment purposes). Various additional requirements for informing consumers of their rights and to inform regular users of credit reports of their responsibilities were also placed on CRAs. Additional amendments further addressed the accuracy of the information contained in consumer reports.

Despite these amendments, the Federal Trade Commission noted in 2002 that complaints about credit reports are still one of the most common consumer complaints the agency receives, with the largest number of complaints still relating to accuracy. The Congress should take appropriate measures to ensure greater accuracy in credit reports, including vigorous oversight and regulatory enforcement. Additionally, public and private support for consumer education can help ensure increased accuracy. But problems are not always related to accuracy. It is sometimes how reports are used, not the credit reports themselves which is the problem.

You are no doubt aware, Mr. Chairman, of recent revelations in the auto finance industry. Class actions against the major automobile lenders have revealed significant involvement in the practice of loan-arrangement fees. When a dealer sends a customer's credit history to a lender, the lender responds telling the dealer the interest rate for the loan. This rate reflects all of the risks and credit history of the borrower. Lenders typically allow the dealership to mark up the rate if they can – in some cases by as much as five percentage points. The dealer and the lender share in the additional profit from the higher interest rate. In some of these cases, the dealer's profit from marking up a loan can be comparable to the profit from selling the car. These markups have been disproportionately applied to minority borrowers. More than half of one auto manufacturer's white borrowers paid no markup at all, while more than half of its black customers paid an arrangement fee above $750. This manufacturer settled a class action case with a promise to put a two-point cap on the markup of most long-term loans. Again, however, it is important to note that these inflated rates are not risk-based. The markup is above and beyond the risk-adjusted rate that the lender sets on the basis of the borrower's credit history.

Finally, Mr. Chairman, let me say a word about common national standards for credit reporting. The provision of FCRA that makes the federal standard preeminent expires on January 1st of next year. I support a common national standard, Mr. Chairman. But by that I do not mean a standard pegged to the lowest common denominator. I appreciated the 1996 amendments to FCRA that extended additional, nationwide protections to consumers. I believe those protections benefited the financial services industry as well. But I know from our own experience in California that a hodgepodge of local standards can interfere with the good lending that we do at TELACU and Community Commerce Bank. Under Gramm-Leach-Bliley, we have had a number of attempts at local privacy standards in jurisdictions we serve across California. A proliferation of such local fair credit reporting standards would create difficulties for our highly regarded lending to low income and minority borrowers in Los Angeles, Orange County, San Diego, Oakland and Sacramento. So I would argue for a vigorously enforced federal standard with appropriate oversight from this Committee and the Congress. I believe such a federal standard serves our bank well but more importantly, serves our customers well.

And so, Mr. Chairman, while not all players in the business community, the financial services industry and the consumer credit reporting industry have always treated their low-income and minority customers in the way we always try to treat our customers at TELACU and Community Commerce Bank, I believe that the FCRA has helped advance the kind of lending and credit opportunities that we have worked so hard to make available in our communities. I strongly urge its reauthorization.

Testimony of the U.S. Public Interest Research Group
Edmund Mierzwinski
Consumer Program Director

Concerning Errors In Credit Reports, The Rise of Identity Theft and the Need to Restore States' Rights to Protect Their Citizens at a Hearing Entitled:

The Fair Credit Reporting Act (FCRA): How It Functions For Consumers and the Economy

Before the Subcommittee on Financial Institutions
U.S. House of Representatives
Honorable Spencer Bachus, Chair

4 June 2003

Chairman Bachus, Representative Sanders, members of the subcommittee. On behalf of the non-profit, non-partisan state-based Public Interest Research Groups, U.S. PIRG is pleased to offer you this testimony on the impact of the Fair Credit Reporting Act (FCRA), and its temporary 1996 partial preemption provision, on consumers and the credit system.

Summary

We appreciate the opportunity to provide our views. By way of introduction, since 1989, when Congress began review of the adequacy of the 1970 FCRA, U.S. PIRG and the state PIRGs have been active participants in the reform process and have conducted research and advocacy projects on issues ranging from credit reporting accuracy to identity theft.

I want to say at the outset that the FCRA is an important consumer protection and privacy law. It plays a critical role in helping consumers obtain opportunities in the marketplace. Yet, despite the 1996 attempts to update the law to improve it, the law still suffers from numerous problems, including a lack of agency enforcement, limits on private enforcement, an utter disdain for compliance by many creditors that furnish information to credit bureaus, the failure by the consumer reporting industry to maintain adequate accuracy standards, and the disconnect in the credit granting process that has led to the identity theft epidemic.

Although it is not these problems that first brought the FCRA to your attention this year, I hope to work with you on solutions to them. Errors in credit reports have profound effects on consumer economic opportunities. Identity theft is rampant in our society and only getting worse. Positive changes to the FCRA, including reinstatement of states' rights, can mitigate these problems without causing the dire consequences threatened by industry lobbyists.

Our complex national credit system, which relies on interrelationships between and among furnishers of information (creditors), consumer reporting agencies (credit bureaus) and numerous other information providers, secondary market players and, finally, consumers, was not created by the temporary 1996 preemption compromise to the FCRA and will not be destroyed by letting it expire.

This year, financial industry lobbyists have come to Congress urging you to extend that temporary preemption provision. Instead, we strongly recommend that you let the preemption expire, as Congress clearly intended in 1996. Letting the preemption expire will fully restore the FCRA's original 1970 provision making federal law a floor and allowing states to protect their citizens better. The FCRA worked well before 1996, as the testimony of the Vermont Attorney General's office and other consumer witnesses has made clear today.

We commend you for rejecting industry's request to simply and quickly extend preemption without debate. Instead you have convened this important series of fact-finding hearings to help you determine how to "put the FAIR back in Fair Credit Reporting."

Industry's lobbying campaign urging you to simply extend the temporary preemption is merely an attempt to preserve the unacceptable status quo.

-- Is a status quo that has led to an increasing number of identity theft complaints in each of the past three years, with identity theft complaints leading all consumer complaints to the Federal Trade Commission (FTC) in 2000, 2001 and 2002 and doubling in 2002, a status quo worth preserving?

-- And is a status quo that leaves many consumers paying too much for credit, or being denied credit, jobs, insurance, an apartment or a home or even the right to cash a check, use a debit card or open a bank account worth preserving?

-- And is a status quo that has allowed some of the largest financial industry players to intentionally misrepresent consumer credit data -- so that their customer's credit scores will be artificially deflated and they become captive consumers who cannot shop around -- worth preserving? Further, I urge the committee to ask: Is this industry chicanery a factor causing some consumers to have their credit card rates re-priced to 25% APR penalty rates when their credit scores are calculated during FCRA-allowed account reviews, as the New York Times suggested in a front page story last week?[1]

-- And is a status quo that results in consumers being burdened by excessive credit card debt, fueled by a system that has resulted in 5 billion credit card solicitations mailed each year, without adequate disclosure of a weak, overly complex opt-out right, worth preserving?

-- And is a status quo where consumers still face what we called in 1992 "the nightmare on credit street," where creditors and credit bureaus blame each other and ultimately don't fix errors because neither faces adequate liability, worth preserving?

Of course not. We believe that after this commendable series of fact-finding hearings is completed, you will agree with consumer groups, privacy advocates and state attorneys general that the act needs a major overhaul. But your significant challenge is to see through the industry's increasingly transparent strategy of denying all problems yet agreeing, while kicking and screaming, to accept modest, token improvements as long as it ultimately gets what it wants—extension of the state preemption.

Your challenge is to reject industry's facile, well-funded propaganda campaign and require industry to make a strong business case why the several states should continue to be denied the right to enact stronger laws in the future. So far, they've shown nothing to convince any reasonable participant in the process that the status quo is worth preserving.

Instead of relying on facts, the industry's slick campaign is based on deceptive, but repetitive, use of the terms "reauthorization," "free flow of information" and "uniformity."

- First, industry lobbyists and advertisements repeat incessantly that the "FCRA itself must be re-authorized," as if this **optional Congressional action** were somehow a mandatory reauthorization of a law that faces a Congressional sunset. But industry's argument is false on face. Only the temporary, partial, preemption expires, not the underlying FCRA. If Congress does nothing, the FCRA remains in force.
- Second, industry argues that we have uniform credit laws, allegedly thanks to the 1996 temporary FCRA preemption. Actually, the preemption froze certain aspects of state laws in 1996, but several state laws were grandfathered in after those states enacted FCRA reforms quickly – while Congress stalled despite numerous complaints of credit reporting errors. These states – including the biggest state, California, as well as

Massachusetts and Vermont – maintain stronger, non-uniform laws than the rest of the country. These states have not been balkanized; their citizens have not been deprived of economic opportunity. Law professor Joel Reidenberg, in testimony before this committee last month, provided record evidence that the opposite may be true: California, Massachusetts and Vermont citizens appear better off, not worse off, despite their stronger FCRA laws.

- Third, industry argues that stronger state laws threaten the free flow of information. Industry goes on to threaten that enactment of stronger state laws will cause companies to drop from the credit reporting system, decreasing its value for all participants. Actually, according to recent studies by both the Federal Reserve Board and the Consumer Federation of America and the National Credit Reporting Association,[2] many banks and other creditors are already intentionally decreasing the value of the free flow of information in the credit reporting system and hurting their consumer customers by failing to completely report their customer's positive credit records, in a purposeful and successful, if facile, effort to deflate their credit scores and prevent them from taking advantage of credit opportunities.
- Finally, industry lobbyists and ads allege that the temporary 1996 FCRA preemption provision is the engine that drives our economic trains. We had a national credit reporting system before 1996 and it worked well. Industry's claim that eliminating the temporary 1996 FCRA preemption provision will jeopardize that system is without foundation.

1. The states are our best hope for reform, not a threat:

Best Solutions Coming From The States: For the last eight years the Congress has done nothing substantive to address the growing problems of identity theft other than to criminalize it. Criminalization hasn't worked, yet industry has stymied Congress from enacting bills such as the proposal by Reps. Hooley and LaTourette and others to improve the situation.

To fill this gap, the best solutions to identity theft and credit reporting errors – those solutions being adopted nationwide by industry on an allegedly "voluntary" basis or being considered by the Congress – come from the several states, acting in areas of the FCRA where their rights were not curtailed. Restoration of their full rights to act will not result in balkanization of our financial laws; instead, it will result in even more rapid nationwide improvements to the serious problems consumers face when their identities are stolen or their credit records are garbled.

We generally agree with industry that a uniform national law would be the most efficient, provided it is adequate. But the best way to get to **adequate uniformity** is to retain states' rights. Congress has not demonstrated a propensity for enacting uniform consumer protection laws that are adequate, except when driven by the threat of state actions. Taking away states' rights will result in enactment of a weak federal law that won't protect consumers. It won't even preserve what industry refers to as the "free flow of information," which is already under assault by some of the biggest banks. If Congress fails to solve the problem, or new problems arise, the states can act more quickly to resolve the problem and provide a template for additional federal action by the Congress.

Retaining states' right to enact stronger laws is the best way to guarantee an eventual strong uniform federal law. The states are rational actors; they will not act to balkanize our financial system. Instead, they will respond to new threats with new and innovative ideas, which will be eventually be adopted by other states. The notion of 50 different, conflicting laws is absurd and not even worth debate.

In the area of consumer protection, without ideas from the states, typically the only way the inertia of Congress is ever overcome is by a stark crisis – such as Enron. Remember, the Enron fiasco wasn't even enough to guarantee passage of last year's Sarbanes-Oxley corporate reforms—we had to wait for Worldcom.

From a public policy point of view, it makes more sense to allow the states to partner with the Congress in developing adequate uniform laws, than to wait for another Enron-Worldcom crisis.

In areas where the states are not preempted, the states have been leaders. States are currently allowed to act in several areas, including: to restrict the uses of credit reports (such as ban insurance uses of credit scoring); to lower the price of or require free credit reports on request; to impose minimum statutory damage penalties for violations; to fight identity theft. This spring, Visa prominently announced it would "voluntarily" truncate credit card numbers on receipts to stop credit card fraud. Voluntary decision? Not really. Ohio and California had already enacted and were implementing laws requiring this action. Several other states are in the process of enacting such a law. Now that Visa has complied nationally with several state laws, we expect this proposal – which came from the states, to be quickly enacted in Congress.

U.S. PIRG: Examples of Some State Consumer Credit and Identity Theft Laws[3]
Arrest, Conviction, and Bankruptcy Records.
Kentucky: CRAs may not maintain information concerning criminal charges unless the charge results in a conviction. Ky. Rev. Stat. Ann. § 431.350. Massachusetts: CRAs may not maintain arrest records more than seven years old. Mass. Gen. Laws Ann. Ch. 93 § 53. New Mexico, Kansas, and Montana: Criminal data must be purged from the report after seven years, bankruptcies must be purged after 14. N.M. Stat. Ann. § 56-3-1; Kan. Stat. Ann. §§ 50-701 to 50-722; Mont. Code Ann. §§ 31-3-101 to 31-3-153.
Cost of Reports.
Georgia: Individuals are entitled to two free credit reports from each national credit reporting agency. Ga. Code Ann. § 10-1-392. Colorado, Maryland, Massachusetts, New Jersey, and Vermont: Individuals are entitled to a free credit report once a year. Col. Rev. Stat. 12-14.3-101; Md. Comm. Law Code Ann. § 14-1209; Mass. Gen. Laws Ann. Ch. 93; N.J. Stat. Ann. 56:11-29; Vt. Stat. Ann 2480b. Connecticut: Credit reports are $5. Conn. Gen. Stat. Ann. § 36a-699a. Minnesota: Caps the cost of credit reports at $8.
Credit Scores.
California: CRAs must furnish credit scores to individuals for a reasonable fee. Cal. Civil Code 1785.10. Colorado: Businesses using credit scores for underwriting must provide notice to the consumer. Colo. Rev. Stat. §§ 12-14.3-101-12.14.3-109. Connecticut: Consumers must receive report within five days of receipt of the request; report must include all information in the file, including any credit score. Conn. Gen. Stat. §§ 36a-695 to 36a-699e. Idaho: Prohibits insurers from raising rates, denying coverage, or canceling a policy primarily based on a credit rating or credit history. Idaho Code § 41-1843. Vermont: Credit scores or predictors must be provided to the individual with the report. Vt. Stat. Ann. Tit. 9.
Duties on Users of Reports.
California: Individuals may receive a free copy of their credit report when it is requested by an employer. Cal. Civil Code 1785.20.5. Utah: Credit grantors must notify consumers when negative information is furnished to a CRA. Utah Code Ann. 70C-7-107.
Investigative Consumer Reports.
Arizona: Sources of investigative consumer reports must be furnished to the individual upon request.

Investigative agency must also comply with shortened time periods to address inaccuracies and must delete inaccuracies if the information cannot be verified. Ariz. Rev. Stat. § 44-1693(A)(4). California: Investigative consumer reporting agencies must allow individuals to visually inspect files. Employers must furnish copies of the report to employees. Cal. Civil Code 1786. New Hampshire: Investigative companies must provide names and sources used when compiling an investigative consumer report. N.H. Rev. Stat. Ann. § 359-B.
Notice to Consumers.
Colorado: CRAs must notify individuals where there have been three inquiries on the report within one year or where adverse information is added to the report. Col. Rev. Stat. 12-14.3-101.
Sale of Personal Information:
California: Credit card issuers must give notice and an opportunity to opt-out when they sell customer information. Cal. Civil Code 1748.12. Connecticut: Selling the names from credit card purchases is prohibited. Conn. Gen. Stat. Ann § 42-133gg. Maryland: It is illegal to disclose ATM or credit card numbers Md. Com. Law Code Ann. § 14-1401. Vermont: Credit reports can only be used for purposes consented to by the customer, and cannot be used for affiliate sharing without consent. Vt. Stat. Ann. Tit. 9.
Use of Medical Information.
Florida: An individual must be informed when genetic information was used to deny an opportunity. Fla. Stat. Ann. § 760.40.

(2) How The Preemption Provisions Have Made Matters Worse For Consumers

In 1996, Congress preempted states from acting in several areas of the FCRA, for 8 years, although it grandfathered in several stronger state laws and rejected complete uniformity. In each of these areas, consumer protection or privacy has suffered.

(a) Preemption of Affiliate Sharing

The 1996 amendments created a new exception to the definition of credit report for the sharing of information among corporate affiliates. The intent of Congress was narrow: it was to ensure that basic affiliate sharing by a company did not trigger the responsibilities of a credit bureau.

Much of the debate over financial privacy has been over opt-in and opt-out. Yet, many observers are unaware that the primary protection of Gramm-Leach-Bliley is provided by notice. Unlike the Fair Credit Reporting Act, which is based broadly on the Fair Information Practices, GLB is largely a notice statute. Notice is not enough. Consumers need the right to choose, the right to review their views and dispute errors all the other protections provided by the FIPs.

Under GLB, most sharing, including sharing of experience and transaction information with both affiliates and third parties providing joint marketing services, is under a no-opt regime. Consumers do not have the right to opt-out except in the circumstance of sharing with other third parties, primarily telemarketers selling non-financial services. Even Congressional Research Service reports have misunderstood the limited opt-out provisions of GLB[4]. Industry documents and materials claim the debate is over opt-out or opt-in. Actually, the vast bulk of industry has yet to agree that opt-outs are acceptable—they are actually for no-opt.

The failure of the GLBA to require any form of consumer consent for the vast majority of information sharing transactions affected is one example of how GLBA – unlike the FCRA -- fails to meet the Fair Information Practices[5].

Problem: Industry has used confusion between the preemptive effect of this narrow exception and a contrasting pro-state's rights provision of the 1999 Gramm-Leach-Bliley Financial Services Modernization Act to chill efforts to enact stronger state and local financial privacy laws. If industry's interpretation were true, then the clear states' rights provision of GLB would have no meaning. Nevertheless, industry has mounted a fierce lobbying campaign against stronger state financial privacy laws and has sued to overturn local financial privacy ordinances in San Mateo and Daly City, California. Expiration of the preemption will help, but the Congress could also clarify that the only effect of the FCRA affiliate sharing exception and its relationship to GLB is to prevent affiliate sharing from triggering the duties of credit bureaus, not to stymie state efforts to improve financial privacy.

(b) Preemption of all matters related to pre-screened credit card solicitations
Industry mails 5 billion credit card solicitations each year. Pre-screened mailings are generated from credit reports. These mailings contribute to massive credit card debt that may lead to financial problems or even bankruptcy. Pre-screened solicitations are also easy prey for identity thieves who steal your mail. Privacy protections provided are weak at best.

Problems:
(A) The 1996 amendments defined a so-called "firm offer of credit" not as a pre-approval to get credit, only pre-approval to receive an offer. Companies are allowed to review, or "post-screen," an applicant's credit report again and reject them for the prominently advertised "low-APR, high credit limit" card and make a less-favorable bait-and-switch offer following the post-screen, without giving consumers an adverse action notice.
(B) In return for this codification of an existing 1991 Federal Financial Institutions Examination Council (FFIEC) rule allowing the so-called firm offer of credit, Congress in 1996 added a modest opt-out privacy right to the FCRA, but failed to require any disclosure rules. The FCRA opt-out has no prominence or express language requirements. Here is a typical sentence from the middle of a long paragraph of a small print disclosure on the back of one of the pages in a credit card solicitation.

> "You have the right to prohibit information contained in your credit file with any credit bureau from being used in connection with any credit transaction that you do not initiate."

Fair Credit Reporting Act Notice: Information contained in a credit bureau report received from a credit reporting agency was used by us in connection with this offer of credit. You received this offer because that report indicated that you satisfied certain criteria for credit worthiness used to select consumers for this offer. The credit may not be extended or you may be offered an alternative credit product if, after you respond to this offer, we determine; that the credit bureau was incorrect; that you no longer meet the criteria used to select you for this offer; or that, based upon information provided in your request for credit, you do not meet other criteria bearing on credit worthiness we have established for this offer. You have the right to prohibit the use of information contained in your credit file with any credit reporting agency for all future credit transactions that are not initiated by you. You may exercise this right by calling 1-888-567-8688 or by writing these agencies: Experian Target Marketing, P.O. Box 919, 701 Experian Parkway B2, Allen, TX 75013; Equifax Options, P.O. Box 740123, Atlanta, GA 30374-0123; Trans Union,LLC, Attn: Marketing Opt Out, P.O. Box 97328, Jackson, MS 39288-7328; Innovis Data Solutions, PO Box 219297, Houston, TX 77218-9297.

That sentence, in case you were wondering, gives you the right to opt-out of, or say no, to the "privilege" of having your credit report used to generate your share of 5 billion credit card solicitations mailed annually. An actual size copy of the full disclosure is reproduced here. The entire page it appears on consists of similar condensed print describing rights and disclaimers.

(C) Problems With The Opt-Out Process: The Congress in 1996 required the credit bureaus to establish a 1-telephone number shared opt-out system. Note that the disclosure goes on to first offer you the names and addresses of each credit bureau, despite the shared 1-call opt-out requirement. The phone number eventually follows the list of addresses. It gets worse.

At the behest of the Direct Marketing Association and creditors, the Congress made the opt-out more complex than even this. Congress established a two-tiered opt-out. If you opt-out by phone, your opt-out is only good for two years. How does the joint 1-call opt-out system handle this? Poorly, and to the advantage of the bureaus. Your first choice, "option 1" is only a two year opt-out. If you select that immediately, you don't even hear about "Option 2," the permanent opt-out. If you do manage to get to "Option 2," the permanent opt-out, it takes your information, then tells you that you must wait and receive a "notice of election" in the mail, sign it and return it. So a consumer who desires to exercise a permanent opt-out right must first decipher an unintelligible, hidden notice, then make a telephone call, push a number of buttons, provide his or her Social Security Number (many consumers hang up at this point thinking the phone number is a scam to steal identities), wait to receive a form in the mail and remember to return it. This is consumer protection?

(D) Pre-screening opt-out doesn't block affiliate-related credit card marketing: Worse, the pre-screening opt-out doesn't stop the flow of credit card solicitations, it only slows it down. Now, many retailers, airlines, organizations and others routinely send credit card solicitations to their customers. Yet, these offers are based on affiliate sharing -- under the Gramm-Leach-Bliley Act, not the FCRA. No credit report was used for pre-screening, so no opt-out is provided on the mailings. Under Gramm-Leach-Bliley, affiliate sharing of "experience and transaction" information is subject to a no-opt rule. The FCRA opt-out does not apply, nor does the limited GLB opt out. Congress should create a "no credit card offers" list and apply the 1-call opt-out to all credit card solicitations not only pre-screened solicitations.

(c) Preemption of furnisher duties has limited consumer rights to enforce act

The 1996 amendments, for the first time, imposed modest duties on banks, department stores and other creditors that "furnish" information to credit bureaus to avoid making errors. The duties are very weak and the threat of liability modest. In fact, Congress prohibited consumers from suing furnishers for failing to comply with what were called in 1996 "front-end" accuracy requirements (Section 623(a)) and limited the section's enforcement to agencies. Congress only gave consumers a private right of action to enforce Section 623(b)'s "back-end" responsibilities, which require a furnisher to comply with reinvestigations and avoid reinsertion of false information after being notified.

Even worse, as the National Association of Consumer Advocates will testify today, after a federal court misinterpreted the 1996 FCRA amendments, it took several years to develop new case law correcting the lower courts and reinstating the clearly intended private right of action for Section 623(a) violations. Notably, the FTC filed a friend of the court brief on behalf of consumer Toby Nelson that was widely cited in the Ninth Circuit's decision reinstating the private right of action against furnishers.

> As counsel for the FTC observed, there are involved in any credit transaction only the consumer, the CRAs, the user of the credit reports and the furnishers of the credit information. As consumers would not be made subject to suit by consumers, and as CRAs and users were already suable, who else except furnishers could Congress have had in mind when it introduced" any person" into the statute? Where, other than under 1681s- 2(b) [623(b)] would furnishers be suable by consumers? In oral argument, counsel for Chase conceded that Chase had no answers to these questions. We cannot suppose that Congress made an amendment without a purpose.
>
> 9th Circuit U.S. Court of Appeals, opinion, 1 March 2002, Nelson vs. Chase Manhattan Mortgage[6]

State and federal laws pertaining to furnishers of consumer credit information differ in two respects: liability standards and remedies. Overall, the state laws in California and Massachusetts, which were grandfathered in, are stronger than the federal FCRA. Law professor Joel Reidenberg, in testimony before this committee last month, provided record evidence that the opposite may be true: California, Massachusetts and Vermont citizens appear better off, not worse off, despite their stronger FCRA laws[7].

The FCRA imposes a standard of actual knowledge or purposeful avoidance of knowledge on furnishers of credit information. It states: "Furnishers of consumer credit information must not give information if they know or consciously avoid knowing that it is inaccurate." FCRA 623(a)(1)(A). Conversely, the two state laws' liability standards are broader in scope and more pro-consumer. California imposes an actual as well as a constructive knowledge liability standard, meaning that regardless of whether the furnisher actually does not know the consumer's information is inaccurate, the furnisher had a duty to know. Cal. Civ. Code 1785.25(a). In Massachusetts, a fact finder will look at whether the furnisher had either actual knowledge of the inaccuracy or, once again, whether he should have known. This is done by employing a reasonable person standard. ALM GL Ch. 93, s. 54(A).

As for remedies, the FCRA provides only an administrative cause of action against furnishers who violate section 623(a); and thus consumers are left with a private cause of action only under 623(b). FCRA 623(c). Such a limit on remedies does not exist under the stronger state laws. In Massachusetts and California, a private remedy is triggered upon a dispute – similar to the FCRA – however an all-encompassing subsection in both state laws provides that all furnishers who fail to comply with the entire section (not just a certain part of the section) are liable.

The difficulty in suing either credit bureaus or creditors places a fundamental role in their lackadaisical attitude toward accuracy and consumer protection.

(D) Preemption of all notices, all timetables

All notices of consumer rights under the FCRA are also subject to preemption as are all timetables for reinvestigation of errors. All timetables for removing negative information (usually 7 years) from reports are also preempted.

Problem: The FCRA's rights notices are inadequate. The FCRA's reinvestigation timetables are too long. The FCRA's obsolescence periods do not reflect risk properly—minor delinquencies should remain on credit reports for shorter times. States have been prevented from acting in all these areas.

(3) The Continuing Problem of Inaccurate Credit Reports

The 1996 amendments included several provisions to improve the accuracy of credit reports. Among the key changes were the following:

First, furnishers were subjected to modest new duties and limited liability. Second, the CRAs were required to develop a joint error notification system to prevent the recurrence of errors. Third, the CRAs were required to have adequate staffing to handle consumer complaints. Fourth, users were required to tell consumers that they had a right to a free credit report following denial, circumstances when free reports were available were expanded slightly and CRAs were required to provide consumers with a detailed description of their rights. Fifth, a series of small changes were made, including a clarification that the 7-year period for dropping obsolete information could not be re-started when debts were sold and that accounts closed in good standing must be coded so that they could not be interpreted as negative items in credit scores.

By and large, the changes haven't worked, because they haven't been enforced by the FTC[8] or other agencies, such as the OCC, that regulate furnishers. Further, as the testimony of the National Association of Consumer Advocates and the National Consumer Law Center points out today, it is difficult for a consumer to privately enforce the FCRA. Absent the threat of significant damages for violations, the credit bureaus and furnishers treat mistakes and identity theft as merely a cost of business, rather than a problem.

(4) Are Credit Reports Accurate?

No. According to the most comprehensive study ever done, released in December 2002 by the Consumer Federation of America and the National Credit Reporting Association, credit scores calculated from credit reports obtained from each of the Big Three repositories show a wide disparity[9]:

- CFA/NCRA analyzed 502,623 credit files with scores from all three major credit reporting agencies – the largest sample ever examined. Every state and territory in the nation was represented.
- Nearly one out of three files (29 percent) had a score discrepancy among the three reporting agencies of 50 points or more. Credit scores range from about 400 to about 800.
- 4 percent of files had a discrepancy of 100 points or more.
- The average discrepancy was 41 points (with a median discrepancy of 35 points).
- Roughly eight million consumers – one in five of those who are at risk – are likely to be misclassified as sub-prime upon applying for a mortgage, based on the study's review of credit files for errors and inconsistencies. A similar number are likely to benefit from errors in their reports. However, individual consumers do not benefit from system-wide averages and should not have to cope with a credit reporting system that functions as a lottery.
- Misclassification into the subprime mortgage market can require a borrower to overpay by tens of thousands of dollars in interest payments on a typical mortgage. For example, over the life of a 30-year, $150,000 mortgage, a borrower who is incorrectly placed into a 9.84% subprime loan would pay $317,516.53 in interest, compared to $193,450.30 in interest

payments if that borrower obtained a 6.56% prime loan – a difference of $124,066.23 in interest payments.

A credit score that is even a few points lower than it should be can have a negative impact on certain consumers, especially those on the border between the prime and subprime mortgage markets.[10]

The CFA and NCRA findings buttress the findings of a number of smaller studies conducted over the years by the state PIRGs and Consumers Union, publisher of Consumer Reports Magazine. These studies found significant error rates that could lead to denials in approximately one-third or more of the credit reports surveyed.

U.S. PIRG: Sources of Errors In Credit Reports and Variances In Credit Scores	
Systemic Errors Possibly In Violation of FCRA's Maximum Possible Accuracy Standard	
Geographical discrepancies in affiliate coverage by repositories	Different repositories may use different overlapping affiliates with differential coverage of local creditors and debt collectors.
Variances in reporting for national or local creditors	One repositories may use monthly tapes from a large creditor; another may use quarterly tapes
Continued use of obsolete Metro tape format with known egregious flaws instead of Metro 2 upgrade	Repositories have not required furnishers to uniformly upgrade to the more accurate Metro 2 format, resulting in numerous errors, especially false bankruptcy reporting.
Incomplete reporting by large creditors in effort to trick scoring systems and prevent customers from shopping around	Some credit card companies do not report the full positive trade line on their good customers, especially subprime customers, deflating credit scores. Bank regulators have failed to adequately enforce.
Public Record data collection	Repositories and their hirelings collect courthouse records and inadequately verify that the John Smith who filed bankruptcy is the John Smith where they insert the negative public record.
Failure to Adequately Match Demographic Information in Subscriber Report Requests With Information in Repository File	Consumers cannot receive own report without providing 4-5 matching pieces of information. Subscribers, conversely, submit only 2 – *name* and Social Security Number. Subscriber reports are therefore much more prone to include information about someone else: called a "mis-merge" or "file variant." Sloppy reliance on Social Security Numbers is the key that opens this door to identity theft.

James Williams of Consolidated Information Services, a New York area retail mortgage credit reporting agency, in 1991 analyzed 1500 reports from the three big bureaus and found errors in 43 percent of the files.

To our knowledge, only one study has ever been released by the Associated Credit Bureaus. According to news reports, its 1991 report, conducted by Arthur Andersen, claimed that "errors critical to the decision of granting credit" occurred in fewer than 1% of files.

U.S. PIRG: Common Problems Resulting From These Errors: Identity Theft, Credit Denial, Paying Too Much For Credit
-- Failure to match full identifying information from applications sent by creditors with report demographic information results in easy identity theft. -- Your accurate information is missing. Small, local creditors may not report to national bureaus. -- Or, your report could be a partial or fragmented report -- with some of your accurate information linked to one version of your name and address and some of your information only linked to a different version. -- Information about someone else is included: You could be a victim of identity theft or you could be a victim of a merged file, where the credit bureau has someone else's information mixed up with yours-- usually, it's someone with bad credit. -- Accurate information is reported twice, which makes it seem as if you have too much credit for your income: Your mortgage or student loan may have been sold or serviced to another lender, but appears twice. -- Your on-time payments are reported late or other problems in reporting (errors by your lenders) result in inaccuracies. -- False public record information appears (bankruptcies, court judgments, etc.). Credit bureaus and their hirelings often inadequately match public records before adding the info to credit reports. Some other John Smith filed for bankruptcy-- but it wasn't you. False public records create the worst negative marks on your report-- much worse than occasional late payments.

(5) The Real Threat To The Free Flow of Information Is The Failure By Furnishers To Report Completely

This spring, the Federal Reserve Board of Governors released a major study[11] of credit reports. Among its key findings, based on a review of 248,000 credit reports held by one unnamed repository, was the following: fully 70% of consumers had at least one trade line account with incomplete information. The Fed finds this problematic.

> A key measure used in credit evaluation—utilization—could not be correctly calculated for about one-third of the open revolving accounts in the sample because the creditor did not report the credit limit. About 70 percent of the consumers in the sample had a missing credit limit on one or more of their revolving accounts. If a credit limit for a credit account is not reported, credit evaluators must either ignore utilization (at least for accounts without limits) or use a substitute measure such as the highest-balance level. **The authors' evaluation suggests that substituting the highest-balance level for the credit limit generally results in a higher estimate of credit utilization and probably a higher perceived level of credit risk for affected consumers.** [Emphasis added] [12]

Although industry witnesses will testify to a vast "free flow of information" driving our economy that should not be constrained, more and more firms are choosing to stifle the flow of information themselves -- to maintain their current customers as captive customers. When a bank intentionally fails to report a consumer's complete credit report information to a credit bureau, that consumer is unable to shop around for the best prices and other sellers are unable to market better prices to that consumer. Even the Comptroller of the Currency, Mr. Hawke, has condemned the practice.[13] So has the FFIEC:

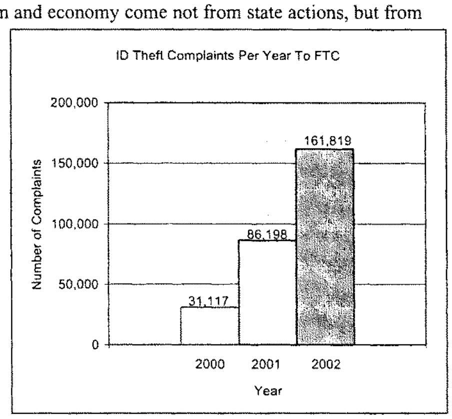
> The Agencies are aware that over the last year some financial institutions have stopped reporting certain items of customer credit information to consumer reporting agencies

> (credit bureaus). Specifically, certain large credit card issuers are no longer reporting customer credit lines or high credit balances or both. In addition, some lenders, as a general practice, have not reported any loan information on subprime borrowers, including payment records. The Agencies have been advised that the lack of reporting is occurring primarily because of intense competition among lenders for customers.
>
> The Agencies note that both financial institutions and their customers generally have been well served by the long-established, voluntary self-reporting mechanism in place within the industry.[14]

Yet, rather than enforcing the accuracy provisions of Section 623(a) of the FCRA and requiring furnishers regulated by FFIEC members to provide complete information, the FFIEC guidance merely urges members to take intentionally flawed trade lines into account in their risk analysis.

> Accordingly, financial institutions that rely on credit bureau information as a tool in their underwriting and account management functions, whether manual or automated, should have processes in place to effectively identify and compensate for missing data in credit bureau reports and models.[15]

So, it is clear that the gravest threats to the FCRA and its role in preserving the free flow of information that affects our credit system and economy come not from state actions, but from changing industry practices designed to limit the act's applicability or coverage. Companies are "gaming" the so-called free flow of information, to create a captive customer base and prevent their own customers from shopping around.



(6) Does The Credit Reporting System Prevent Identity Theft? No

1996-2002: The Age of Identity Theft: From 1989 through 1996, while Congress considered the strengthening of the FCRA, identity theft was not a significant issue in the debate. While it turns out that the problem was growing, the industry had been keeping it quiet and absorbing the costs of fraud without providing Congress or the FTC with significant information. In 1996, the state PIRGs released the first national report on the problem, "The Consumer X-Files," documenting the cases of several identity theft victims and attempting to quantify the problem.

In 1997, the state PIRGs released a follow-up, "Return To The Consumer X-Files[16]". In 2000, the state PIRGs and Privacy Rights Clearinghouse released a detailed survey of identity theft victims, "Nowhere To Turn[17]." In 2003, CALPIRG released the first analysis of police officer views on identity theft, "Policing Privacy[18]." It found that police share consumer groups' views that creditor practices must be reined in to stop identity theft.

In 1997, victim Bob Hartle pushed state legislation through the Arizona legislature criminalizing identity theft. Hartle urged Senator Jon Kyl (R-AZ) and Rep. John Shadegg (R-AZ) to enact similar legislation federally in 1998. The proposal was backed by PIRG and other consumer groups, by the Secret Service and police associations, and embraced by the industry. But criminalization of identity theft, also adopted by nearly every state, hasn't solved the problem. The FTC has recently reported that identity theft was the leading complaint to the agency for the years 2000, 2001 and 2002. The number of cases doubled in 2002, according to the FTC. Based on figures reported to the GAO by the credit bureaus themselves, identity theft may strike as many as 500,000-700,000 consumers annually.

First, identity theft is a fast growing crime and criminalization is only part of the solution. Identity theft criminalization does not appear to have slowed the growth of identity theft. Creditors (banks, mortgage companies, department stores, etc) and credit bureaus (Experian, Equifax and Trans Union) must improve both their credit granting practices – to reduce the incidence of identity theft -- and their treatment of identity theft victims – to make it easier for these victims to clear their good names and re-enter the financial world. Legislation is necessary to coerce these recalcitrant firms, which generally consider a "few" mistakes and a few lawsuit settlements the cost of doing business while they ignore the real costs, both tangible and intangible, to victims. Unless banks, department stores and credit bureaus are forced by law to help prevent identity theft, they will continue in their sloppy credit-granting practices, they will continue to dismiss the problem of identity theft with their public relations campaigns[19] and they will continue to reject the massive impact identity theft has on its consumer victims.

Second, misuse, over-use and easy access to Social Security Numbers helps drive the identity theft epidemic. Fundamentally, this nation needs to wean the private sector of its over-reliance on Social Security Numbers (SSN) as unique identifiers and database keys. Creditors issue credit based on a match between an applicant's SSN and a credit bureau SSN, with no additional verification in many cases that the applicant is actually the consumer whose credit bureau file is accessed.

Types of Identity Theft: Experts divide financial identity theft into two main categories. "True name" fraud occurs when someone uses pieces of a consumer's personal identifying information, usually a Social Security number (SSN), to open *new* accounts in his or her name. Thieves can obtain this information in a variety of ways, from going through a consumer's garbage looking for financial receipts with account numbers and SSNs, to obtaining SSNs in the workplace, to hacking into computer Internet sites, or buying SSNs online.

"Account takeover" occurs when thieves gain access to a person's *existing* accounts and make fraudulent charges. Regardless of the types of fraud committed or the amount of money taken fraudulently, victims indicate that stress, emotional trauma, time lost, and damaged credit reputation -- not the financial aspect of the fraud -- are the most difficult problems they face. One victim from Nevada explained to us, "this is an extremely excruciating and violating experience, and clearly the most difficult obstacle I have ever dealt with."

(7) Results of the PIRG/Privacy Rights Clearinghouse Survey of Identity Theft Victims

In the spring of 2000, CALPIRG and Privacy Rights Clearinghouse sent surveys to victims who had recently contact our offices, and published a report based on the findings, entitled "Nowhere To Turn: Victims Speak Out on Identity Theft.[20]" The report followed up on CALPIRG's groundbreaking identity theft reports[21] released in 1996 and 1997, and on the pioneering work of the Privacy Rights Clearinghouse in assisting victims and drawing attention to their plight. Both organizations have also worked with victims to find ways that they can help themselves, because until the Federal Trade Commission established its clearinghouse, there was no government agency that made identity theft solutions its priority.[22]

The data pinpoint the failure of law enforcement, government, and the credit industry to address the root causes of identity theft. By not changing their procedures, these stakeholders have both helped perpetuate identity theft and have made it difficult for victims to resolve their cases expeditiously. Although each identity theft case is different, we have been able to identify patterns and trends in the victims' responses. The survey data also verify that the stories in the news on identity theft are not extreme cases in which an unlucky victim has had an unusually bad experience. As one victim from California stated, "It was as terrible as all the books and articles say it is."

Forty-five percent (45%) of the victims consider their cases to be solved; and it took them an average of nearly two years, or 23 months, to resolve them. Victims (55%) in the survey whose cases were open, or unsolved, reported that their cases have already been open an average of 44 months, or almost 4 years.

Three-fourths, or 76%, of respondents were victims of "true name fraud." Victims reported that thieves opened an average of six new fraudulent accounts; the number ranged from 1 to 30 new accounts.

The average total fraudulent charges made on the new and existing accounts of those surveyed was $18,000, with reported charges ranging from $250 up to $200,000. The most common amount of fraudulent charges reported was $6,000.

Victims spent an average of 175 hours actively trying to resolve the problems caused by their identity theft. Seven respondents estimated that they spent between 500 and 1500 hours on the problem.

Victims reported spending between $30 and $2,000 on costs related to their identity theft, not including lawyers' fees. The average loss was $808, but most victims estimated spending around $100 in out-of-pocket costs.

Victims most frequently reported discovering their identity theft in two ways: denial of either credit or a loan due to a negative credit report caused by the fraudulent accounts (30%) and contact by a creditor or debt collection agency demanding payment (29%).

Victims surveyed reported learning about the theft an average of 14 months after it occurred, and in one case it took 10 years to find out.

In one-third (32%) of the cases, victims had no idea how the identity theft had happened. Forty-four percent (44%) of all the victims had an idea how it could have happened, but did not know who the thief was. But in 17% of the cases, someone the victim knew -- either a relative, business associate, or other acquaintance -- stole his or her identity.

Despite the placement of a fraud alert on a victim's credit report, almost half (46%) of the respondents' financial fraud recurred on each credit report.[23]

All but one of the respondents contacted the police about their cases, and 76% of those felt that the police were unhelpful. Law enforcement agents issued a police report less than three-fourths of the time, and assigned a detective to the victims' cases less than half of the time. Despite the high rate of dissatisfaction with law enforcement assistance, 21% of the victims reported that their identity thieves had been arrested, often on unrelated charges.

Thirty-nine percent (39%) of the victims reported contacting the postal inspector about their cases, and only 28% (7 out of 25) of those respondents found the post office helpful. Only four of the respondents reported that the postal inspector placed a statement of fraud on their name and address.

Forty-five percent (45%) of the respondents reported that their cases involved their drivers' licenses. For example, the license had been stolen and used as identification, or the thief had obtained a license with his or her picture but containing the victim's information. Fifty-six percent (56%) of the respondents contacted the Department of Motor Vehicles, and only 35% of those found the DMV helpful.

Forty-nine percent (49%) of the respondents contacted an attorney to help solve their cases. Forty-four percent (44%) of those people found their attorney to be somewhat helpful. Many consumers contacted attorneys at public interest law firms and received advice for free. Attorneys' fees ranged from $800 to $40,000.

Respondents reported that the most common problem stemming from their identity theft was lost time (78% of consumers identified this problem). Forty-two percent (42%) of consumers reported long-term negative impacts on their credit reports, and 36% reported having been denied credit or a loan due to the fraud. Twelve percent (12%) of the respondents noted as a related problem that there was a criminal investigation of them or a warrant issued for their arrest due to the identity theft.

Financial Identity Theft Only Part of the Problem: Increasingly, thieves are also committing other crimes using the names generated from identity fraud. According to the survey, thieves committed various other types of fraud with the respondents' information, including renting apartments, establishing phone service, obtaining employment, failing to pay taxes, and subscribing to online porn sites. In 15% of the cases, the thief actually committed a crime and provided the victim's information when he or she was arrested. A growing problem for victims is that thieves who have rented apartments or purchased homes using fraudulent identities are filing for bankruptcy in the victim's name, with the intention of seeking a mandatory stay against eviction or foreclosure. The false public record bankruptcies are difficult for victims to remove.

(8) Solution: Improve the FCRA

In addition to allowing state preemption to sunset, PIRG's key recommendations to prevent identity theft and credit reporting errors are the following: (1) Require credit bureaus to provide free credit reports annually on request, as six states already do (Colorado, Georgia, Massachusetts, Maryland, New Jersey, Vermont). Add disclosure of credit scores to credit reports and ban insurance uses of credit scoring. (2) Provide victims, as well as other consumers, with the right to block access to their credit reports. (3) Require matching of at least four points of identity, such as exact name and exact address, date of birth, account number and former address, instead of only on Social Security number between credit reports and credit applications. (4) Improve address-change verification. (5) Close the "credit header" loophole that allows Social Security numbers to be sold on the information marketplace, including over the Internet. (6) Take Social Security Numbers out of general circulation. (7) Make it easier to sue credit bureaus and creditors. (8) Improve the pre-screening opt-out.

Some of these solutions are discussed in detail above.

The Hooley/LaTourette identity theft proposal, HR 2035, includes a number of these provisions, including the laudable free credit report, address change verification and fraud flag protections. Unfortunately, like-several state enacted identity theft reforms and several Senate proposals, it also includes an unacceptable safe harbor for reseller credit bureaus. Resellers should not be treated differently than other credit bureaus[24].

Get The Social Security Number Out Of Circulation: Several important provisions were included in HR 2036 in the last Congress (Shaw). The bill included a strict anti-coercion clause giving consumers the right to say no to most businesses demanding their Social Security Numbers. The bill included limits on public display of SSNs which will make it harder for identity thieves to obtain the key to a consumer's financial life. The bill closed the so-called "credit header loophole" that has been narrowed by the DC Circuit decision upholding the FTC's consent decree against Trans Union and its decision upholding the GLB regulations.[25]

Closing the credit header loophole will reduce access to Social Security Numbers. It will not shut the door completely on their use. Military IDs, insurance and Medicare IDs, college IDs and drivers' licenses often routinely display Social Security Numbers. Businesses use the SSN as their database key for the same reason Mallory climbed Everest: "Because it is there." Of course, they have less justification than Mallory did. He was an explorer, creditors and credit bureaus are merely lazy and sloppy. Unless legislation such as the Shaw proposal is enacted, SSNs will continue to be easily available and routinely abused by identity thieves.

Make It Easier To Sue Credit Bureaus and Creditors: In November 2001, the Supreme Court raised the bar for identity theft victims, by shortening the FCRA's statute of limitations to sue credit bureaus to only two years after an error is made, in the case TRW vs. Andrews.[26] The FCRA also unduly restricts a consumer's right to sue creditors that make mistakes, restricting most enforcement to agencies.

Bi-partisan legislation, HR 3368, introduced by Reps. Schakowsky and Chairman Bachus in the last Congress would reinstate the previous rule of two years from date of discovery of the error by the consumer. A defective proposal, S. 22, in this Congress, would only extend the statute of limitations for identity theft victims, not for all consumers. That is unacceptable.

Consumers should also be able to obtain minimum damages for all violations of the FCRA, so that they don't have to prove actual damages. The actual damages requirement is a difficult hurdle in many cases.

Require creditors to warn consumers of negative information: Last year, Rep. Gary Ackerman, a member of the House Financial Services Committee, pointed out during a markup that he will pay thousands of dollars in excess interest on a mortgage due to failing to qualify for a low-interest loan as the result of a 3-year-old error on his credit report. We expect Rep. Ackerman to offer a laudable proposal that would require creditors to clearly warn consumers when negative information is being sent to credit bureaus.

Free credit reports and credit scores: Transparency is critical. Consumers shouldn't have to wait for credit denial to look at their credit reports, which can be sold into commerce without consent and may contain serious errors.

The credit bureaus will likely make a claim that they shouldn't have to give away their product for free. Their real customers are businesses. Consumers should have the right to audit their own records, for free. Instead, the industry has aggressively marketed credit reporting subscription services, warning consumers: "you could be an identity theft victim. Join now for $99/year." That's a deplorable form of protection racket, when the bureaus are both responsible for identity theft and are charging you a fee to look at your report.

With credit scores being used for most credit decisions, credit scores should also be incorporated into reports. Credit scores should be banned for insurance uses.[27]

An additional problem of transparency is that consumers see a different credit report than subscribers do. Often, a consumer report is based on 5 pieces of identifying information and is more likely to be accurate than the subscriber report which resulted in a credit denial. It is much more likely to contain merged information about other consumers, since it is based on a less precise matching algorithm. Consumers should see the same report the subscriber used to deny them.

Furnisher completeness standards: While we recognize that the Congress is unlikely to require furnishers to report to credit bureaus, we believe that the committee should examine whether minimum "completeness" standards are necessary to correct the problems identified by the federal financial agencies due to incomplete reporting. If Congress is not going to change the "voluntary" requirement for reporting, it should at least make completeness part of accuracy. This is especially important if companies are using "account reviews" to raise consumer's interest rates, based on negative items or changes in credit scores. What about the consumers who are victims of errors, identity theft or this gaming of the system? The Congress should consider severe restrictions on account reviews, which do not appear to be in any way being used for any legitimate, risk-related use, but merely to pump profits up.

Adverse Action Notices: Adverse action notices under the FCRA are important. The notices provide consumers a trigger that warns them of their other substantive rights. Yet, not all firms may be providing adverse action notices. The FTC has recently enforced an action against the Internet loan company Quicken[28], but we believe that the problem is more serious and affects thousands of consumers in the mortgage market, where brokers, lenders and secondary market players may be failing to provide adverse action notices. According to the Washington Post:

> Yet all too often, mortgage industry critics charge, today's lightning-quick electronic underwriting systems leave applicants in the dark when they're being charged higher rates or fees because of credit report negatives. Richard F. Le Febvre, president of AAA American Credit Bureau Inc. of Flagstaff, Ariz., says he has seen hundreds of cases in which borrowers were overcharged for home loans because of erroneous credit file information, without ever receiving adverse action notices[29].

Conclusion

We appreciate the opportunity to provide our views on the Fair Credit Reporting Act. We look forward to working with you in the future on these and other solutions to the problems consumers face in dealing with creditors, furnishers and identity theft. In this testimony, we have attempted to emphasize issues that were not being covered by some of the other pro-consumer witnesses. I concur with the recommendations made by National Consumer Law Center, the Vermont Office of the Attorney General, the National Association of Consumer Advocates and the National Fair Housing Alliance.

As we indicated above, the FCRA is an important privacy and consumer protection law. It provides consumers with substantive rights. We hope that a future hearing in this series will examine the effect of the growing use of affiliate sharing under GLB for profiling and credit decision-making. If credit decisions are made on the basis of affiliate-shared information, consumers do not have the same bundle of rights as they would under FCRA. As internal creditor databases increase in size and predicative value, either credit decisions or other profiling decisions (whether to even offer a consumer a certain class of product, for example) may more and more be made under the GLB regime. These adverse actions will not result in triggering the same disclosures and rights that consumers obtain under the FCRA. These changes in the marketplace, which are already occurring, mean that consumers may not have the same credit rights in the future. We would be happy to discuss these significant matters further.

[1] "Surprise Jumps in Credit Rates Bring Scrutiny," by Jennifer Bayot, The New York Times, 29 May 2003, Page 1.
[2] "Credit Score Accuracy and Implications for Consumers", December 17, 2002, Consumer Federation of America and the National Credit Reporting Association
http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf
[3] This is a partial list. Beth Givens of the Privacy Rights Clearinghouse has prepared a summary (5 pages) of all California identity theft related laws.
[4] See for example, "Financial Privacy -- The Economics of Opt-In vs Opt-out. (Updated 16 Apr 2003) by CRS's Loretta Nott. It repeats a mischaracterization of GLB that I believe has been made in other CRS reports. The third sentence states: "A consumer's financial information may be shared among the (affiliates of the same corporate) group as long as the person has been notified and has the opportunity to decline, or "opt-out." The paragraph goes on to wrongly say that the Johnson S 660/Tiberi HR 1766 proposals are intended, among other things, to "maintain the opt-out policy for affiliate information sharing."
[5] Ideally, consumer groups believe that all privacy legislation enacted by either the states or Congress should be based on Fair Information Practices, which were originally proposed by a Health, Education and Welfare (HEW) task force and then embodied into the 1974 Privacy Act and into the 1980 Organization for Economic Cooperation and Development (OECD) guidelines. The 1974 Privacy Act applies to government uses of information.[5] Consumer and privacy groups generally view the following as among the key elements of Fair Information Practices:
1) Collection Limitation Principle: There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the data subject.
2) Data Quality Principle: Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date.
3) Purpose Specification Principle: The purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfillment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.
4) Use Limitation Principle: Personal data should not be disclosed, made available or otherwise used for purposes other than those specified in accordance with the Purpose Specification Principle except: a) with the consent of the data subject; or b) by the authority of law.
5) Security Safeguards Principle: Personal data should be protected by reasonable security safeguards against such risks as loss or unauthorized access, destruction, use, modification or disclosure of data.
6) Openness Principle: There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller.
7) Individual Participation Principle: An individual should have the right: a) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to him; b) to have communicated to him, data relating to him within a reasonable time; at a charge, if any, that is not excessive; in a reasonable manner; and in a form that is readily intelligible to him; c) to be given reasons if a request made under subparagraphs (a) and (b) is denied, and to be able to challenge such denial; and d) to challenge data relating to him and, if the challenge is successful to have the data erased, rectified, completed or amended.
8) Accountability Principle: A data controller should be accountable for complying with measures which give effect to the principles stated above.
[6] See the FTC's brief in Nelson vs Chase Mortgage at <http://www.ftc.gov/ogc/briefs/nelsont.pdf>. The 9th Circuit U.S. Court of Appeals decision of 1 March 2002 in Nelson vs. Chase Manhattan Mortgage is available at http://www.ca9.uscourts.gov as Case # 00-15946.
[7] See http://financialservices.house.gov/media/pdf/050803jr.pdf
[8] In 2000, the FTC did impose a total of $2.5 million in fines on the Big Thee repositories for failing to have enough staff to answer he phones.
[9] The following bulleted facts are from a Consumer Federation of America summary fact sheet on the report. "Credit Score Accuracy and Implications for Consumers", December 17, 2002, Consumer Federation of America and the National Credit Reporting Association
http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf
[10] "Credit Score Accuracy and Implications for Consumers", December 17, 2002, Consumer Federation of America and the National Credit Reporting Association
http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf

[11] See "An Overview of Consumer Data and Credit Reporting," Avery et al, February 2003, Pages 47-73, Federal Reserve Bulletin http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf

[12] See page 71, "An Overview of Consumer Data and Credit Reporting," Avery et al, February 2003, Pages 47-73, Federal Reserve Bulletin http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf

[13] See speech by Comptroller of the Currency John Hawke at http://www.occ.treas.gov/ftp/release/99-51.txt 7 June 1999: "Some lenders appear to have stopped reporting information about subprime borrowers to protect against their best customers being picked off by competitors. Many of those borrowers were lured into high-rate loans as a way to repair credit histories." According to U.S. PIRG's sources in the lending industry, this practice continues.

[14] See advisory letter of18 January 2000 at http://www.ffiec.gov/press/pr011800a.htm

[15] See advisory letter of18 January 2000 at http://www.ffiec.gov/press/pr011800a.htm

[16] See http://www.pirg.org/reports/consumer/xfiles/index.htm

[17] See http://calpirg.org/CA.asp?id2=3683&id3=CA&

[18] See http://www.pirg.org/alerts/route.asp?id2=9791

[19] See, for example, the recent opinion piece by Oscar Marquis in the American Banker, 17 May 2002, claiming that estimates of identity theft over-state the problem. Marquis was until recently the long-time general counsel for the Trans Union credit bureau. He has recently joined Hunton and Williams, a law and lobbying firm that is one of numerous financial-industry affiliated organizations that are publishing "reports" and other polemics in opposition to strict privacy protection laws. See, for a rebuttal to these industry-funded materials, "Privacy, Consumers, and Costs," March 2002, by Robert Gellman. Available at http://www.epic.org/reports/dmfprivacy.html

[20] The full report, "Nowhere To Turn," by CALPIRG and the Privacy Rights Clearinghouse, May 2000, is available at <http://www.pirg.org/calpirg/consumer/privacy/idtheft2000/>

[21] "Theft of Identity: The Consumer X-Files", CALPIRG and US PIRG, 1996 and "Theft of Identity II: Return to the Consumer X-Files", CALPIRG and US PIRG, 1997. See http://www.pirg.org/reports/consumer/xfiles/index.htm

[22] In 1999 the Federal Trade Commission established a clearinghouse to assist victims of identity theft and document their cases in a database. This endeavor is a result of a new federal law, "The Identity Theft and Assumption Deterrence Act of 1998" (18 USC 1028), implemented in 1999. The FTC maintains a toll-free telephone number for victims, 877-IDTHEFT, as well as a web site, www.consumer.gov/idtheft.

[23] When a "fraud alert" is placed on a victim's credit file, the credit bureau reports to credit issuers that the subject of the report is a victim of fraud. The creditor is supposed to contact the victim at the phone number provided in the fraud alert in order to determine if it is an imposter or the rightful individual applying for credit. Obviously, if the credit bureau does not adequately report the presence of an alert, which often happens when only a credit score is reported, or if the credit grantor fails to detect the fraud alert, which is a common experience of victims, the imposter is able to obtain additional lines of credit in the victim's name. Consumer and identity theft experts believe that one way that credit bureaus under-state the magnitude of the identity theft problem is by only calculating the results of consumers who place a 7-year or "permanent" fraud flag on their credit reports. Most consumers are quite unaware that there is even an option to insert a permanent fraud flag and are not routinely offered the chance when they call the credit bureaus and "speak" to their "voice-mail-jail" computer response systems.

[24] The FTC's enforcement position, as evidenced by the First American Credco consent decree and settlement order, is that resellers must comply with the FCRA http://www.ftc.gov/opa/1998/10/credco.htm We agree.

[25] See PIRG's financial privacy pages for a detailed discussion http://www.pirg.org/consumer/banks/action/privacy.htm

[26] See TRW vs. Andrews, 13 Nov 2002, No. 00-1045, http://a257.g.akamaitech.net/7/257/2422/13nov20011040/www.supremecourtus.gov/opinions/01pdf/00-1045.pdf See the amicus brief of U.S. PIRG and other consumer groups, filed in support of identity theft victim Adelaide Andrews, at http://www.pirg.org/consumer/andrews6.htm

[27] The committee held a hearing on credit scoring disclosure 3 years ago. http://financialservices.house.gov/banking/92100toc.htm Since then, action on credit scoring issues has largely shifted to the states. California has allowed scores to be disclosed to consumers. Numerous states have sought to regulate or ban the use of scores for insurance purposes.

[28] See FTC consent order, "In the Matter of Quicken Loans", Docket #9304, 30 December 2002, http://www.ftc.gov/opa/2002/12/quicken.htm

[29] "FTC Policing Accuracy of Credit Files, "The Washington Post, by Kenneth R. Harney, Saturday, 11 January 2003; Page H01

Testimony before the

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

regarding

"Fair Credit Reporting Act: How it Functions for Consumers and the Economy"

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Introduction

Mr. Chairman and Members of the Subcommittee, the National Consumer Law Center[1] thanks you for inviting us to testify today regarding the Fair Credit Reporting Act. We offer our testimony on behalf of low-income consumers.

The Fair Credit Reporting Act (FCRA) contains important consumer protections, yet there is a compelling need for improvements to this law to address the harm caused by inaccuracies and substandard reinvestigations of disputed information. Without improvements to the FCRA that include enhanced consumer remedies and protections, economic and emotional harm to our nation's consumers will continue unabated. Such harm includes denial of credit, overcharges for credit, denial of insurance or payment of higher insurance premiums, and denial of employment. For these reasons we recommend that Congress amend the FCRA to ensure that all entities within the credit reporting system, including furnishers, are held to high standards of accuracy and are held accountable when they fail.

The Fair Credit Reporting Act is an essential part of the federal umbrella protecting the privacy of American consumers and the accuracy of the information gathered by corporations about us all. Unfortunately, because of numerous loopholes, the FCRA fails to protect American consumers against misinformation provided by creditors and other furnishers of information which is then disseminated by credit reporting agencies. One Congressman described the adverse impact of bad credit histories this way: "A poor credit history is the 'Scarlet Letter' of 20th century America."[2]

The Credit Reporting System Is Plagued With Inaccuracies

The credit reporting system has an historic and enduring problem with inaccuracies. Indeed concern with the high level of inaccuracies in credit reports was the primary theme throughout the legislative debates leading up to passage of the FCRA.[3]

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[1] **The National Consumer Law Center** is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys around the country, representing low-income and elderly individuals, who request our assistance with the analysis of credit transactions to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen numerous examples of invasions of privacy, embarrassment, loss of credit opportunity, employment and other harms that have hurt individual consumers as the result of violations of the Fair Credit Reporting Act. It is from this vantage point--many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities--that we supply this testimony today. *Fair Credit Reporting* (5th ed. 2002) is one of twelve practice treatises which NCLC publishes and annually supplements. These books, as well as our newsletter, *NCLC Reports: Consumer Credit & Usury Ed.*, describes the federal and state law currently protecting all types of consumer loan transactions.

[2] 136 Cong. Rec. H5325-02 (daily ed. July 23, 1990) (statement of Rep. Annunzio), cited in *FTC v. Gill*, 265 F. 3d 944, 947 (9th Cir. 2001).

[3] "[T}he increasing volume of complaints makes it clear that some regulations are vitally necessary to insure that higher standards are observed with respect to the information in the files of commercial credit bureaus. I cite what I consider to be the three most important criteria for judging the quality of these standards. They are first, confidentiality; second, accuracy; and third, currency of information." Statement of Sen. Proxmire, 114 Cong. Rec. 24903 (1968).

Several studies over many years have repeatedly documented the chronic problem of inaccuracies in credit reports. U.S. PIRG has conducted at least six studies between 1991 and 1998 and each time has found a shocking number of serious errors in consumer credit reports. US PIRG's most recent study in 1998 revealed the following:

- Twenty-nine percent (29%) of the credit reports contained serious errors -- false delinquencies or accounts that had never belonged to the consumer -- that could result in the denial of credit;
- Forty-one percent (41%) of the credit reports contained personal demographic identifying information that was misspelled, long-outdated, belonged to a stranger, or was otherwise incorrect;
- Twenty percent (20%) of the credit reports were missing major credit, loan, mortgage, or other consumer accounts that would demonstrate the positive creditworthiness of the consumer;
- Twenty-six percent (26%) of the credit reports contained credit accounts that had been closed by the consumer but incorrectly remained listed as open;
- Altogether, 70% of the credit reports contained either serious errors or other mistakes of some kind.

Another analysis found that almost half of the reports reviewed contained at least one error, and many contained multiple errors.[4] Yet another survey found errors in 43% of the reports furnished by the three major credit reporting agencies.[5] In 2000, a Consumers Union review of credit reports of twenty-five staffers found that more than half of the reports contained inaccuracies.[6] In a more recent study by the Consumer Federation of America and the National Credit Reporting Association, the problems of inaccuracies and inconsistencies continued to plague consumer credit reports upon which credit scores were based.[7]

Information reported by furnishers is not always complete[8] and many small retail and mortgage companies, and some government agencies simply never report to credit reporting agencies.[9] Failure to report positive information means that consumers of these furnishers never have the opportunity to prove their creditworthiness. Other creditors do not report or update information on the accounts of borrowers who consistently make payments as scheduled, yet report negative information. Often credit limits established on

[4] Consumers Union, *What Are They Saying About Me? The Results of a Review of 161 Credit Reports from the Three Major Credit Bureaus*, April 29, 1991.
[5] Jan Lewis, *Credit Reporting: Paying for Others' Mistakes*, Trial 90 (Jan. 1992) (describing a 1998 study done by Consolidated Information Services that reviewed 1500 reports from Equifax, Trans Union and TRW).
[6] *Credit Reports: How Do Potential Lenders See You?*, Consumer Rep. July, 2000.
[7] *See Credit Score Accuracy and Implications for Consumers*, Consumer Federation of America and the National Credit Reporting Association, December 17, 2002.
[8] *Id.*
[9] *See An Overview of Consumer Data and Credit Reporting*, U.S. Treasury (2003)

revolving accounts are not reported, which in some cases has the effect of making consumers appear to be less credit worthy than they really are. In other instances, creditors may not notify the credit reporting agency when an account is closed or has other material changes.[10]

Evidence of high error rates in the credit reporting system is also found in the complaints received by the Federal Trade Commission regarding credit reports. For many years consumer complaints about credit reports have ranked at the top of all complaints submitted to the FTC for any reason. Identity theft, which also involves creditors or furnishers of credit information and credit reporting agencies, is now at the top of all fraud complaints received by the FTC. The FTC reported to Congress that as of March 2002, the FTC received approximately 3000 calls per week to their toll-free identity theft hotline.[11] Approximately 43% of all complaints received by the FTC in all subjects are identity theft related.[12]

These statistics and reports clearly demonstrate that the credit reporting system is broken and in need of a fix that includes heightened standards for accuracy and accountability within the nation's credit reporting system. Most importantly furnishers must be provided with economic incentives to provide accurate information about consumers. Without such improvements, American consumers like those described below will continue to suffer serious financial and emotional consequences flowing from the modern version of the "Scarlet Letter."

Consumers Are Harmed By Inaccuracies And Errors In Our Broken Credit Reporting System.

Statistics of inaccuracies tell only a part of the story. The harm caused to consumers is real and devastating to those who, through no fault of their own, are victims of credit reporting falsehoods. Just this month, the Hartford Courant documented the harm and difficulties six consumers faced when inaccurate information was placed in their credit reports.[13] Consumers, who are victims of credit reporting errors, can be cut off from student loans and lose educational opportunities,[14] pay higher finance charges,[15] and face difficulties obtaining home financing.[16]

Anecdotal stories of errors illustrate the human costs of credit errors, but because they are stories of individuals they should not be considered to be isolated instances of a minor problem. These stories are typical of the thousands of daily errors in credit reports including inaccurate reports of bankruptcies,[17] reports of overpayments and non-

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[10] *Id.*
[11] *Identify Theft: The FTC's Response*: Before the Subcommittee on Technology, Terrorism and Govt. Info. of the Senate Judiciary Comm. (March 20, 2002)
[12] *A Positive Agenda For Consumers: The FTC Year In Review* (April, 2003)
[13] *See* Kenneth R. Gosselin and Matthew Kauffman, *A Credit Trap for Consumers*, Hartford Courant (May 11, 2003).
[14] Id.
[15] *See Credit Score Accuracy and Implications for Consumers*," Consumer Federation of America and the National Credit Reporting Association, December 17, 2002.
[16] *Id.*
[17] *See Nelson v. Chase Manhattan Mortgage Corp.*, 282 F. 3d 1057 (9th Cir. 2002).

payments, and reports of theft or other crimes. In one case, a check cashing agency that provides businesses with check security services erroneously reported that a consumer was part of "fraud ring." This report led to the arrest of the consumer and his friend who was waiting in a car while the consumer tried to cash a check. Although a day later the check cashing firm learned that its information was inaccurate, the person arrested while waiting in the car spent ninety days behind bars before the charges were dismissed.[18] In another case, a consumer had a bankruptcy listed on his credit report, even though he had never filed for bankruptcy. The bankruptcy was instead filed by his business associate, but listed on the consumer's report even though the consumer continued to pay the underlying debt.[19] In another example, a consumer received a nonrenewal notice from her insurer and learned that her insurer erroneously reported that she had made four fire claims and an "extended loss" claim over a short period of time. The consumer actually had only made prior claims relating to hail damage to her home, as well as a claim relating to her leaky washing machine. The false claims information remained on the consumer's report for over a year, even after the consumer filed suit, resulting in emotional harm and forcing her to pay higher insurance rates.[20]

Furnishers (Creditors) Have No Incentives To Provide Truthful Information

Credit bureau subscribers, for example department stores, banks, insurance companies and utilities, make reports to the credit reporting agencies of which they are members and include information about whether consumers are current or late with payments (30, 60, 90 days or more). The subscribers also state the balance on a consumer's account and the amount of minimum monthly payment. When incorrect information is reported to credit reporting agencies, that inaccurate information will be entered into a consumer's credit report incorrectly as well. Although credit reporting agencies have a duty to ensure "maximum possible accuracy" under the Act, they rely heavily upon creditors and other furnishers of information.

Under the FCRA, consumers have very limited remedies to pursue against furnishers of inaccurate information. The FCRA does establish minimum standards of accuracy for furnishers. The problem is that consumers have no private method of enforcing violations of such standards.[21] The only privately enforceable rights against furnishers of information are those relating to the reinvestigation which the creditor or furnisher is required to perform after a consumer requests that a credit reporting agency reinvestigate.[22] The reinvestigation process, intended by Congress to protect consumers from inaccurate information, exists in name only. Instead it has become simply verification process, not a reinvestigation process. It is highly doubtful that the process used by credit bureaus and furnishers is the reinvestigation process which was envisioned by Congress when the 1996 Amendments were enacted.

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[18] *Haque v. Comp U.S.A., Inc.* 2003 WL 117986 (D. Mass. Jan. 13, 2003).
[19] *Nelson v. Chase Manhattan Mortgage, Corp.*, 282 F. 3d 1057 (9th Cir. 2002).
[20] *Boris v. Choicepoint Services, Inc.*, 249 F. Supp. 2d 851 (W.D. Ky 2003).
[21] 15 U.S.C. § 1681s-2 (c) & (d) (enforcement limited to the FTC and state attorneys general).
[22] 15 U.S.C. § 1681-2(b); *See Bruce v. First U.S.A Bank, National Association*, 103 F. Supp. 2d 1135 (E.D. Mich.).

The evidence in case testimony by employees of the credit industry, shows that violations of the reinvestigation requirements are routine.[23] Credit reporting agencies (CRA) and furnishers bypass the requirements of checking original documents to determine the accuracy of disputed accounts. This is despite the FTC opinion in a consent decree that furnishers are required to check the original documents when reinvestigating a debt.[24] Instead, credit bureaus simply punch in codes or numbers that verify inaccurate information, without any real investigation or checking of documents.

Moreover, case testimony indicates that the CRA employees who are responsible for conducting investigations have time restrictions to investigate and send the dispute onto the creditor or furnisher. One credit reporting agency employee has testified that her agency receives between five to eight thousand consumer credit disputes per day and employees must handle one dispute every four minutes in order to meet quotas.[25] This demonstrates that the credit reporting agencies have no economic incentives to ensure accuracy – instead the incentive is simply to go through the motions of an investigation process. The current structure of the FCRA protects the agency and the furnisher who engage in a process, regardless of whether the process yields real results in ensuring accuracy.

Furnishers are not subject to litigation for providing incorrect information and there is no federal liability for failing to provide truthful information, or even for providing blatantly false information. Furthermore, so long as the mistakes about consumers generally make the consumers appear to be a worse credit risk than they really are, rather than better, the credit industry has no incentive to improve the system, especially where the current system covers additional risk by charging more for borrowers wrongly identified as being a greater risk by the credit reporting system.

Preemption Has Removed Important State Common Law Claims For Consumers And Hurts Creditors Who Maintain High Rates Of Credit Reporting Accuracy.

Furnishers are also protected from state common law and other claims because of preemption. Except in the context of a dispute and reinvestigation initiated with and by the credit reporting agency, consumers have to turn to legal theories outside the FCRA to establish liability of a creditor or other party furnishing inaccurate information to a reporting agency. However, claims for negligence, invasion of privacy and defamation are preempted unless malice can be proven.[26] Without preemption of state claims

[23] Deposition of Regina Sorenson, *Fleischer v. Trans Union*, Civ. Action No. 02-71301 (E.D. Mich. Jan. 9, 2003).
[24] *U.S. v. Capital Management,* (Bankr. C.D. Cal. Aug. 24, 2000) (consent decree).
[25] Deposition of Regina Sorenson, *Fleischer v. Trans Union*, Civ. Action No. 02-71301 (E.D. Mich. Jan. 9, 2003).
[26] *See* 15 U.S.C. § 1681h(e).

consumers could pursue claims against furnishers for (a) unfair practices,[27] (b) deceptive practices,[29] (c) defamation and (d) infliction of emotional distress.

In light of the preemption of state common law claims, and the limitation to claims for reinvestigations under federal law, there is no incentive – litigation risk or credit risk – for furnishers to provide truthful information to credit reporting agencies. For furnishers it is cheaper and easier to be sloppy. This creates a dynamic in the credit marketplace that favors the creditor/furnisher operating the sloppiest credit reporting system, as there is no economic incentive for the furnisher to spend money to make the reporting accurate. Indeed the consumer is wrongly charged a higher rate to access credit. This not only hurts consumers economically and emotionally, as previously described, it unfairly and adversely affects those creditors and furnishers who strive for accuracy. For those who seek greater accuracy, as envisioned by Congress when enacting the FCRA, the extra money spent to maintain high accuracy standards is not rewarded by the marketplace.

Changes To The Credit Reporting System Are Needed To Protect Consumers And The Marketplace

Now is the time to correct the deficiencies in the credit reporting system. State laws should be allowed to apply so that the risk of litigation, including state claims, provides the appropriate incentive to maintain high accuracy standards and provide truthful credit information. Higher accuracy standards and clear accountability for violating such standards ensure that consumers are protected and that the marketplace, including those who use credit information when making decisions on credit, insurance, and employment, can rely upon the information.

Consumers Should Have The Right To Obtain Equitable And Declaratory Relief To Correct False Information.

Businesses who furnish information to the credit reporting agencies should be liable to consumers for providing false or inaccurate information, especially when done after notification that the information is inaccurate. Reporting agencies rely on the information furnished by creditors and others. Yet, the Act currently protects creditors from all liability for furnishing inaccurate information -- even if the consumer has repeatedly informed the creditor of errors, the information is blatantly wrong, or if the information is furnished spitefully.[30] With one minor exception, [31] the FCRA does not even explicitly provide for injunctive relief in actions by private parties. One circuit court and several district courts have held that courts do not have the power to issue an injunction under the FCRA.[32]

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[27] *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 322 (1972); See National Consumer Law Center: *Unfair and Deceptive Acts and Practices* (5th ed. 2001 and Supp.).
[29] *FTC V. Colgate-Palmolive Co.*, 380 U.S. 374 (1965); FTC v. Gill, 71 F. Supp. 2d 1030 (C.D. Cal. 1999); See National Consumer Law Center: *Unfair and Deceptive Acts and Practices* (5th ed. 2001 and Supp.)
[30] *See generally* 15 U.S. § 1681s-2.
[31] 15 U.S.C. § 1681u(m), relating to FBI counter-intelligence purposes.
[32] *See Washington v. CSC Credit Services*, 199 F. 3d 263 (5th Cir.), cert. denied, 530 U.S. 1261 (2000); Ditty v. Checkrite, Ltd., Inc. 973 F. Supp. 1320 (D. Utah 1999); *Mangio v. Equifax, Inc.* 887 F. Supp. 283 (S.D. Fla. 1995); *Kekich v. Travelers Indemnity Co.*, 64 F.R.D. 600 (W.D. Pa. 1974). Compare *Califano v. Yamasaki*, 442 U.S. 682 (1979) which provides that "[a]bsent the clearest command to the contrary from

Providing courts with explicit authority to issue injunctive relief would further the purpose of the FCRA to "assure maximum possible accuracy." Courts should be granted the explicit authority to order credit reporting agencies and furnishers to delete inaccurate information and cease issuing reports that contain such inaccuracies. This could easily be accomplished by granting consumers the ability to seek injunctive and declaratory relief for initial reporting errors by furnishers of credit information. Judicial efficiency would also be served since consumers would not be compelled to file multiple suits when credit reporting agencies repeatedly include inaccuracies or fail to comply with the FCRA's requirements. Injunctive relief would further limit the need for class actions. Finally, it would provide relief to consumers who have not yet been harmed by the inaccurate information due to a denial of credit or other actual damages, but who still had inaccurate credit information associated with their names.

We propose that consumers be granted the right to correct inaccuracies by obtaining injunctive and declaratory relief against furnishers for the errors that furnishers transmit to credit reporting agencies. In this initial process consumers seeking injunctive and declaratory relief would not be entitled to monetary damages, only attorney's fees should they be successful in obtaining injunctive or declaratory relief.

The ability to obtain injunctive and declaratory relief to correct inaccurate information provided by furnishers can be accomplished by removing the prohibition against private actions to enforce §1681s-2(a) of the FCRA. That limitation is now found in §1681s-2(b)(4)(c) of the FCRA. The FCRA only allows state and federal officials to enforce accuracy requirements against furnishers. An appropriate amendment would remove these limitations and enable consumers to seek only declaratory and equitable relief against those who furnish inaccurate information.

Statutory Damages for Furnishers' Failure To Correct Inaccurate Information After Notice

For instances when a furnisher continues to report inaccurate information, after being placed on notice of the inaccurate information and the consumer's dispute of such information, we propose that a consumer be afforded the opportunity to seek statutory damages, in addition to declaratory and injunctive relief. This proposal would serve the dual purpose of providing incentives to maintain high accuracy standards for consumers and, at the same time, empower consumers with the ability to obtain immediate and effective relief from harm caused by inaccurate reports.

Other Recommendations To Ensure Accuracy And Increase Accountability.

Clearly the most important economic incentive for furnishers and credit reporting agencies to maintain high accuracy standards is private litigation. However, we also believe that other improvements to the FCRA are necessary to ensure accuracy and

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Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction."

accountability in our credit reporting system. Such improvements would include the following:

1. Requiring furnishers to conduct a "reasonable" investigation and not simply verify information;
2. Requiring furnishers to comply with the same modification and deletion requirements as those applicable to credit reporting agencies after there has been an investigation of disputed information;
3. Requiring credit reporting agencies to notify furnishers anytime information is deleted from a consumer's file; and
4. Requiring credit reporting agencies and furnishers to maintain data for a period of five years, including anything sent to creditors or others who use credit reports.

Conclusion

NCLC has over 30 years of experience working on behalf of consumers in several areas of financial and credit services. We have seen the exponential growth of the availability of credit and personal information about consumers and we are familiar with the shortcomings of our current credit reporting system to ensure high rates of accuracy in credit reports. Our current law has not kept pace with the growth of the marketing of consumer credit information. As a result, consumers bear the burden, financially and emotionally, of responding to and attempting to correct the misinformation that furnishers and others in the credit reporting system disseminate. We offer to the subcommittee our expertise and access to attorneys in legal services, private practice and governmental agencies to improve the FCRA and correct this injustice within our credit reporting system.

Thank you for this opportunity to testify today.

GOOD MORNING MR. CHAIRMAN. THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE RELEVANT TO AN ISSUE THAT IS OF VITAL INTEREST TO THE CONSUMER IN PARTICULAR, TO FINANCIAL INSTITUTIONS IN GENERAL, TO SMALL BUSINESS OWNERS AND IN PARTICULAR TO HISPANIC-OWNED BUSINESSES.

MY NAME IS RAMON RODRIGUEZ AND I AM THE CHIEF OPERATING OFFICER OF THE UNITED STATES HISPANIC CHAMBER OF COMMERCE. COMMONLY REFERRED TO AS THE USHCC.

SINCE ITS FOUNDING IN 1979 IN THE STATE OF NEW MEXICO, THE USHCC HAS BEEN AT THE FOREFRONT OF ADVOCATING FOR AND ON BEHALF OF HISPANIC BUSINESS OWNERS, BOTH ON A NATIONAL AND INTERNATIONAL LEVEL. AS THE LEADING HISPANIC BUSINESS ORGANIZATION IN THE UNITED STATES WE REPRESENT THE INTERESTS OF MORE THAN 1.5 MILLION HISPANIC OWNED BUSINESSES IN THE UNITED STATES AND PUERTO RICO. OUR PRIMARY MISSION IS TO PROMOTE AND ENHANCE BUSINESS OPPORTUNITIES WITH CORPORATE AMERICA AND THE PUBLIC SECTOR, FOR THE CONSTITUENCY WE REPRESENT. ONE OF THE CHALLENGES THAT CONFRONTS OUR CONSTITUENCY CONTINUOUSLY IS ACCESS TO CAPITAL. THE ENTREPRENEURIAL SPIRIT OF THE HISPANIC COMMUNITY IS UNEQUALED WITHIN THE MINORITY BUSINESS COMMUNITY. IT HAS TWICE AS MANY BUSINESSES AS THE NEXT LARGEST MINORITY BUSINESS SECTOR AND GROWING AT AN

EXPONENTIAL RATE AND GENERATING OVER $200 BILLION IN ANNUAL GROSS RECEIPTS. WITH AN INCREASE IN THE NUMBER AND PROFITS OF HISPANIC BUSINESSES IN THIS COUNTRY, THE COMMUNITY HAS BECOME A CENTRAL FIGURE WITHIN THE COUNTRY'S FINANCIAL MARKETS. FOR HISPANIC BUSINESSES, ACCESS TO CAPITAL MEANS THE ABILITY GROW AND EXPAND THEIR ENTERPRISES TO BECOME MORE COMPETITIVE IN THE BUSINESS WORLD. PART OF THAT ACCESS TO CAPITAL IS HAVING ACCESS TO CREDIT AND HAVING A MECHANISM IN PLACE THAT WILL NOT IMPEDE THE FREE FLOW OF THAT CREDIT, THAT IN SOME INSTANCES CAN MEAN THE DIFFERENCE BETWEEN TAKING ADVANTAGE OF AN OPPORTUNITY OR NOT.

MR. CHAIRMAN, NOW THAT YOU KNOW WHO WE ARE, ALLOW ME TO FOCUS ON THE FAIR CREDIT REPORTING ACT AND THE IMPORTANCE OF UNIFORM NATIONAL STANDARDS TO OUR MEMBERS. BECAUSE OTHERS HAVE AND WILL TESTIFY ABOUT THE INTRICATE INNER WORKINGS OF THE ACT AND WHAT WILL HAPPEN IF ANY ASPECT IS MATERIALLY DISRUPTED; I WILL NOT DO SO TODAY. SUFFICE IT TO SAY THAT ALL OF THE ECONOMIC BENEFITS BEING DESCRIBED APPLY EQULLAY TO OUR BUSINESSES AND OUR MEMBERS AND, MORE IMPORTANTLY AL OF THE CONSEQUENCES OF DISRUPTING OR BALKANIZING THE CURRENT SYSTEM FALLS ON US AS WELL.

HAVING SAID THAT, LET ME MAKE SOME IMPORTANT POINTS UNIQUELY FROM OUR PESPECTIVE.

LET ME BEGIN WITH SOME STATISTICS I HAVE SEEN. SEVEN OUT OF 10 BUSINESSES ARE STARTED WITH LESS THAN $20,000. SMALL BUSINESSES REPRESENT 99% OF ALL U.S. EMPLOYERS AND THEY ACCOUNT FOR 80% OF ALL NEW JOBS. OVER 45% OF SMALL BUSINESSES RELY UPON PERSONAL CREDIT CARDS AS A MAJOR SOURCE OF FINANCING AND, SINCE THE 1996 AMENDMENTS, THOSE IN THE LOWER HALF OF THE INCOME SPECTRUM HAVE ENJOYED BY FAR THE LARGEST INCREASE IN ACCESS TO COMPETITIVELY PRICED CREDIT. MINORITY HOME OWNERSHIP AND MINORITY OWNERSHIP OF BUSINESSES HAVE INCREASED STEADILY SINCE 1996, DUE LARGELY TO COMPETITIVELY AVAILABLE CREDIT AND UNLIKE ANY TIME IN OUR HISTORY. THOSE IN THE LOWEST ONE FIFTH INCOME BRACKET HAVE, BY FAR, SEEN THE GREATES INCREASE IN HOME OWNERSHIP AS A RESULT.

THESE PHENOMENA HAVE OCCURRED BECAUSE CONGRESS ENACTED LAWS THAT ALLOWED A TRULY NATIONAL MARKET FOR CREDIT TO DEVELOP AND GAVE BUSINESSES, BOTH LARGE AND SMALL, THE ABILITY TO ACCURATELY ASSESS CREDIT RISKS LIKE NEVER BEFORE. NOT SURPRISING THEN THAT RECENT STUDIES ALSO SHOW THAT THOSE WHO ACHIEVED THE MOST GAINS SINCE 1996 WILL, SHOULD

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THE CURRENT SYSTEM BECOME BALKANIZED, SUFFER DISPROPORTIONATELY. ONE STUDY INDICATED 1.8 MILLION FEWER JOBS AND 19,000 FEWER HOME PURCHASES A YEAR IS FCRA IS NOT RENEWED. BECAUSE OUR MEMBERS ARE AMONG THOSE WHO HAVE BENEFITED THE MOST FROM WHAT THE 1996 AMENDMENTS MADE POSSIBLE, WE WILL SUFFER DISPROPORTIONATELY SHOULD THE CURRENT LAW BE PERMITTED TO LAPSE. WE URGE YOU NOT TO LET THAT HAPPEN.

LET ME SHARE WITH YOU A LETTER OUR PRESIDENT, GEORGE HERRERA, RECENTLY SENT TO THE WHITE HOUSE ON THIS TOPIC. I SHARE THIS BECAUSE I KNOW THIS ADMINISTRATION SHARES OUR CONCERN. THE LETTER READS AS FOLLOWS:

"THIS ADMINISTRATION HAS ALWAYS BEEN ATTENTIVE TO ISSUES OF IMPORTANCE TO THE HISPANIC BUSINESS COMMUNTY, PARTICULARLY ISSUES THAT IMPACT UPON OUR ABILITY TO ENJOY THE SAME ECONOMIC OPPORTUNITITES AS OTHERS. ON BEHALF OF THE UNITED STATES HISPANIC CHAMBER OF COMMERCE, ALLOW ME TO FOCUS ON TWO ECONOMIC ISSUES IMPORTANT TO BOTH OUR MEMBERS AND TO OUR COMMUNITY.

THERE IS INCREASING DISCUSSION WITHIN THE CHAMBER OF THE POTENTIALLY SEVERE ECONOMIC CONSEQUENCES SHOULD THE EXPIRING PROVISIONS OF THE FAIC CREDIT REPORTING ACT BE PERMITTED TO LAPSE. EQUALLY OF CONCERN IS HAVING STATES LIKE

CALIFORNIA CONTINUE EFFORTS TO RESTRICT OUR COMPANIES FROM KNOWING THEIR CUSTOMERS AND ACTING UPON INFORMATION NOW AVAILABLE TO THEM TO BETTER THEIR BUSINESS POTENTIAL. I URGE THE WHITE HOUSE TO ACTIVELY WORK TO OBTAIN THE LEGISLATION NECESSARY TO PREVENT THESE THINGS FROM HAPPENING.

THROUGHOUT THE YEARS, BUT MORE SO RECENTLY, THE HISPANIC BUSINESS COMMUNITY AS CONTRIBUTED GREATLY TO THE GROWTH OF OUR NATION'S ECONOMY. THE ECONOMIC SUCCESSES OF OUR MEMBERS AND OF INDIVIDUALS WITHIN THE COMMUNITY IS DUE, IN SUBSTANTIAL PART, TO CREDIT BECOMING WIDELY AND FAIRLY AVAILABLE AT COMPETITIVE RATES. THESE LAWS HAVE EXTENDED THE REACH OF CREDIT MARKETS IN WAYS THAT HAVE LARGELY ABOLISHED ARTIFICIAL RESTRICTIONS PREVALENT ONLY A FEW SHORT YEARS AGO. WE MUST NOT RETREAT AND WE MUST NOT ALLOW A PATCHWORK OF LAWS THAT ULTIMATELY WILL UNFAIRLY HURT OUR MEMBERS AND OUR COMMUNITY."

GEORGE CONCLUDED BY SAYING, "ONE RECENT STUDY I SAW PREDICTED A SEVERE ECONOMIC IMPACT SHOULD CONGRESS NOT ACT. IT CAME AS NO SURPRISE THAT THE FINDINGS ALSO INDICATED WE WOULD SUFFER DISPROPORTIONATELY. THAT IS WHY THIS IS IMPORTANT TO OUR MEMBERS AND THAT IS WHY I AM ASKING FOR

FOR YOUR HELP."

GEORGE MAKES THE POINT WELL. WITH THE CURRENT LAW, A CREDIT SYSTEM THAT IS THE ENVY OF THE WORLD HAS DEVELOPED. OUR MEMBERS CAN BOTH EXTEND AND RECEIVE CREDIT ATA SPEED AND COST NEVER BEFORE DREAMED POSSIBLE. THE DAYS WHEN MOST SMALL BUSINESSES ONLY SOLD THEIR WARES TO CUSTOMERS IN THE NEIGHBORHOOD ARE LONG GONE. OUR MEMBERS NEED AND RELY UPON A CREDIT REPORTING SYSTEM THAT REFLECTS NATIONAL CONSISTENCY. ONLY THEN CAN OUR MEMBERS ACCURATELY JUDGE THE CREDIT WORTHINESS OF THEIR CUSTOMERS REGARDLESS OF WHERE THEY ARE AND ONLY THEN CAN OUR MEMBERS BENEFIT FROM INTENSE COMPETITION TO FULFILL THEIR CREDIT NEEDS, REGARDLESS OF WHAT STREET OR NEIGHBORHOOD THEY LIVE OR DO BUSINESS.

ALLOW ME, PLEASE, TO MAKE TWO FINAL POINTS. FIRST, MANY OF OUR HISPANIC BUSINESS MEMBERS SUCCEED BECAUSE THEY ARE ABLE TO MARKET AGGRESSIVELY AND SUCCESSFULLY. THOSE OF US WHO HAVE SUCCEEDED IN BUSINESS KNOW THAT CUSTOMERS DON'T COME TO US. WE HAVE TO GO FIND THEM AND WE HAVE TO MARKET OUR GOODS AND SERVICES ONCE WE DO FIND THEM. OUR ECONOMY IS IN LARGE PART BUILT ON MARKETING AND WHILE THE EXPIRING PROVISIONS IN FCRA ALL SUPPORT OUR ABILITY TO COMPETITIVELY

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GRANT OR RECEIVE CREDIT, SOME PROVISIONS ALSO HELP US MARKET SUCCESSFULLY. THERE SHOULD BE NO MISTAKE. THAT ASPECT OF FCRA IS JUST AS VITAL TO THE ECONOMY, AND ANY SUGGESTION TO THE CONTRARY, I SUBMIT, IS WRONG.

FINALLY, IN OUR LETTER TO THE WHITE HOUSE WE EXPLAINED THAT WE ARE VERY CONCERNED ABOUT THE EFFORTS IN SOME STATES TO RESTRICT OUR COMPANIES FROM KNOWING THEIR CUSTOMERS AND ACTING UPON THE INFORMATION NOW AVAILABLE TO THEM TO BETTER THEIR BUSINESS POTENTIAL. BECAUSE SO MANY OF OUR BUSINESSES OPERATE ON A MULTI-STATE BASIS, BALKANIZATION OF THE STANDARDS BY WHICH WE SHARE INFORMATION WILL ONLY SERVE TO DRIVE UP COSTS AND PRICES AND, IN THE EXTREME, MAKE DOING BUSINESS IN SOME STATES NO LONGER COMMERCIALLY VIABLE. IN MANY RESPECTS, ALLOWING THIS TO HAPPEN WILL HAVE THE SAME EFFECT AS ALLOWING THE PROVISIONS IN FCRA TO EXPIRE. IT IS BAD FOR THE ECONOMY AND WILL HURT MANY OF OUR MEMBERS. IN THE END, THERE WILL BE A NATIONAL CREDIT MARKET. THE ONLY QUESTION IS WHETHER THE NATIONAL STANDARDS WILL BE ESTABLISHED BY WASHINGTON OR SACRAMENTO.

THESE ARE SERIOUS ISSUES ABOUT MATTERS THAT ARE VITAL FOR OUR MEMBERS. BECAUSE SO MUCH IS AT STAKE, THEY WILL WATCH

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CLOSELY. I URGE THE CONGRESS AND THE ADMINISTRATION TO RE-SOLVE BOTH OF THESE ISSUES QUICKLY. OTHERWISE, WE BELIEVE THIS COUNTRY RISKS A SIGNIFICANT ECONOMIC RETREAT AND, IF THE ECONOMISTS ARE CORRECT, IT WILL FALL HARDES ON THOSE WHOSE GAINS ARE ONLY RECENT, THAT IS, MINORITY BUSINESS COMMUNITIES.

THANK YOU, MR. CHAIRMAN.

Testimony of the
National Association of Insurance Commissioners

Before the
Subcommittee on Financial Institutions and Consumer Credit

Committee on Financial Services
United States House of Representatives

Regarding:
The Fair Credit Reporting Act: How it Functions for Consumers and the Economy

June 4, 2003

Gregory V. Serio
Superintendent of Insurance
New York

Testimony of Gregory V. Serio, Superintendent of Insurance
New York Department of Insurance

Introduction

My name is Greg Serio. I am the Superintendent of Insurance for the State of New York. I serve as Chair of the National Association of Insurance Commissioners Privacy Issues Working Group. I am pleased to be here on behalf of the NAIC and its members to update the Subcommittee on Financial Institutions and Consumer Credit on the impact of the Fair Credit Reporting Act (FCRA) and its preemption provisions on insurance, particularly in the areas of credit scoring and privacy.

State insurance commissioners recognize that FCRA provides an important tool to insurers and consumers alike by requiring accurate and complete credit reports, which enable more informed and potentially quicker decision making. FCRA specifically applies to credit report information used to determine eligibility for insurance and defines certain parameters under which that information can be used and disclosed. In addition, FCRA preempts state laws to the extent they conflict with the federal law and explicitly prohibits states from enacting laws and regulations on issues already covered by FCRA even if they do not conflict. These latter preemptions expire at the end of this year.

You asked me to talk today about FCRA's impact on insurance and the role of insurance regulators. Before I address that issue, I would like to make a preliminary point, but one that is critical when considering the role that state insurance regulators play in the insurance sector and the wider financial services marketplace. This is a theme we have presented in previous testimony:

An important reason for government regulation of insurers is to protect American consumers. Effective consumer protection, which to date has focused on local needs, is the hallmark of state insurance regulation. We understand local and regional markets and the needs of consumers in these markets. We recognize that consumer protection is the central purpose of our jobs. In addition, protecting insurance consumers in a world of hybrid institutions and products must start with a basic understanding that insurance is a different business from banking and securities and these differences need to be thoughtfully considered. For that reason, I appreciate the opportunity to bring the insurance regulatory perspective to your FCRA deliberations.

I would like to focus on two issues today, both of which are central to state insurance regulators' efforts to protect insurance consumers:

First, I will provide an update on the current debate over insurers' use of credit scores in the underwriting and rating of insurance, and the legislative and regulatory approaches the states are using to ensure credit scores are used fairly.

Second, I will address the relationship between the states' privacy efforts and FCRA's preemption provisions, which prohibit the states from restricting the sharing of information among affiliates.

The Use of Credit Scoring in Insurance Rating and Underwriting

Background

Over the past decade, insurers have begun using consumer credit histories to create "credit scores"[1] for individuals who apply for, or renew, homeowner and automobile insurance policies. Credit scores are used by insurers as one of the factors in determining the premium for a customer's policy. They are also used as a factor in underwriting procedures, including placement of policyholders within insurance company groups and determinations of whether to cancel or non-renew a policy. Credit scores are high if an

[1] Note that credit scores used for insurance purposes are now sometimes called "insurance scores" to distinguish them from those used by banks and other institutions for credit purposes. In my testimony, I will use the more commonly used term, "credit score."

individual's credit history is good, and low if it is not good. A low credit score could increase premiums and a high credit score could lower premiums.

The use of credit scores by insurers has generated a vigorous public policy debate as to whether a statistically significant relationship exists between credit history and insurance loss. Questions have been raised not only about the validity of credit history as a predictor of risk, but also its fundamental fairness, and the impact of credit scoring on minority and low income groups.

Insurers contend that studies show a correlation between lower credit scores and higher loss ratios. Therefore, the use of credit history is fair and benefits consumers whose good credit scores indicate lower risks. Insurance companies also argue that using consumer credit history is non-discriminatory because it is "color blind" and because there is no consistent correlation between income level and credit score.

Consumer groups concede credit scoring may not be intentionally discriminatory. However, they claim credit scoring may nonetheless produce disparate impacts that unjustly harm minorities and the poor. Consumer groups also contend that the data in credit reports are often inaccurate and that the process for correcting inaccuracies is cumbersome and time-consuming, especially for those whose time is already stretched by work and family obligations. Moreover, credit scoring models and how they are used, vary from one insurance company to another. Therefore, it can be difficult for consumers to know how they are affected when credit scores are used as one element in a complex formula for determining rates or assigning consumers to risk pools.

Extensive Activity in the States to Ensure Fair Use of Credit Scores

Since 1996, insurers' use of credit scoring has increased and so has the intensity of the public policy debate about this practice. While FCRA allows insurers to use credit reports in determining eligibility for insurance, the states are integrally involved in this issue because, as the regulators of the business of insurance, we regulate the use of such information as part of our oversight of insurers' solvency and to ensure the protection of insurance consumers.

Specifically, state law regulates the factors that insurers use for underwriting and rating. As with any underwriting or rating factor, insurance regulators are concerned with two issues in connection with the use of credit scoring:

- Is there a correlation between the factor (credit scores) and risk of loss?
- Does the use of credit scores in rating and underwriting result in unfair discrimination against protected classes?

This year, a majority of the state legislatures have considered bills to regulate or restrict the use of credit scores. To date, at least 11 states have adopted legislation, and a dozen states have legislation pending. Nine of the state laws that were enacted this spring are based on the National Conference of Insurance Legislators (NCOIL) "Model Act Regarding Use of Credit Information In Personal Insurance." The NCOIL model prohibits insurers from using credit information as the sole basis for increasing rates or denying, canceling or non-renewing a policy. The NCOIL model requires insurers:

- to notify an applicant for insurance if credit information will be used in underwriting and rating;
- to notify a consumer in the event of an adverse action based on credit information, including notification of factors that were the primary influences on the adverse action;
- to re-underwrite and re-rate a policyholder whose credit report was corrected;
- to indemnify insurance agents/brokers who obtained credit information and/or insurance scores according to an insurer's procedures and according to applicable laws and regulations; and
- to file its scoring models with the applicable state department of insurance; such filings are deemed trade secrets.

The model act also prohibits a consumer reporting agency from providing or selling information submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score.

In Kansas, Governor Kathleen Sebelius has signed credit scoring legislation similar to the NCOIL model. The new law, based on recommendations from the state's Credit Scoring Task Force, applies to auto and homeowner's insurance. The Task Force concluded that neither unfettered use of credit-based insurance scoring nor a total ban of credit-based insurance scoring is appropriate. For that reason, the Kansas law prohibits insurers from using credit scoring as the sole factor in determining an insurance risk. Among other things, the law also requires a change in a "traditional" underwriting factor (age, driving record, etc.) before credit can be used against a consumer and requires insurers to file their methodology with the state insurance department.

In Texas, the House and Senate initially took differing approaches to the issue. Earlier this week, however, a legislative conference committee adopted a final bill based on the NCOIL model. Governor Perry is expected to sign the legislation.

In California, legislation is still pending. The Senate has cleared SB 691, which would ban the use of credit scoring by insurers to underwrite, cancel or non-renew homeowner policies. The bill will be considered by the Assembly sometime in June. Note that California already bans the use of credit scores in the underwriting of auto insurance as a result of the adoption of Proposition 103 in 1988. The current legislation extends that ban to homeowners insurance.

In New York, there are a number of bills pending in the Legislature limiting or prohibiting the use of credit scoring in an insurer's underwriting criteria. Respectively, these bills prohibit an insurer from using a person's credit history in the setting of rates for homeowners' insurance; prohibit an insurer from using a person's credit history in determining whether or not to issue or renew a motor vehicle liability insurance policy; and prohibit an insurer from using a consumer's credit history in the determination of rates and premiums and in determining whether to cancel, deny or non-renew any kind of insurance policy. In addition, another bill would add several provisions regulating consumer credit information to our General Business Law and adopts various provisions of the Federal Fair Credit Reporting Act.

In addition to legislative action, states have taken other action, including the issuance of regulations, bulletins and formal studies, to educate insurers and consumers as to acceptable uses of credit scores.

- In Alabama, Commissioner Walter Bell is in the process of finalizing a credit scoring regulation that is set to take effect June 7. The regulation requires insurers to make available to the commissioner procedures used to obtain credit reports and insurance scores, and it prohibits insurers from calculating a credit score based on an applicant's lack of credit history.
- Ohio has issued a regulation similar to the NCOIL model law, prohibiting credit scores from being used as the sole criterion in underwriting and rating personal auto and homeowners insurance. The regulation also requires a comprehensive notice to consumers. Coupled with their consumer information bulletin, the insurance department has provided consumers with a strong baseline of protection.
- Michigan has issued bulletins giving insurers guidance as to the use of credit scores.
- A number of states have independently reviewed the use of credit scores:
  - Alaska: Insurance Credit Scoring in Alaska; February 21, 2003
  - Florida: Task Force on the Use of Credit Reports in Underwriting Automobile and Homeowners Insurance, January 23, 2002
  - Michigan: The Use of Insurance Credit Scoring in Automobile and Homeowners Insurance; December, 2002
  - Texas: A Statistical Analysis of the Relationship Between Credit History and Insurance Losses; March, 2003 -- prepared by the Bureau of Business Research, McCombs School of Business and the University of Texas at Austin

- Washington: A Report to the Legislature: Effect of Credit Scoring on Auto Insurance Underwriting and Pricing; January, 2003.

The NAIC Credit Scoring Working Group has requested the American Academy of Actuaries to review and comment on the credit scoring studies conducted in the states of Alaska, Texas and Washington.

In New York, we have seen a number of proposals designed to use credit characteristics in private passenger automobile rate filings. Generally, the filings have utilized a credit "score" established by private vendors that have traditionally tracked credit report data (such as Fair Isaac, Inc.). The methods involved in establishing the credit score are proprietary to the vendors. Accordingly, this represents a "black-box" approach since neither the insurance department, the insurer, nor the consumer can be 100% sure how the score is established, or even the variables used in the scores' determination. To date - with one exception - the New York Insurance Department has not approved the use of credit information in private passenger automobile insurance rating.

The one filing that was approved for an insurer allowed it to use credit information for the purpose of granting a discount to insureds possessing what the insurer has determined to be "good" credit characteristics. This discount differed from other "credit score" proposals in that it does not use the "black-box" approach based on an independent vendor's data. Rather, it has selected specific credit characteristics that appear to be correlated with insurance loss experience of its own insureds. We approved this insurer's use of credit reports in the determination of a discount on automobile insurance rates on an experimental basis, provided the insurer complied with the disclosure requirements for an "adverse action" under Federal and State law, whereby the insurer agreed to provide an appropriate notice to any affected insured.

For more information on state action on credit scoring, please see the attached Appendix A. This chart gives a brief description of the laws and rules in each state.

NAIC Activity Reflects Strong Interest In Credit Scoring Among Insurance Commissioners

Credit scoring has been a focus of interest at the NAIC for several years. In fact, in 1998, the NAIC adopted a white paper on the subject. The white paper, "Credit Reports and Insurance Underwriting," gives an excellent overview of the use of credit scores in insurance, the policy issues involved, and information for consumers.

Last year, the NAIC formed a working group to study the use of credit scores and credit history in the insurance underwriting and rating process. Joel Ario, the NAIC's Secretary-Treasurer and Oregon Insurance Administrator, and Mike Kreidler, Washington Insurance Commissioner, co-chair the working group.

Credit Scoring Education Tools for Regulators and Consumers

In order to help regulators and consumers better understand credit scoring, which can be a complicated issue, the working group recently developed two documents that are scheduled for adoption by the full NAIC membership next month:

- "Credit Based Insurance Scoring: Regulatory Options" is an analysis of regulatory alternatives for regulators (Appendix B); and
- "Understanding How Insurers Use Credit Scoring" is a consumer education brochure (Appendix C).

Credit Based Insurance Scoring: Regulatory Options

This document provides the pros and cons of a broad range of regulatory options states may choose to reference when establishing state public policy, laws and regulations addressing the use of credit scores. Specifically, the document addresses underwriting, rating, modeling insurance scores, and disclosures. By way of illustration: a state may wish to prohibit the use of credit scores as the sole underwriting criterion or may wish to ban the use of credit scores in the cancellation or non-renewal of insurance policies. When it comes to rating, a state may wish to prohibit the use of credit scores for rating or may wish to place a cap on the amount of premium surcharge or discount that results due to credit history. When addressing insurance scoring models, states may wish to restrict the use of certain credit attributes or prohibit the use of credit history in dispute. In terms of disclosure, a state may wish to require an insurer provide advance notice to a consumer that his or her credit history will be used or require an insurer to disclose the specific attributes of a consumer's credit history that result in an adverse action.

Consumer Brochure: Understanding How Insurers Use Credit Information

The Consumer Brochure is designed to help consumers understand how insurance companies use credit information and how the use of credit scores affects how much individuals pay for insurance. States may choose to modify the brochure to ensure consistency with state public policy, laws and regulations addressing the use of credit scores. The brochure answers the following types of questions:

- Can an insurance company look at consumers' credit information without their permission?
- What kind of credit information do insurance companies use?
- Must an agent or company tell a consumer what his/her insurance credit score is?
- How can consumers improve their credit score if they have been adversely affected?

In addition to drafting the regulatory and consumer documents, the working group has achieved two other specific goals:

Consultation with the Federal Trade Commission

After consultations with the NAIC, the Federal Trade Commission (FTC) has reiterated that insurers must provide notice to consumers when an action based on a credit score adversely affects them. Prior to this statement, insurers maintained that certain actions, such as not offering the lowest price, were not necessarily adverse actions.

American Academy of Actuaries Report on Credit Scoring Studies

At the request of the NAIC, the American Academy of Actuaries has evaluated four studies on insurance credit scoring. The studies are:

1. The Impact of Personal Insurance Credit History on Loss Performance in Personal Lines by James E. Monaghan (2000);
2. Insurance Scoring in Personal Automobile Insurance - Breaking the Silence by Conning & Company (2001);
3. Predictiveness of Credit History for Insurance Loss Ratio Relativities by Fair, Isaac (1999); and
4. Use of Credit Reports in Underwriting by the Commonwealth of Virginia, State Corporation Commission, Bureau of Insurance (1999).

Based on their review of the four studies and their expertise in the development and review of rating models based on credit history, the Academy members that reviewed the studies believe that credit history can be used effectively to differentiate between groups of policyholders. Therefore, they believe credit scoring is an effective tool in the underwriting and rating of personal lines of insurance. Having said that, they also concluded that none of the four studies contained the necessary information to enable an evaluation as to whether credit-related insurance scoring results in a disproportionate impact for protected classes or for low-income policyholders.

Following on its report on the four studies, the Academy continues to work with the NAIC to develop guidelines for a potential NAIC study of credit scoring. The issues being discussed for inclusion in a study include determining the correlation between credit history and risk of loss, and whether insurance scoring disproportionately affects protected classes and low-income groups.

States are Actively Working to Protect Consumer Privacy

Section 624(b)(2) of FCRA prohibits the states from placing any requirement or prohibition "with respect to the exchange of information among persons affiliated by common ownership or common corporate control..." This provision effectively creates a uniform privacy standard with respect to the treatment of the disclosure of certain information among affiliates. This concept was incorporated into the privacy provisions of the Gramm-Leach-Bliley Act (GLBA), which state that "nothing in this title shall be construed to modify, limit, or supersede the operation of" FCRA (15 USC 6806), as well as the state and federal implementing regulations.

The states have worked actively to protect consumer privacy and meet the requirements mandated by GLBA. All of the states and the District of Columbia have taken action to ensure that insurance companies meet GLBA's privacy requirements. In 2000, the NAIC adopted the "Privacy of Consumer Financial and Health Information Model Regulation" to serve as a guide for the states as they sought to comply with the enforcement requirements of GLBA's privacy provisions. Most of the states have promulgated this model regulation and I am proud to note that New York was the first state to take action. The remaining states have revisited the privacy laws that they had in force before GLBA was enacted in 1999. These state laws, based on the 1980 NAIC Insurance Information and Privacy Protection Model Act, are considered by insurance regulators to be generally more protective of consumer privacy than GLBA.

While privacy rules in some states have unique aspects, for the most part the states have achieved "operational uniformity." This means an insurer can operate across the country utilizing a single privacy policy. Although there may be differences in state requirements, there are no conflicts, so insurers can take a uniform approach nationwide. This brings stability and allows the marketplace to function efficiently nationwide.

It should be noted that limitations on inter-affiliate information sharing are not due to FCRA "occupying the field." In fact, FCRA only addresses certain inter-affiliate disclosures, thus making those disclosures "off limits" to state regulation. FCRA does not address disclosure of other information, such as "transaction or experience" information, "credit header" information (such as identifying information), or disclosures made for non-FCRA uses, such as marketing. Inter-affiliate disclosures of such information could be restricted by the states if the states so chose.

Although GLBA permits the states to provide greater privacy protections than the federal law requires, for the most part the states have chosen to follow GLBA, the NAIC model, and the federal banking agencies' implementing regulations fairly closely, including avoiding restrictions on inter-affiliate information sharing. This conscious decision was made for two reasons:

- to encourage uniformity among the states, thereby ensuring that insurance consumers would have consistent treatment of their personal information from state to state, and insurers would have an even playing field across the country; and
- to ensure that insurers would not be at a competitive disadvantage in comparison with their counterparts in the other financial services sectors, banking and securities.

Thus, the state insurance regulators have satisfied their obligations under GLBA and stayed within the limits imposed by FCRA. In addition, although they have the authority to promulgate stricter privacy protections in some areas, most insurance regulators have chosen not to do so, believing that uniformity and consistency with the federal requirements is in the best interests of consumers and insurers, alike. The goal for insurance regulators is, as always, consumer protection. In the privacy context, that means effective privacy protections that provide real security for consumers and uniform requirements, not only among the states but across the financial services industry.

Conclusion

The impact of the Fair Credit Reporting Act on insurance, the relationship between FCRA and other privacy protections (including GLBA), and the use of credit scores in insurance underwriting and rate-setting are enormously complicated issues. As you proceed with your deliberations, I urge you to keep in mind what I mentioned earlier is the central purpose of my role as a state insurance regulator: protecting consumers. Making sure this complicated system is used fairly and for the benefit of consumers, and helping them understand their rights and responsibilities should be our ultimate goal.

Accurate credit reporting is essential to ensure that consumers are treated fairly in the pricing and underwriting of insurance. FCRA is an effective means of accomplishing this goal. The other essential element is the role of the states. In credit scoring, the states have devoted tremendous resources to determining if there is a relationship between a credit score and risk of loss, and, equally important, to determining if the use of credit scores is fair to consumers. In privacy, the states have implemented strong consumer protections in a fair and "operationally uniform" manner. The states have taken action to ensure that consumers are educated and treated fairly. In so doing, we are fulfilling the central role of our jobs, which is protecting American insurance consumers.

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USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
AL	No provision			*Reg. 482-1-127 pending (2003)*	*Personal lines*	*Make procedures used to obtain credit reports and insurance scores available to commissioner. May not calculate score based on lack of credit history.*
				SB 271 pending (2003)	*Property and casualty*	*An insurer may not base an underwriting decision, in whole or in part, on a credit report.*
AK	§§ 21.36.120, 21.36.150, 21.39.030	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 5, HB 47, SB 13 pending (2003)*	*All lines*	*May not base rates on credit score.*
				HB 85, SB 64 pending (2003)	*Consumer reporting agencies*	*Consumer reporting agency shall provide complete file to consumer on request without charge.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
AZ	§ 20-448	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 44-1692	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§§ 20-2102, 20-2109 to 20-2110	Property and casualty	Must provide specific reasons for adverse decision based on credit history or credit score.
				HB 2183 pending (2003) **DIED**	*Property and casualty*	*May not use credit history to determine rates or eligibility for coverage unless models to calculate are filed with the commissioner. May not consider absence of credit or medical industry codes.*
				HB 2032 (2003)	All lines	In the event of an adverse underwriting decision, provide the specific reasons. If based on credit-related information, must decide factors that were primary cause. May not use the following credit-related factors for property or casualty premiums: absence of credit history, credit history based on collection of medical bills, total available credit, etc.

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AR	§ 23-66-205, 23-66-206	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 23-66-317 (Repealed eff. 1/1/04)	Auto	Auto insurer may not refuse to issue or renew coverage or limit coverage solely upon the applicant's credit history unless the credit report reveals an increased hazard and the insurer or its agent sends written notice to the applicant explaining the insurer's actions.
				Directive 2-2002	Personal lines property and casualty	May not refuse to issue or renew coverage based solely on credit report unless report shows substantially increased risk to insurer and insured is given notice. If insurer relies on credit scoring, system must be filed with department.
				SB 846 (2003) will be §§ 23-67-401 to 23-67-415 (Eff. 1/1/04)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

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CA	Ins. § 790.93	Life	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Civ. §§ 1785.10 to 1785.11	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Agency must notify consumer of rights and provide copy of file, including any credit score used.
				AB 800 pending (2003)	*Consumer reporting agencies*	*Amends Civ. § 1785.25 to state that the credit reporting agency may only furnish information if it reasonably knows the information is accurate and complete.*
	Reg. tit. 10 § 2632.5	Private auto	Credit scores are not listed as an allowable auto rating factor.	Civ. § 1786.18	All lines	May not include specified information in an investigative report except when used in underwriting life insurance expected to amount to $250,000 or more.
				Bulletin 76-3	All lines	Users of credit reports who deny insurance or increase the prices charged on the basis of information contained in the reports must disclose the information that was the basis for the adverse decision.
				AB 227 pending (2003)	*Auto, property*	*May not use credit scoring to underwrite or rate insurance.*
				AB 3 pending (2003)		*Consumer credit reporting agency must remove derogatory information more than 7 years old. Credit score may not be affected by number of inquiries. Provide one free copy of report to consumers yearly.*
				SB 691 pending (2003)	*Homeowners*	*May not use credit history to underwrite a risk.*

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CO	§ 10-3-1104	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 12-14.3-103	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. Must notify consumers that will be using credit report for determination of eligibility for coverage or to determine premiums.
				§ 12-14.3-105.3	Life	May not use credit report in underwriting life insurance expected to amount to $100,000 or more.
				Reg. 5-1-16	Personal auto, homeowners, non-commercial fire, mobile home owners	Safeguards and standards for proper use of credit information. May not use credit information as sole basis for underwriting or refusing to renew. Insurer must have written guidelines that are consistently applied. Must provide notice to consumers advising them that credit information will be used for underwriting/rating.
				HB 03-1273 (2003) (Eff. 7/1/04)	Auto	Disclose to a consumer that a credit score will be considered, the range of scores, and how the score is calculated.

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CT	§ 38a-816, 38a-818	Disability specifically addressed; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Guidelines for the Examination of Financial History Measurement Programs for Personal Risk Insurance Underwriting and Rating Plans. *AB 5490 pending (2003)*	All lines *All lines*	File measurement tools with the department. May only be used for new business. May not consider lack of credit history. Demonstrate coordination with expected risk of loss. Disclosure to customer. *May not use credit history for underwriting or setting rates.*
DE	tit. 18 § 2304	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*Ins. Reg. 87 pending (2002)*	*Personal lines*	*May not use credit report or score unless the company has obtained authority to do so in its rate filing. File supporting information showing it is actuarially supported and is not the sole basis for denying coverage or assigning the consumer to a premium class. May not assign a higher rate because the consumer has no credit history. Provide notice to consumers of use of credit history.*
DC	No provision			No provision		

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FL	§ 626.9541	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. 4-125.004	All lines	An insurer shall notify an insurance applicant in writing, or in the same medium as the application, that a credit report will or may be requested as part of the application process. If the application is denied, the insurer must tell the applicant in the notice of the denial how a copy of the credit report can be obtained so the applicant can identify the items that resulted in the denial.
				HB 233 pending (2003)	*Personal lines*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department.* (NCOIL model)
				SB 204 (2003)	Auto and homeowners	Notify consumers that the credit report will be considered; may not use as sole criteria for adverse underwriting decision. May not consider absence of credit history or problems resulting from medical bills, must provide information to insurance department showing credit history is a reasonable predictor of insurance risk. Must review score after 2 years or earlier if requested by consumer. Implementation contingent on passage of HB 1895, which provides a public records exception for credit scoring methodology.

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GA	§ 33-6-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. 120-2-15	Private passenger auto, residential property	Insurer may cancel, nonrenew or decline a policy based on an individual's credit report. Insurer shall file this information quarterly with the commissioner. Insurer shall provide notice and the specific reason for the decision to the insured.
				Reg. 120-2-65	Private passenger auto	An insurer shall not use underwriting criteria or guidelines that result in the fictitious grouping of risks and results in unfair discrimination. The use of credit reports in determining an applicant's or insured's acceptability for coverage may create fictitious grouping and unfair discrimination.
				HB 215 pending (2003) (would be eff. 7/1/03)	*Personal lines P/C*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)*

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HI	§ 431:13-103	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 431:10C-207	Auto	Insurer shall not base standard or rating plan upon a person's credit bureau rating.
ID	§ 41-1313	Life, disability	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 91-9 § 41-1843	All lines Property or casualty	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting. May not charge a higher rate or cancel coverage based primarily on a credit rating or credit history.

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IL	No provision			215 ILCS 5/155.38	Personal lines	May not refuse to issue or renew a policy solely on the basis of a credit report. Provide policyholder with notice.
				HB 502, SB 92 pending (2003)	*Homeowners and renters insurance*	*May not consider credit score.*
				HB 1640 pending (2003)	*Personal lines P/C*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)*
				HB 2378 pending (2003)	*Credit reporting agencies*	*Establishes the duties of credit reporting agencies.*
				SB 818 pending (2003)	*Personal lines P/C*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. Methodology considered a trade secret under IL law. May not sell any data or lists regarding credit inquiries or credit reports. (Based on NCOIL model)*

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IN	§ 27-4-1-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 25-1-22-25	Personal auto	May not charge higher rate because policyholder has filed bankruptcy petition.
				Bulletin 111 (July 1, 2002)	Personal lines property and casualty	Submit to insurance department information on how credit information is utilized in underwriting, including the factors from a credit report that are included in a credit score, the computer model used to determine a credit score, any underwriting guidelines related to the use of credit scores and documentation to demonstrate the correlation between credit information and expected risk of loss. May not use credit scores after 10/1x/02 unless the information is filed with the department.
				SB 178 (2003)	Personal lines property and casualty	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				HB 1634, HB 1187 pending (2003) **DIED**	*Personal lines property and casualty*	*May not use credit score to underwrite or rate a policy.*

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IA	§ 507B.4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. § 191-20.12	Auto and homeowners	May not underwrite or cancel based solely on credit report or scores. Commissioner may request copy of factors used in decision and the model used in credit scoring.
KS	§ 40-2404	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Concurrent Resolution 1623 (2002)		Study the issue and report to 2003 legislature.
				HB 2071 (2003) (Eff. 1/1/04)	Personal lines P/C	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
	§ 40-2,112	All lines	Insurer submitting an adverse underwriting decision shall either provide, in writing, the applicant, policyholder or individual with the specific reason for the decision or advice the person that they may receive the reason in writing.			
	§ 40-953	Property and casualty	Rates shall not be unfairly discriminatory. Differences in rates must reflect the differences in risk with reasonable accuracy.			

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KY	§ 304.12-080	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 304.20-040	Auto	May not refuse to issue or renew a policy solely because of credit history, or lack of credit history of the applicant.
	Dept. policy	All lines	Underwriting guidelines must be in written form and filed with the Dept. of Insurance. The guidelines must be used uniformly.			

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LA	§ 22:1214	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 22:1214(7)(i)	Auto liability	Prohibits an insurer from terminating, refusing to renew or refusing to issue insurance because the insured has declared bankruptcy.
				HB 53, HB 58, HB 118, SB 206 pending (2003)	*Auto and homeowners*	*Use of credit reports and credit scores is an unfair trade practice.*
				HB 399, HB 1448, SB 56, SB 391 pending (2003)	*Personal lines P/C*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)*
				HB 1107 pending (2003)	*Auto and homeowners*	*May not use credit score in underwriting homeowner's insurance. May use for auto only to rate a new policy. Limits on the considerations that may be included.*

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ME	tit. 24 § 2159	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	tit. 10 § 1313-A	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				tit. 24-A § 2917	All lines	Insurer must notify policyholder of reason intend to nonrenew, such as "credit report."
				LD 470 (2003)	Personal lines auto and property and casualty	May not use an insurance score calculated using income, gender, ZIP code, religion, etc. or raise rates based solely on credit score. Provide notice to consumer.
				LD 556 (2003)	Credit reporting agencies	Disclose procedures to consumers to correct inaccurate credit reports.

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MD	Ins. § 27-208	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Ins. § 27-501	Private auto	May not refuse to underwrite based solely on credit history.
				Commercial § 14-1202	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				Reg. 31.15.11	Personal lines property and casualty	Insurers that use credit reports or credit scores must provide the commissioner with underlying information so the commissioner can ensure that reports are used in accordance with the law. Must notify consumers of actual reason for an adverse action.
				Ins. § 27-501	Personal lines property and casualty	May not use credit history to rate or refuse to underwrite homeowners coverage. May not use credit history to refuse to renew an auto policy or increase its premium. May use credit history to rate a new auto policy. Advise applicant that credit history is being used. May not consider the absence of a credit history as a factor.
				SB 444 pending (2003) **DIED**		*Would amend § 27-501 by deleting the provision that allows credit history to raise the premium for auto.*
				SB 174 pending (2003) **DIED**		*Would amend § 27-501 by requiring permission of the applicant to use credit history.*
				Ins. § 11-317	Private auto	Must provide a policyholder statement on rating factors. If use credit scoring, explain how it may cause an increase in premiums.
				Bulletin 02-14, 02-16	Personal lines property and casualty	Address questions in implementation.

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MA	ch. 176D	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory. Department does not allow credit scoring, based on Unfair Trade Practices Act.	§ 93:51	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§ 93:62	Insurance for personal, family or household purposes	If coverage is denied or price increased because of credit report, must notify consumer of right to receive a credit report.
				Regulation pending (2003)	*Personal lines property and casualty*	
MI	§§ 500.2019, 500.2020, 500.2027	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 2003-01-INS	Personal lines	File formula used to compute credit score with the department. Must recalculate credit score at least yearly.
				Bulletin 2003-02-INS	Personal lines	Revises 2003-01-INS to require rescoring only at the request of the policyholder. Notify consumers of their score and the discount tier they are in.
	§ 500.2110a	All lines	If uniformly applied to all its insureds, an insurer may establish a premium discount plan. Insurers utilize this provision to justify using credit scores.	*HB 4268, SB 191 pending (2003)*	*Auto and homeowners*	*May not rate based on credit history or lack thereof.*

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MN	§ 72A.20	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 72A.20 subd. 36 *HF 76 pending (2003)*	Private passenger auto and homeowners *Auto and homeowners*	May not reject, cancel or nonrenew a policy solely on the basis of credit information. If will use credit information, must notify consumer. If use a credit scoring system, must have methodology on file with the commissioner. *Prohibits use of credit information.*
MS	§§ 83-5-35, 83-5-45	Life, health specifically mentioned; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Dept. policy		Credit information may not be sole criteria.

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MO	§ 375.936	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Reg. tit. 20 § 500-9.100	Homeowner	Insurer must inform the Dept. of Insurance that it is using credit history as an underwriting guideline.
				§ 375.918 (Eff. 7/5/03)	*Personal lines property and casualty*	May not use credit report or credit score as the sole rating factor. Must disclose the fact that will gather credit information. Must inform applicant if credit score or report adversely affected him.
				HB 259 pending (2003) **DIED**	*Auto or personal property*	*Would amend § 375.918 to broaden its provisions from underwriting to "any other insurance purpose."*
				SB 670 pending (2003) **DIED**	*Credit reporting agencies*	*May not determine credit risk in whole or in part by the number of inquiries posted.*

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MT	§§ 33-12-206, 33-18-210	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 31-3-111	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§ 33-18-210	Auto, homeowners	An insurer may not refuse to insure or refuse to renew, charge higher rates or limit the scope of coverage based on credit history unless related to the risk of the insured.
				SB 349 pending (2003) **DIED**	*Personal lines*	*May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department.* (NCOIL model)
				HB 184 pending (2003) **DIED**	*Personal lines*	*May not cancel or refuse to renew existing coverage based on credit score. May not use score as sole basis to deny coverage. File credit scoring methodology with commissioner. Provide consumer notice if take adverse action based on credit information*
				HB 332 pending (2003) **DIED**	*Auto and homeowners*	*May not use credit score as a rating factor.*

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NE	§ 44-5019	Property, casualty	Rating systems shall not produce premiums that are excessive, inadequate or unfairly discriminatory.	§ 44-7516.01	Private passenger auto	Policy must be accompanied by disclosure stating if any credit-based rating was used to determine rate charged for coverage.
	§ 44-1525	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	LB 487 (2003)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Most recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				LB 693 pending (2003)	*Homeowners, renters, auto*	*It is an unfair trade practice to use credit scores.*
NV	§§ 686A.100, 686A.170	Life, health specifically mentioned; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*AB 194 pending (2003)*	*All lines except surety*	*May not use credit reports in underwriting insurance.*

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NH	§ 417:4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 359-B:4	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§ 359-B:5	Life	May not use credit report in underwriting life insurance expected to amount to $50,000 or more.
				§ 412:14-a	Auto	Use of credit reports, credit histories and credit scoring for underwriting purposes shall be based upon objective and measurable standards with appropriate consumer protections.
				HB 557 pending (2003)		*Would revise § 412:14-a by forbidding the use of credit history.*
				§ 414:3	Fire, certain casualty	Use of credit reports, credit histories and credit scoring for underwriting purposes shall be based upon objective and measurable standards with appropriate consumer protections.
				Reg. Ins. 1401.08	Auto	Unsubstantiated information developed by credit or character investigations shall not be relied on in making decisions on whether to write or renew coverage.
				Reg. Ins. 3301.01 to 3310.02	Auto and homeowners	If use credit scoring, must establish written standards to prevent discrimination and submit scoring model to the insurance department for review.

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NJ	§§ 17:29B-4, 17:29B-9	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 56:11-31	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
NM	§§ 59A-16-11, 59A-16-17	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 2002-001	All lines	All insurers that use credit scoring in underwriting or rate making must submit all portions of the programs that include the use of credit scoring.
				SB 325, HB 598 pending (2003) **DIED**	*Auto*	*May not use credit history to raise the premium for a new or existing policy or to cancel an existing policy.*

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NY	Ins. Law §§ 2301 to 2302	All lines	Rates shall not be excessive or discriminatory.	General Business *§ 380-i*	*All lines*	Requires users of consumer reports to advise the consumer of adverse action taken in reliance on the report.
				OGC Opinion No. 96-1	Homeowners	Must give specific reasons for cancellation.
				AB 2661 pending (2003)	*Homeowners*	*May not use credit history information to decide whether to issue or renew a policy.*
				AB 4730 pending (2003)	*All lines*	*It is an unfair trade practice to consider credit information in setting premiums.*
				AB 4754, SB 2728 pending (2003)	*All lines*	*May not use credit history in underwriting.*
				AB 6281, SB 3186 pending (2003)	*Auto*	*May not use credit history in deciding whether to issue or renew coverage. May not request a credit report.*
				AB 7419 pending (2003)	*Consumer reporting agencies*	*Consumer may request a consumer reporting agency not to release any information about him.*
				SB 356 pending (2003)	*Consumer reporting agencies*	*Most data can only be disclosed for 3 years instead of the current 7 years.*

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NC	§ 58-63-15	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 596 pending (2003) (would be eff. 1/1/04)*	*Private passenger auto*	*May not base rates on credit reports.*
				SB 771 pending (2003)	*Private passenger auto*	*May not use credit reports as sole rating factor. Must notify consumer if will be used. File scoring models with insurance department.*
ND	§ 26.1-04-03	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 1290 pending (2003)***DIED**	*Property and casualty*	*May not use credit scoring as the sole basis to decline or refuse to renew a policy or to increase or decrease a premium more than 15%. If use credit report, provide free copy to insured.*
				HB 1260 (2003) (Eff. 8/1/03)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

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OH	§ 3901.21	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 26	*Auto substandard risks*	If a substandard risk classification relies on a credit report, that report should be attached to the dailies of the policies issued. The Ohio Dept. will periodically inspect.
				Bulletin 2002-2	*Property and casualty*	Insurers must establish that credit history and credit scores are valid risk characteristics. May not use for discriminatory purposes.
				SB 48 pending (2003)	*Homeowners*	*Using a credit score in connection with homeowner's insurance is an unfair trade practice.*
				Regulation pending (2003)	Personal lines	*Prohibits insurers from using credit information as the sole basis for underwriting and rating decisions. Disclosure to consumers required.*

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OK	tit. 36 § 1204	All lines	There shall not be discrimination in favor of particular persons having substantially like insuring risk and exposure factors or expense elements in the terms or conditions of any insurance contract or in the rate or amount of premium charged.	Guidelines adopted by Oklahoma State Board for Property and casualty Rates 9/27/01	*Property and casualty insurance*	Insurers that use credit history or credit scores must provide the board with underlying information to show they are using the information in accordance with OK law. Notify the insured of any adverse action taken as a result of the credit history or credit score.
				SB 539 (2003)	Personal lines	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)
				HB 1659 pending (2003)	Property and casualty	*May not use credit history.*
				SB 684 pending (2003)	*Credit, homeowners, life, auto*	*May not use insurance score that includes the address or ZIP code as a factor.*
				HB 1629 pending (2003)	*Auto*	*May not use credit history.*

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OR	§ 746.015	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 746.635	All lines	Insurer, agent or insurance support organization may not prepare or request an investigative consumer report about a person involving an insurance transaction unless the insurer or agent informs the person that he may request to be interviewed in connection with the preparation of the report and that the person may request a copy of the report.
				Reg. §§ 836-080-0425 to 836-080-0440 (Eff. 7/1/03)	Personal lines P/C	Must disclose to consumer that credit history will be used. Notice if adverse action based on credit score; explain how to dispute finding.
				SB 260, SB 314 pending (2003)	*Personal lines*	*May not use credit history in underwriting.*
				SB 280, SB 484 pending (2003)	*Personal lines*	*May not use credit history to cancel or nonrenewal personal insurance. May use to decline coverage only in combination with other factors. Includes a list of factors insurers may not consider.*

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PA	§ 40-29-105	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*SB 198 pending (2003)*	*Personal lines*	*May not use credit history to deny, cancel or refuse to renew coverage. May adjust rates based on credit history in combination with other factors. Authority to adopt regulations.*
				SB 331 pending (2003)	*Personal lines P/C*	*May not use credit scoring to underwrite coverage.*
				SB 336 pending (2003)	*Auto*	*May not use credit scoring*
				SB 337 pending (2003)	*All lines*	*May not use credit score in underwriting.*

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RI	§ 27-29-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 6-13.1-21	All lines	May not request a credit report without first notifying the insurance applicant. If deny coverage or charge more, must notify consumers that is due to credit report.
				§§ 27-6-53, 27-9-56	Homeowners and personal auto	May use credit scoring for rating and underwriting only if the insurer demonstrates the predictive nature of the score to the insurance department. If requested by customer, must do new credit score every 2 years and lower rates if score is better. May not use revised score to raise rates except as noted.
				SB 137, HB 5362 pending (2003)	*Homeowners and auto*	*Amends above statute to state that rates may only be changed at time of renewal. List of factors that may not be considered. Reporting agency may not sell data or lists that include information about credit report.*
				HB 5709 pending (2003)	*All lines*	*May not request credit report in connection with a consumer's application for insurance.*
				Bulletin 2002-16		Explains 2002 law.

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SC	§ 38-57-120	Life, health	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 38-73-740	Auto	Credit report used as basis for rate classification must be kept on file by the insurer for 3 years, and be available to the applicant.
				Bulletin 2002-04	Private passenger auto	May not refuse to insure, cancel or non-renew based solely on credit history or credit score. A filing including credit scoring must include justification. Disclose to consumer that insurer may gather and consider credit information.
				SB 49 pending (2003)	All lines	*May not consider credit reports or credit rating.*

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SD	§§ 58-33-12, 58-33-13, 58-33-38	Life, health specifically mentioned; commissioner may pursue undefined unfair practices.	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin 2002-3	Personal lines property and casualty	May not use credit information as the sole rating factor.
TN	§ 56-8-104	Life, health, fire	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Department Policy	All lines	Justification for use of credit scoring must be provided in the filing. Credit scoring cannot be the sole basis for determining rates.
				SB 122, HB 284 pending (2003)	*Homeowners*	*May not base rates on credit information.*
				HB 711, SB 638 pending (2003)	*All lines*	*May not charge higher rate based primarily on credit score.*
				HB 22, SB 1616 pending (2003)	*Personal lines*	*May not charge higher rate based primarily on credit score.*
				HB 1445, SB 1713 pending (2003)	*Credit reporting agencies*	*Must give a free copy of credit report to consumer yearly under certain circumstances.*

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STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
TX	I.C. art. 21-21	Life	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Business and Commerce § 20.02	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				Business and Commerce § 20.05	Life	May not use credit report in underwriting life insurance expected to have a value of $150,000 or more.
				SB 310 (2003)	Residential property	File information on credit scoring along with other rating information. Information is confidential.
				HB 45, HB 81, HB 870, HB 115, HB 331, HB 600, HB 800, SB 91, SB 99, SB 400, HB 696 pending (2003) **DIED**	*Auto, homeowners, farm/ranch*	*May not use credit score.*
				HB 259 pending (2003)	*Auto, homeowners, farm/ranch residential fire*	*File credit scoring model with dept. for approval prior to use. Filing becomes public information.*

Texas (cont.)

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
TX (cont.)				*HB 265, SB 130 pending (2003)*	*Auto, homeowners, farm/ranch residential fire*	*If use credit reports, must provide disclosures to customers. May not use credit information as sole rating factor; may not consider medical information. May not consider absence of credit history.*
				HB 920 pending (2003)	*Auto, homeowners, farm/ranch, non-commercial watercraft*	*May not deny or cancel based solely on credit report. May not consider medical information. May not consider absence of credit history.* (some of NCOIL model)
				HB 2467 pending (2003)	*Auto, homeowners, farm/ranch, non-commercial watercraft, snowmobile, RVs*	*May not use credit history to unfairly discriminate: list of factors may not consider. Disclosures required.*
				SB 400 pending (2003)	*Auto, homeowners*	*May not use underwriting guideline based in whole or in part on credit score.*

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
UT	No provision			§ 31A-22-1307	Homeowners liability	Insurer that uses credit reports in underwriting must comply with federal Consumer Credit Reporting Act.
				§ 31A-22-320	Auto	May only use credit information to reduce rates or in conjunction with other factors.
				Reg. R590-219-1 to 590-219-8 pending (2003)	*Private passenger auto*	*Inform consumer of factors used in adverse underwriting decision. May not use credit information to cancel or nonrenew coverage that has been in place 60 days or more or as the primary reason to refuse to issue a new policy.*
VT	tit. 8 § 4724	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	*HB 186 pending (2003)*	*Personal lines*	*May not take an adverse action based on information in a credit report unless can demonstrate the criterion increases the risk of loss. Disclosure rules.*
				SB 77 pending (2003)	*Credit reporting agencies*	*Must explain credit scores and key factors that make up the score.*

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
VA	§ 38.2-508	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§§ 38.2-2114, 38.2-2212	Auto, fire	Insurers shall not refuse to renew an insurance policy solely based on credit information contained in a consumer report, bearing on an individual's creditworthiness, credit standing or credit capacity unless the insurer includes a statement informing the insured of the reasons for nonrenewal.
				Administrative Letter 2002-6	All lines	Any insurer intending to use credit score must file the model prior to their use.
				SB 1284 (2003)	Homeowners, renters, auto	May not include income, gender, race, religion, marital status, ZIP code, nationality, etc. as factors. May not base rates solely on credit score or consider absence of a credit history. Must recalculate credit score after 3 years. May not consider medical history codes. File scoring models with department. (NCOIL model)

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
WA	No provision			§ 19.182.020	All lines	Consumer reporting agency may furnish credit report where the insurer intends to use it for underwriting.
				§ 19.182.040	Life	May not use credit report in underwriting life insurance expected to amount to $50,000 or more.
				HB 2544 (2002) (Eff. 7/5/03)	All lines of personal insurance	Credit history shall not be used to determine insurance rates unless the credit scoring models are filed with the commissioner. May not consider the absence of credit history or the number of inquiries.
				Reg. 284-24A-001 to 284-24A-065	All lines of personal insurance	Regulation describes standards that apply to insurers that use credit history.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
WV	§ 33-11-4	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	§ 91-8-3	Auto	Dept. of Motor Vehicles may furnish credit information from its files where an insurer intends to use it for underwriting.
				Informational Letter No. 142 (July 2002)	Personal auto, homeowners, accident and sickness	Guidelines for filings containing credit scoring. Data may not be used in unfairly discriminatory manner. May not be sole basis for deciding whether to write coverage. If used for rating, must recheck scores of policyholders yearly.
				§ 33-6B-3	Auto	May not decline a policy based on adverse credit report.
				§ 33-17A-6	Property	May not decline a policy based on adverse credit report.
				SB 376 pending (2003) **DIED**	*All lines*	*Insurers must provide free consultation on how to improve a credit score.*

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

5/03

STATE	INDIRECT REGULATION OF CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS	SPECIFIC REFERENCE TO CREDIT REPORTS	LINE OF BUSINESS	SUMMARY OF PROVISIONS
WI	§ 628.34, Reg. § INS 6.67, 6.68	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	Bulletin dated 6/16/97	Personal auto and homeowners	Can use credit reports but not as the sole reason to refuse, cancel or nonrenew a policy.
				AB 102, SB 39 pending (2003)	*Credit reporting agencies*	*Provide written disclosure to consumers as listed.*
				AB 278 pending (2003)	*Renters and homeowners*	*May not use information in a credit report as a rating factor.*
WY	§§ 26-13-109, 26-13-112, 26-13-116	All lines	Sections define practices that are unfairly discriminatory. The use of credit reports is not specifically discussed, but if the use of the credit report is not justified, it might be considered unfairly discriminatory.	SF 81 (2003)	Personal lines, auto, homeowners	Authority to adopt regulation to provide that credit history may not be sole factor and to require disclosures. Protect consumers against unfair discrimination.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted.

USE OF CREDIT REPORTS/SCORING IN UNDERWRITING

Credit-Based Insurance Scoring: Regulatory Options

ADOPTED BY THE CREDIT SCORING (D) WORKING GROUP: JANUARY 17, 2003

This document contains a list of regulatory options states state may choose to reference when establishing state public policy, laws and regulations addressing the use of credit scores.

UNDERWRITING ISSUES: Insurers use credit history to determine eligibility for personal lines insurance coverage.

Options:

(1) BAN UNDERWRITING BASED SOLEY ON CREDIT HISTORY - Insurers may not cancel, deny or non-renew insurance coverage unless they consider underwriting factors independent of credit information.

Pros:

1. Insurers may not use credit history as the only factor in underwriting to the exclusion of other relevant underwriting factors.
2. Current policyholders would be evaluated based on traditional underwriting factors – which they may already understand.
3. Companies retain flexibility in structuring rating plans.
4. Resolves concerns about availability.

Cons:

1. "Sole basis" restrictions are ineffective if insurers use credit history as 99% of the reason for underwriting actions.
2. Insurers may interpret "sole basis" restrictions to mean a consumer is not eligible for insurance if they do not have a minimum insurance score.
3. Restrictions add an additional layer of regulation on underwriting practices and reflect a movement away from a free market approach.
4. Insurers can use pre-screening to solicit business with a "hit" or a "score" (which may benefit direct writers to the detriment of independent agents).

Other Issues:

1. Phraseology is critical to avoid confusion and provide meaningful consumer protections.

Credit-Based Insurance Scoring: Regulatory Options

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(2) BAN CANCELLATION OR NON-RENEWAL BASED SOLEY ON CREDIT HISTORY - Insurers may not cancel or non-renew coverage based on credit history unless they consider underwriting factors independent of credit information.

Pros:

1. Insurers may not use credit history as the only factor in underwriting to the exclusion of other relevant underwriting factors.
2. Current policyholders would be evaluated based on traditional underwriting factors – which they may already understand.
3. Companies retain flexibility in structuring rating plans.
4. Resolves concerns about availability.
5. Insurers have historic experience data on a consumer to supplement the renewal underwriting picture.

Cons:

1. "Sole basis" restrictions are ineffective if insurers use credit history as 99% of the reason for underwriting actions.
2. Insurers may interpret "sole basis" restrictions to mean a consumer is not eligible for insurance if they do not have a minimum insurance score.
3. Restrictions add an additional layer of regulation on underwriting practices and reflect a movement away from a free market approach.

Other Issues:

1. Phraseology is critical to avoid confusion and provide meaningful consumer protections.

(3) BAN NEW BUSINESS UNDERWRITING BASED SOLEY ON CREDIT HISTORY - Insurers may not deny coverage based on credit history unless they consider underwriting factors independent of credit information.

Pros:

1. Insurers may not use credit history as the only factor in new business underwriting to the exclusion of other relevant underwriting factors.

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2. Insurers maintain flexibility in new business underwriting (where the insurer has less information about the customer).
3. Companies retain flexibility in structuring rating plans.
4. Resolves concerns about availability.

Cons:

1. "Sole basis" restrictions are ineffective if insurers use credit history as 99% of the reason for underwriting actions.
2. Insurers may interpret "sole basis" restrictions to mean a consumer is not eligible for insurance if they do not have a minimum insurance score.
3. Restrictions add an additional layer of regulation on underwriting practices and reflect a movement away from a free market approach.
4. Insurers can use pre-screening to solicit business with a "hit" or a "score" (which may benefit direct writers to the detriment of independent agents).

Other Issues:

1. Phraseology is critical to avoid confusion and provide meaningful consumer protections.

(4) BAN CANCELLATION OR NON-RENEWAL BASED ON CREDIT HISTORY - Insurers may not cancel or non-renew existing policyholders based on credit history.

Pros:

1. Current policyholders would be evaluated based on traditional underwriting factors – which they may better understand.
2. Agents would find it easier to explain underwriting actions to customers.
3. Insurers would not be able to use credit history as 99% of the reason for an underwriting action (as a "sole basis" restriction permits).
4. Simplifies market conduct review of underwriting practices.

Cons:

1. Restrictions add an additional layer of regulation and reflect a movement away from a free market approach.
2. Legislatively, this may be the most difficult underwriting option to enact.

Credit-Based Insurance Scoring: Regulatory Options

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Other Issues:
1. Many existing laws already address cancellation and non-renewal.
2. Restrictions must conform to federal Fair Credit Reporting Act.
3. More sweeping step than "sole basis" restrictions.
4. Some insurers, such as Progressive, have publicly stated support for this type of prohibition.

(5) PLACEMENT WITH AN AFFILIATED INSURER - Offer to place applicant with "affiliated" insurer is not considered denial, cancellation or non-renewal of coverage.

Pros:
1. Recognizes that availability issues do not occur where coverage is offered.
2. Puts multi-company groups on a level playing field with insurers that use rating tiers to determine premiums.

Cons:

Other Issues:
1. Should be combined with restrictions on cancellation, denial and non-renewal.

(6) EXTRAORDINARY CIRCUMSTANCES – Require insurers to offer reasonable underwriting exceptions if an extraordinary personal circumstances adversely impacts a consumer's credit history.

Pros:
1. People who are "down-on-their-luck" will not have to deal with the added concern of insurance availability.
2. Underwriters will have discretion to treat customers as individuals.
3. Agents may have more influence on situations involving extraordinary personal circumstances.

Cons:
1. Many states permit underwriting discretion, so companies can already take a second look at a risk upon request.
2. Insurers want to determine their own business practices.

Other Issues:

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1. "Extraordinary personal circumstances" must be defined. Options include a serious illness, involuntary unemployment, or divorce. Repeated events do not constitute an extraordinary circumstance.
2. Must comply with laws in some states that require similar risks to be treated consistently (laws often prohibit "unfair discrimination").
3. Insurers may have to establish an underwriting review team and develop procedures.
4. Documentation of the "extraordinary circumstance" is needed to ensure consistent treatment. Insurers may require that documentation be written and independently verifiable.

(7) BAN PAYMENT PLAN RESTRICTIONS - Prohibit insurers from offering less favorable payment plans based on credit history.

Pros:
1. Insurers would not be able to use payment plans to circumvent restrictions on cancellation, denial or non-renewal.
2. A policyholder's track record paying insurance premiums would determine their payment plan (if a policyholder's premium payment history is exempted from such a ban).
3. Payment plans are important to low income people.

Cons:
1. Holds insurers to a higher standard than other industries with respect to the purchase of products and services.
2. Lapsed policies cost money.
3. Credit history may be relevant to whether an insurer should extend credit.
4. Restrictions must comply with the federal Fair Credit Reporting Act.

Other Issues:
1. Should new and renewal business be treated the same?
2. Can a policyholder earn favorable payment plans?
3. Restrictions should be consistent with other laws dealing with premium payment plans.

Credit-Based Insurance Scoring: Regulatory Options

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(8) BAN USE OF "NO HIT" OR "NO SCORE" IN UNDERWRITING – Insurers may not deny, cancel or non-renew if a consumer has "no hit" or "no score".

Pros:

1. Addresses concerns about whether certain portions of the population, like the elderly and certain ethnic groups, use less credit.
2. Insurers have other underwriting factors available for risk selection.

Cons:

1. Some insurers may be able to show that certain groups of consumers with "no hit" or "no score" have poor claims history.
2. Insurers can use pre-screening to solicit business with a "hit" or a "score" (which may benefit direct writers to the detriment of independent agents).
3. Restrictions add an additional layer of regulation on underwriting practices and reflect a movement away from a free market approach.

Other Issues:

1. This restriction should be evaluated in the context of other restrictions adopted by a state, such as limits on cancellation, denial or non-renewal of insurance based on credit history.
2. "No score" is not the same as a "thin file." A "thin file" for certain groups, such as the elderly, often places the consumer in a favorable score range.
3. Some consumers may have "no hit" because they provide incorrect information. Consumers must be required to cooperate and provide accurate information.
4. Some consumers may have "no score" because past credit history is poor and they have been unable to obtain credit.

Credit-Based Insurance Scoring: Regulatory Options

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(9) RESTRICT USE OF "NO HIT" OR "NO SCORE" IN UNDERWRITING – Insurers may not deny, cancel or non-renew if a consumer has "no hit" or "no score" unless they consider underwriting factors independent of the consumer's lack of credit history.

Pros:

1. Addresses concerns about whether certain portions of the population, like the elderly and certain ethnic groups, use less credit.
2. Insurers must underwrite people with no credit history based on traditional underwriting factors – which they may already understand.
3. Insurers may not use credit history as the only factor in renewal underwriting to the exclusion of other relevant underwriting factors.

Cons:

1. Insurers can use pre-screening to solicit business with a "hit" or a "score" (which may benefit direct writers to the detriment of independent agents).
2. Some insurers may be able to show that certain groups of consumers with "no hit" or "no score" have poor claims history.
3. Restrictions add an additional layer of regulation on underwriting practices and reflect a movement away from a free market approach.

Other Issues

1. This restriction should be evaluated in the context of other restrictions adopted by a state, such as limits on cancellation, denial or non-renewal of insurance based on credit history.
2. "No score" is not the same as a "thin file." A "thin file" for certain groups, such as the elderly, often places the consumer in a favorable score range.
3. Some consumers may have "no hit" because they provide incorrect information. Consumers must be required to cooperate with the insurer and provide accurate information.
4. Some consumers may have "no score" because past credit history is poor and they cannot obtain credit.

Credit-Based Insurance Scoring: Regulatory Options

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(10) NO ACTION – UNDERWRITING.

Pros:

1. Regulators have tools now, such as unfair trade practices laws, market conduct and insurance department consumer assistance programs.
2. Consistent with a free market approach.

Cons:

1. Current protections have not yet alleviated the concerns of consumers.
2. Many current insurance laws were developed before credit history was used in underwriting.

Other Issues:

1. Insurers have other tools that they can use to underwrite insurance.

Credit-Based Insurance Scoring: Regulatory Options

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RATING ISSUES: Insurers use credit history to determine pricing for personal lines insurance coverage.

Options:

(1) BAN USE OF CREDIT HISTORY FOR RATING - Insurers may not use credit history to determine premiums.

Pros:

1. Consumers will be evaluated based on traditional rating factors independent of credit – which they may better understand.
2. Agents would find it easier to explain how rates are developed.
3. Insurers have other rating factors available to price insurance products.
4. Most comprehensive option to deal with allegations that the use of credit history is a form of red-lining.

Cons:

1. Most insurers are now using credit history for rating purposes. Turning back the clock may result in significant premium changes for some consumers.
2. Legislatively, this will be the most difficult rating option to enact.
3. Prohibits insurers from using any correlation between credit history and loss history to make rates.
4. Insurers can use pre-screening to solicit business with a "hit" or a "score" (which may benefit direct writers to the detriment of independent agents).
5. Consumers who now pay less premium due to their credit history will pay more for insurance.

Other Issues:

1. Will require the re-filing of rating plans for many personal lines products.
2. Restrictions must conform to federal Fair Credit Reporting Act.

Credit-Based Insurance Scoring: Regulatory Options

ADOPTED BY THE CREDIT SCORING (D) WORKING GROUP: JANUARY 17, 2003

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(2) PROHIBIT PREMIUM INCREASE AT RENEWAL - Insurers may not increase premiums for existing customers based on credit history.

Pros:

1. Existing customers will not have premiums increased due to credit history. Insurers may increase rates only as a result of traditional rating factors.
2. Consumers may be able to lower their premium if their credit history improved.
3. Would eliminate consumer complaints that premium went up at renewal based solely on credit history alone.

Cons:

1. A one-way approach which allows only premium decreases on renewal may be unfairly discriminatory.
2. Limits insurers' ability to use a correlation between credit history and loss history to make rates.
3. This approach may not have a uniform impact on insurers, since the scores represented by their overall book of business may be different.

Other Issues:

1. This approach will likely force rate re-filings.
2. Rating restrictions should be reviewed in the context of other limitations being put into place that are designed to lessen the effect of credit history.
3. Consider existing laws against rates that are excessive, inadequate or unfairly discriminatory.

(3) PREMIUM CAP - Cap the amount of premium surcharge or discount that results due to credit history.

Pros:

1. Credit history would not be the primary reason premiums change (a return to traditional rating factors).
2. Some consumers will pay less for insurance.

Cons:

1. Premium caps are difficult to implement (from a rating and systems standpoint).
2. Premium caps may lessen the diversity product offerings and prices.
3. This approach will require re-filing of rating plans.

Credit-Based Insurance Scoring: Regulatory Options

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4. This approach will produce rate subsidies where there is a conclusive correlation between credit history and loss history, and some consumers will pay more as a result.
5. Legislatively, this will be a difficult restriction to enact.
6. This approach may not have a uniform impact on insurers, since the scores represented by their overall book of business may be different.
7. Annual premium caps may result in companies treating similar risks differently; both may deserve the same rate on renewal but the caps may not allow insurers to charge them both the same rate.

Other Issues:

1. Rating restrictions should be reviewed in the context of other limitations that lessen the effect of credit history has in premium development.
2. These kinds of restrictions are difficult to implement. Premium is the total charge for coverage and produced using a variety of rating factors. It is difficult to cap one premium developed from one aspect of a rating plan when other rating factors are involved.

(4) ACTUARIAL SUPPORT - Require insurers to actuarially support rating differentials based on credit history.

Pros:

1. Consumers should be charged premiums based on credit history or any other factor only if they are actuarially justified.
2. Actuarial review may alleviate some concerns over fairness.
3. Regulators will be able to review actuarial justification and insurer compliance with state rating laws.

Cons:

1. May require new insurance department resources or reallocation of existing resources.

Other Issues:

1. Requirements should address the adequacy of confidentiality protection and the scope of materials and documentation to be provided.

Credit-Based Insurance Scoring: Regulatory Options

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(5) MULTIVARIATE ANALYSIS - Require insurers to perform a multivariate analysis that evaluates other rating factors if they use credit history in rating.

Pros:

1. May quell the call for premium caps and other rating restrictions if regulators and consumer groups are convinced that credit-based rating plans do not "double count" for other rating factors.
2. Multivariate analysis is a commonly used analysis in other counties (such as the UK) to develop rating plans.
3. Multivariate analysis will improve the accuracy of other rating factors.

Cons:

1. Credit history will be held to a higher standard than traditional factors.
2. Smaller insurers may object to cost and staff time required.
3. May require new insurance department resources or reallocation of existing resources.

Other Issues:

1. The scope of multivariate analysis should be carefully considered.
2. Process for new entrants to the marketplace should be considered.
3. A lack of uniformity among states may increase costs and slow the time to market.
4. States may have authority to require this analysis under current rating laws.
5. A number of insurers already perform multivariate analysis.

(6) NEUTRAL RATING FOR "NO HIT" OR "NO SCORE" – Insurers must treat no hits or no scores in a limited or "neutral" fashion for rating purposes.

Pros:

1. Addresses concerns about whether certain portions of the population, like the elderly and certain ethnic groups, use less credit.
2. Insurers will have to rate people with no credit history based on underwriting factors independent of credit history.
3. Insurers have other rating factors available to price insurance products.

Credit-Based Insurance Scoring: Regulatory Options

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Cons:

1. Insurers can use pre-screening to solicit business with a "hit" or a "score" (which may benefit direct writers to the detriment of independent agents).
2. Restrictions reflect a movement away from a free market approach.
3. People can try to hide their credit history by providing incorrect information.
4. Limits ability to use correlation between credit history and loss history to make rates.

Other Issues:

1. Must define what "neutral" means.
2. "No score" is not the same as "thin file." Some consumers with thin files, such as the elderly, may deserve better than a "neutral" rating.
3. Consumers should cooperate in providing correct information.

(9) RESTRICT RATING BASED ON "NO HIT" OR "NO SCORE" – Insurers may not rate based on "no hit" or "no score" unless they consider rating factors independent of the consumer's lack of credit history.

Pros:

1. Addresses concerns about whether certain portions of the population, like the elderly and certain ethnic groups, use less credit.
2. Insurers must underwrite people with no credit history based on traditional underwriting factors – which they may already understand.

Cons:

1. Insurers can use pre-screening to solicit business with a "hit" or a "score."
2. Some insurers may be able to show that certain groups of consumers with "no hit" or "no score" have poor claims history.
3. Restrictions add an additional layer of regulation on underwriting practices and reflect a movement away from a free market approach.

Credit-Based Insurance Scoring: Regulatory Options

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Other Issues:

1. This restriction should be evaluated in the context of other restrictions adopted by a state, such as limits on cancellation, denial or non-renewal of insurance based on credit history.
2. "No score" is not the same as a "thin file." A "thin file" for certain groups, such as the elderly, often places the consumer in a favorable score range.
3. Some consumers may have "no hit" because they provide incorrect information. Consumers must be required to cooperate with the insurer and provide accurate information.
4. Some consumers may have "no score" because past credit history is poor and they cannot obtain credit.

(8) PERIODIC REVIEW OF INSURANCE SCORE – If requested by an insured, require an insurer to re-calculate an insurance score at renewal if the insurer has previously taken an adverse action.

Pros:

1. Some attributes of credit history are a snapshot in time. A consumer would not be stuck with high premiums indefinitely based on one scoring period.
2. Consumers can benefit if they are pro-active in improving their credit history.
3. Insurers may achieve better retention if an insured does not have to "shop around" to lower their premium.

Cons:

1. Cost of calculating a new score at renewal.
2. An insurance score may go up or down if it is re-calculated. Some consumers may get premium increases. This may impact retention as well.

Other Issues:

1. The consumer may already be getting the best rate/premium.

(9) NO ACTION - RATING

Pros:

1. Some regulators currently have authority to review credit scoring rating plans.
2. Consistent with a free market approach.

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Cons:

1. Current protections have not yet alleviated the concerns of consumers.
2. Current insurance laws were not designed to address the use of credit history in rating. This is a relatively new practice.

Other Issues:

1. Some consumer protections are currently in place, including the FCRA, state rating laws in some jurisdictions, unfair trade practices laws, market conduct activities and consumer assistance programs. States should analyze existing authority before proposing new reforms.

Credit-Based Insurance Scoring: Regulatory Options

ADOPTED BY THE CREDIT SCORING (D) WORKING GROUP: JANUARY 17, 2003

This document contains a list of regulatory options states state may choose to reference when establishing state public policy, laws and regulations addressing the use of credit scores.

INSURANCE SCORING MODELS ISSUES: Insurers use credit-based scoring models to determine premiums and eligibility for personal lines insurance coverage.

Options:

(1) CREDIT HISTORY IN DISPUTE - Prohibit insurers from using credit history in dispute to determine premiums or eligibility for coverage.

Pros:

1. Vendors can exclude disputed items from data used by insurance scoring models.
2. Consumers would be able to use the process in the FCRA to correct their records.
3. Consumers would be empowered to solve issues related to incorrect credit history.

Cons:

1. Some consumers may file frivolous disputes to avoid premium increases. However, insurers could treat this as they would any other undisclosed piece of relevant rating information.

Other Issues:

1. Consumers would have to notify an insurer after they go through a dispute process.
2. The federal FCRA anticipates that most disputes will be resolved within 30 days.
3. Insurers would have to re-score a consumer who successfully disputes items in their credit history
4. A state would have to specify a reasonable time period for adjustment of premium, perhaps the shorter of the policy period or 12 months.
5. Effectiveness depends on the consumer going through the dispute process.

(2) DATA ELEMENTS - Restrict the credit attributes used in insurance scoring models.

Pros:

1. Models would have more uniformity and be more transparent to consumers.

Credit-Based Insurance Scoring: Regulatory Options

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2. Some attributes used in models are hard to explain or justify to consumers. For example, if the rationale for using insurance scoring relates to the "financial stability" of the consumer, what does the type of credit card they have or the number of time they have shopped for a loan have to do with stability?
3. Some attributes used in credit scoring models, such as medical collections, may hurt people who have unusual and unforeseen expenses due to a serious illness or the inability to buy medical insurance.

Cons:
1. Less variety in the models may result in less consumer choice in the marketplace.
2. Restricting data elements may limit the predictive value of some insurance scoring models.

Other Issues:
1. Some elements are extremely difficult if not impossible to remove from consideration.
2. With fewer elements in the model, more weight may be placed on the remaining factors. The remaining factors may or may not be more closely tied to the consumer's performance in handling debt.

(3) PROHIBITED INFORMATION - Prohibit insurers from using attributes such as income, gender, race, nationality or religion in insurance scoring models.

Pros:
1. The public expects that these factors will not be used in insurance rating and underwriting.

Cons:
1. May duplicate existing state law.

Other Issues:
1. This can likely be addressed by a rule in most states.

(4) FILING - Require insurance scoring models to be filed.

Pros:
1. Regulators have the opportunity to review and understand the scoring models.

Cons:

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1. Staff resources to review models.

Other Issues:

1. Confidentiality will remain an important issue to the insurance industry and some vendors, as they consider this information is proprietary in nature.
2. Vendors of models should be permitted to file models with regulators on behalf of or for use by insurers to reduce administrative paperwork.

(5) CONFIDENTIALITY - Exempt insurance scoring models from public disclosure, except in the context of an enforcement action.

Pros:

1. If an insurer makes an investment to develop a model, it should have the opportunity to profit from that investment.
2. Exposing proprietary information may lead to competitive harm for insurers.
3. Consumers want to know how their credit history affects their insurance premiums.

Cons:

1. If a competitor has access to these data, that insurer obtains information at no or little cost. This may benefit that competitor in the marketplace.
2. Difficult for regulators and agents to explain beyond a general description how credit history affects pricing if the models are confidential.

Other Issues:

1. Where confidentially is proposed, the insurance scoring models themselves, as well as the guidelines or rules relating to them, should be considered proprietary.
2. Consumers have an interest in understanding how these models work. Perhaps this could be addressed by insurers through improved customer education.

(6) NO ACTION - MODELS

Pros:

1. Regulators may be able to require models to be filed under current rating laws.

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2. Consistent with a free market approach.

Cons:
1. Current protections have not yet alleviated the concerns of consumers.
2. Current insurance laws were not designed to address the use of credit scoring models. This is a relatively new practice.

Other Issues:
1. Numerous consumer protections currently in place, include the FCRA, state rating laws, unfair trade practices laws, insurance department assistance and the market conduct process.

Credit-Based Insurance Scoring: Regulatory Options

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DISCLOSURE: Insurers' practices differ with respect to disclosing the use of credit history to determine premiums and eligibility for personal lines insurance coverage.

Options:

(1) DEFINE "ADVERSE ACTION" - Define "adverse action" to be consistent with the definition in the federal Fair Credit Reporting Act.

Pros:

1. Insurers must provide notice consistent with legal standards provided by the federal FCRA.
2. The Federal FCRA defines "adverse action" as follows:

   . . .a denial of cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms or coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance; . . ..

   This definition may be interpreted broadly, and insurers risk of violating § 615(a) of the Federal FCRA if they do not provide notice.
3. Consistent definition will make disclosure requirements more uniform.
4. Consistent with the advisory opinion letter written by FTC staff on March 1, 2000 in response to questions of one insurer through its counsel.
5. Allows consumers the right of legal action at the state level.

Cons:

1. Any state differences may complicate compliance.
2. Any lack of consistency with the federal law may present problems, since the credit bureaus' trigger is also "adverse action."

Other Issues:

1. Obligations of credit reporting agencies should be reviewed.
2. Some vendors want insurers to disclose both positive and negative attributes of credit history.

Credit-Based Insurance Scoring: Regulatory Options

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3. The Federal Trade Commission has stated it will publish information about the definition of "adverse action" and commence enforcement actions against insurers.
4. Insurers need lead time to implement notice procedures.

(2) "ADVERSE ACTION" NOTICE - Require notice if an insurer takes an adverse action based on credit history.

Pros:
1. This follows the approach taken in the FCRA.
2. States may be able to adopt disclosure rules without additional legislation.
3. Raise awareness of consumers.

Cons:

Other Issues:
1. A uniform definition of adverse action would be the most cost effective way to implement this requirement.
2. Some vendors want insurers to disclose both positive and negative attributes of credit history.
3. Already required by federal FCRA.

(3) PRE-DISCLOSURE NOTICE THAT CREDIT HISTORY WILL BE USED IN UNDERWRITING OR RATING - Require advance notice if an insurer will obtain credit history for insurance underwriting or rating.

Pros:
1. This will raise the awareness of consumers.
2. May reduce frustration upon receipt of a post-notification.
3. Consumers can decide whether they really want an insurance quote if the insurer is going to check their credit history.

Cons:
1. This is a new layer of regulation, extending beyond the requirements of the federal law.
2. Adds to the cost of insurance.

Other Issues:

Credit-Based Insurance Scoring: Regulatory Options

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1. Pre-disclosure must not be confused with consent.
2. The disclosure should be allowed either in writing or in the same medium as the application.
3. Notice should not be required prior to each renewal.

(4) NOTICE OF FACTORS THAT CAUSE ADVERSE ACTION- Require insurers to disclose the specific attributes of credit history that result in an adverse action.

Pros:
1. Consumers will better understand what aspects of their credit history cause their premiums to increase.
2. Consumers will be able to take steps to improve their credit history and lower their premiums.
3. Credit scoring vendors can work with insurers to provide this information.
4. States may be able to adopt disclosure rules without additional legislation.

Cons:
1. May require system changes.
2. If very specific and detailed information is required to be disclosed, the cost will by high.

Other Issues:
1. Some vendors want insurers to disclose both positive and negative attributes of credit history.
2. Credit scoring vendors provide reason codes that indicate significant issues with a credit score. It is possible to provide consumers with explanations corresponding to some of these reason codes. A uniform approach in disclosing credit history attributes is crucial if costs are to be controlled.
3. Individual states must decide whether companies are permitted to either to provide this information as a matter of course or to provide it upon the request of the consumer.
4. The degree of detail that must be disclosed should be carefully reviewed. Insurers and agents are not credit counselors.

(5) NOTICE OF PREMIUM INCREASE - Require insurer to disclose to their insured any amount of premium increase due to credit history.

Pros:
1. Consumers will understand the impact of credit history on their insurance premiums.

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Cons:

1. May not be mathematically possible under many existing rating plans. This may require the re-filing of all rating plans.
2. May result in less diversity between competitors in their product pricing.
3. Does not contemplate the inclusion of savings (however, insurers are free to voluntarily disclose savings).
4. Creates a unique requirement for credit history that is not imposed for other rating factors.

Other Issues:

1. Re-filing of entire plans may be required.
2. This is a major undertaking for insurance departments as well as for insurers trying to figure out how to comply.
3. Credit is only one factor for many companies.
4. States may be able to adopt disclosure rules without additional legislation.

(6) NO ACTION - NOTICE

Pros:

1. Avoids additional regulation.
2. FCRA already requires notice of an adverse action.

Cons:

1. Current insurance laws and regulations were developed before credit history was used extensively in insurance underwriting and rating.
2. Disclosure by insurer has been inconsistent and often not useful to consumers.
3. Consumers need information in order to make informed decisions that affect their insurance costs.
4. The use of credit history in insurance underwriting and rating needs to be more transparent to consumers.
5. If consumers have more information about their credit history, they may made different decisions the will improve both their insurance score and credit score. Perhaps this could be addressed by insurers through improved customer education.

Appendix C

ADOPTED BY THE CREDIT SCORING (D) WORKING GROUP: JANUARY 17, 2003
This brochure is a guide that states may choose to modify to ensure consistency with state public policy, laws and regulations addressing the use of credit scores.

CONSUMER BROCHURE

UNDERSTANDING HOW INSURERS USE CREDIT INFORMATION

Many personal auto and homeowners insurance companies look at consumer credit information to decide:

- Whether to issue or renew an insurance policy
- How much premium to charge for insurance

This brochure will help you understand how insurance companies use your credit information and how this business practice affects how much you pay for insurance.

1. Can an insurance company look at my credit information without my permission?

Yes. Both the federal and state Fair Credit Reporting Acts (FCRA), say that insurance companies may look at your credit information without your permission for underwriting practices. The federal law may be found at http://www.ftc.gov/. The state law is ___________, and may be found at ___________. *(Note: We recommend individual states amend to include relevant state-specific laws, in addition to the federal FCRA citation).*

2. Why do insurance companies use credit information?

Some insurance companies have shown that information in a credit report can predict which consumers are likely to file insurance claims. They believe that consumers who are more likely to file claims should pay more for their insurance.

3. How do I know if an insurance company is using my credit information?

Ask your insurance agent or company if they use credit information for underwriting or rating. If credit history is used for underwriting, ask them how it affects your eligibility for coverage. If credit history is used for rating, ask them how it affects your insurance premium. Finally, you should also ask if they will check the credit history of other people insured on your policy, such as family members, and how they will affect your policy.

4. If I don't have a credit history, will it affect my insurance purchase?

Possibly. Not all insurance companies handle this situation the same way. Some companies will charge you more. Other companies will use other information, such as driving record or claims history, to decide whether to insure you or how much premium to charge.

There is something you can do. Sometimes an insurer will not be able to find a meaningful credit history for you. If you think you have a credit history but the insurer cannot find it, make sure your agent or insurance company has your correct name, address, social security number, and birth date.

5. How do insurance companies use credit history?

Insurers can use your credit history to **underwrite** your insurance policy or to **rate** your insurance policy.

- **Underwriting.** Underwriting is a process where an insurance company gathers information and decides whether or not they will insure you. *(Note: We recommend individual states provide a brief summary of relevant state-specific laws that affect an insurer's ability to use credit history for underwriting.)*
- **Rating.** Rating is a process that determines how much you pay for insurance. Many insurers charge higher premiums based on various attributes of an individual's credit history, some of which are described in question 7. *(Note: We recommend individual states provide a brief summary of relevant state-specific laws that affect an insurer's ability to use credit history for rating.)*

6. What kind of credit information do insurance companies use?

Most companies that use credit information use an "insurance credit score." An insurance credit score is calculated using information about your credit history. Many insurance credit scores are weighted using recent credit history more heavily than old credit history. The factors used in many scoring models are:

- **Public records** (such as bankruptcy, collections, foreclosures, liens, and charge-offs). Public records generally have a negative effect on your insurance credit score.
- **Past payment history** (the number and frequency of late payments and the days between due date and late payment date). Late payments tend to have a negative effect on your insurance credit score.
- **Length of credit history** (the amount of time you've been in the credit system). A longer credit history tends to improve your insurance credit score.
- **Inquiries for credit** (the number of times you've recently applied for new credit, including mortgage loans, utility accounts, and credit card accounts). Shopping for new credit tends to have a negative effect on your insurance credit score.
- **Number of open lines of credit** (including the number of major credit cards, department store credit cards). Having too much credit tends to have a negative effect on your insurance credit score. However, it generally is not a good idea to cancel a credit account that you have had for a long time. A long credit history may help your score.
- **Type of credit in use** (such as major credit cards, store credit cards, finance company loans, etc). Major credit cards may be treated more favorably than other types of consumer credit, such as store credit card or loans from finance company.
- **Outstanding debt** (how much you owe compared to your available credit). Too much outstanding debt tends to have a negative effect on your insurance credit score.

Insurance credit scores are not uniform among insurance companies. Insurance companies have different views on which factors are more important based on their experience and business practices. For example, one company might feel that public records are more important than past payment history. Another company might take the opposite view. How much weight a company gives each of the factors determines, to a large extent, your insurance credit score with that company.

7. What is a good insurance credit score?

There is no single answer to this question. Generally, a good insurance credit score will translate to lower premiums. However, insurance companies use different scoring calculations, so different insurers will likely give you a different score. That is why it pays to shop around on a regular basis to make sure your premiums are competitive.

8. Is my premium based entirely on my insurance credit score?

No. Both auto and homeowners premium are based on factors other than credit history. Your auto insurance premium is based on factors such as your driving record, the type of car you drive, and where you live. Your homeowners premium is based on factors such as where you live and the cost to replace your home. Credit history is only one of a number of factors insurers use to rate your policy.

9. Must an agent or company tell me what my insurance credit score is?

No. In fact, the agent or company underwriter might not even know your score. Instead, all your agent or underwriter may know is that your score qualifies you for a particular rate or company within the group.

Even if you know your insurance credit score, it may not be useful to you. Your insurance credit score is a "snapshot in time," and a significant change in your credit activity or a creditor's report can change your score.

10. If I don't know my score, and my score varies from company to company, how will I know if my credit history affects my insurance purchases?

Ask your insurance agent or insurance company. The FCRA requires an insurance company to tell you if they take an "adverse action" because of your credit information. FCRA defines "adverse action" to include denying or canceling coverage, increasing premiums, or changing the terms, coverage, or amount of coverage in a way that harms the consumer. Examples of an "adverse action" include:

- Canceling, denying or non-renewing coverage.
- Giving the consumer a limited coverage form.
- Limiting benefits, such as eligibility for dividends.
- Issuing coverage other than that applied for.
- Not giving the consumer the best rate.
- Not giving the consumer the best discount.
- Adding a premium surcharge.

If your insurer takes an adverse action due to your credit history, it must also tell you the name of the national credit bureau that supplied the information. You are also entitled to a free copy of your credit report from the credit bureau that supplied the credit information.

Federal law says you have a right to a free copy of your credit report if you've been denied credit or insurance, if you are on welfare, unemployed, or if you are a victim of identity theft. Otherwise, you may have to pay a small fee (the current fee is $9 for each report). Most consumer groups suggest you get a copy of your credit report once a year and review it for errors.

11. What can I do if there is incorrect information in my credit report?

Tell the credit bureau. If you report an error, the credit bureau must investigate the error and get back to you within 30 days. The credit bureau will contact whoever reported the information. Credit information is often reported by banks, credit card companies, collection agencies, or a court clerk. If the investigation shows the information is wrong or if there is no proof it is true, the credit bureau must correct your credit record.

You can ask the credit bureau to send a notice of the correction to any creditor or insurer that has checked your file in the past six months. Once the errors are corrected, it is a good idea to get a new copy of your credit report several months later to make sure the wrong information has not been reported again. You should also get a copy of your credit report from the other national credit bureaus, which are listed below. If you correct an error on one report, it will not "fix" incorrect information on the other reports.

If the information in your credit report is correct, the credit bureau will not change it. However, the FCRA lets you file a 100-word statement explaining your side of the story, and the credit bureau must include your statement with your credit information each time they send it out. Make sure your insurance company has a copy of your statement, and ask if it will take your statement into account.

The three national credit bureaus are:
- Equifax (www.credit.equifax.com or 800-685-1111);
- Experian (www.experian.com or 888-397-3742); and
- Trans Union (www.transunion.com or 800-888-4213).

Tell your insurance company. Don't wait until the credit bureau investigates the errors to contact your insurer. Tell your insurance company right away and ask if the errors will make a difference in your insurance.

If the errors are big, tell your insurer that you are disputing the information and ask if they will wait to use your credit information until the errors are corrected. Small errors may not have much effect on your credit score. If the errors are big, it can make a significant difference in your premium.

12. How can I improve my insurance credit score if I have been adversely affected?

You must find out what attributes of your credit history were used to calculate your insurance credit score. An "attribute" is a piece of your credit history, such as filing bankruptcy or paying bills late. Companies that develop insurance credit scores, such as Fair Isaac and Choice Point, provide insurance companies with up to four attributes that have had a negative impact on your insurance credit score. The agent or company should be able to tell you which attributes of your credit history had the most impact on your score.

Potential ways improve your credit score:

- Don't try to "quick fix'" your credit overnight. You could end up hurting your score. For example, your score may go down if you cancel a credit card that you have had for a long time.
- Don't pay someone to "fix" your credit history. Some credit repair firms promise, for a fee, to get accurate information taken out of your credit report. Accurate information cannot be deleted from your credit report. Some credit repair firms promise to "fix" your credit report by challenging information in it. They charge you a fee to do that. This is something you can do for yourself without paying the fee.
- Create a plan to improve your credit over time. Pay your bills on time. Pay at least the minimum balance due, on time, every month. If you cannot make a payment, talk to your creditor. Work to reduce the amount you owe, especially on revolving debt like credit cards.
- Limit the number of new credit accounts you apply for. Several applications for credit in a short time will usually lower your credit score.
- Keep at it. Your credit history will improve over time if you make changes now and continue to improve. If you manage your credit better, your credit score will improve over time.

13. Where can I go for help with credit problems?

If you cannot resolve your credit problems alone, a non-profit credit counseling organization may be able to help you. Non-profit counseling programs are often operated by churches, universities, military bases, credit unions, and housing authorities. You can also check with a local bank or consumer protection office to see if they have a list of reputable, low-cost financial counseling services.

14. Will my credit history haunt me forever?

Probably not. Credit history is just that – history. Once you find out what attributes of your credit history is affecting your insurance credit score, you can work to improve your record. If your premiums are high because of your credit history and you take steps to improve your record, you should:

- Ask your insurance company to re-evaluate your insurance credit score at renewal.
- Shop for new insurance at renewal to see if better prices are available.

15. Does using credit information penalize minorities or low-income consumers?

We do not know. Statistical studies have not conclusively determined whether insurance credit scoring disproportionately affect minorities or the poor. Insurance regulators nationwide are currently examining this issue.

Consumer groups worry that insurance credit scores will be lower for low income and minority groups. Consumer groups also point to the fact that most insurers and insurance credit scoring model vendors will not make their insurance scoring models public so consumers can see how they use credit data to calculate a score.

16. Where can I get more information?

- Ask your insurance agent or company if they have educational material that explains how they use credit.
- Contact the Department of Insurance by calling our Consumer Assistance Hotline toll free at .... or visiting our website at ....
- Contact the Federal Trade Commission for information about the FCRA or their consumer brochures on credit. Call 877-382-4357 toll free or visiting their website at www.ftc.gov.
- Choice Point offers a service which allows consumers to see their insurance credit scores. The service costs $12.95 and is available at www.choicetrust.com.
- Search the Internet, but be sure the information you find explains how insurers (not lenders) use of credit information.
- Contact your local Cooperative Extension Service for information about improving your credit history.

17. Final Points to Remember

- There is a good chance your current or prospective insurer is looking at your credit.
- Ask your insurance agent or company if they use credit information, how they use it, and whether it affects your rate.
- Get a copy of your credit report from each of the three national credit bureaus and correct any errors. Tell your insurance agent and company about any errors and tell them your side of the story.
- Improve your credit history if you have had past credit problems. Ask your agent or company for the top reasons (factors) that your insurance credit score is low, and work to improve those pieces of your credit history. If you are paying higher premiums because of your credit history, ask your insurer to re-evaluate you when you improve your credit. If your insurer will not agree to re-evaluate you, it is probably time to "shop around."
- Shop around for insurance. Insurance companies use credit information in different ways, so your rates can vary dramatically from company to company.

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June 4, 2003

Statement of

Dolores S. Smith

Director, Division of Consumer and Community Affairs

Board of Governors of the Federal Reserve System

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

U.S. House of Representatives

June 4, 2003

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to testify before this Subcommittee on the role of federal banking regulators under the Fair Credit Reporting Act ("FCRA") and on how the FCRA promotes the national operations of entities under our jurisdiction. I commend the Subcommittee for holding this hearing to gather information and solicit the views of interested parties concerning this important topic.

I. The Fair Credit Reporting Act

A. Background

When Chairman Greenspan testified before the House Financial Services Committee earlier this year, he noted that there was a time in this country when local banking institutions knew the credit capacity of the individual consumers in their community. As the financial system became larger and more complex and the mobility of the population increased, particularly after World War II, it was no longer feasible for institutions to evaluate the credit standing of consumers on a strictly local basis. Centralized credit bureaus, or consumer reporting agencies, evolved to provide a repository of credit history information that could be accessed by creditors to evaluate the creditworthiness of prospective borrowers. The credit reporting system has had, as Chairman Greenspan put it, "a dramatic impact . . . on consumers and households and their access to credit in this country at reasonable rates." [1]

Today, each of the three national consumer reporting agencies--Experian, Equifax, and Trans Union--maintains records on as many as 1.5 billion credit accounts held by approximately

[1] Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, February 12, 2003, House Financial Services Committee; see also Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee.

190 million individuals. Each of the consumer reporting agencies receives more than 2 billion items of information per month and issues roughly 2 million credit reports each day.[2]

The information gathered by the consumer reporting agencies is obtained from banks, savings associations, credit unions, finance companies, retailers and other creditors, collection agencies, and public records. A consumer report generally consists of five types of information: identifying information, such as the consumer's name and address; detailed information reported by creditors regarding individual credit accounts; public record information, such as records of bankruptcies, foreclosures, and tax liens; information reported by collection agencies, mostly regarding non-credit related accounts; and information regarding inquiries about a consumer's credit record. Consumer reports are used for credit, insurance, employment, and certain other limited purposes.

B. Overview of the FCRA

The Congress adopted the FCRA in 1970 to regulate the credit reporting system in the United States, and passed significant amendments in 1996. The primary purposes of the FCRA are to ensure fair and accurate credit reporting and to protect consumers' privacy. Among other things, the FCRA imposes certain obligations on consumer reporting agencies, on users of consumer reports, and, since 1996, on furnishers of information.

The major provisions of the FCRA are as follows. Under the FCRA, a person may obtain a consumer report only if that person has a permissible purpose. The statute specifies the permissible purposes for obtaining a consumer report, which include the intended use of the information from a consumer report for a transaction involving an extension of credit to a consumer. If a creditor takes any action that is adverse to a consumer based on information in a

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[2] See "An Overview of Consumer Data and Credit Reporting," Federal Reserve Bulletin, February 2003, at 49-50.

consumer report, the creditor generally must give the consumer a notice of the adverse action. This notice informs consumers about their rights under the FCRA.

Participation in the U.S. credit reporting system is voluntary. Creditors are not required to obtain consumer reports before making credit decisions, although most creditors rely on consumer reports for risk-management purposes. There also is no requirement that creditors furnish information to consumer reporting agencies. But if they do, they must ensure that the information they furnish is accurate. They must correct and update erroneous information, and must investigate any disputed information.

Consumer reporting agencies have extensive responsibilities under the FCRA. Those responsibilities include: maintaining reasonable procedures to ensure that consumer reports are furnished only to persons having a permissible purpose; following reasonable procedures to ensure the maximum possible accuracy of consumer reports; reinvestigating the accuracy or completeness of any disputed information and notifying the consumer of the results of the reinvestigation; omitting certain obsolete information from consumer reports after specified periods of time; and providing a consumer with a copy of his or her consumer report upon request.

C. Consumer Protection under the FCRA

The FCRA contains important consumer rights and protections. Several are designed to promote accuracy in consumer reports. As mentioned above, a consumer must receive notice if information in a consumer report has resulted in adverse action against the consumer. An adverse action notice must inform the consumer of the name, address, and telephone number of the consumer reporting agency that furnished the report, the consumer's right to obtain a free copy of the consumer report, and the consumer's right to dispute the accuracy or completeness of any information in the consumer report. Consumers have a right to obtain a copy of their consumer reports, except for credit scores, upon request.[3] Consumers also have the right to dispute the accuracy or completeness of any information in their consumer reports with a consumer reporting agency, to have such information deleted or corrected, and to include a statement of dispute in the report if the dispute is not resolved. Consumers may also dispute inaccurate items with the furnisher of the information.

Other consumer rights and protections are designed to protect consumer privacy. Consumers have a right to be excluded from prescreened solicitation lists. The three national consumer reporting agencies maintain a toll-free telephone number that consumers can call to exercise what is, in effect, a right to opt out of receiving most prescreened solicitations for a period of two years. Consumer privacy is also protected by the limitation on access to consumer reports to persons that have certified a permissible purpose under the FCRA. In general, the FCRA restricts the sharing of certain information among affiliates unless the consumer is given the opportunity to opt out of that sharing. Additional privacy protections cover specific circumstances where consumer reports are provided to prospective employers, consumer reports contain medical information, or investigative consumer reports are prepared or obtained.

D. The Role of the Federal Reserve Board Under the FCRA

The Federal Reserve Board and the other banking agencies play an important role in interpreting and enforcing the FCRA as it relates to credit. The agencies have the statutory authority to jointly prescribe regulations necessary to carry out the purposes of the FCRA with respect to financial institutions subject to their jurisdiction. The Board also has authority to prescribe regulations (consistent with the interagency regulations) with respect to bank holding

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[3] A credit score is a numerical representation of a consumer's overall credit profile.

companies and their affiliates (other than depository institutions and consumer reporting agencies).

The FCRA specifically authorizes the Board to enforce compliance with the Act with respect to state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under sections 25 or 25A of the Federal Reserve Act. The Board has adopted examination procedures for entities subject to its jurisdiction and routinely examines for compliance with the FCRA. The other banking agencies have substantially similar examination procedures for entities subject to their jurisdiction.

The entities subject to the Board's jurisdiction primarily are users of consumer reports and furnishers of information. Typically, entities regulated by the Federal Reserve Board are not consumer reporting agencies.

E. Preemption under the FCRA

In the 1996 amendments to the FCRA, the Congress preempted the states from enacting laws or regulations dealing with seven key areas regulated by the FCRA:

- The procedures for furnishing information from consumer reports for the purpose of offering credit through prescreened solicitations, such as the procedures through which consumers may elect to have their names and addresses excluded from any prescreened list;
- The time for completing reinvestigations of disputed consumer report information;
- The duties of creditors that take adverse action, such as the duty to give the consumer notice of the adverse action and the consumer's rights under the FCRA;

- The informational contents of consumer reports, such as the time periods within which consumer reporting agencies must omit from consumer reports certain obsolete information;
- The duties of furnishers of information, such as the duty to investigate the accuracy and completeness of information furnished to a consumer reporting agency upon receipt of notice from the consumer reporting agency that the information is disputed;
- The rules regarding the sharing of information among affiliated companies, such as when a consumer may have the opportunity to opt out of certain information sharing among affiliates; and
- The form and content of the written disclosure summarizing the consumer's rights under the FCRA that consumer reporting agencies must provide to consumers along with a copy of the consumer's credit report.

These preemption provisions are scheduled to sunset on January 1, 2004. After that date, states would be permitted to enact laws in these seven areas if those laws explicitly provide that they are intended to supplement the FCRA and give greater protection to consumers than is provided under the FCRA.

Preemption under the FCRA is limited to these seven areas, and states are not precluded from enacting supplementary laws or regulations in other subject areas addressed by the FCRA. Some states have enacted laws requiring consumer reporting agencies to provide free copies of credit reports to consumers annually, even though the FCRA only requires free copies after adverse action has been taken based on information in a consumer report. Some states also require consumer reporting agencies to disclose credit scores to consumers, even though the FCRA does not require the disclosure of credit scores.

The Chairman has stated that he would support making permanent the provision currently in the FCRA "that provides for uniform federal rules governing various matters covered by the FCRA."[4] In an appearance before the House Financial Services Committee in April of this year, Chairman Greenspan spoke of the importance of having "national standards" under the FCRA.[5]

II. Discussion of the National Credit Reporting System

A. The FCRA and the Nationwide Operations of Financial Institutions

The FCRA promotes the interstate operations of banks and other financial entities subject to the Board's jurisdiction in important ways. Perhaps most significantly, the ability of financial institutions to obtain standardized consumer reports--that contain robust, nationally uniform data--allows banks to make prudent credit decisions quickly and inexpensively wherever they do business and wherever their customers live and work. The FCRA's national standards governing furnisher responsibilities and duties of users taking adverse action--the two primary areas of responsibility for most financial institutions--promote efficiency by enabling banks to comply with a single set of rules for all of their domestic credit operations.

The FCRA's provisions regarding firm offers of credit or prescreened solicitations have enabled banks to effectively market their products to consumers most likely to want them. Without prescreened solicitations, the cost of acquiring new customers, particularly in the credit card market, could be considerably higher. The FCRA's affiliate-information sharing provisions enable bank holding companies and other large financial enterprises to efficiently manage and use consumer information across multiple account relationships.

[4] Letter from Chairman Alan Greenspan to Congressman Rubén Hinojosa, February 28, 2003.

[5] Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee.

B. The FCRA and the National Credit Reporting System

On the question of whether the preemption provisions of the FCRA should be extended or made permanent, today's hearing offers Subcommittee members an opportunity to obtain input from various interested parties and to assess the likely impact that state-by-state differences in the seven areas could have on the national credit reporting system and the credit granting process. A key consideration in this reexamination of federal preemption of state law is the impact that different state laws may have on the availability and cost of consumer credit.

Maintaining a reliable and robust national credit reporting system is essential to ensure the continued availability of consumer credit at reasonable costs. As Chairman Greenspan observed, "there is just no question that unless we have some major sophisticated system of credit evaluation continuously updated, we will have very great difficulty in maintaining the level of consumer credit currently available because clearly, without the information that comes from various credit bureaus and other sources, lenders would have to impose an additional risk premium because of the uncertainty before they make such loans or may, indeed, choose not to make those loans at all."[6]

The ready availability of accurate, up-to-date credit information from consumer reporting agencies benefits both creditors and consumers. Information from consumer reports gives creditors the ability to make credit decisions quickly and in a fair, safe and sound, and cost-effective manner. Consumers benefit from access to credit from different sources, vigorous competition among creditors, quick decisions on credit applications, and reasonable costs for credit.

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[6] Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee.

State-specific restrictions governing areas such as furnishing information to consumer reporting agencies, or the contents of information contained in consumer reports supplied by consumer reporting agencies, could decrease the availability of credit or increase the cost of credit. As Chairman Greenspan observed, "[l]imits on the flow of information among financial market participants, or increased costs resulting from restrictions that differ based on geography, may lead to an increase in the price or a reduction in the availability of credit[.]"[7]

Additionally, credit scoring has become an important tool in the credit granting process. Credit scoring models use credit bureau data to construct mathematical scorecards that accurately predict the risk profiles of individual consumers. The predictive power of credit scores depends directly on the content and quality of the credit bureau data that are used to construct the models. Credit scoring enables creditors to evaluate, quickly and inexpensively, the risk of lending to virtually any credit applicant, and promotes the making of expedited credit decisions in a safe and sound manner. Consumers benefit from the increased availability and lower cost of credit that results from the use of credit scoring models. Credit scoring also may help to reduce unlawful discrimination in lending to the extent that these systems are designed to evaluate all applicants objectively and thus avoid issues of disparate treatment. As Chairman Greenspan recently noted, "the emergence of credit scoring technologies, which rely on the availability of information about the financial experiences of individuals, has proven useful in expanding access to credit for us all, including for lower-income populations and others who have traditionally had difficulty obtaining credit. It has also enabled financial institutions to offer a wide variety of customized insurance, credit and other products."[8]

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[7] Remarks following prepared testimony by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, April 30, 2003, House Financial Services Committee.

[8] Letter from Chairman Alan Greenspan to Congressman Rubén Hinojosa, February 28, 2003.

Non-uniform state laws currently preempted by the FCRA might seek to restrict the information that can be furnished to or reported by a consumer reporting agency and could reduce the availability or increase the cost of credit by impairing the utility of consumer reports and credit scores that creditors use for portfolio management, underwriting, and fraud control. Legislation has been proposed in several states to impose greater obligations on furnishers to ensure the accuracy of information furnished to consumer reporting agencies.

The duties of furnishers of information raise complex issues that require a delicate balancing of divergent interests. The accuracy of consumer report information is a critical element of the national credit reporting system. Recent studies have shown that consumer reports sometimes contain inaccurate, incomplete, or inconsistent data, although the degree to which this is a problem is in dispute.[9] Most of the problems with consumer reporting agency data appear to result from the failure of creditors, collection agencies or public entities to furnish complete and consistent information in a timely manner.[10]

Although these studies might suggest to some that states should be allowed to impose increased obligations on furnishers to ensure the accuracy of the information that they furnish, differing state laws regarding the duties of furnishers could have adverse consequences. First, state-by-state differences in the responsibilities of furnishers--many of which operate nationwide--could result in consumer reporting agencies obtaining less complete and consistent data and increase compliance costs for furnishers. Second, because there is no requirement to furnish information to consumer reporting agencies, the imposition of additional, state-specific

[9] For a summary of these recent studies, see "An Overview of Consumer Data and Credit Reporting," Federal Reserve Bulletin, February 2003, at 50.
[10] Id. at 70-73.

duties or liabilities on furnishers for purposes of ensuring accuracy could affect the willingness of creditors to furnish information voluntarily to consumer reporting agencies.

The informational content of consumer reports, including the requirement to remove obsolete information, is another area where different state laws could adversely affect the national operations of banks and bank holding companies. Under the FCRA, consumer reporting agencies generally may include any information in a consumer report, except that certain obsolete information must be omitted from consumer reports within prescribed time periods. If the preemption provision applicable to the informational content of consumer reports is allowed to sunset and states were to enact different restrictions on what information, if any, must be omitted from consumer reports--and when--the contents of consumer reports could vary on a state-by-state basis. This would make it more difficult and costly for institutions doing business in different states to evaluate the creditworthiness of prospective applicants.

Different state law requirements regarding furnishers or the informational contents of consumer reports, therefore, could produce a lack of uniformity in credit bureau data and undermine the utility of such data for assessing creditworthiness. This, in turn, could compromise the integrity and predictability of the credit scoring models that banks and other creditors rely upon for risk-based underwriting and portfolio management. As a consequence, creditors might have greater difficulty assessing their risk from an underwriting, portfolio management, and fraud control perspective, which could lead to higher credit costs and reduced credit availability.

III. Conclusion

In conclusion, this Subcommittee is to be commended for undertaking this examination of the FCRA preemption provisions to determine whether to allow states to enact non-uniform laws or regulations in areas currently preempted by the FCRA. In conducting this examination, it is important to ensure that we maintain a viable, national credit reporting system that preserves and expands reasonable access to credit.

Testimony of

JOSEPH A. SMITH, Jr.

NORTH CAROLINA COMMISSIONER OF BANKS

on behalf of the

CONFERENCE OF STATE BANK SUPERVISORS

before the

FINANCIAL SERVICES COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

June 4th, 2003

Good morning, Chairman Oxley, Representative Frank and members of the Committee. I am Joe Smith, North Carolina Commissioner of Banks and Chairman of the Legislative Committee of the Conference of State Bank Supervisors' (CSBS). Thank you for asking us to be here today to share the views of CSBS on the Fair Credit Reporting Act.

CSBS is the professional association of state officials who charter, regulate and supervise the nation's over 6,300 state-chartered commercial and savings banks, and more than 500 state-licensed foreign banking offices nationwide.

CSBS Views on Preemption

The Conference of State Bank Supervisors formed more than 100 years ago, with states' rights as a keystone of its founding charter. The organization has a long history of supporting states' ability to charter and determine the powers of financial institutions. This system of state chartering and supervision has served our nation very well, and is the choice of charter for approximately 75% of commercial banks. Nearly every innovation in banking services, powers, structures and consumer protections has come out of the state system. Many academics point to the state system as the reason the U.S. has the world's most competitive and responsive banking system. It is also principally the state banking system that provides the fuel for the small business sector that serves as our economy's engine.

Federal Reserve Chairman Alan Greenspan has said that "[l]arge numbers of small banks go hand in hand with a macroeconomy characterized by large numbers of small, entrepreneurial nonfinancial businesses." In fact, most of our nation's state chartered banks are community banks – and a recent study conducted by the Federal Reserve System indicates that over 60% of commercial loans made to small businesses (loans less than $100,000) are extended by community banks. Chairman Greenspan has also said that our "decentralized and diverse banking structure" was arguably the key to weathering the financial crisis of the late 1980s and so quickly returning to economic health. Contrast this with the centralized banking system of Japan, which has spent more than a decade in economic malaise.

Consolidation and centralization of authority and rulemaking are not always the best economic answer, or the best answer for bank customers and borrowers. As a result of this conclusion, state bank supervisors are strong advocates for a system that allows the states to serve as laboratories for innovation and change, not only in bank powers and structures, but also in the area of consumer protections. We believe in states' rights not as a theoretical principle, but because we have seen the evidence of its benefits to our states and our nation.

CSBS does, however, recognize the benefits of a dual system that recognizes national interests and national needs as well as local interests and needs. Since the creation of the Federal Reserve System and the Federal Deposit Insurance Corporation, national rules and standards have applied to state banks, and these have helped establish a stronger banking system that has, in turn, strengthened our economy.

Our system of banking needs to promote an efficient and effective banking industry that offers the best, most competitive options for financial institutions and their customers. Since consumer needs can vary considerably among regions, we believe that consumer protection is often best addressed at the state level. Thus, our nationwide system of banking should include a strong component of state supervisory authority and applicable state law. We acknowledge, however, that uniform nationwide standards, developed and enacted by the Congress, may be appropriate and desirable in some specific areas.

CSBS Policy on the Fair Credit Reporting Act

We must all acknowledge that technology has radically changed the world since the original enactment of the Fair Credit Reporting Act (FCRA) in 1970. Most would agree that this technology revolution has benefited both our financial institutions and the consumers they serve. It has also changed the needs, demands and expectations of both the industry and its customers.

Congress's 1996 review of FCRA was long overdue. That revision included experimental preemptions of state authority to enact laws in several areas related to information sharing[1], with some exceptions for California, Massachusetts and Vermont. These preemptions passed with little debate at the time, and we welcome the opportunity to discuss them today.

Good information about borrowers is essential to a financial institution's ability to make safe and sound lending decisions. Bank supervisors have always demanded that the institutions they regulate make decisions based on solid data. Technology has revolutionized the information base of credit decisions and now allows financial institutions to extend credit to individuals with whom they never could have imagined they would have relationships. Much of this revolution has occurred since the 1996 FCRA amendments.

Theoretically, this revolution – supercharged by the Internet -- should benefit the prudent consumer of financial products, as institutions can compete for their business based on their credit records. This theory seems to hold up when we observe recent innovations in consumer and mortgage finance, their broadening markets and decreased costs. Underlying this six trillion dollar market is a credit information system supported by the FCRA.

Observing the many benefits of technology-powered credit information sharing, and recognizing that an efficient information network requires standards and consistency, CSBS adopted a policy in March of this year to support the permanent extension of the 1996 FCRA preemptions, retaining the exceptions acknowledged at that time.

While we generally oppose preemption, we believe that the benefits of uniformity to our credit granting system, and the value of this system to consumers and our economy, outweigh our objections.

Economic research is just developing on the impact of allowing a broader variety of state-level credit reporting laws, but the credit-granting system is so important to the health of our financial institutions and their ability to serve their customers that we believe the Congress should take action before the current FCRA preemptions expire.

Other Preemption Issues

CSBS's support for preemption in this area does not imply support for the growing preemption of other state consumer protection laws. The federal chartering agencies – the Office of the Comptroller of the Currency and the Office of Thrift Supervision – continue to preempt state consumer protection laws without the kind of public debate we are having today.

The OTS does not even publish its preemptive decisions, because the agency believes that the Home Owners' Loan Act does not require it, and because Congress has not applied to the OTS the guidelines for preemption articulated in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

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[1] The affected areas are the content of consumer reports, liability for those who provide information to consumer reporting agencies, prescreening procedures, adverse action requirements, content of disclosures, exchange of information among affiliates, and the time periods for disputing the accuracy of reports.

Additionally, recent OCC proposals and court decisions sought by the agency are making the issue of applicable state law discussed here today moot.

The states are increasingly concerned about the growing pervasiveness and boldness of OCC and OTS preemption, which these federal entities now claim reaches traditionally state-licensed and regulated operating subsidiaries of their federally chartered institutions.

. The OCC has asserted that the National Bank Act authorizes these preemptions, and that the agency is merely implementing congressional intent. The OTS makes similar claims.

CSBS respectfully disagrees. We believe that regulatory interpretations have moved away from well-considered public policy into the realm of loophole-lawyering. It is one thing for the Congress to debate policy openly and publicly, and then establish federal standards. It is quite another when a regulator proposes cleverly-worded interpretations that a clear reading of the law would not support. At a minimum, a clearer articulation of OCC and OTS standards of preemption would lessen the legal burden of litigation over the federal regulators' sometimes tenuous interpretations of applicable law.

We ask Congress to exercise its oversight role in reviewing the growing expanse of state consumer protection laws being preempted for national banks, federal thrifts and their subsidiaries. We hope that the Committee and the Congress might extend its interest in the legislative preemptions of the FCRA to other areas of consumer law preemption by the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

Conclusion

CSBS holds federal preemption of state laws and authority to a very high standard. Our rapidly developing technology-based credit system has benefited consumers and our economy, and depends on reliable information and a consistent environment. Recognizing this, CSBS supports extending the temporary preemptions contained in the 1996 amendments to the FCRA.

CSBS is committed to working with the Congress to address the needs of an evolving nationwide financial services system in a way that respects the interests of all our nation's financial services providers and minimizes regulatory burden, while also protecting our nation's consumers.

I would be pleased to answer any questions members of the Committee might have.

NMHC National Multi Housing Council

National Apartment Association

TESTIMONY OF

JULIE A. SMITH

PRESIDENT,

BOZZUTO MANAGEMENT COMPANY

ON BEHALF OF

THE

NATIONAL MULTI HOUSING COUNCIL/

NATIONAL APARTMENT ASSOCIATION

JOINT LEGISLATIVE PROGRAM

BEFORE THE

HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND

CONSUMER CREDIT

WEDNESDAY, JUNE 4, 2003

The American apartment industry...working together for quality, accessible, affordable housing.

SUITE 540 • 1850 M STREET, NW • WASHINGTON, DC 20036 • (202) 974-2300 • FAX (202) 775-0112 • WEB SITE: WWW.NMHC.ORG

Good morning Chairman Bachus, Ranking Member Sanders, and distinguished members of this Subcommittee. I am Julie Smith, President of Bozzuto Management Company, an owner, developer, and manager of apartments in the mid-Atlantic region. It is my pleasure to appear today on behalf of the National Multi Housing Council/National Apartment Association Joint Legislative Program to discuss the experience of apartment providers and the rental housing industry with the Fair Credit Reporting Act (FCRA).

The National Multi Housing Council and the National Apartment Association represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance.

To summarize my testimony, NMHC/NAA believe that eliminating the current uniform federal treatment of adverse action notices, consumer report contents, and furnisher obligations can be expected to impose new operational costs on rental housing firms and increase uncertainty about the credit and legal history of our residents. These increased operating costs and risks, could, we believe, have a material impact on the cost and availability of rental housing. Further, recent state legislative proposals addressing consumer data demonstrate the benefits of FCRA's system of functional regulation. These state proposals suggest that, given new powers, states may opt to regulate in a patchwork fashion, varying coverage of their consumer data laws by industry, rather than by function, as the FCRA does. Finally, while we support the continuation of the national preemptions now found in FCRA, we support efforts by Congress and the Administration to develop new measures to address identity theft problems that have gained wider national attention since the enactment of major changes to FCRA in 1996.

1. FTC has found "high level" of industry compliance with FCRA

Millions of rental and employee applicant transactions annually are subject to the Fair Credit Reporting Act. Rental housing providers use consumer rental, credit, and criminal history in their decisions to accept, accept with conditions, or reject applicants for rental housing. The consumer reporting system also communicates timely information about an individual who has defaulted on a lease obligation without paying rent or damages owed. Finally, consumer reports are an important tool for verifying the background of employee applicants and thus reducing the risk of negligent hiring practices.

The Federal Trade Commission's (FTC) review of rental housing industry compliance with FCRA has been positive, and the agency has provided useful industry-specific compliance education as a result of its reviews. In testimony before the Senate Committee on Banking, Housing, and Urban Affairs on May 20, Howard Beales, Director of the FTC's Bureau of Consumer Protection, pointed to the "high level of compliance with the adverse action requirements of the Act" that FTC staff found in a national compliance review of rental housing providers. "Using Consumer Reports: What Landlords Need to Know," which the FTC released following its review, has been a beneficial educational reference for the industry.[1] To promote FCRA compliance, NMHC/NAA support the development of this kind of industry-specific compliance education.

[1] The guidance can be found at http://www.ftc.gov/opa/2002/01/fcraguide.htm.

2. The expiration of Section 624's preemptions could raise operating costs and risks for rental housing in three areas

The uniform national standards that FCRA now provides have increased the usefulness of consumer report information – and thus enabled rental housing providers to make more informed decisions about resident and employee applicants. The January 1, 2004 expiration of current state law preemptions under Section 624 of the FCRA,[2] however, raises concerns for rental housing providers in three specific areas: (1) adverse action notices, (2) permissible consumer report information and the obsolescence of that information, and (3) consumer data furnishers' statutory obligations.

Adverse Action Notices - Without additional Congressional action, the expiration of Section 624's pre-emption of state laws addressing Sections 615 (a) and (b) beginning next year could mean that rental housing firms operating in multiple states would be required to provide many more versions of adverse action notices under circumstances that would vary with each jurisdiction.[3] Following the FTC's useful industry compliance guidance noted above, rental housing providers are typically providing standard-form adverse action notices in the vast majority of states under uniform conditions – e.g., where a resident applicant is either declined or accepted with qualifications based on his/her consumer report. Adverse action notices provided by rental housing owners are promoting wider awareness of consumer history that, in turn, can be used to improve the accuracy of file data where consumers access and review their report and dispute inaccurate data. NMHC/NAA are concerned about the higher operating costs that could result from a legal regime where the content of the adverse action notice and the circumstances under which it is provided varies with each jurisdiction.

Consumer Report Contents and Obsolescence - Permitting states to vary the content of what information may be included in consumer reports, as the expiration of Section 624's pre-emption of the obsolescence limitations and other provisions in Section 605 would do, could substantially expand crime and credit risk for rental housing owners and residents.[4] With the expiration of the pre-emption of Section 605, it appears that states would be permitted to block rental housing providers from accessing criminal history, bankruptcy filings, civil judgments, and "any other adverse item of information" contained in consumer files, no matter how recently the underlying event, conviction, or judgment had occurred.

Although Section 624 (d) would limit states to adopt after January 1, 2004 only those consumer data laws that give "greater protections to consumers,"[5] this limitation could still allow states to permit wider deletion of consumer legal and credit history information from consumer reports, perhaps on the ostensible rationales that negative credit or legal history compromises an applicant's "fresh start" or right to privacy.

NMHC/NAA believes that creating new opportunities for states to delete information from consumer reports based on varying policy rationales compromises the national consumer data system. On a national basis, rental housing residents and providers

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[2] See FCRA Section 624 (d). References in this testimony to "Section..." are to the Public Law section numbers of the Fair Credit Reporting Act, unless otherwise noted.
[3] See FCRA Section 624 (b)(1)(C).
[4] See FCRA Section 624 (b)(1)(E).
[5] See FCRA Section 624 (d)(2)(C).

could bear the hardship of states that decided to use this new authority to restrict the availability of negative criminal and credit history. For example, a resident or employee applicant from a state that had decided to restrict disclosure of prior sexual offender history – as some states already do following Megan's Law – could very well be obligated to document that he/she was not a sex offender wherever the applicant's application to rent or work included a reference to time spent in the non-disclosing state.

NMHC/NAA are concerned that a rental housing provider's ability to mitigate crime risks on the community it owns by screening out applicants with criminal history profiles could be significantly compromised by the ability of states to restrict the sharing of criminal history data through consumer reports. Naturally, a state law (or municipal ordinance enacted under a state enabling law) that restricted the disclosure in consumer reports of prior criminal history would make it easier for criminals to opt not to disclose prior crimes – and more difficult for rental housing providers to detect the failure to disclose.

Finally, NMHC/NAA are concerned about the expanded ability states would have, with the expiration of this pre-emption, to erase from consumer histories material credit history information, such as an applicant's recent history of eviction, lease default, property damage, or bankruptcy. Facing increased uncertainty about an applicant's credit history, rental housing providers would be less able to accurately price the risk of applicant default. As a result, many housing providers would be obligated to reject or accept with qualifications a resident applicant they would have accepted under the current system.

Furnisher Obligations – Section 624's existing pre-emption of state laws (outside of Massachusetts and California) governing furnishers' duties provides benefits that should also be preserved.[6]

Expiration of the preemption on furnishers' duties would likely create varied, new state-imposed furnisher duties that might not track the realities of reasonable business practices, particularly in industries such as rental housing where small businesses predominate. For example, a state might choose to specify a short amount of time for a furnisher to conduct an investigation upon notice of a dispute under FCRA Section 623 (b). This mandate may appear to provide additional consumer benefit – but, in practice, the state standard may well promote hurried, inaccurate investigations if the state deadline does not provide adequate time for small companies as well as large companies to undertake a full and fair investigation.

FCRA currently provides businesses with standards of care and deadlines that are capable of being implemented. These provisions, in the experience of NMHC/NAA members, have worked well to balance customers' and users' desire for file accuracy with furnishers' business practices. Were the duties of furnishers left to the states to define, the operational practices of rental housing providers furnishing consumer data would have to be adapted and updated with the advent of each new statutory change.

[6] See FCRA Section 624 (b)(1)(F).

3. Recent state law proposals demonstrate the benefits of extending uniform national standards

State legislative proposals to permit file-freezing and applicant-supplied reports, as well as state proposals that substitute industry-by-industry regulation for FCRA's functional regulatory model, have surfaced in the past few years. A short review of the impact of these proposals gives some insight into what might happen to the national consumer data system were this Congress to permit the beneficial uniform national standards now found under FCRA to expire.

For example, state legislative proposals that would permit an employee or resident applicant to freeze his consumer report raise risks that a housing provider will rent to an individual who has developed a history of crime or negative credit history since the date the file was frozen. Laws which require a rental housing provider to take a consumer report submitted by a resident or employee applicant also raise the risk that the housing provider will accept a resident or hire an employee whose report omits material negative criminal or credit history.

The current reporting system enables more accurate and reliable decisions about an applicant's criminal and credit history than could be made if applicants were able under state law to freeze their applicant file or supply their own, unauthenticated consumer reports. The current federal statute's preemptions provide safeguards necessary to ensure that consumers may not manipulate the data in their file to present a picture that selectively deletes material, accurate information that does not reflect well on the consumer.

Recent state consumer reporting legislative proposals indicate a trend toward exempting certain industries from coverage on a one-by-one basis, in place of the more uniform, function-by-function regulation now found in the FCRA. The current version of FCRA appropriately treats covered entities uniformly by their function (e.g., furnisher, user) instead of variably by industry sector or corporate form. Yet state law proposals, such as the version of Texas S.B. 473 proposed earlier this year, would exempt some rental housing providers but not others from the bill's new requirements for matching criminal history. The Texas proposal also distinguished between criminal and credit history information, requiring new identity matching requirements for credit information used by all rental housing providers but not for criminal information. In contrast, the FCRA generally provides for uniform treatment of criminal and credit history. We believe this example of uniform treatment in the current FCRA system is preferable.

4. Apartment providers share public concerns over identity theft crimes

We share the concerns voiced by members of this committee and witnesses before it about the crime of identity theft, which has received increased public attention since the passage of the last major changes to the FCRA in 1996. The Act imposes duties on rental housing providers furnishing consumer information to verify disputes. Thus, where identity theft has compromised a person's rental, credit, or criminal history, the FCRA provides a resolution mechanism for victims to work with rental housing providers and other furnishers to correct records that have been compromised.

Specific protections against unauthorized use of resident information are also accomplished through contracts between rental housing providers and with consumer data suppliers, which impose specific operational safeguards against unauthorized employee access to consumer data. We believe that existing contractual practices provide important safeguards, in addition to the federal statutory requirements, that can be flexibly adjusted to reflect future crime risks, technological capabilities, and operational solutions in a way that no federal or state statute alone can. These voluntary practices should be considered as part of any solution to provide new tools to fight identity theft.

We look forward to working with this Congress and the Administration to address identity theft concerns in the context of the extension of the state law preemptions now found in FCRA. The expiration of the existing preemptions presents an opportunity to maintain uniform national standards while providing new tools to address crimes such as identity theft that have gained greater prominence since 1996.

THE NMHC/NAA JOINT LEGISLATIVE PROGRAM

AND THE APARTMENT INDUSTRY

The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is the largest national federation of state and local apartment associations. NAA is comprised of 163 affiliates and represents more than 30,000 professionals who own and manage more than 4.6 million apartments. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

Apartments and rental housing play a major role in our economy. One-third of Americans rent their housing, and 15 percent live in an apartment (defined as a building with 5 or more units). The value of the nation's entire apartment stock (buildings with 5 or more units) alone is $1.3 trillion. Rental revenues from apartments total almost $100 billion annually, and management and operation of apartments are responsible for approximately 500,000 jobs. Construction of apartment communities has added roughly 250,000 new apartment homes in each of the past three years. The value of the new construction has averaged more than $17 billion annually, providing jobs to more than 200,000 workers.

Apartments are a central part of the solution to the nation's affordable housing needs. At the same time, apartments are the solution for the increasing proportion of Americans who rent by choice, preferring the convenience and flexibility of rental housing to homeownership. According to Fannie Mae's 2001 Annual Housing Survey, 41 percent of renters rent out of choice and not out of economic necessity. That number is up significantly from 32 percent in 2000 and 28 percent in 1999.

Finally, apartment and rental housing owners are predominantly small businesses. Under Small Business Administration (SBA) guidelines, 99 percent of the operators of residential rental housing qualify as small businesses.[7]

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[7] SBA defines a real estate concern as a small business when its total "annual receipts" are no more than $5 million. "Annual receipts" are defined at 13 CFR 121.104 as "total income" plus "cost of goods sold," in the same manner these terms are defined or reported to the Internal Revenue Service.

Written Testimony
of
Shanna L. Smith
President and CEO
National Fair Housing Alliance

BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE
Subcommittee on Financial Institutions and Consumer Credit

"Fair Credit Reporting Act:
How It Functions for Consumers and the Economy"

June 4, 2003

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I. Introduction: My name is Shanna Smith, and I am President/CEO of the National Fair Housing Alliance. I want to thank Chairman Spencer Bachus and Congressman Bernard Sanders and the committee for inviting me to speak about the issue of fair access to credit and the use of credit scoring for mortgage loans and homeowners insurance. The National Fair Housing Alliance is a membership organization representing virtually all of the private, non-profit fair housing education and enforcement agencies in the United States.

For the past twenty eight years I have been investigating housing discrimination in the areas of rental, sales, lending and homeowners insurance. As executive director of the Toledo, Ohio Fair Housing Center from 1975 until 1990 and as the President of the National Fair Housing Alliance. Since 1990, I have utilized both the HUD administrative process and the federal courts to challenge violations of the federal Fair Housing Act by mortgage lending and homeowners insurance companies.

My testimony today will focus on fair access to credit and the use of credit scoring models in determining eligibility for and pricing of mortgage loans and homeowners insurance.

II. Fair Access to Credit: Studies as well as lawsuits[1] continue to demonstrate that African Americans, Hispanics, and elderly women are not treated the same as similarly qualified white males when attempting to purchase products such as cars, or secure mortgage loans or homeowners insurance. The terms and conditions for purchase of these products can be driven by the race, national origin or gender of the consumer rather then by their ability to pay or condition of the home. For example, in a recent complaint against Nissan's financing arm,[2] it was alleged that African American buyers were not only charged more for their cars, but charged higher interest rates for the car loan than equally or less qualified white buyers. When this type of practice is repeated against consumers in the purchasing of other necessities such as appliances, furniture, mortgage loans and homeowners insurance products, then we find that people of color and elderly women pay more for products and services because of their race, national origin or gender. As a result, people in these groups end up having less savings because they are paying higher prices and higher interest rates to finance the products. Some scholars refer to this as the "Black tax".

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[1] See *USA v Long Beach Bank*; *NFHA et al v Prudential Insurance Company*
[2] "Nissan's financing arm has agreed to stop marking up loan rates", p.E2; *Washington Post*, February 20, 2003.

Some people argue that the African American, Hispanic or elderly female consumers should be better negotiators for the products. However, testing of these companies for various consumer products as well as testing involving access to mortgage loans and homeowners insurance indicates that white consumers did not have to negotiate to secure the best price or interest rate. Better pricing was offered to the white consumer, not negotiated. So people of color and elderly women will often pay more for the same product or loan and/or pay more for inferior homeowners insurance coverage.[3] Consequently, when there is a downturn in the economy, resulting in layoffs and even higher interest rates, people of color and elderly women are the first to suffer and may end up making late payments, which are subsequently recorded in their credit histories.

III. Credit Scoring Models: All credit scoring models rely on credit reports. The extension of credit in the United States is fraught with discrimination. The foundation for statistical credit scoring models is unreliable and does not accurately reflect the use of credit. In addition, there is no incentive for companies using credit scoring models to use the latest generation of that model. Purveyors of these models concede that older versions may result in consumers paying higher interest rates. Why would a company upgrade if they can charge more?

What actually can improve a credit score? Many housing counselors tell potential homebuyers to pay off old debt and close out accounts because too many open accounts will lower the credit score. However, closing out older accounts and maintaining a newer account that has a lower interest rate will actually lower your credit score rather than raise it. Credit scoring models give a higher ranking to people who have long term established accounts without regard to the logic of closing out an older account because it has a high interest rate.

I have checked my credit score number and I am in the high 700s. However, the credit scoring company informed me that my score could be higher if I did not have so many open lines of credit – allegedly 24 open lines. I do not have double-digit lines of open credit.

When I reviewed my credit bureau file, I found that the credit scoring company is counting as open lines of credit that are in fact closed. Unfortunately over the past ten years, my purse was stolen three times and each time I closed my bank accounts as well as my three credit card accounts. However, it appears that these closed accounts continue to be counted as open. The credit bureau report clearly indicates these are closed accounts. Even though these closed accounts have R-1 or I-1 ratings, my score remains lower because the model used counts closed accounts as open. So am I paying more credit because of these errors? Probably.

Type of Trade Line: Credit scoring models penalize the consumer for the type of trade line s/he is using. For example, if my loan is with a finance company my credit score is lowered even if I have paid that loan with a high interest on time every month. Wouldn't it make sense to consider this consumer a better credit risk if s/he can pay the loan in a timely way – and surely at a

[3] See NFHA testimony U.S. Senate Banking, Housing and Urban Affairs Committee - 5/94 Prepared testimony for presentation on the nature and extent of homeowners insurance discrimination in the United States.

minimum the credit scoring company should treat the type of trade line the same. Perhaps companies think if I can only secure a subprime or predatory loan then I am a "risk by association". In fact, I may only have access to a finance company because there are no banks in my neighborhood or because I do not have a home equity line of credit. Some companies might claim that they no longer penalize people for the type of trade line they have, but I have seen no evidence to indicate that this change has been made. In addition, as mentioned above, lenders, insurers and other companies are not necessarily using the latest generation of the credit scoring models.

Questions for Credit Scorers: There are a number of questions that should be asked of credit scoring companies, as well as those companies who use credit scores, which would illuminate this discussion from a fair housing perspective:

- What does FICO/Choice Point do to measure the accuracy of the data in credit history files?
- What does FICO/Choice Point do to measure the completeness of the data in the credit history files?
- Has FICO/Choice Point considered using factors in its algorithm that are NOT typically contained in credit reports? (Rental payment history, utility payment history, etc.)
- Has FICO/Choice Point or anyone else analyzed the distribution of risk scores by race, ethnicity, gender, etc.?
- Has FICO/Choice Point or anyone else analyzed the distribution of risk scores by geography, and if so, at what geographic level (e.g., statewide, city, county, ZIP code, census tract)?

III. Fair Lending Practices and the Use of Credit Scores: Is credit scoring designed to predict which loan will default or which loan will end up in foreclosure? If a loan defaults does that automatically mean a foreclosure will result? According to the lenders and credit scoring companies, credit scoring can predict which loan is likely to default. Default means being failing to make a monthly payment during the month it is due. Can credit scoring predict which defaulted loan will be cured in the next month? Prior to foreclosure? The Center for Community Self-Help, a North Carolina based direct lender specializing in creating ownership and economic opportunities for minorities, women, and rural residents, reports extremely low foreclosure rates with people who have credit scores below the conventional lender cutoff of 620. Since 1980, Self-Help has provided over $1.78 billion in financing to 25,800 small businesses, nonprofits, and homebuyers.

Dr. Calvin Bradford of Bradford & Associates has conducted research which indicates that approximately 90% of the loan applicants whose credit scores are between 580 and 619 will not default on their mortgage loan. However, these people are often denied loans by conventional lenders and pushed into the subprime market which charges higher interest rates and fees.

Mortgage Lending Discrimination: Is the loan applicant entitled to the best rate for which s/he qualifies or is the loan applicant required to negotiate for the best rate? If you go to a federally regulated lender, you should expect to be offered the best loan for which you are qualified and not be required to negotiate. But often, this is not the case.

If a loan originator runs your credit score first, you may be steered to the company's subprime division before an application is completed. If Fannie Mae's Desktop Underwriter (DU) initially alerts the loan originator with a "caution", the loan originator will submit the application to Freddie Mac's Loan Prospector (LP), or vice versa, rather than immediately manually underwrite the loan. If a caution appears because of a credit score below 620, the loan originator should manually underwrite the loan. However, we have found that this is not the case. From interviews with hundreds of loan originators over the past five years, I have learned that at least half of the loan originators will send the applicant to a subprime lender rather than spend the time necessary to manually underwrite the loan. The cutoff of 620 throws many healthy, viable babies out with the proverbial bath water. There is a rumor that lenders may raise the "A" loan standard from 620 to 700 which will result in even more qualified loan applicants paying more for loans than is reasonable according to their credit history, and ability to repay that loan, and likelihood of default.

Because discrimination still exists in the loan process, it is necessary to make certain that new efficiencies in lending – credit scoring and automated underwriting -- do not contribute to direct acts of discrimination or result in disparate impacts because of membership in any of the seven classes protected by the Fair Housing Act: race, color, national origin, religion, sex, disability, or familial status.

The National Fair Housing Alliance's testing of mortgage lenders in the prime and subprime markets have shown that white individuals are afforded better treatment and better products because they are white and live in predominantly white neighborhoods. For example, when I contacted the subprime subsidiary of a conventional lender via telephone to refinance, I was asked who held my current mortgage. When I gave the name of the mortgage lender, I was advised to contact them to refinance. African Americans who made the same inquiries were not referred to their mortgage lenders, but invited to refinance with the subprime subsidiary at a higher interest and higher fees. Another example: while speaking with the regional manager of a large mortgage company and sharing with her that my husband and I were new to California and we were looking at homes in Richmond, CA, a city with a substantial African American population, that regional manager said, "After listening to your voice, I suggest that you consider looking in Concord, because you will get better loan terms."

My access to better loan terms as a white female, results in lower monthly payments and which then allows me to direct my money to savings, other investments and wealth building. Therefore, when credit scoring companies state emphatically that their models are race and gender neutral, this simply is untrue. Race, national origin and gender continue to control the type and terms of credit available.

IV. Fair Insurance Practices and the Use of Credit Scoring Models: Consider the fact that a homebuyer can be approved for a mortgage loan but denied homeowners insurance based on the same information in her credit history. What does an insurance credit score allege to predict? The answer depends upon when you asked.

Initially, credit scoring companies marketed the homeowner's insurance score stating that it could predict who would file fraudulent claims. This marketing scheme was quickly dropped when fair housing groups challenged the veracity of the claim. Lately the credit scoring companies are marketing their products by stating that insurance credit scores can predict who will file a claim. This is interesting because a large percentage of claims are weather-related. Will credit scores become the almanacs of the future? Insurance companies have stated that claims are related to two factors: weather and the filing of previous claims. While the credit scoring companies state that there is a correlation between credit and homeowner claims, they can show no causal relationship.

Why have insurance companies turned to credit scoring? Companies have acknowledged that during the 1990s, they were under-pricing some premiums for homeowner products in order to stay competitive in certain markets. Their decision to under-price products for some homeowners, predominantly white homeowners, is causing price increases today so companies are relying on credit scoring models as an excuse to charge more. Unfortunately, the higher premiums based on credit scoring are going to have a disparate impact on neighborhoods of color, regardless of the quality of housing in those neighborhoods, because credit has never been equally available to similarly qualified applicants.

Since 1991, testing conducted by the National Fair Housing Alliance has demonstrated that white homeowners living in predominantly white neighborhoods pay less for the best coverage while African American or Hispanic homeowners living in comparable homes in integrated or predominantly minority neighborhoods pay more for inferior coverage. In the mid 1990s, the Missouri Insurance Commissioner reported that African American homeowners in St. Louis were paying higher premiums for inferior coverage (market value policies) but were reporting fewer claims and lower costs per claim than their white counterparts reporting more claims with higher costs per claim. Since that time, investigations conducted by the National Fair Housing Alliance and HUD found similar disparities in pricing and policy type occurring Toledo, Ohio, Richmond, VA, Milwaukee, WI, New Orleans, LA, Chester, PA, Chicago, Il, Los Angles, CA, Memphis, TN, Cincinnati, OH, Washington, DC, Louisville, KY, Akron, OH, and Atlanta, GA.

As mentioned earlier, oftentimes insurance companies justify this discriminatory behavior with credit scoring. The National Fair Housing Alliance believes it is unfair and in violation of the Fair Housing Act to increase premiums even higher for neighborhoods of color. How long will people living in minority and integrated neighborhoods continue to subsidize bad business practices that favored white neighborhoods?

The insurance companies state that they are losing money on their homeowner products, but isn't this because they under priced the true cost of the product to their "preferred" customers? Their reserves are still more than sufficient to cover any catastrophe as well as anticipated claims.

Insurers are also developing new schemes to deny homeowners insurance to qualified buyers. The latest tactic is to deny insurance to a new homebuyer if the sellers of the home they are buying filed claims related to that home! The insurance companies are using the Comprehensive

Loss Underwriting Exchange (CLUE) to identify homes that have had claims filed. So now the insurers are saying that "accident prone homes"[4] exist – not just accident prone people. Fire is becoming a major reason for homeowner claims and losses and the popular burning of candles is the top cause of these fires. The home did not light the candle that started the fire. The home did not cause the wind storm to knock over the tree that hit the roof. The home did not leave the door unlocked so a thief could run off with property. Congress should put an immediate halt to the use of CLUE information for this purpose.

V. Conclusions and Recommendations: The insurance industry, like the lenders, must underwrite real risk, not race or national origin or gender. Credit scores cannot predict who will file a claim or who will commit a fraud. Credit scores are not predicting which loan will end in foreclosure. The insurance industry has acknowledged that both weather and past claims filing history are the best predictors of who files future claims. I think we should even be skeptical about past claim filing because we know that insurance agents have encouraged customers to file claims; in addition, the industry supported the filing of small claims because they paid them and did not cancel or non-renew the policy holders, especially those living in white neighborhoods.

If policy holders understood that the insurance companies see homeowners insurance as protection for serious losses, then people would file only serious claims. However, that is not how the products have been marketed.

- **Underwriting guidelines of insurance should become open to the public.** Lenders complained in the 1980s that if there underwriting were public, they would lose market share to competitors. This never happened.

  Insurers claim that underwriting guidelines are proprietary, but when you speak with them they say they follow the practices of largest insurance companies – State Farm, Allstate or Nationwide. Note: All three of these companies have changed their underwriting guidelines to be non-discriminatory, due to the efforts of the National Fair Housing Alliance. State Farm and Allstate both changed their guidelines following a HUD conciliation agreement; Nationwide changed following litigation and a settlement with the National Fair Housing Alliance members.

  Already, the state of Connecticut maintains and releases to the public insurance company underwriting guidelines – and competition continues to be healthy in Connecticut. I have reviewed many underwriting guidelines of insurance companies and there are few and only minor differences, except for those that include discriminatory statements such as limiting or denying homeowners policies because of subjective issues including family composition, presence of disable occupant, quality of housekeeping or pride of ownership. Making these underwriting guidelines public would allow homeowners, housing counselors, fair housing practitioners, and consumer activists to teach people how to be responsible consumers of

[4] "Accident prone home" is a term coined by Lisa Rice, Executive Director of the Toledo Fair Housing Center to challenge use of CLUE in this manner.

homeowners insurance.

- **Congress should enact disclosure legislation which will provides, at a minimum, the following:**

  1. Disclosure of Underwriting Guidelines. Several years ago, mortgage lenders claimed their underwriting guidelines were "trade secrets" and that they would lose their competitive edge if forced to reveal the guidelines. What has happened since the lenders made their underwriting standards public? Better underwriting policies and practices are being put into place. Antiquated and discriminatory guidelines were identified and removed. Sound lending in urban areas is underway in many cities. The insurance industry should be required to do the same.

  2. Disclosure of Loss Data. The industry must present information about the number, type and amount of claims filed. Without this information, Congress and the public will not know if higher premiums charged in minority, integrated, older or lower income neighborhoods are based upon higher risks or whether these high premiums are being used to subsidize other neighborhoods, as some studies reveal.

  3. Disclosure of Type and Cost of Policies. Certainly insurers will come forward with numbers showing they are writing policies in some of the same neighborhoods where we have documented discrimination, but do these policies include their top of the line packages or are they minimum insurance at maximum price? Remember when lenders made loans in minority neighborhoods, but the terms and conditions were more restrictive, not based on risk ,but based on race? The insurance industry must provide documentation that their business decisions are based on risk and not race.

  4. Reporting Race, National Origin and Gender of Policyholders. Just as mortgage lenders record the information or have the loan applicant complete the section on race, insurance companies can include this information on their application. As with Home Mortgage Disclosure Act (HMDA) data, this information may be used to see who is being covered.

  5. Reporting Information By Census Tract. Currently, insurance companies keep information by zip code. Zip codes are large geographic areas that encompass many minority and non-minority neighborhoods. An insurance company could report that it is writing 20% of the policies in the zip code, but that 20% could be confined to the high income white neighborhood. Census tracts, however, have approximately 5,000 people within their boundaries and provide demographic data that is essential to determining the characteristics of neighborhoods such as race, income, age of housing. Census tract reporting is required of mortgage lenders, and Congress gave them one year to convert from zip code to census tract after passing the Home Mortgage Disclosure Act. It is certainly much easier and less expensive now to convert.

  6. Reporting for ALL Metropolitan Statistical Areas. The federal Fair Housing Act provides protection based upon race, color, religion, sex, familial status, disability or national origin. It also protects people who live in minority and integrated neighborhoods. Clearly the MSAs in the United States include people and neighborhoods represented in the protected classes. How can we justify protecting some, but not all, of the residents in the country? Reporting must be inclusive.

- **Lenders should follow the policies and procedures of the Center for Community Self-Help and dig deeper into the default versus foreclosure issues.** Certainly, if there are higher costs for servicing a loan that is predicted to default in order to cure the default before it ends in foreclosure, then a higher interest is justified. But if the vast majority of the people between 580 and 620 pay on time and be responsible consumers, they should not be charged higher rates because credit scoring models fail to deal with the race, national origin and gender discrimination inherent in the credit system.

- **Credit history should never be the sole reason for denial of homeowners insurance coverage.**

- **No annual credit report reviews by insurance companies should result in increased premiums unless there is sufficient reason to believe that a real risk is posed for fraud.**

It is important that Congress take swift and comprehensive action to address discrimination in the homeowners' insurance industry. For more than twenty years, the mortgage lending industry claimed that denial of loans in minority neighborhoods was based upon sound lending practices. We are confident that insurance companies will claim they are insuring risk, not race. But we believe the evidence disclosed to you today is simply the tip of the insurance discrimination iceberg. America's neighborhoods are counting on you to provide the public with the tools necessary to identify and eliminate discrimination in all forms.

I would like to thank the Committee once again for inviting me to testify before you today.

United States House of Representatives

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

108th Congress, 1st Session

Hearing on "Fair Credit Reporting Act:
How it Functions for Consumers and the Economy"

June 4, 2003

TESTIMONY OF TIM SPAINHOUR
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Good afternoon Chairman Bachus, Ranking Member Sanders, and distinguished members of the Subcommittee.

My name is Tim Spainhour and I am the Legal Compliance Leader of Acxiom Corporation. I would like to thank you for holding this hearing and inviting Acxiom to participate. The reauthorization of the preemptive aspects of the Fair Credit Reporting Act (FCRA) is important to Acxiom's clients and, therefore, Acxiom, and is vital to the national credit reporting system consumers enjoy the benefits of today.

Although the scope of today's hearing is rather broad, I will limit my testimony to a single, discrete aspect of the activities covered by the FCRA in which Acxiom is involved. Specifically, I will address the role of the processor in the creation and use of prescreened consumer lists in credit and insurance solicitations.

The Role Acxiom Plays in Prescreening

For more than thirty years, Acxiom has been a *leader* in responsibly providing innovative *data management services* to leading companies in America. In a nutshell, Acxiom helps businesses—including those businesses that use prescreened lists for credit and insurance solicitations—recognize and engage customers who have the highest need for their product or service.

Simply put, in the context of prescreening, Acxiom's role is one of a data processor. We provide information products and services to our customers, and we build and maintain the computer systems that are the foundation of our client's customer management and marketing programs. Once we assist in creating these systems, our clients use the consumer data available to them to identify potential customers.

In the May 8 hearing before this subcommittee, testimony was presented which suggested that prescreening may increase competition among issuers of credit, thereby providing consumers with greater access to favorable credit rates and features. Although prescreening may offer such consumer benefits, not every consumer who meets or exceeds a credit issuer's minimum credit criteria for a firm offer of credit, will respond to such an offer.

Acxiom assists credit issuers in matching consumers with the offers they will find most interesting, and then assuring that those offers are delivered to the right address. Furthermore, many consumers have expressed an interest in not receiving such offers. In this regard, the FCRA requires that consumer reporting agencies, which prepare prescreened lists, also maintain an "opt-out" system whereby consumers can elect to be omitted from such lists.

Because consumers have the ability to opt out from inclusion in prescreened lists, and in light of the substantial costs associated with large-scale prescreened solicitations, our customers have a clear economic incentive to market only to those consumers who are most likely to respond to their offer, and to avoid marketing to those consumers who are not interested. That is where Acxiom's expertise comes into play.

The credit issuer first determines the credit criteria of the consumers to whom it will make a firm offer and communicates that criteria to a Consumer Reporting Agency. Once the list of consumers meeting the issuer's credit criteria has been determined by the Consumer Reporting Agency, a processor such as Acxiom will assist in further refining that field of potential customers to those who are more likely to want or need the product and are most likely to respond.

The process of refining the list of potential customers may entail the use of what we refer to as a partner file obtained by the issuer. Such a file could identify participants in a frequent flier program, who will be offered a product that allows the accumulation of frequent flyer credits. Or, the issuer may wish to market to consumers who have demographic characteristics similar to those who have responded to offers of similar products in the past. A processor like Acxiom applies demographic data to the records and then processes the file to identify those consumers whose demographic characteristics are similar to past responders.

For example, golf has become a very popular sport. An issuer may offer a credit card with a golfing theme as the background on the actual card and utilize that theme on the envelope and letterhead used to communicate the offer. That offer would be targeted to those consumers who are likely to have an interest in golf or who live in areas near golf facilities. Acxiom helps the issuer get that offer to those consumers.

Acxiom also performs the services needed for postal certification in order to assure that each letter gets delivered to the most current, correct address and qualifies for available postal discounts. This includes processing the file for address standardization, carrier route pre-sorting and the application of the National Change Of Address (NCOA) file to make sure the issuer has the most current and accurate addresses. In other words, Acxiom utilizes all the tools at its disposal to assure that the right consumer gets the offer intended for him or her. This saves our clients money and lessens the amount of unwanted mail in consumers' mailboxes.

Consumer choice is important to the credit issuers and to Acxiom. Another service provided by the processor is to assist the issuer in honoring consumer preference. There are some consumers who don't want to receive prescreened offers. The issuer will provide the processor with a list of consumers who have elected to opt out with the issuer. Acxiom, as well as other processors who are members of the Direct Marketing Association (DMA), also applies the opt-out list (known as the Mail Preference Service) maintained by DMA to eliminate those consumers from the file. Acxiom also offers consumers the ability to opt out with Acxiom and those preferences are also applied. The issuer may also want to eliminate those consumers who are already customers or who have received recent offers, and may provide those lists as well.

By narrowing the scope of prescreened offers to only those consumers most likely to welcome such offers, Acxiom's activities complement, and are consistent with, the intent and policies underlying the FCRA. We add value to the prescreening process by helping credit issuers place welcomed offers in the correct mailboxes. Without our expertise, consumers would receive unwelcome mail through less accurate targeting. Without this system, issuers would incur higher costs, which would be passed on to consumers.

I have described how the prescreening process is performed by responsible companies in a manner that not only addresses the business requirements of credit and insurance issuers, but also in a manner that respects the important policies underlying the FCRA. The FCRA's preemption of state laws governing prescreening, and the resulting national uniformity that exists with respect to prescreening issues, is a major factor in the successful implementation of our prescreening system.

If the existing preemption provisions are not renewed, the current orderly and effective prescreening process will likely become mired in a web of conflicting state and local laws. The prodigious costs that would result from the increased complexity and liability would, in Acxiom's opinion, create a substantial disincentive for responsible companies to participate in the prescreening process, thereby limiting consumer access to credit at favorable rates and terms, a highly undesirable result.

A WRITTEN STATEMENT OF FAIR ISAAC CORPORATION

ON THE FAIR CREDIT REPORTING ACT

HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY

BEFORE THE U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

WASHINGTON, D.C.

JUNE 4, 2003

Introduction. Mr. Chairman and members of the subcommittee, my name is Cheri St. John. I am the Vice President of Global Scoring Solutions for Fair Isaac Corporation. Thank you for the opportunity to testify before you today regarding the critical role played by uniform national credit reporting standards and credit scores in creating a robust national credit market that helps consumers get the credit they deserve, and get it faster.

Fair Isaac Corporation. Fair Isaac Corporation is the preeminent provider of creative analytics that unlock value for people, businesses and industries. Founded in 1956, Fair Isaac helps thousands of companies in over sixty countries acquire customers more efficiently, increase customer value, reduce fraud and credit losses, lower operating expenses, and make more credit available to more people. Fair Isaac pioneered the development of statistically-based credit risk evaluation systems, commonly called "credit scoring systems," and is the world's leading developer of those systems. Thousands of credit grantors use scores commonly known as "FICO® scores" generated by Fair Isaac-developed scoring systems implemented at the national credit reporting agencies. Fair Isaac has also developed custom scoring systems for hundreds of the nation's leading banks, credit card issuers, finance companies, retailers, insurance companies, and telecommunication providers.

Over the last forty years credit scoring has become an important part of most credit decisions. Fair Isaac believes that some form of credit scoring is now used in the majority of consumer credit decisions, and the most widely used credit scores in the U.S. today are FICO scores. A FICO Score is a 3-digit number that tells lenders how likely a borrower is to repay as agreed. FICO Scores use information from consumer credit reports to provide a snapshot of credit risk at a particular point in time. Scores can change over time, as that credit risk prediction reflects changes in underlying behaviors.

Fair Isaac has also given consumers a place in the credit reporting process by pioneering consumer credit empowerment with its myFICO.com score explanation website. Millions of consumers have already taken steps to control their credit lives by using myFICO to obtain informative, actionable credit-information services including the FICO scores that lenders use, and to help improve and protect their overall financial health.

Fair Isaac is a leading developer of insurance scores. Over 350 insurance companies use Fair Isaac insurance scores that they obtain through national credit reporting agencies. Although insurance scores utilize credit data, they differ from credit scores in that insurance scores are developed based on insurance premium and loss history and predict future insurance loss ratio relativity. Like credit scores, insurance scores do not consider a person's income, marital status, gender, ethnic group, religion, nationality or neighborhood, and the scores are applied consistently from one consumer to the next. A strong statistical correlation has been repeatedly demonstrated between credit data and insurance loss ratio[1], and insurance scores have become a valuable component in determining insurability and the rate assigned. Insurers use insurance scores to accelerate their processing for applicants and renewal shareholders, to concentrate additional underwriting attention on higher-risk individuals, and to better manage operational strategies. Consumers benefit from lower rates. Insurers have stated that 60-75% of their policy holders pay lower premiums because of insurance scoring. Fair Isaac has been supportive of the efforts of insurance score users to educate consumers and agents about insurance scoring.[2]

With credit scoring, more people get credit, they get it faster, and it's more affordable. FICO scores mean more people have access to credit. Credit scores allow lenders to better assess the risk and tailor credit for each consumer's needs. FICO scores are used in almost

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[1] See, *Predictiveness of Credit History for Insurance Loss Ratio Relativities*, October 1999; Attachment 1: *Insurance Bureau Scores vs. Loss Ration Relativities*, Tillinghast-Towers Perrin, December 1996, Attachment 2; *A Statistical Analysis of the Relationship Between Credit History and Insurance Losses,* Bureau of Business Research (McCombs School of Business) at the University of Texas, March, 2003 available at http://www.utexas.edu/depts/bbr/bbr_creditstudy.pdf.

[2] See e.g., *Answers to Your Questions About Insurance Bureau Scores*, Attachment 3.

every sector of the nation's economy: for mortgages, credit cards, auto loans, personal loans, even cell phone service. More people can get credit regardless of their credit history because credit scores allow lenders to safely assess and account for the risk of consumers who have no existing relationship with the lender, who have never entered the lender's branches, and who may have been turned away in the past by other lenders. Lenders use scores not only to evaluate applications, but also to manage the credit needs of existing customers by extending additional credit or helping consumers avoid overextending themselves. FICO scores are also used by lenders and securities firms as to aid securitization of credit portfolios which provides lenders the capital they need to make credit available to more consumers. FICO scores are accepted, reliable, and trusted to the point that even regulators including federal bank examiners, and security rating agencies, use them to help ensure the safety and soundness of the financial system.[3]

FICO scores mean people get credit faster. "Instant credit" at a retailer, an auto dealer, over the phone, or on the Internet would not be possible without credit scores. Even mortgage loans that used to take weeks can now be done in minutes. Removing information from credit reports, or even varying reported information from state to state, would make the process of obtaining credit more difficult for consumers. Among the tremendous lending advances in the U.S. over the last decade has been the streamlining of the lending process, so that credit approvals – not just on credit cards but on installment loans, mortgages, home equity lines of credit and even commercial loans to small businesses – can be made faster with less manual review and with less paperwork and requests for data. All of this has occurred while lenders have not only preserved but strengthened their visibility and control over their risk exposure. These gains stand to be lost if weaker or inconsistent data reduces the predictiveness of credit scores. If the reliability of credit scores diminishes, for the reasons discussed, lenders will need to use other techniques to bolster their risk assessment. Consumers will likely have to complete more paperwork, supply additional types of information not required today, and wait longer for decisions. This would be a setback

[3] See Attachment 4 for examples of Federal agencies that use FICO scores.

for the national economy, and it would inconvenience and potentially harm consumers searching for credit.

FICO scores mean people pay less for their credit. Scores make credit more affordable by reducing the cost of evaluating applications, reducing loan losses, reducing the cost of managing credit portfolios, reducing marketing costs with prescreening, and cutting the cost of capital with securitization. This efficient flow of credit and capital has a large part to play in the continued robustness of the American economy. By enabling lenders to extend credit quickly while managing their risk, credit reports and credit scores have made credit more accessible, at lower rates, to more people.

More data means smarter scores. Smarter scores help everyone get the credit they deserve.

Fair Isaac supports renewal of the national uniformity provisions of the FCRA. The current uniform credit reporting system helps both consumers and lenders. Complete and consistent credit information increases the predictive power of the scoring system.[4] If national uniformity in credit information is lost, scores will be less predictive and consumers will be hurt. Lenders will be less able to precisely distinguish risk. The likely result is that consumers in states that allow less information, for example a state that might restrict information on mild delinquency, will have access to fewer credit products and pay higher prices for credit because lenders will have to increase prices overall to cover the increased risk. Moreover, the consumers with better payment records will lose the benefit of always paying on time every time and end up paying higher prices. With less information to work with, scores would be less able to distinguish between those consumers who pay their bills every time and consumers who occasionally miss payments. Lenders will have to charge the same price for both groups, thereby making the consumers with better credit records pay the increased costs currently paid by the less reliable

[4] See, *A Clarification of the Consumer Federation of America's Observations about Credit Score Accuracy*, Attachment 5, for Fair Isaac observations about the December 17, 2002 report, "Credit Score Accuracy and Implications for Consumers," issued by the Consumer Federation of America.

credit risks. A consumer should not be charged more because of someone else's debts. If states pass legislation affecting the content of credit reports, many consumers could get a lower score than their actual risk level warrants. Complete and consistent data makes scores smarter, which helps everyone get the credit they deserve.

State regulation of credit reporting works against a national economy because smaller states would likely experience a greater negative impact from inconsistent and varied state regulation of credit reporting. As credit data becomes fragmented, credit scores would need to adapt to utilize available data. Smaller, less populous states may bear a heavier burden for at least two reasons. First, the market will likely prioritize the redevelopment of scores to serve the larger markets, i.e. the more populous states. Second, smaller states would have a smaller pool of available data on which to conduct research to refine and develop smarter scores for those markets. Either of these developments would mean residents of smaller states would be at a disadvantage in credit markets because with less sophisticated scoring, lenders would have to raise prices and reduce credit availability to respond to the diminished ability to assess risk in smaller markets. The cost and availability of credit should be determined by the credit risk of each consumer rather than the state of residence and therefore Fair Isaac supports the renewal of the national uniformity provisions of the FCRA.

Lenders must make a credit decision, and they must predict the future in doing so. Lenders can use a variety of decision making techniques to predict the future, ranging from a simple subjective evaluation of application and credit history information by a loan officer, to predictive technologies, including credit scoring. When a creditor switches from judgmental decisions to scoring, it is common to see a 20-30% increase in the number of applicants accepted with no increase in the loss rate. Lenders should use all the information that is legally, economically and efficiently available to make the best and fairest possible decision for each individual with whom they do business. FICO scores, when used properly, make a tremendous contribution in doing just that. FICO scores use only legal data as inputs, and only those factors proven to be predictive of credit risk.[5] Scores are also more consistent from consumer to consumer because they apply the same factors the same way, each time.

Studies have concluded that the same Fair Isaac credit score indicates the same level of risk regardless of the income level of the consumer or whether the consumer resides in an area with a high percentage of minority residents, with differences consistently favoring the low to moderate income ("LMI") and high minority area ("HMA") applicants.[6] Those same studies indicate that credit scoring is a far more predictive screen for both the LMI and HMA applicants than is judgmental decision making. Finally, the multiple scorecard systems developed by Fair Isaac and resident at the three main U.S. credit bureaus were proven to be more predictive than a single scorecard developed for the HMA population for the study.

Fair Isaac credit scores transform the economics and efficiency of the credit decision to allow all relevant information to be brought to bear so that no information that is favorable to an individual is omitted from the decision process. Credit scoring scientifically, and therefore fairly, balances and weighs *positive* information along with any negative information in credit reports. In essence, full positive credit reporting and scoring have "democratized" credit granting – information about all consumers is available to all lenders for a fair evaluation. Scoring has transformed credit granting so that it is no longer simply based on who you know. State regulation that limits the nature and quality of the credit data available will only diminish the value of this powerful and beneficial tool.

People who know their scores–and improve their credit health–have more credit power.

National uniformity in credit data empowers consumers by promoting consumer awareness and understanding of their credit standing, helps prevent identify theft, and facilitates an efficient

[5] See Attachment 6, available free at http://www.myfico.com/Offers/RequestOffer.asp for the major factors used to calculate the FICO score and other educational information about credit scoring.
[6] See, *The Effectiveness of Scoring on Low-to-Moderate Income and High Minority Area Populations*, a Fair Isaac Paper dated August, 1997, Attachment 7.

national labor pool. Consumers can get expert explanations of their current FICO scores and copies of their current credit reports from www.myFICO.com. and learn how to improve their credit scores with more responsible credit behavior.[7] Consumers will find it harder to understand and take charge of their credit if the rules for credit reporting vary by state because credit scores and reports may change without a change in the consumer's credit behavior if new state laws or a move by the consumer to another state changes the availability of data. The problem would be compounded for consumers that bank, do business in or own property in multiple states with varied regulatory approaches. Even if the consumer perseveres through that confusion, differing state rules will likely diminish the quality of consumer credit products. State restrictions on credit reporting will tend to cause consumer products to adopt the lowest common denominator to create a single, affordable national standard. The FCRA has created a uniform system that empowers consumers to manage their credit standing and permits the creation of sophisticated products to help them. Well-meaning state regulation should not be allowed to diminish a consumer's role in.managing his credit standing.

Consistent, Quality Data helps Prevent Identity Theft

Renewal of the FCRA uniformity provisions helps both consumers and the financial industry prevent identity theft. Congress recognized the need for reliable and consistent data to prevent fraud when it created an exception to the data sharing restrictions in section 502 (e) (3) (B) of the Gramm- Leach-Bliley Act so that data can be shared to prevent fraud. Well-meaning restrictions on data reporting and sharing will hurt those they intend to protect by reducing the ability of both consumers and the financial industry to prevent identity theft and other types of financial fraud. The industry tries to prevent fraud like identity theft by using analytics to detect potential fraud. Robust, consistent and reliable data improves the performance of analytic fraud detectors. Consumers also prevent identity theft by utilizing services available at myFICO.com and other sources to monitor their credit reports for suspicious activity. The Federal Trade Commission

[7] See Attachment 6 available free at http://www.myfico.com/Offers/RequestOffer.asp for the major factors used to calculate the FICO score and other educational information about credit scoring.

states that one of the best ways for a consumer to catch identity theft early is for the consumer to monitor his credit report.[3] Reliable, credit data of a consistent nature makes it easier for consumers to protect themselves against identify theft because they can learn one data format and rely on certain types of data to be there such that they can easily detect suspicious activity. If credit data varied and was inconsistent from state to state, consumers would not be able to tell whether changes to their credit reports are from state regulation or from suspicious activity. Even if a consumer continues to monitor despite shifting data content, he/she might stop using their credit report to monitor for identity theft as they learn time and again that changes in the report are due to changes in state laws rather than suspicious activity.

Uniform Credit Reporting Promotes a National Labor Pool

If uniform national credit reporting is eliminated, consumers will find it more difficult to move from state to state in search of employment, or do business or own property in more than one state. A consumer that moves to a state with different credit reporting laws will at best be confused by the changes to his/her score and credit report that are generated solely by a change in available data. Worse, that consumer may find that he/she is unable to obtain credit or must pay more for it. Credit cost and availability should be based on each consumer's behavior, not on the state of residence.

Credit scoring and the national credit reporting system created by the FCRA has many benefits for both individual consumers and our nation's economy. I thank you for the opportunity to share with you Fair Isaac's expertise and experience in this important area.

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[8] See, Attachment 8, available at http://www.consumer.gov/idtheft/risk.htm

Testimony of Kevin T. Sullivan
Vice President and Deputy General Counsel, Government Relations
Allstate Insurance Company
Northbrook, Illinois
Before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit
June 4, 2003

Fair Credit Reporting Act: How it Functions for Consumers and the Economy

I. Introduction

Thank you Mr. Chairman, Ranking Member Sanders and members of the Subcommittee. My name is Kevin Sullivan. I am the Vice President and Deputy General Counsel of Government Relations at the Allstate Insurance Company. I appreciate the opportunity to provide you with an overview of insurance scoring and to discuss why and how this competitive innovation benefits consumers.

I would like to summarize the role of national uniform standards in creating a robust insurance market for consumers, and how such uniformity affects insurance availability and affordability. I will also discuss the correlation between insurance scores and insurance underwriting, and how this issue has evolved under the Fair Credit Reporting Act. Finally, I will discuss how the myriad of state legislation and regulation in the credit arena have made it more difficult for insurers to provide the best in the way of affordability and availability to consumers.

II. Applicability of the FCRA to Insurers

The Fair Credit Reporting Act has recognized the use by insurance companies of credit information since its enactment in 1970. The use of consumer reports in connection with the underwriting of insurance has been a permissible purpose under the Fair Credit Reporting Act for over 30 years.

When the Fair Credit Reporting Act was amended in 1996, national uniformity was achieved by removing certain matters from the ambit of state regulation. Those national uniform standards or preemptions, which cover information in consumer reports, timing for resolving disputes, adverse action duties, the obligations of those who furnish information to credit reporting agencies, consumer rights notices, pre-screening, and affiliate sharing of information, will sunset on January 1, 2004 unless Congress extends or reauthorizes them.

Since the 1996 amendments were enacted, the insurance industry has begun to more fully utilize credit history as a predictor of future losses. This has resulted in substantial consumer benefits by allowing insurers to offer coverage at lower premiums to those whose credit report indicates they will be less likely to incur losses.

III. Overview of Insurance Scoring

The use of credit-based insurance scoring is the most significant advancement in cost-based pricing in at least the past 30 years. Insurance scores are derived from information contained in credit reports and are used to help insurance companies determine which risks to accept and how to allocate premium accurately among the risks that are accepted.

Insurance scoring is good for consumers, insurance agencies, insurers, and the marketplace. It allows insurers to reward customers in already-existing risk pools with lower premiums, and to write more consumers than they otherwise would. Insurance pricing and actuarial science is based upon the fundamental belief that premiums should be related to risk of loss. Using insurance scoring as part of cost-based pricing results in premiums that more accurately reflect risk of loss for each consumer, thereby reducing subsidies, which effectively are hidden taxes.

Insurance scoring allows more opportunity for individuals to be charged relatively lower premiums based on behavior they can control. In addition, even those who are not initially charged lower premiums benefit because insurance is more available to them and because they may be less likely to be non-renewed. Information that is accurate, predictive, and difficult to falsify is absolutely critical for appropriate underwriting and rating. The greater the accuracy and reliability of the available data, the more healthy the marketplace for insurance, which means lower costs, greater availability, and more stability for the consumer.

Information obtained from credit reports is information that helps insurers more accurately determine the cost of insurance, thus driving down prices and creating greater stability in the marketplace, which benefits everyone.

IV. History of Insurance Scoring

The predictive power of information included in credit history has been known since at least 1968, when the Washington State Department of Motor Vehicles reported a correlation between credit history and auto accidents, but its modern use can be traced to the late 1980's, when Fair Isaac, a leading provider of insurance scores to many insurers in the industry, began developing scoring models based on credit history. Allstate began using its own models during this time as well.

In the early 1990's, Allstate began using information included in credit history to help evaluate all auto and homeowners risks in nearly every state. At that time, we only used information included in credit history to help us determine who we could afford to write, but as we learned more, we realized that by using this information and knowledge to help us set premiums, we could afford to write more consumers and we could reward consumers less likely to incur insurance losses with lower premiums. In 1999, we began using information included in credit history to help us determine premiums, and we now use this predictive information for some combination of underwriting and premium determination in almost every state.

While credit-based insurance scoring provides valuable information and knowledge that insurers use to more accurately assess the likelihood of insurance losses, it is generally **used in addition to, not instead of, other information.**

Insurance scoring models generally consider aspects of a consumer's credit management history related to the presence of public records, collections or delinquencies, number of accounts of various types, length of account history, frequency of non-promotional inquiries into the credit report, and credit utilization (account balances relative to limits). Insurers have found that these specific characteristics, when used together, are very predictive of insurance losses.

Allstate uses a scorecard approach, where particular attributes of a consumer's credit report (e.g., number of collections) receive a score. The total insurance score for the credit report is an aggregation of all the individual attribute scores. An attribute can be assigned either a positive or a negative insurance score. This allows positive attributes to offset negative ones, and gives us a more holistic assessment of a customer's insurance score as it relates to insurance loss potential. This means that the presence or absence of any particular attribute will not necessarily preclude anyone from qualifying for the tiers associated with the lowest premiums.

The characteristics that are considered and used in our scoring process are not the same as would be used to evaluate credit worthiness or the ability to pay insurance premiums. Rather, we consider only information that we have found to be significant predictors of insurance losses. In addition, while a credit report may be used by a lender to make a decision to accept or reject a request for credit, Allstate's scoring model is designed to create several different levels of distinction, including distinctions between varying degrees of excellent scores.

Banks and insurance companies use information contained in credit reports for very different purposes, so it is not surprising that a positive decision by one does not mean a positive decision by the other. Banks are concerned about ability to re-pay the loan. Insurance companies are concerned about the likelihood of loss. The reason that insurers and lenders might make different decisions based on the same credit report is that they are using information in the same credit report for very different purposes. When looking at an individual's credit report, banks look to an applicant's income, financial obligations and collateral to assess the likelihood of repayment. Insurers, however, do not consider income in the analysis of credit information. Rather, insurers only seek to evaluate an individual's handling of financial obligation to glean information on the likelihood of future insured loss claims.

V. Insurance Scoring Predicts Losses

The relationship between credit history and insurance losses is not a matter of theory or conjecture, but of statistical reality and fact. State insurance regulators have recognized the strong correlation between credit-based insurance scores and future insured losses. In fact, Mike Pickens, Arkansas insurance commissioner and current National Association of Insurance Commissioners president, has stated that insurance scoring is colorblind and is valid and credible, pointing to a recently released University of Texas study showing a high correlation between credit scores and frequency, probability and degree of loss.

Allstate's observations of its own actual loss experience confirm the relationship between insurance scoring and insurance losses. Allstate has been evaluating the use of credit history information and the ability to use this information to predict insurance loss ratios since the 1990's. We have seen, and continue to see, an extremely strong correlation between information included in a person's credit report and the likelihood of insurance losses. Auto insureds in the worst 10% of insurance scores incur over 60% more losses than those in the best 10%. This correlation is even stronger in the homeowner arena, where insureds in the worst 10% of scores incur well over twice as many losses as those in the best 10% of scores. Customers less likely to incur losses should not have to bear the burden of subsidizing customers more likely to incur losses. Our use of insurance scoring helps us address this inequity and reward customers likely to incur fewer or lower losses with lower premiums.

For us, what matters is that certain information in credit history predicts losses and that its use allows us to provide more consumers with insurance at lower prices. In the face of irrefutable data based on actual loss experience, some critics at the state level continue to question the value of this knowledge. We find this surprising because the link between credit history and loss potential has been studied extensively by many scholars independent of the insurance industry, in fields such as psychology, safety engineering, occupational medicine, consumer research, and risk perception.

Over 30 articles and studies that we have analyzed point to two possible explanations. One explanation relates to risk-taking behavior. Different people have different aversions to risk. Some people like to skydive. Some people are afraid of the amusement park roller coaster. Some people will run a yellow light if it was yellow when they first saw it. Some people will stay under 55 miles per hour on the highway. People who are more likely to take risks are more likely to get into serious financial difficulties (bankruptcies, liens, foreclosures, etc.) than those who are more risk averse. As the studies show, people who are more likely to take risks are also more likely to get into auto accidents. Therefore, some people with poor scores are more likely to engage in risky behavior and thus more likely to incur losses. Another explanation relates to stress. People under stress are more likely to have auto accidents. They may be more easily distracted or not react as well to certain situations. Difficulty in the management of one's financial assets is a known cause of stress. Therefore, some people with poor scores are more likely to experience stress and thus more likely to incur losses.

Neither, either or both of these theories may be true for a particular individual. In some instances, financial difficulties might not be caused by risk-taking behavior but will still produce stress. In other instances, however, it is the risk-taking behavior rather than stress that leads to a greater likelihood of loss.

Other theories have also been offered to explain why insurance scoring predicts insurance losses. Some believe that credit history may reflect personal responsibility and that it is intuitive and reasonable to believe that the responsibility required to prudently manage one's finances is associated with other types of responsible and prudent behaviors, such as proper maintenance of homes and automobiles and safe operation of cars. Others have suggested that if people take care of their most important asset--their finances--they are likely to exercise the same amount of responsibility in other areas of their lives; they're also more likely, if they have a minimal loss, to pay for the loss themselves. Another theory is that financially stable individuals are likely to exhibit stability in many other aspects of their lives. We are not aware of a body of research that supports these theories, unlike the voluminous research that supports the risk-taking and stress theories, but that does not mean that these alternative explanations are necessarily invalid.

Allstate's use of insurance scoring as a risk evaluation tool is based on the fact of its predictive power, not on the explanation for its predictive power. Insurance pricing based upon valid and credible data and actuarially sound methodology has never been asked to support **why.** Rather, it is just required to mirror **what is**. Just as we all recognize the fact that apples fall down from trees despite the fact that scientists have yet to fully explain how gravity works, Allstate must recognize and cannot ignore the fact of the predictive power of insurance scoring--customers less likely to incur losses would pay for our overlooking this undeniable fact. Insurance scoring is colorblind and is based upon risk criteria that consumers can control—specifically, the management of their financial obligations. Nevertheless, we do take great comfort in the fact that there is such strong, intuitively satisfying support for the link between information in credit history and loss likelihood contained in the academic literature mentioned above. Even in the absence of such compelling explanations and academic support, the case for using insurance scoring as a risk evaluation tool would remain just as strong.

Scientific and logical explanations, while comforting, are not always available to support that which we know to be fact. For example, if I were to tell you that there was a group of drivers who had superior eyesight, superior hearing, more stamina, sharper reflexes, needed less sleep, and had greater athletic ability than other drivers, and that drivers within this group had in addition just completed a safe driving course, you might think that these drivers would be less likely to have accidents than others on the road. However, we've actually identified this segment of the population—they are young male drivers, and they are actually much more likely to have accidents. You might guess that the factor that outweighs all these other factors is maturity (or the lack thereof), but insurance companies have no data showing that maturity outweighs all these other factors. All we have is clear data showing a correlation between young male drivers and insurance losses. Our decision to charge young males more is based solely on actual loss experience, the same data and the same analysis we use for insurance scoring. The correlation between the information contained in credit history and insurance losses is even stronger, and the fact of its predictive power would and in fact does stand independent of the explanations that exist to support it.

VI. Insurance Scoring Benefits Consumers

Insurance scoring benefits the insurance-buying public because it allows insurers to write more insurance, because it increases the accuracy of risk evaluation, and because it allows insurers to reward consumers who are less likely to incur losses with lower premiums. Historically approved factors such as age, sex, marital status and territory have been criticized in the past because even though those factors are predictive of losses, consumers have little or no control over them. An insurance score is related to risk behavior that consumers exhibit, characteristics they can control, yet it is also an objective and uniformly applied criterion.

The rationale for insurance scoring is the same as for all other cost-based pricing variables: those less likely to incur losses should pay less for insurance. Allstate wants to write as much profitable business as it can. We are a publicly traded company that is committed to profitable growth. The personal lines insurance business is highly competitive. Through our use of insurance scoring, we can write more business than we otherwise would, and reduce subsidies among the business we do write; if we were to lose this tool, we would be forced to write less business and reintroduce pricing subsidies. The net effect of our use of insurance scoring is that more people are written and get the benefit of lower rates because our ability to consider information included in credit history allows us to relax other underwriting standards. We can do this because our use of insurance scoring allows us to create further risk segmentation and identify more business that we can write. In addition, customers less likely to incur loss can qualify for lower rates.

By providing consumers with more prices to choose from, companies can write more business. About 20% of the standard auto business Allstate has written since it began using insurance scoring would not have qualified under Allstate's previous underwriting guidelines. By using insurance scoring in addition to other factors, Allstate has been able to relax its underwriting guidelines and provide more choices for consumers. As a result, we have been able to write more business.

When insurers must decide which, if any, of its customers to non-renew, such decisions are based on a re-assessment of risk of loss going forward based on either new data or new methods of considering existing data. To the extent that insurers have more confidence that they have properly evaluated a risk, they are more likely to continue insuring that risk. The use of information included in credit reports as a risk evaluation tool can increase such confidence.

Because the use of information in credit history allows insurers to create a more accurate tiering structure, insurers can initially offer tiers that anticipate a certain amount of loss, thus alleviating the risk of non-renewal. For example, a company with no tiers might accept risks with no losses in the past three years, and then find itself having to non-renew customers who experience losses because the company's preferred rate structure is not designed to accommodate customers who have recently incurred losses (because such customers are more likely to incur losses in the future).

But a company with a tier structure designed to accommodate greater risks might, by using information included in credit history as one of its criteria, be able to identify customers with no losses in the past three years who are nevertheless more likely to incur losses. By putting such risks into a higher-priced tier that is designed to accommodate these higher costs, such a company might not have to non-renew someone who incurred a loss because this additional fact, indicative of greater losses, had already been priced for, and thus the risk presented had not changed. Cancellation or non-renewal is simply not a good thing to happen to consumers, and our use of insurance scoring makes it less likely that such actions will occur.

Reducing the likelihood of non-renewal results in less customer disruption, and also helps prevent customers from being non-renewed. In certain states, insurers may underwrite against consumers who have previously been non-renewed, which is another reason that a less disruptive renewal program, made possible by the increased information and certainty provided by credit history, helps consumers.

VII. The Problems Caused by State Legislation and Regulation of Credit Reports

The benefits to insurance consumers from the use of information included in credit reports are clear. But as more and more insurance companies realize the value of certain information included in credit reports, credit information usage has come under fire in many states. Political considerations have often dominated the process. The outcome has been inconsistent and very costly. The Fair Credit Reporting Act requires that we send notices of adverse action to anyone who does not receive our best credit-based rate, which means that even someone whose premium is lowered by our use of insurance scoring will get an adverse action notice if the premium is not the lowest credit-based premium we offer. Someone who yesterday would not have even qualified for our preferred company, but who today qualifies at a rate lower than what he would have paid in another company (but not at the best credit-based rate we offer in the preferred company) will receive such a notice, even though he is paying less than he did before and is actually benefiting. We do not object to sending these notices because they help consumers identify potential errors in their credit reports, which is consistent with the goals of the FCRA. In fact, proposals to enhance the notice to ensure that uniform and consistent notice is provided in every state may have merit; however, a political process that produces inconsistent and expensive requirements or restrictions does not.

Unfortunately for consumers, the use of information included in credit reports by insurers has become an easy political target. One state legislator told us that the safest votes a politician can make are for longer prison sentences and for restrictions on insurance companies!

In each of the past three years, including 2003, approximately 40 states have considered restrictions on the use of information included in credit history. Since May 1, 2002, only one year ago, over 30 new state laws affecting how insurance companies use information included in credit reports have or will become effective, ranging from complete bans for certain lines to substantive restrictions of varying degrees (such as what information can be considered and in what manner). It is too early to measure the actual results of this political interference with the marketplace, but we know that Maryland's recently enacted ban on the use of credit information by insurers for homeowners insurance is already causing more subsidy to be built into rates and contraction in the homeowners insurance market. Inconsistent and onerous restrictions on the use of information contained in consumer reports could have the effect of eliminating insurance underwriting as a "permissible purpose" under the FCRA regulatory structure—at least for some competitors.

It is almost axiomatic that if insurance companies are denied access to information and knowledge relevant to the risk of loss, or if insurance companies must comply with notice requirements that vary from state to state, costs will be added to the system and the marketplace will not function as efficiently. The result will be some combination of less availability and higher prices, exactly the opposite of what consumers truly want. Such unpredictable, inconsistent, complex and expensive state regulation of the use of credit history by any other financial services segment would be seen as inefficient and unfair and as undermining the FCRA structure.

The prohibitions and restrictions adopted by states deny consumers the benefits of innovation, vigorous competition and more choice in the marketplace. The use of information included in credit history by insurers may have only been a blip on the radar screen in 1996, but today it benefits millions of consumers, and its benefits are at risk. Attached is a list of states that have enacted laws that create inconsistency, complexity and expense. Politicians in the states have been very active, and their colleagues at the municipal level could enter the fray some day soon as well.

VIII. Conclusion

The Fair Credit Reporting Act has provided national uniformity and consistency with regard to the use of credit reports by insurers, particularly with regard to pre-screening, marketing, and adverse action notices. Such uniformity is necessary to allow the marketplace to operate to the benefit of consumers. Unfortunately, it has become increasingly apparent in recent years that regulation of insurance at the state level can, and in fact has, subverted this system of uniformity, particularly with regard to the use of insurance scoring. Consumers of insurance are the only customers of major financial institutions not fully protected by the Fair Credit Reporting Act.

Existing preemptions serve to protect consumers who use services provided by other financial services industries from state regulation because the use of consumer reports is much more efficiently regulated at the federal level. The Fair Credit Reporting Act clearly contemplates the use of credit reports by insurers, as such use has been a permissible purpose since 1970. However, the use of information included in credit histories by insurance companies has grown significantly in the past few years, and the potential for counterproductive state regulation is coming closer to reality. The insurance industry uses information contained in the same credit reports used by other financial service providers, yet unlike consumers of the products provided by those related industries, consumers of insurance products must pay the price for compliance with a myriad of state restrictions.

In Allstate's view, the re-authorization of existing national uniform standards would be the ideal context in which to remedy this deficiency in the Fair Credit Reporting Act, thereby protecting consumers from the disruption and costs associated with inconsistent state regulation.

As Congress continues to examine the FCRA preemptions, we look forward to working with this Subcommittee in an effort to not only extend the existing preemptions, but also to find a solution to the problems created by the inconsistent and anti-competitive restrictions on the use of insurance scoring at the state level.

I would be happy, Mr. Chairman, to answer any questions that you or members of the Subcommittee may have. Thank you again for the opportunity to provide this testimony.

List of States with Requirements Impacting the Use of Credit Reports

The following states have imposed substantive restrictions and/or front end or back end notice requirements on the use of credit. While some of these restrictions and requirements are similar, many differ greatly from the others, and even slight differences from state to state require vast resources and incredible diligence on the part of an insurer to ensure compliance:

- Arkansas
- Arizona
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Michigan
- Minnesota
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma

- Oregon
- Rhode Island
- South Carolina
- South Dakota
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin

STATEMENT OF CLINTON W. WALKER
CHIEF ADMINISTRATIVE OFFICER AND GENERAL COUNSEL
JUNIPER BANK

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

"THE FAIR CREDIT REPORTING ACT:
HOW IT FUNCTIONS FOR CONSUMERS AND THE ECONOMY"

JUNE 4, 2003

Good morning Chairman Bachus, Congressman Sanders, and Members of the Subcommittee. My name is Clint Walker, and I am the Chief Administrative Officer and General Counsel of Juniper Bank. Juniper Bank is a young and growing bank focused on issuing credit cards to U.S. consumers. I appreciate the invitation to appear before you today to discuss how the Fair Credit Reporting Act (FCRA) affects our bank and functions for the benefit of consumers and the economy.

In general, the FCRA has provided the legal framework that has been instrumental in shaping an extremely efficient credit reporting system that supports millions of credit decisions in the United States each year. Consumers receive direct benefits from this system in the form of lower credit costs, more choices for credit, and greater convenience. These benefits to consumers are largely the result of a competitive marketplace which has thrived under the framework established by the FCRA. The benefits of consumer credit to the economy are many, not the least of which is the increased ability of consumers to make purchases as a result of less expensive and more convenient credit made more widely available than ever before.

It is my pleasure to provide the Subcommittee with a more in-depth analysis of how the FCRA plays a crucial role in allowing lenders to serve customers better, and by extension, plays an important role in today's national economy.

Prescreening

Consumer Benefits

The FCRA governs an important underwriting and marketing tool known as "prescreening." Prescreening is a process under which a creditor may provide firm offers of credit to consumers who meet certain established underwriting criteria. For example, Juniper Bank has developed a credit card product specifically designed for customers of Midwest Express which will allow those customers to receive frequent flier miles from Midwest Express each time they use the Midwest Express Juniper card. Although we want to be sure that customers of Midwest Express are aware of this opportunity, it would not be efficient for us to mail an offer to every individual who flies Midwest Express because not everyone who flies

Midwest Express will meet our underwriting criteria. In addition, our experience tells us that consumers do not want to receive offers for credit for which they do not qualify. The FCRA enables us to address these issues by providing a list of Midwest Express customers to a credit bureau with instructions to determine which customers on that list meet the underwriting criteria we use for this product. Once we receive a list of qualified consumers back from the credit bureau, we send all of those consumers a firm offer of credit. Firm offers of credit often take the form of the "preapproved" offers that people receive in the mail. If the individual responds by requesting the credit, we must, under the FCRA, honor the offer so long as the individual continues to meet the underwriting criteria for the offer. Under the FCRA, each of our prescreened mailings must also include instructions as to how the consumer can "opt out" of receiving prescreened offers in the future. Today, a consumer can opt out of prescreened lists from the three main credit bureaus simply by calling a single toll-free number.

Thanks to the national uniformity established under the FCRA, the prescreening process permitted under the FCRA is the same across the country. This allows lenders to develop and market products on a nationwide basis. If different states had different prescreening rules, or prohibited prescreening, it is undeniable that consumers would not enjoy the same competitive benefits they enjoy today. A brief review of recent history may be helpful to explain the consumer benefits of prescreening consumers nationwide. According to one recent study by Michael Staten and Fred Cate, in 1990, more than 70% of credit card balances were being charged more than an 18% annual interest rate.[1] However, a wave of competition developed in the early 1990s as a result of prescreening. Credit card issuers such as Citibank, First USA, American Express, Household, and MBNA used prescreening to compete for customers across the country, which fostered competition among all credit card issuers and lowered costs for consumers. By 1993, only 34% of credit card balances were being charged more than 18% interest. Of course, most of us can recall being charged an annual fee for a basic credit card. Today, consumers can choose from dozens of basic credit cards that have no annual fee—another benefit which has resulted from the increased competition for customers through prescreening.

Juniper Bank is a perfect example of the importance of prescreening. Indeed, it is prescreening that has enabled us to enter the market and compete nationwide with the giants of the industry. We started our business not even three years ago, in late 2000. Although our bank is made up of executives with extensive and proven track records, it takes more than know-how to make a bank successful. A bank, like any other commercial entity, needs to obtain and retain customers if it is going to succeed. Juniper Bank has developed credit card programs that we think consumers will like, including partnership programs with Frontier Airlines, Air Tran, Midwest Express, and several others to be announced in the near future. But unless we can make qualified consumers aware of our products, they will not have the opportunity to take advantage of them. In this regard, the ability to prescreen was absolutely necessary for us to enter the credit card market and continues to be essential to making our products available. Compared to most credit card issuers, we are small—but in less than three years, Juniper Bank has over 700,000 account holders, and we expect to have close to 1,000,000 by the end of this year. Our ability to

[1] Michael E. Staten and Fred H. Cate, "The Adverse Impact of Opt-In Privacy Rules on Consumers: A Case Study of Retail Credit".

compete would be significantly undermined if the national uniformity established by the FCRA for prescreening were allowed to expire.

We are quite pleased with our ability to achieve the results we have accomplished in less than three years. But Juniper Bank is not the only one competing for consumers on a nationwide basis. Many other successful entities, such as MBNA, Capital One, Chase, and Citibank, for example, have been able either to enter the market or expand their presence in the market as a result of prescreening on a nationwide basis. It should be obvious, but more market participants means more competition and choices for consumers—which leads to lower prices for consumers. Without prescreening on a nationwide basis, consumer choice in the credit card market would be limited, and credit cards would likely have interest rates and fees higher than today.

Prescreening is Critical to Underwriting

Lower interest rates, no annual fees, and more credit options are obvious consumer benefits derived from the prescreening process. However, there are other significant benefits related to prescreening that have attracted less attention but are just as important. For example, accounts obtained through prescreening have a loss rate of approximately one-fourth to one-half of those associated with accounts obtained through other means. Furthermore, fraud losses on prescreened accounts are approximately one-seventh of those associated with accounts obtained through other means. This is, in part, because prescreening allows banks to more carefully and efficiently target offers through use of their underwriting criteria. Although beneficial to consumers, prescreening is not just about marketing better products to consumers. It also allows banks to control their risk by targeting those individuals that meet certain credit standards. In this regard, prescreening is fundamental to Juniper's credit underwriting process. Prescreening begins with finding consumers who meet our underwriting criteria, and ends with the verification that the applicants still meet those criteria. Having information about the consumer at two points in time greatly increases the predictability of risk involving these consumers.

Furthermore, prescreening lowers risks for other reasons as well. For example, there is always more risk when the consumer approaches the bank, as opposed to when the bank solicits the consumer, due to adverse selection. The lower loss rates directly derived from prescreening result in less risk to the bank, and facilitate lower costs to consumers.

The fact is that for a small start-up bank like Juniper, one that needs to grow to a certain size in order to become profitable, the lower incidence of credit loss and greater predictability afforded by prescreening are essential. State laws restricting our ability to prescreen would make it difficult, if not impossible, to offer Juniper cards in that state and would place us at a competitive disadvantage vis-à-vis our larger competitors.

Contents of Credit Reports

The contents of a consumer report are also largely standardized as a result of the national uniformity provisions of the FCRA. The FCRA establishes the time frames during which information becomes "obsolete" and can no longer be included in a consumer report. Generally, adverse items of information that are older than seven years cannot be reported in a credit report (although the time frame expands to ten years for bankruptcy information). The FCRA preempts state laws with respect to any subject matter relating to information contained in credit reports. This means that, as a general matter, someone's credit report will look the same, regardless of whether they live in Alabama, Vermont, California, or even Delaware.

Let me take a moment to explain why it is important for us to know that the contents of a credit report are uniform across the country. Underwriting credit is a business of evaluating and managing the risk of consumer default. In an effort to evaluate the likelihood of a consumer repaying a debt, the most useful piece of information we can obtain is a credit report. The credit report gives us a snapshot look at the consumer's complete repayment history over the past seven years (at least), and allows us to evaluate the likelihood that the consumer will repay a debt to Juniper. Because the FCRA establishes uniform rules for the contents of a credit report, we have a high degree of confidence that the credit report is complete and up-to-date.

The quality and completeness of the information in credit reports enables us to evaluate the credit risk posed by each consumer more accurately. In addition, the information can help us price the credit according to the risk. In this regard, the more accurately we can assess an applicant's risk, the more accurately we can price the product. This enables us to offer lower prices (*e.g.* interest rates, fees, etc.) and to make credit more widely available. On the other hand, if credit report information were less reliable or complete, we would have to increase our prices or reduce availability to compensate for the unknown risks. Let me give you an example. John Doe applies for a Juniper card. Juniper does not know John Doe, but can obtain John Doe's credit report in order to determine whether to extend credit to him and at what price. John Doe's credit report indicates that he has a solid credit history. Juniper has confidence that the credit report presents a complete picture of John Doe, and therefore Juniper will be able to make a loan to him at favorable rates.

The importance of ensuring the consistency of credit report information is perhaps best illustrated with an alternative example. This time, assume that the FCRA's national uniformity provisions are allowed to expire and John Doe lives in a state that prohibits information more than three years old from being reported. The state has also determined that being less than 90 days late on a payment is not relevant, and therefore does not allow late payments of 30 or 60 days to be reported in a credit report. As a result of the state law, Juniper does not know the complete picture of John Doe's financial history. We would not know, for example, whether John Doe has any delinquencies or bankruptcies that are older than three years. We also would not know if John Doe has any delinquencies of 30 or 60 days, regardless of how old. This lack of information is significant. Although John Doe's credit history may in fact be perfect, Juniper would have to evaluate the application with the understanding that it does not know certain information. In these instances, Juniper may decide to not grant John Doe credit. Alternatively, Juniper may decide to lend to John Doe, but at a higher price in order to account for the additional risk that would exist as a result of the decrease in the quality of the credit report information available on John Doe. In fact, such a law would hurt residents of that state.

It may seem counterintuitive, but the customers with less-than-perfect credit histories may suffer the most if states are permitted to restrict the contents of consumer reports. For example, assume Jane Doe applies for credit. She has been delinquent on a payment by 90 days once (two years ago). Jane Doe applies for credit from a bank. If the bank can see the full credit file, as currently ensured under the FCRA, it can evaluate her application with confidence and perhaps extend her credit despite the isolated 90-day delinquency. If a state law were to prohibit the reporting of 30- and 60-day delinquencies, as described above, it may be another story. In this instance, the bank would see the 90-day delinquency, but not have any idea how many 30- to 60-day delinquencies Jane Doe has. While a bank today may be willing to lend to someone that has a 90-day delinquency so long as there are not other risk factors on the file, the bank may not be willing to lend to that same person if the states impede the ability of the bank to see the full credit file. In essence, the current law allows banks the opportunity to see whether one or two late payments are aberrations in otherwise good credit histories. State laws limiting the information that can be reported by a credit bureau would rob those consumers on the margin of the ability to demonstrate their true capacity to repay debt.

Furnisher Obligations

In addition to being a user of credit reports, Juniper furnishes information to credit bureaus. Indeed, card issuers like Juniper supply much of the information included in credit reports. In fact, when examining a credit report, we at Juniper find that the most useful, up-to-date information in the report typically has come from card issuers.

We report information about our accountholders regularly to the three nationwide credit bureaus, TransUnion, Experian, and Equifax. Generally, we report information indicating that the consumer has an account with Juniper, the line of credit and current balance on that account, and whether the consumer is delinquent on any payments. We also report when consumers close their accounts with us.

Furnishers have certain obligations under the FCRA, and these obligations are the same across the country as a result of the uniform standards established by the FCRA. For example, a furnisher may not provide information to a credit bureau if the furnisher knows or consciously avoids knowing that the information is inaccurate. If a furnisher determines that information it has reported to a credit bureau is not complete or accurate, the furnisher must promptly notify the bureau and provide any information necessary to make the information complete and accurate. Furthermore, if a consumer disputes the accuracy of information with a furnisher, the furnisher may not provide the information to the credit bureau without a notice that the accuracy is disputed. These accuracy obligations may be enforced by the federal banking agencies, the Federal Trade Commission, and by state Attorneys General.

These obligations were established in 1996 in an effort to address concerns about the accuracy of information received by credit bureaus. The furnisher obligations were carefully crafted to balance between the need for furnishers to provide accurate information to credit bureaus and recognition of the fact that furnishing information to credit bureaus is completely voluntary. In particular, Congress recognized that imposing unreasonable liability or risk of litigation on furnishers could have a chilling effect on the flow of the information that is the lifeblood of the credit reporting system. As part of the delicate balance struck on this issue, the FCRA precludes the states from imposing different standards.

It is important that this delicate balance be preserved. If a state were free to impose stricter liability standards on furnishers and/or allowed class action lawsuits with respect to the furnishing of information to credit bureaus, Juniper and others would be forced to re-evaluate the practice of furnishing information to credit bureaus with respect to consumers in that state. Indeed, many furnishers may have no choice but to stop furnishing information on consumers in that state rather than face the cost of litigation for an activity which does not produce revenue.

Affiliate Sharing Provisions

Finally, we believe that the national uniformity established with respect to the ability of affiliated entities to share information also must be preserved. In this regard, although Juniper Bank currently does not share information with affiliates, we may do so in the future and believe that the benefits of affiliate sharing should be preserved. For example, information shared among affiliates today can be important in addressing identity theft, controlling credit risks, and in identifying products and opportunities that may be beneficial to consumers. The availability of these benefits would be significantly undermined if states were free to impose their own restrictions on affiliate sharing activities.

Conclusion

The benefits to consumers associated with uniform standards established under the FCRA are clear. As a result of the market that has developed under the uniform framework of the FCRA, consumers benefit from the increased competition fostered by nationwide prescreening. In addition, lenders are able to price risk relatively accurately as a result of the uniform standards pertaining to the contents of credit reports and furnisher obligations, which further lowers costs for consumers. In sum, the national standards in the FCRA enable access to a multitude of credit choices at lower costs than ever before.

Thank you again for the opportunity to appear before this Subcommittee. I would be pleased to answer any questions you may have.

Testimony before the
U.S. House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

Regarding

Fair Credit Reporting Act: How it Functions for Consumers and the Economy

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Rayburn House Office Building
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Written Testimony of Paul Wohkittel
Before the
U.S. House of Representatives – Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
Fair Credit Reporting Act:
How it Functions for Consumers and the Economy
June 4, 2003

I am Paul Wohkittel, President of Lenders' Credit Services in Baltimore, MD and the Legislative/GSE Chairman and a Director of the National Credit Reporting Association (NCRA). On behalf of NCRA, I want to thank you for inviting me to participate in today's hearing.

INTRODUCTION

The National Credit Reporting Association, on whose behalf I appear today, is a non-profit trade association representing the consumer reporting industry and specifically "reseller" firms specializing in mortgage reporting, employment screening, and tenant verifications. There are approximately 300 such credit-reporting agencies in the United States that specialize in mortgage credit reports. NCRA's more than 125 members provide in excess of 25,000,000 credit reports annually to the mortgage industry according to specifications required by the U.S. Department of Housing and Urban Development (HUD), Fannie Mae and Freddie Mac for mortgage loan underwriting. Due to the requirements of the mandatory use of all three of the repository files[1], firms like those of the membership of NCRA handle almost 100 percent of the credit reports for the mortgage loans purchased by Fannie Mae or insured by HUD.

While we believe that the U.S. credit reporting system, in a macro sense, is the best such system in the world, we also believe that it can be improved to better serve both consumers and lenders. I say this from experience, as I have attended and presented at conferences in Central Asia and Eastern Europe and have knowledge of the systems of different countries.[2] I currently am involved in constructing a credit bureau in Kazakhstan and expect to begin a similar undertaking in Ukraine in September of this year. In these projects I am afforded the opportunity to incorporate the best aspects of our system and the Fair Credit Reporting Act. I also am able to incorporate those modifications that we know, based on experience, will make this superior system even better.

THE GROWING IMPORTANCE OF CREDIT REPORTS

NCRA commends this Subcommittee for holding these hearings and for conducting a broad-based review of the credit reporting industry. The effectiveness of this industry is critical to the entire economy. Today, consumer access to credit, housing, insurance, basic utility services, and even employment increasingly is determined by centralized records of credit history and

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[1] The three national credit repositories are Trans Union -Chicago, IL;, Equifax – Atlanta GA;, and Experian, Orange CA.
[2] Central Asian Credit Bureau Conference: January 29-31, 2003 Almaty, Kazakhstan
Presentation: Mortgage Credit Reporting Agencies and Their Relationship to the Credit Bureaus
Ukrainian Card 2003 Conference: April 22-25, 2003 Odessa, Ukraine
Presentation: Consumer Reporting Agencies and the Mortgage Market

automated interpretations of those records. Computer models now play the central role in determining whether to extend or deny credit to consumers. These models produce numerical credit scores that function as a shorthand version of an applicant's credit history to facilitate quick credit assessments.

The automated quantification of the information in credit reports has not simply been used to decide whether or not to extend credit, but also to set prices and terms for mortgages and other consumer credit. In certain cases, even very small differences in scores can result in substantially higher interest rates, and less favorable terms on new loans. Lenders also review credit histories and/or credit scores to evaluate existing credit accounts, and use the information when deciding to change credit limits, interest rates or other terms on those accounts.

In addition to lenders, potential landlords and employers may review credit histories and/or credit scores. Landlords may do so to determine if potential tenants are likely to pay their rent in a timely manner. Employers may review this information during a hiring process, especially for positions where employees are responsible for handling large sums of money. Utility providers, home telephone and cell phone service providers also may request a credit report or credit score to help determine whether to offer service to a consumer.

Recently, insurance companies have started using credit scores and similar insurance scores (derived from the same credit histories) when underwriting consumer applications for new insurance and renewals of existing policies. Credit information has been used as a basis to raise premiums, deny coverage for new customers, and deny renewals of existing customers – even in the absence of other risk factors, such as moving violations or accidents.

Clearly, a consumer's credit record and corresponding credit score can determine access and pricing for the most fundamental financial and consumer services. For this reason, it is critically important that the credit reporting system be adequately structured to fairly and efficiently accommodate the needs of lenders while offering solid and strong protections.

THE ROLE OF "RESELLERS"

Like other members of NCRA, Lenders' Credit Services is a credit-reporting agency that provides specialized mortgage credit reports and is referred to as "Reseller" in the Fair Credit Reporting Act. Unlike the three main repositories, resellers do not gather and maintain a database of credit information on consumers. Instead, on behalf of our client, typically a mortgage lender, we purchase consumer files and create specialized, hybrid reports with the data and resell these specialty reports.

For the mortgage process, NCRA member reports contain the data of all three of the main credit repositories, merged into one report. Often times, this report also contains information we have obtained form other sources not found in the three national repositories' databases or new information that has been updated or corrected from that of the original repository data[3]. In short, while the primary function of the repositories is to collect and maintain consumer credit data, the

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[3] For example, information typically requested by a mortgage lender that is not found in a consumer's existing file with a repository is credit information from landlords and small creditors that do not have a sufficient number of accounts for the repositories to accept their data. Common types of corrections, updates and alteration that resellers make to the raw repository file include disputed late payments, collections, and public records, separating files mixed between generations, i.e. Jr./Sr. or common names, updating recent payments, and closing mortgage loan accounts that have been transferred or sold.

primary function of a reseller is to research and amend the data and provide enhanced customer service to lenders and borrowers alike.

The services of NCRA member firms are utilized because we are highly specialized agents in the credit reporting industry with the responsibility to assure the accuracy of the credit reports for the benefit of lenders and, importantly, for the protection of consumers. Last year, NCRA and the Consumer Federation of America[4] analyzed the credit scores of more than 500,000 consumers and extensively reviewed the files of more than 1,700 individuals maintained by the three major credit repositories. This review revealed the irregularities of data between the national repositories and found that the average American consumer with a credit history has a greater than 40 point variance between their high and low credit score[5].

An excellent illustration of the valuable service we perform for consumers is the recent introduction of Credit Re-Scoring.[6] With the growing popularity of "automated underwriting systems" that are driven to a high degree by risk-based scoring, consumers can be denied credit outright or forced into higher-than-deserved interest rates if inaccuracies exist in their credit files. The result can be tens of thousands of dollars in excess interest paid over the life of the loan[7]. Our staff fully analyzes the entire credit report and if inaccuracies exist, expediently corrects them, in conjunction with the repositories, to generate a new and accurate score. My staff receives letters, cards, and tokens of appreciation from consumers for helping correct files that have historically troubled them so they can obtain a loan for a lower rate than they thought possible.

RECOMMENDATIONS FOR IMPROVING THE CREDIT REPORTING SYSTEM

Clearly, the debate over the reauthorization of the Fair Credit Reporting Act has been dominated by the debate over reauthorizing the expiring preemption provisions which prevent states from imposing limits on the reporting and sharing of consumer credit histories. While NCRA appreciates the importance of this issue, we also believe that other issues warrant the attention of this Subcommittee and the entire Congress as you move forward.

First, NCRA supports a continued national standard in terms of the reporting and sharing of consumer credit histories. While we fully appreciate the consumer protection arguments being made in favor of allowing states to impose stricter standards and limitations, we have concluded

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[4] "Credit Score Accuracy and Implications for Consumers," December 17, 2002, published by the Consumer Federation of American and the National Credit Reporting Association, Inc.
http://www.ncrainc.org/documents/CFA%20NCRA%20Credit%20Score%20Report.pdf
This report was submitted to the Financial Services Committee for the record by Rep. Ruben Hinojas during a May 8, 2003 hearing.

[5] The CFA/NCRA study, conducted during the summer of 2002, blindly reviewed 502,623 randomly selected three repository merged credit reports that were pulled for mortgage transactions between 2000 and 2002. The credit scores from each of the respective repository files was recorded for comparative analysis in phase two of the study which found that: 24 percent of the consumer files (105,324) had a variance of less than 20 points between their high and low credit score; 29 percent (129,284) had a range of greater than 50 points; and 4 percent (17,626) had a differential greater than 100 points between their high and low scores. The average (mean) range between the high and low credit score found in this phase of the study was 41 points. Page 24-25, Sec. 6 B-1 Credit Score Accuracy and Implication for Consumers

[6] Credit Re-Scoring was created as an answer to the demanding requirements of automated underwriting systems in the mortgage industry and is used to update and correct data discrepancies in an expedited fashion and the credit report is re-accessed from the credit repository to obtain a new credit score based on the corrected/updated data.

[7] Interest on a loan with an "A-" designation, the designation for sub prime loans just below prime cutoff, can be up to 2.25 percent higher than prime loans. On a 30 year, $100,000 mortgage, a borrower who is incorrectly placed into a 10 percent "A-" loan would pay a difference of $161.15 per month or $58,017.56 in interest payments over the life of the loan. This represents $215,925.77 in interest, compared to $157,908.41 if that borrower obtained a 7.75 percent prime loan. Thus, the consumer experiences a potential overcharge greater than half the cost of the principal amount of the actual loan.

that a uniform national standard is necessary to maintain the levels of efficiency consumers enjoy when purchasing a product or service on credit. It is NCRA's opinion that a credit reporting system fractured by a variety of state laws, regardless of how well intended, not only would harm the credit reporting industry, but the credit and banking system and our economy as a whole.

Second, NCRA supports modifications or fine-tuning of the FCRA to allow it to address the needs of all parties concerned in the credit reporting process. Specifically, NCRA supports the following enhancements:

- Strengthen the Responsibilities of Furnishers of Information Section:

  Industry experts agree that an unacceptable percentage of discrepancies in consumer files are the result of creditor error. While inaccuracies are unavoidable, especially in the administration of some 200 million files, NCRA believes that a significant reason for the source of these errors on the part of creditors is that the current FCRA does not address the problem adequately. The current law does not provide significant creditor legal responsibility. Section 623, outlining the responsibilities of furnishers should be revisited. The responsibilities and duties should be re-written to a higher and stricter standard. In addition, penalties and consumer remedies should be made more prominent.

- Provide better disclosure of the original qualifying report when any adverse lending actions exist:

  The current required method of providing names and phone numbers of the credit reporting agency, along with short, non-descriptive, and sometimes cryptic reasons for denial should be changed to include a full copy of the entire credit report used in the decision making process, along with a letter detailing the steps to dispute any inaccuracies contained in the report. By seeing a copy of the entire report, a consumer can make a more qualified decision, when evaluating the accuracy of the report, of whether or not to spend the time and effort to dispute items with the reporting agencies and the reporting creditors.

- Enhance the definition section of the FCRA pertaining to Consumer Reporting Agencies to better define and delineate Repositories and Intermediary Agencies (Resellers) and their responsibilities:

  Because a more developed role of Intermediary Consumer Reporting Agencies (Resellers) will significantly assist consumers in researching, disputing, and maintaining accuracy of their personal credit files, section 603 of the FCRA should be re-written to include a separate definition for "Intermediary Consumer Reporting Agencies," those agencies that do not physically maintain the data housed in the repositories' databases but resell both data and services essential in correcting data in a efficient and expedient manner. More specific duties, definitions, responsibilities, and accountabilities would be included.

- Increase the availability of consumer assistance from Intermediary Agencies:

    In the adverse action letter, include a disclosure offering consumers the option to: a) contact the repository that furnished the report and include their rights for disputing any inaccurate information under the FCRA or b) contact an intermediary credit reporting agency for assistance in the correction process for a nominal service fee.

These enhancements to the FCRA would help update the credit reporting system to address issues that have arisen since the 1996 FCRA reform. Issues of identity theft, increased reliance on risk-based, score-driven lending and insurance underwriting, and predatory lending have reached much greater levels than that which was the case in 1996 and the recommendations offered here may be a means of offering both consumers and users of credit data an improved system.

CONCLUSION

In closing, on behalf of NCRA, Lenders' Credit Services, and resellers nationwide, I would like to thank you for inviting us to this hearing and to assure you that we stand ready to assist, in a unique way that only a reseller who compares and contrasts the data within each of the three repositories on a daily basis can, to address and meet the challenges posed to the greatest credit reporting system in the world. We look forward to helping to update the FCRA to allow this system to maintain its place at the cutting edge of powering our nation's economy.

What follows is the Equifax response to the question from Congressman Gary Ackerman submitted after the Financial Institutions Subcommittee hearing on June 4, 2003 and received by Equifax on June 16, 2003.

Congressman Ackerman's question: Section 611 of the FCRA requires that, "If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete the item of information from the consumer's file or modify that item of information as appropriate, based on the results of the reinvestigation." How does Equifax define "promptly?"

Equifax response: "Promptly" means that the credit file is updated within 24 to 72 hours after the reinvestigation has been completed. If the reinvestigation is completed before the expiration of 30 days from the receipt of the dispute, the credit file is updated without waiting for the 30-day statutory period to expire. In all situations, the credit file is updated no later than the expiration of the 30-day statutory period.

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American Insurance Association

American Insurance Association Statement Before the Subcommittee on Financial Institutions and Consumer Credit on "Fair Credit Reporting Act: How it Functions for Consumers and the Economy"

June 4, 2003

Introduction

The American Insurance Association (AIA) is a national trade association comprising more than 424 insurance companies that write over $103 billion in premiums annually. AIA member companies offer all types of property and casualty insurance, including personal and commercial automobile insurance, commercial property and liability coverage, workers' compensation, homeowners' insurance, and product liability insurance.

The purpose of this testimony is to provide information about how insurers use the information they are permitted to use under the Fair Credit Reporting Act (FCRA); to describe the benefits of that use; and, to enumerate the consumer protections governing such use.

Under the FCRA, insurers' use of consumer reports and affiliate sharing of information have benefited the public through increased choice, better customer service and more accurate assessment of risk. Consumer report use by insurers is regulated not only by the FCRA but also by general insurance regulatory laws in every state, supplemented by specific laws and regulations on credit use in more than half of the states. This comprehensive regulatory system reflects a positive balance that recognizes and preserves the public policy benefits of allowing insurers to use consumer reports while addressing specific issues that may arise in various states.

Types of Products and Services the FCRA Enables Insurers to Use

FCRA-related discussions of insurer data practices center on two issues: use of consumer reports and affiliate sharing.

Insurers, as well as many other businesses, have a permissible purpose for using consumer reports. While insurers use several kinds of consumer reports in connection with underwriting and rating, the most frequently discussed in the insurance context are credit history reports (generally to generate credit-based insurance scores) and loss history reports.

These kinds of consumer reports – which are statistically proven to be meaningful in the context of underwriting and rating – are cost-effective tools that give an insurer a more complete picture of the risk associated with the person and/or the property to be insured. For example, research shows that consumers with better credit-based insurance scores generally file fewer claims and have lower insurance losses. With respect to loss history, insurers look at loss information related to both the applicant and the property itself because of the strong statistical correlation established between these records and the likelihood of future losses. In addition to their relative efficiency, claims databases also help to uncover fraudulent claims by enabling insurers to track loss history among multiple insurers.

Affiliate Sharing: Providing Tailored Products for Consumers

Sharing of information among affiliates is facilitated by the FCRA. The 1996 amendments exclude "any communication" of a consumer's transaction and experience information among affiliates from the FCRA definition of "consumer report." Communications of other types of information between affiliates also are excluded from the "consumer report" definition if the consumer is given notice and an opportunity to "opt-out" of such disclosures. Congress included provisions preempting state or local laws regarding information exchanges among affiliates to further the objective of facilitating such information sharing. As a result, insurers may freely share consumer transaction and experience information with their corporate affiliates in response to consumer needs gleaned from that information without fear of state interference.

Affiliate sharing benefits both insurer and policyholder, especially with respect to a diversified underwriter. This potential one-stop shopping allows diversified financial services entities to tailor their products to the individual consumer more effectively.

For instance, where a consumer finances a home, affiliate sharing allows an entity to more seamlessly determine whether the consumer is eligible for homeowners insurance coverage and whether to extend the offer for coverage to that consumer. The same service may be available for coverage related to other purchases, such as an auto, boat or jewelry. This sharing of information not only allows for convenience and protection, but also helps to ensure appropriate coverage levels and to address other insurance-related concerns.

Where computer systems and other operational considerations allow, the one-stop integrated financial service provider is better able to respond to simple requests such as address changes, saving the consumer time and trouble. One major property and casualty insurance writer, USAA, reports that affiliate sharing allows them to rapidly respond when military personnel who are USAA members change status to active duty. This goes beyond administrative tasks, and extends to offering timely assistance logically resulting from the change in status. For example, during the period the USAA member is on active duty, he/she may wish to increase his/her life insurance or to alter his/her automobile insurance and property insurance (and benefit from the resulting decrease in premium).

Consumer Benefits

Affiliate sharing and insurer use of consumer reports benefit many consumers. Importantly, consumer reports typically contain useful, affordable, objective, and readily available information. Use of such information allows insurance companies to give more favorable rates to consumers who are less likely to have losses. Better experience means more choice for many consumers. In addition, making information available among affiliates enables those companies to offer, and consumers to choose from, a broader array of customized products and services in the marketplace.

Insurance companies use consumer report information differently. Some use it for making underwriting decisions; others use it for establishing rates. The models for determining a credit-based insurance score are not uniform. These differences bode well for competition in the insurance market and for the consumer who shops for the best policy and price.

Additional underwriting and rating tools allow an insurer to look beyond the information it typically would review in an effort to more accurately assess its business. When an insurer evaluates applicants with greater confidence, it may be able to accept many applicants who might not have been previously accepted. For example, it is estimated that three quarters of applicants have good to excellent credit scores. By allowing insurers to identify these applicants, the applicants are eligible to receive lower rates and we understand from some of our members that many do. Furthermore, the availability of an accurate cost-effective tool for rating and underwriting has increased insurance capacity and choices for consumers.

Consumer Protections

The FCRA provides several effective consumer protections. First, it limits those who may view consumer reports and the uses of information contained in the reports. Second, it sets forth nationwide means by which consumers may dispute and correct information in their consumer reports. Third, it requires those who use consumer reports to take certain steps. For insurers, this means notifying consumers when use of credit history has led the insurer to take an adverse action.

Though the FCRA's control over insurer use of consumer reports ends with the permissible purpose and adverse action notice requirements, insurers are subject to additional restrictions on their use. These additional restrictions at the state level act as a consumer "safety net" that complements the FCRA. Importantly, nearly every state rating law prohibits rates that are "excessive, inadequate, or unfairly discriminatory." With the addition of consumer reports, subjectivity is minimized, as a formula is applied that evaluates more empirically derived data. Furthermore, consumers are protected by state unfair trade practices laws, by insurance department assistance and through insurance department oversight of the market conduct examination process. The market conduct surveillance process generally allows a state insurance department to assess whether insurers are acting in accordance with laws and regulations. As part of this process a department will often review an insurer's complaint log, which indicates complaints the company has received. The consumer complaint process (where consumers call or write to an insurance department about their concerns) serves as a flag to regulators, indicating a possible non-compliance or discrimination problem. Using complaints and other tools, insurance departments trigger market conduct examinations, where appropriate, to assess market performance in detail.

In addition to general state consumer protection laws, many states have enacted laws and promulgated regulations that specifically address insurer use of consumer reports. For example, at least half the states have acted on the issue of credit-based insurance scores. This year, some have been looking to the National Conference of Insurance Legislators (NCOIL) model act on the issue. Among other things, the NCOIL model restricts how an insurer may use credit information, expands the notice obligations, limits the kinds of credit information that may be considered in developing a score and requires the insurer to submit its model to the regulator.

Conclusion

The FCRA preemptions should be reauthorized because there are general benefits to the financial services sector of having a uniform system for consumer reporting, and because there are insurance-specific benefits from the use of reports and from the sharing of information among affiliates. While the FCRA provides consumer protections, it is not the sole check on the system. Reauthorizing the preemptions will not take away the states' ability to regulate in this area.

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