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H.R. 2622—FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JULY 9, 2003

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H.R. 2622—FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Wednesday, July 9, 2003

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The Committee met, pursuant to call, at 10:14 a.m., in Room 2128, Rayburn House Office Building, Hon. Michael Oxley [Chairman of the Committee] presiding.

Present: Representatives Oxley, Leach, Bachus, Royce, Lucas of Oklahoma, Kelly, Gillmor, Ryun, Ose, Biggert, Shays, Miller of California, Hart, Capito, Tiberi, Kennedy, Hensarling, Murphy, Barrett, Harris, Renzi, Frank, Waters, Sanders, Maloney, Velazquez, Ackerman, Hooley, Carson, Sherman, Lee, Inslee, Moore, Capuano, Hinojosa, Lucas of Kentucky, Clay, Israel, McCarthy, Baca, Matheson, Miller of North Carolina, Emanuel, Scott and Davis.

The CHAIRMAN. [Presiding.] The Committee will come to order.

The Committee meets today for a legislative hearing on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, the FACT Act, comprehensive legislation to reauthorize certain key provisions of the Fair Credit Reporting Act and make other needed reforms to our national credit reporting system.

The bill was introduced just prior to the 4th of July recess by a bipartisan coalition of 32 members of this Committee, 18 Republicans and 14 Democrats, led by the Chairman of the Financial Institution Subcommittee, the hardworking Mr. Bachus, Ms. Hooley, Mrs. Biggert and Mr. Moore.

The FACT Act grew out of an exhaustive series of hearings that Chairman Bachus's subcommittee has held on the FCRA over the past several months. Those hearings, which featured testimony from some 75 witnesses, representing every conceivable perspective on the FCRA, has laid the groundwork for this Committee to act, hopefully later this month, to preserve the benefits of the national credit reporting system and give consumers important new rights in the process.

I commend Chairman Bachus and all of the members of the Financial Institutions Subcommittee for their diligent and very thorough approach to this complex issue. The legislation that the Committee considers today is a testament to their months of hard work.

The subcommittee's hearings have, in my view, established a compelling case for reauthorizing the FCRA's uniform national standards. As one of our distinguished witnesses at today's hearing, FTC Chairman Muris, has stated, the "miracle of instant cred-

it created by our national credit reporting system has given American consumers a level of access to financial services and products that is unrivaled anywhere in the world."

According to the Federal Reserve Board, since FCRA's enactment, the overall share of families with general purpose credit cards increased from 16 to 73 percent, with low income families achieving the greatest increase.

American families' ability to buy a home has also increased, with ownership levels growing significantly from 60 to 68 percent, again with the largest gains achieved by lower income and minority groups.

These improvements in the credit and mortgage systems have saved consumers nearly $100 billion annually, according to some estimates. The FACT Act is, first and foremost, an attempt to make sure that the considerable benefits of that system to consumers and to the U.S. economy do not go up in smoke at the end of this year when the FCRA's uniform national standards are set to expire.

Let me highlight just a few of the provisions that I was particularly pleased to see included in this important jobs and economic growth bill.

The FACT Act incorporates a number of provisions drawn largely from legislation introduced earlier this year by Ms. Hooley and Mr. LaTourette that aimed to reduce the incidence of identify theft and protect those who are victimized by this increasingly common form of criminal activity.

The bill prohibits the printing of complete account numbers and expiration dates on credit and debit card receipts and requires verification of certain address changes so that consumers are less likely to have their accounts stolen.

It helps consumers who fear they have been victimized by identify theft to place fraud alerts on their credit reports to ensure that criminals can't access their accounts.

And it allows identity theft victims filing police reports to block any fraudulent information from appearing on their credit reports to protect their credit reputations from being destroyed.

With these targeted reforms, the FACT Act will strike a serious blow against the identity theft criminals who have succeeded in victimizing millions of innocent Americans over the years.

The FACT Act also contains a number of provisions strengthening consumers' ability to dispute the accuracy of incorrect or incomplete information that appears on their credit report.

For example, perhaps the most fundamental protection the bill gives consumers is the right to a free annual credit report accompanied by an explanation of their individual credit score and what steps they can take to improve it. This will not only help consumers guard against identity theft, but will empower consumers to ensure they will not be unfairly denied access to credit or other financial products before the need arises.

Let me again thank Chairman Bachus and the original co-sponsors of this legislation for their leadership and exemplary work.

Let me also indicate to members that I fully expect this bipartisan consumer protection legislation to continue to be perfected as it moves through the markup process.

The ranking minority member, Mr. Frank, has stated that one of his priorities will be to ensure that the legislation includes heightened safeguards for consumers' health-related information. We have been working hard on that issue and I am committed to continuing to work with him in the same bipartisan spirit that has characterized the Committee's review of FCRA thus far.

Other members on both sides of the aisle have thoughtful proposals addressing various aspects of the FCRA that also warrant the Committee's careful consideration.

In closing, I want to welcome Secretary Snow and Chairman Muris before the Committee and thank them for their constructive role in this process. Just last week, Secretary Snow unveiled the Bush administration's proposal for reauthorizing FCRA's uniform national standards, which included sweeping new protections for the security of America's personal financial information.

And under Chairman Muris's leadership, the FTC has recently begun implementing its national "do not call" registry—bless your heart—something that I and many members of Congress have long supported to limit unwarranted telemarketing phone calls. Judging from the millions of Americans who have signed up for it thus far—and I understand it is 20 million and counting—this Bush administration effort appears well on its way to becoming one of the most popular consumer protection initiatives of all time.

The Chair would add that pursuant to the Chair's prior announcement, he will limit recognition for opening statements to the Chair and ranking minority member of the full Committee, the Chair and ranking minority member of the Subcommittee on Financial Institutions and Consumer Credit, or their respective designees, to a period not to exceed 16 minutes evenly divided between the majority and minority. The prepared statements of all members will be included in the record.

The Chair now recognizes the ranking member, Mr. Frank, for an opening statement.

[The prepared statement of Hon. Michael G. Oxley can be found on page 94 in the appendix.]

Mr. FRANK. Thank you, Mr. Chairman. I appreciate the cooperative spirit in which we have been able to work so far.

I think it is very clear from a wide range of conversations I have had that the votes exist, both on the Committee and in the House, to continue the existing FCRA, including the seven preemptions. I can't name them all. I think I can get more of them than of the seven dwarfs, but I am not sure, but I know them when I see them.

[Laughter.]

So that outcome is not in question. There are, I should say, within the responsible consumer community, on our side of the aisle here, some people who oppose that. And what I am giving now is not my personal preference, but my statement of a fact. It is clear to me that there is majority support for extending the preemptions. The question is, in what form?

Now, we should accept reality. It is very clear that if the majority party in this House decides to pass something, it will pass. A lot of time may pass before it passes, as we learned a week ago, but it will pass.

Things are obviously different in the Senate, and that is what is relevant here.

Just briefly, our deliberations will decide, I believe, whether or not a bill passes the House extending the preemptions with 240 or 250 votes or 380 to 390 or maybe even 400 votes. I think it would be better if it were the latter.

One, I think it would be in the interests of the country and of the economy for us to pass a bill that extended the preemptions with increased consumer protections.

And I should note that there is, I think, a very high degree of agreement among all of the members of the Committee, about the consumer protections. There is a very high degree of conceptual agreement, areas such as identity theft, medical information, better information for consumers about what is in fact happening to them. I am impressed with the degree of consensus.

We have had a very good set of hearings and I congratulate the Chairman of the subcommittee and the ranking member of the subcommittee. I read the hearing opening statements over the break. I don't often read opening statements for hearings unless there is no other soporific available. But in this case I really found them cumulatively quite useful.

So the question then is, can we translate this conceptual agreement on a lot of things into enough agreement so that we get a large vote? And the reason for a large vote is very important. Obviously, the United States Senate is going to be getting this bill, and there is a deadline of the end of December, so the bill will be one of the things being acted on along with appropriations bill at the end of the session.

And as I said, I acknowledge that in the House the majority will be able to pass it. In the Senate, obviously, things are very different. I mean, I have explained to people that if a dog dies in the wrong place it can keep the United States Senate from acting. If a dog dies in the House it gets a rule and gets passed.

[Laughter.]

So, I mean, that essential difference between the two bodies ought to be kept in mind.

The more we can achieve a consensus and a large vote in the House, the likelier we are to get a bill that can be signed into law in a way that won't be disruptive by the end of the year.

Now, there is one particular issue. As I said, I am struck by the degree we have had a lot of agreement on more transparency, on identity theft, which is a problem both for the consumer and for the financial institutions. The consumer bears a great deal of the anguish and stress of this; the financial institutions bear a great deal of the burden.

I think it makes sense to focus on the Fair Credit Reporting Act and not on Gramm-Leach-Bliley. There are issues to be addressed there. I think opening them up would be—I do not see how the United States House and the United States Senate can complete action on this between now and December 31 with all the other business pending if we broaden this beyond the Fair Credit Reporting Act.

There are a couple of areas that are particularly important to me. Our colleague from New York, Mr. Ackerman, has been raising

the question of giving consumers notice when there is inaccurate information, they think, about them. We are all in agreement that people should be able to correct inaccurate information about themselves, but if you don't know it has been put there, then by definition you can't do anything about it. And waiting until you have been penalized for inaccurate information obviously imposes costs on the consumer that I think are unacceptable.

In addition, there is one flaw in the system that I have seen. I do believe the consumer credit system works well. I think it works well on the whole. It obviously supports a considerable part of our economy. We have increased the extent to which people get credit. All those are good things.

I think there is a problem in the extent to which individuals who are the victims of identity theft or simple error or whatever are able to get some redress. That is, I do believe that the existing procedures whereby a consumer who has been the victim of inaccurate information tries to get that corrected are not very good.

I was told by one of the groups, "Well, if you have information about you that is inaccurate we will include in the statement that we send out your statement that what we say isn't true."

So if I want to get some credit people will get a statement about how bad I am and a corresponding statement from me saying, That is not true, I am really a nice person.

I think that is the equivalent of the newspaper that having printed an inaccurate obituary corrects that by printing a birth notice. Sending out information that is both accurate and inaccurate I think is unacceptable.

I think we can do a better job of mandating that the credit furnishers and the credit reporting agencies take care of those cases where there is injustice.

And I want to address specifically the argument that, well, there are people who think the system works very well and there are people who think it doesn't work well.

I think it works well with the major exception that—and it is a relatively small number of individuals who are victimized by inaccurate credit, but I don't think it is acceptable to say to them that in the interest of the system as a whole they are going to have to bear that particular burden. I think we can do a better job of cleaning up their accuracy.

So from that standpoint I hope that we will be able to proceed, as the Chairman has said, to take a basically reasonable approach and make it stronger, and I look forward to our being able to work together, and I hope that with that kind of approach we will be able to get a very large majority ultimately for a bill that extends the preemptions and protects consumers.

The CHAIRMAN. The gentleman from Alabama?

Mr. BACHUS. I thank the Chairman.

What we are dealing with here is a national delivery system, and that is our national credit reporting system. And like our national interstate highway system, like our national power grid, like our national communications system, they deliver an incredible amount of value and are very important to the economy.

Consumers today are able to move from state to state, they are able to finance loans, get mortgages at low rates. And part of the

reason is what they never see, and that is the national uniform credit reporting system.

As much as anything, and I think Secretary Snow pointed this out in a press conference last week, we have seen the democratization of credit, where low and middle income families enjoy incredible access to credit today at unparalleled levels.

And I think that no one on this Committee wants to jeopardize that. At the same time, Chairman Oxley earlier this year recognized that many of the uniform standards were expiring, that that was a threat to this national uniform system, and he made it the top priority of this Committee not only to reauthorize those national standards, but to also improve upon the system. And we can improve upon it, and that is what this legislation is all about.

The ranking member, Mr. Frank, pointed out identity theft. That is the fastest growing white collar crime in America. Hundreds of thousands of victims. People used to rob banks, and then they found that it was easier to rob railroad or trains, because they weren't protected like the banks were.

Well, the last thing that thieves have discovered is easy to rob is people's credit, because people's credit has a great deal of value to them, and people are now stealing people's identity and using that identity and the credit that goes with that identity to steal millions of dollars every day here in America.

This legislation is the result of a bipartisan group of members—Ms. Hooley, Mr. Moore, Mr. Frank, even Mr. Sanders has had input and his stamp is on this bill, Chairman Oxley, Ms. Biggert. Really, you have got 14 co-sponsors on each side of this Committee, and every one of them has had a role to play in this legislation.

This is a work in progress, as any legislation. We are at the beginning of the legislative process, we are at the end of the hearing process where we had 75 witnesses. We will continue to work with the members to refine this. We are aware of Mr. Ackerman's concerns. We are aware of concerns of other members.

And what we will do as we address all these concerns, we will try to determine what is in the best interest of the American consumer, the public, and we will try to balance the concern with the benefit of the system as it now exists.

And if we can tweak that system, if we can make refinements to that system without erecting barriers to our uniform national credit reporting system, we will do that, and where justice dictates, we will do that.

Now, I want to end, Mr. Chairman, by saying that, as much as anything, this bill demonstrates that when the Administration works with the Congress what a benefit that is.

The Treasury Department and the FTC have worked very closely with us. Witnesses on our first panel have been very helpful to us, and their agencies.

But as much as anything else, this is a bill where bipartisan cooperation has come together, and we have all put aside some of our personal differences to come up with the legislation that is a starting point for renewing the uniform credit system. Thank you.

The CHAIRMAN. I thank the gentleman.

The gentleman from Vermont.

Mr. SANDERS. Thank you, Mr. Chairman. And I want to thank you and Ranking Member Frank for holding this important hearing on H.R. 2622, introduced by Subcommittee Chairman Bachus, and I want to thank Spencer Bachus for his openness in this entire process, and for his willingness to work in a non-partisan way. We appreciate that, and we look forward to continue working with him.

And I also want to thank Secretary Snow for being with us today, as well as our other witnesses.

And, Mr. Secretary, you and I will be meeting later on today to deal with another crisis, and that is the collapse of our pension system, which is affecting millions of American workers, and we look forward to that meeting, as well.

Mr. Chairman, while this bill does include some modest consumer protections, H.R. 2622, as currently drafted, does not include a number of reforms that are needed to increase the accuracy of credit reports, reduce identity theft, and protect the medical privacy of consumers.

Most importantly, H.R. 2622 contains a major anti-consumer provision that would permanently bar the States from passing stronger bad credit reporting laws designed to protect their citizens against any number of problems, including identity theft and the ability to protect consumers' access to credit by ensuring that the notoriously flawed credit reporting system is cleared up, and in my mind just that is not acceptable.

Mr. Chairman, this issue is extremely important to consumers, which is why the National Association of Attorneys General, representing all 50 of our states, unanimously passed a resolution opposing this preemptive language.

They, the Attorney Generals throughout this country, who are closest to the problem, know that to protect consumers in this country, they have got to have the ability, whether it is in Alabama or Ohio or Massachusetts or Vermont, the ability to respond quickly and effectively to the particular consumer problems of people in their own State. And we should not deny them that right.

Mr. Chairman, this preemption provision is also opposed. We hear the word consumer very often, but we should be clear that this preemption provision is also opposed by every major consumer organization in this country, including the Consumer Federation of America, or ACORN, the Center for Community Change, Consumers' Union, Consumer Action, U.S. Public Interest Research Group, and the lower-income clients of the National Consumer Law Center.

I look forward to working with Subcommittee Chairman Bachus, Ranking Member Frank, and Chairman Oxley, on improving this legislation before it reaches the floor.

Let me also mention a few other concerns that I have. While HR 2622 does allow consumers to receive free credit reports annually, and that is a very important step forward, it is not clear that it does allow consumers to receive free credit scores, the most important information consumers need to find out if they qualify for credit.

The language here is vague, and I look forward to working with the Chairman to improve that language, to make it clear, abundantly clear, that consumers who receive free credit will receive

free credit scores along with their free credit report, including the key factors adversely affect the consumer's credit score.

Further, Mr. Chairman, we must address the crisis in the credit card bait-and-switch scam, as recently reported by The New York Times, the Washington Post, ABC News and other media outlets.

Credit card companies are penalizing customers who have always paid their credit card bills on time by, in some cases, tripling their interest rates due to information contained in the consumer's credit reports that were linked to other loans.

In other words, people pay their bills on time, month after month, and because they may have borrowed money for a personal crisis, or for another reason, credit card companies around this country are doubling or tripling their interest rates, and that is not acceptable and we have got to address that issue.

Lastly, Mr. Chairman, I also support the visions that would protect Social Security numbers from identity thieves, protect the medical privacy of consumers, protect the credit of persons in combat or activated to military service, provide notification to consumers when negative information is put on their credit reports, protect consumers by disclosing insurance clause, reduce the time frame available for credit bureaus to investigate and correct consumer reports, increase the penalties for companies that repeatedly report inaccurate information to credit bureaus, and prohibit credit and insurance clause for bringing reduced space on the number of credit inquiries.

Finally, Mr. Chairman, credit is more important than ever in our society. Consumers need to know that both the Federal and State governments are working hard to protect their access to credit. We need a strong federal law with flexibility by the States to react to local problems.

I thank the Chairman, and I look forward to working with him and Mr. Bachus to improve this bill.

Thank you.

The CHAIRMAN. The gentleman's time has expired.

And the Chair would reiterate that all members' opening statements be made part of the record. Without objection, so ordered.

We now turn to our distinguished panel, beginning with the Secretary of the Treasury, Mr. John Snow.

And, Secretary Snow, it is good to have you back again before the Committee.

And also to Chairman Muris from the Federal Trade Commission.

We thank both of you.

And, Mr. Secretary, whenever you wish, you may begin.

STATEMENT OF HON. JOHN W. SNOW, SECRETARY, DEPARTMENT OF THE TREASURY

Secretary SNOW. Thank you very much, Mr. Chairman, Chairman Bachus, Ranking Member Frank, Member Sanders. It is a pleasure to be back here with you.

In listening to your opening statements, for the most part I would say, as lawyers often say in proceedings, I stipulate to what you said and want to identify myself with it and adopt it as my own, because you have really hit on the high points of what this

is all about, and there is hardly any reason for me to go through a lengthy statement.

I have submitted a statement for the record, and I would ask that it be adopted——

The CHAIRMAN. Without objection.

Secretary SNOW.——and included in the record.

As Chairman Bachus said, the FCRA is the invisible infrastructure of the credit markets of the United States, and that invisible infrastructure makes possible the most extensive and widely available credit at the best rates anywhere in the world. And it simply wouldn't be possible without that broad sharing of information. And that is why it is so important, so important, critically important, that you take the steps to make those standards permanent.

Consumers have two vitally important interests here. First is access to credit and other financial services. They also, though, have a vital interest in the accuracy and the security of their financial information. Good legislation is going to serve both interests, and any proposals, it seems to me, should be judged by those two standards: Does the proposal advance the availability of credit, and does it make the information more secure and more accurate?

It is important to recognize, I think, as we think about the extension of the FCRA, how important it has been for lower income people and how many people at the lower portions of the income scales in the United States have credit today because of the FCRA and the information pooling that it makes possible.

It is also important to recognize just how many people generally benefit from the national uniformed standards.

The Council of Economic Advisers has done some studies in this regard that I have detailed in my submitted testimony. They estimate that without the national standards, 280,000 home mortgage applications that are now approved each year would be denied. And that is roughly $22 billion of new mortgage money made available, made available because of these standards.

And as I say, this democratization of credit has especially benefited minority and lower-income families. And if you look at the credit numbers, you will see that credit extension, credit card extension, mortgages and so on have even grown even faster among minorities and lower-income people over the last decades than among the populace generally.

Good as it is, it can be improved. And significant improvements are suggested by the Administration and are included in the legislation that is pending before you today. A critically important area where improvements can be made is in this area of identify theft that needs to be addressed. It is a terrible national problem. In my written testimony I have offered some examples illustrating the lengths that these identify thieves go to rob people of their financial identity, illustrating how clever they are, how adaptable they are, how heartless they are as they perpetrate these horrors on innocent victims. And one of the worst aspects of the identity theft is how quickly one's good reputation can be destroyed, and in turn how long it takes to get it back.

Our proposals and your legislation addresses that issue. And it is important to recognize how important these national standards for sharing information can be in both reducing the prospects for

identity theft and in correcting it once the crime has occurred. And I have detailed in my testimony the various ways we would suggest that be done.

In closing, I want to congratulate the sponsors of this important legislation, the Bachus-Hooley-Biggert-Moore bill, all of whom I think I see here on the podium. This is legislation that is very much akin to the proposals that the Administration thinks makes good sense and the very proposals I talked about last week. And we are in very broad agreement, I want you to know, with what you were proposing in that legislation.

We look forward to working with the members of the Committee, and the sponsors particularly, to move a strong package of reforms forward to ensure that the Fair Credit Reporting Act becomes an even more effective tool for meeting the financial needs of American consumers. I am confident that the legislation that is being proposed does that, and we want to see it become law.

And I thank you for the opportunity to testify before you this morning.

[The prepared statement of Hon. John W. Snow can be found on page 243 in the appendix.]

The CHAIRMAN. Thank you, Mr. Secretary. And again, it is always good to have you here before the Committee. And thank you for your good work in this area.

We now turn to Chairman Muris from the Federal Trade Commission. Mr. Chairman, welcome.

STATEMENT OF TIMOTHY MURIS, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. MURIS. Thank you. Thank you very much, Mr. Chairman, and members of the Committee.

I am certainly pleased to appear here today to discuss the FTC's legislative recommendations with respect to the Fair Credit Reporting Act. The FCRA has been a remarkably effective law and serves as a model for our efforts to protect consumer privacy.

As the Chairman mentioned, the FCRA makes possible what I call the miracle of instant credit. This miracle occurs all over American every day. For example, if a consumer has good credit he or she can borrow $10,000 or more from a complete stranger and within an hour drive away in a new car. Now, I am told that you need a higher authority than a credit manager to bestow miracles, but it is a remarkable event when you focus on it.

The flexibility of our credit markets is one of our great strengths as a nation.

It is one reason why we are so large, strong, and prosperous.

Since the FCRA was enacted, over 30 years ago, consumer credit has expanded exponentially and today accounts for two-thirds of our nation's GDP.

Since 1970, access to credit has greatly expanded as well. Thirty years ago, less than 10 percent of the least affluent Americans had credit cards. Today, more than half do.

The FCRA has facilitated this growth while at the same time protecting consumers' sensitive financial data.

Our recommendations for legislation will help fight identity theft and improve credit report accuracy. At the same time, they will

preserve the benefits to consumers of the national credit reporting system.

To begin, the Commission recommends that Congress renew the existing preemptions of Section 624 of the FCRA. The national character of our credit markets is a powerful argument for retaining these provisions. The current system functions well, and we believe there is no compelling justification for fundamental changes.

This is not to say that the FCRA is perfect, and we have other proposals that we believe would improve the act.

These proposals focus on getting credit reports more easily to consumers who want them, streamlining the dispute process and easing the burden on identity theft victims.

I want to finish by highlighting our proposal to expand adverse action notices to consumers.

In its basic operation, the FCRA is an extraordinarily insightful statute. Without the consent or choice of consumers, an enormous amount of information is collected, information that allows our national credit markets to function.

Use of this information is strictly limited, however, to permissible purposes as defined under the statute.

With all of the information, some inaccuracy is inevitable. Here to, the FCRA solution is ingenious. The FCRA requires that when credit is denied based even in part on a consumer report, the creditor must notify the consumer of one, the identity of the credit bureau from which the creditor obtained the report, two, the right to obtain a free copy of the report, and three, the right to dispute the accuracy of information in the report.

Now, the self-help mechanism embodied in the FCRA scheme of adverse action notices and the right to dispute is critical to maximize the accuracy of consumer reports.

It puts credit reports in consumers' hands when they are the most motivated to inspect the report for inaccuracies. That is, after they have been denied credit, employment, insurance, or another benefit based on the report.

Moreover, adverse action notices help fight identity theft. An adverse action notice can alert a consumer that he may have bad marks on his credit that he doesn't know about.

The subsequent free credit report helps consumers discover these accounts that an impostor may have opened.

Enforcing the FCRA's adverse action provisions is at the heart of FTC action, but we believe there is room for improvement.

Today, the FCRA requires an adverse action notice only when a consumer is denied credit based on his credit report. The consumer who is offered credit on less advantageous terms and accepts the offer gets no adverse notice.

Ten years ago, consumers simply were denied credit based on their credit report. Today, however, with the prevalence of risk-based pricing, it is more likely that consumers are charged a higher rate rather than rejected outright.

For this reason, we recommend that Congress give the FTC rulemaking power to expand the circumstances under which consumers will get adverse action notice in these credit transactions.

We make several other specific recommendations, which I will be happy to discuss in response to the Committee's questions.

It is a pleasure to be here, and particularly to be here with Secretary Snow, and we support his proposals as well.

Thank you very much.

[The prepared statement of Hon. Timothy J. Muris can be found on page 207 in the appendix.]

The CHAIRMAN. Thank you, Mr. Chairman.

And let me begin with a couple of questions for Secretary Snow.

Mr. Secretary, you testified that the Council of Economic Advisers estimates that if Congress doesn't reauthorize the uniformity under FCRA and the States pass significantly different laws, that as many as 280,000 mortgage applications per year could be denied, especially for first-time home buyers.

Doesn't that make the legislation that is before us, the FACT Act, the top priority for our country and, indeed, guarantee our economic viability?

Secretary SNOW. Absolutely, Mr. Chairman.

I couldn't agree more strongly. These national standards are essential to the way credit gets made available in this country. They have made for much more robust credit markets. Those robust credit markets lie at the heart of the success of the American economy. They are integral to the success of the American economy.

As Chairman Muris said, consumers represent some 70 percent of all the activity in the American economy. And that depends on credit. And we have the best credit markets and the most available credit and the lowest cost credit in the world. And that is, in large part, due to these standards.

So I would see the legislation pending here, making these standards permanent, an essential condition for the continued success of the American economy.

The CHAIRMAN. Mr. Secretary, I was struck by some testimony, when Chairman Bachus had his series of hearings, as to how mobile our society really is, almost clearly the most mobile society in the world. Fourteen percent of Americans move every year.

We indeed do have a national credit system that is, I suspect, the envy of most countries. And despite that, there are those who—including the gentleman from Vermont—who mentioned the attorneys general not wishing to have a uniform national standard.

It just seems to me that based on this incredible infrastructure of credit that we have developed in a national marketplace and given the mobility that our people have that it is almost incumbent upon us to maintain that national system. Would you agree and expound on that?

Secretary SNOW. I would indeed. In some ways, credit is as American as apple pie. We lead our lives because credit is so readily available. And so many Americans are in the system because of widespread credit availability.

Those numbers on mobility. I have seen that study. It is an astonishing thing. Americans move, on average, every 6 years. That is about 17 percent of the U.S. population in a given year. It is an astonishing number.

There is no other country that has that sort of mobility. And that sort of mobility is central to keeping this economy fluid and flexible with people moving to where the jobs are.

It is at the very heart of having flexible labor markets. And you can't have those flexible labor markets unless people have the credit to be able to buy the home in the new location, unless they can open checking accounts, unless they can shop.

And these standards allow one to take your good credit reputation with you wherever you go. And that facilitates labor mobility and is a critical part of what defines the success of the American economy.

So I agree entirely.

The CHAIRMAN. It just seems that we have such a mobile society. They move because that is where the jobs are, which is exactly what you want in a vibrant economy. But it is one thing to move from Ohio to Arizona and get a job and then have problems getting credit, which really defeats the purpose behind the move in the first place.

We appreciate the comments.

Chairman Muris, how does our current system of credit reporting help to ensure that people who should not get credit, who are not qualified to get credit, do not get credit?

Mr. MURIS. Well, the system works, as I mentioned, not at the choice of consumers. Consumers who have bad credit can't hide that fact, and that is a very important part of why the system functions so well.

In many parts of the world, so-called negative information is not allowed to be reported. We allow that to be reported, and that is of tremendous benefit to the people who have good credit records, that the absence of that negative information when it is reported.

The CHAIRMAN. My time has expired.

The gentleman from Massachusetts.

Mr. FRANK. I appreciate the testimony, and particularly, in both cases, I think, the witnesses represent what we need to do, which is to let us now start to get specific about improvements.

Mr. Muris, I am particularly pleased to see a couple of things for that. As I said, my sense of this is that the one weakness that I believe most critical to address is that a very small minority of consumers about whom inaccurate information gets kind of locked in, and I think they are inadequately protected, and I think it is within our capacity in this large system to improve the protections for these individual consumers without burdening the system.

I mean, people say it is going to cost more. Yes, we are socializing the cost a little bit, but when we are talking about the hundreds of billions of dollars that are supported here, I don't think we are out of the ball park. I am also, I have to say, joining the Chairman congratulating you on implementing the do-not-call list.

When I read some of the concerns about some of the industry groups about some of the consumer protections we are talking about, they predict danger to the economy, damage to the economy, like the people who are in the call business predict from the do-not-call lists.

And I don't think they were right there, and I don't think they are right here. That is, the gloom and doom we heard about the do-not-call list, I think, will soon be shown to be that I don't think the American economy has really been that dependent on bothering people's dinner.

And I don't think that perpetuating inaccurate information in files is necessary to the consumer credit situation.

You had a couple of very important specific suggestions, which I am going to be asking the people on my staff to be working on. One, on page 15, you recommend that the FCRA be amended to provide that disputes raised with furnishers receive the same treatment as disputes filed with a credit reporting agency.

That is very important. To some extent, it is almost like sort of 18th century England: If you are the consumer, you must go through all the right forms, and if you don't go through all the right forms, you are penalized.

In my conversations, I too often heard with some of the people who are in the business of furnishing credit or other credit reporting entities the argument, well, if the consumer does it all right then this or that can happen.

With identity theft, or whatever, if you filed the police report, well, not everybody knows they are supposed to file a police report or can find it easy to file a police report, or in a lot of communities when they are having to lay-off cops you are going find a policeman to report it to, because he is busy out there trying to catch a bad guy who is trying to whack some guy.

So, here the notion that you would not have a substantive right to get your reinvestigation because you didn't go to the FCRA, I think that is very, very important, and I appreciate it.

I also was pleased in pages 10 and 11, with your specific endorsement of making it statutorily clear the resellers have the same responsibility as other people.

I mean, I think we ought to be very clear. You have a right to complain, you have a right to a substantive reinvestigation, and you have that right with anybody who might be perpetuating the, or sending along the misinformation.

And one of the things that strikes me here, and, well, I know we will probably wind up preempting going forward, the advantages of not having preempted prematurely seem to me to come forward.

My own State of Massachusetts, and I was not previously familiar with this, it wasn't an area I had specialized in, is grandfathered in a piece of legislation which gives the furnishers and others a somewhat higher standard, and I am struck by that because apparently Massachusetts has been able to sell things.

The existing of the higher standard in Massachusetts has not had the negative consequences that some of the furnishers predict. And so I am going to be looking at that, I think, in that we have some happy experience here in those three States that were grandfathered, and I look forward to working with your staff.

As I said, I am going to be trying to translate these two into statutory language, we will look forward to you working together on that, and I appreciate your coming forward with that.

So I thank you.

Mr. MURIS. Thank you.

Mr. FRANK. Mr. Snow, I also appreciate your testimony. I really want to talk to you about capital controls in Argentina, but we will do that some other time. Thank you, Mr. Chairman.

[Laughter.]

The CHAIRMAN. Gentleman yields back.

The gentlelady from New York, Ms. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman. Secretary Snow, and Chairman Muris, I would like to thank you both for appearing before the Committee and voicing your strong support for H.R. 2622.

As you know, this legislation's been drafted after careful consideration by this Committee that included a multitude of views from many diverse witnesses. We actually began the process by investigating the issue of identity theft in several oversight subcommittee hearings, including a joint hearing that I chaired with Chairman Bachus in the beginning of April, and I am pleased that this legislation specifically addresses some of the problems we discovered in these hearings and hits at the heart of identity theft.

In the past few months, in my subcommittee, we have also investigated another important security issue, the blocking of terrorist financing under the USA PATRIOT Act. I believe this legislation will further help law enforcement combat financial fraud and track down criminals and terrorists.

However, there are some concerns about the privacy under this act. And as we move forward with consideration of the FCRA reauthorization, I believe we must also be concerned about the sanctity of privacy for the American people in this act.

As we will hear from several witnesses today, medical information is readily available and easily identifiable on credit reports. I am currently exploring language that will protect medical information of individuals without disrupting the access to low cost credit and the security of information. In fact, I believe it enhances the security of personal information.

To that end, I would like to ask a couple of questions.

Chairman Muris, is it the intent of a credit report to specify information outside the realm of the credit-granting process? Would you support coding medical information in a way that would allow financial transactions to appear on a credit report, but not the actual names of the institutions or the entities that have provided those transactions?

Mr. MURIS. This is a problem or an issue that has recently been brought to my attention. First of all, I am not sure the extent to which there is a problem. We are looking, and we will be glad to work with you and the other members and your staffs, to see what the impact of that would be.

I do know under the FCRA there are separate standards and separate procedures for getting medical information. And if you want to get a life insurance policy, for example, you will need to consent to the insurance company for the right to receive medical information about you. That is regulated to a certain extent by the FCRA.

But the specific issue that you mention is one that has just been recently brought to my attention, and we would be glad to work with you on it.

Mrs. KELLY. Let me just give you an example of what I am concerned about. In New York City we have a wonderful cancer-treating institution called Memorial Sloan-Kettering. If I am being treated and I have a bill dispute with Memorial Sloan-Kettering, the assumption would be that I am being treated for cancer and the assumption is in many people's mind still that cancer is almost

inevitably problematic to the extent that it deeply affects your ability to work or can result and does result in death.

My concern is if that name, like Memorial Sloan-Kettering, appears on a credit report, there may be an assumption made by someone who is looking at that credit report that I have a difficulty without understanding that I am there because I am actually going back in for a checkup and there was a discussion about that bill.

I want to make sure that we work out a method so that the financial end of that could be presented, but the entity providing that service is not listed. That is my intent, that is the legislation that I am working on, and I am glad to think that you would be working with me on that. I would hope that you would support that.

Mr. MURIS. Well, yes, we would certainly be glad to work with you on it, and it may be easy to do that. I don't know what the ramifications are.

I do know that in the situation that you are talking about, if someone currently, under the current law, is denied a benefit because someone drew an inference they didn't like in their credit report, the person has to be told that they were denied the benefit because of the credit report.

The person has to be told that they were denied the benefit because of the credit report.

So some protection already exists. And I would be glad to work with you on the additional issue.

Mrs. KELLY. Recognizing that that protection does exist, my problem is that it is one more step that we simply, I don't believe, need to have people get involved in if we can stop it before it happens.

Secretary Snow, in your testimony you discuss the integrity of information and note that one of your most important assets is your reputation. Do you believe that there needs to be specific medical information on an actual credit report? Or do you think it makes sense to consider coding the information in some way, as I have described?

Secretary SNOW. You raise a good issue, an important issue. And I don't have a fixed answer to it. I want to think about it, though, against the criteria that we set forth—I set forth in my statement, and that is how would a given proposal such as that, affect the accuracy and security of information to protect the individual, and how would it affect access to the credit?

And I think your proposal is something to be looked at, but against those criteria. Today, of course, there is some sharing of medical information that grows out of so-called experiential, but not otherwise.

And getting that line right, I think, is something that deserves attention. And like the Chairman, we would be pleased to work with you to try and get that balance right. But it is a critically important issue and a very sensitive issue.

The CHAIRMAN. The gentlelady's time has expired.

Mrs. KELLY. Thank you very much.

The CHAIRMAN. The gentleman from Vermont, Mr. Sanders.

Mr. SANDERS. Thank you, Mr. Chairman.

Gentlemen, the legislation that we are discussing today allows consumers to receive free credit reports annually, and that is something that some of us have fought for and we think is a real step forward. Unfortunately, the language in the bill is vague when it comes to providing free credit numerical scores along with a free credit report, including the key factors that adversely affect the consumer's credit score.

So my first question to both of you is does the Administration support the right of consumers in this country not only to get free credit reports, but to get the scores and the explanation about adverse numbers that might impact the consumer? Mr. Snow?

Secretary SNOW. We would support, as we have said in the testimony, access to the credit bureaus of the data. We would also require that with the data go some help in understanding how the data is used, so that the individual consumer would be in a better position to understand what they might be able to do to improve their credit standing.

The score I am more dubious on, and I will tell you why, Congressman. The score itself is a proprietary product. It comes from not the credit bureaus, of course you know, but from these private entities, who have invested a good deal of intellectual capital developing their algorithms and so on.

Mr. SANDERS. Mr. Secretary, you used the word "proprietary"; that is my information, that is my life that that information is about. And to suggest that it is an intellectual property right for somebody else when it is information about what the heart of what my life is about, I would suggest it is my information.

Secretary SNOW. But it is your information, but it is there methodology and their intellectual property.

Mr. SANDERS. But don't I have a right to know if three different credit companies, agencies, provide three different scores, don't I have a right to know how that came about?

Secretary SNOW. You will have the data under our proposal that they use; you will know what the records are. And you will be given assistance and help in trying to understand how that data would be applied. The scores comes from a different source.

Mr. SANDERS. Frankly, that is not good enough for me, and I think we have got to go further than that. And I look forward to working with you and with the majority to clarify that issue. I think consumers are entitled to more.

Second issue, what I call bait-and-switch. As you know, right now if I have a credit and I responded to one of the 5 billion applications that people get in this country at 3 percent and then I take out a loan because my wife is ill, suddenly it can go up to 25 percent.

I think that is an outrage. I think that is a ripoff of consumers in this country.

Is the Bush administration going to be strong in protecting consumers against this ripoff and help us include strong language, strong language, in this bill?

Secretary SNOW. This is an area that the Chairman can speak to.

Mr. SANDERS. Thank you.

Mr. MURIS. It certainly is under our jurisdiction. To the extent it involves banks and credit cards, it is not. But to the extent it is under our jurisdiction and for a lot of lenders, it is.

There are circumstances under which, I think, this raises a problem. We are looking at this issue specifically and, in general, the issue about unilateral modifications to standard form contracts. As an old contracts law professor, there are many circumstances in which those modifications should not be allowed.

Mr. SANDERS. Just a question. In English.

I sign up with your credit card company at 3 percent. You are giving me this 1 year at 3 percent. Every month, I pay my bills on time. Suddenly, I am now paying, instead of three percent, five months later I am paying 25 percent although I have paid what I owe you every month promptly.

Is that appropriate? Is that right? Or should we make sure that credit card companies cannot do that.

Mr. MURIS. I think, again, you would have to look at the circumstances. But if someone on their own, which is what unilaterally means, not bilaterally with the consent of the consumer, changes the terms in a one-sided fashion, that can easily be a problem.

Mr. SANDERS. Well, I look forward to working again with you and the majority on that issue. Lastly, I want to make a philosophical statement and let you respond.

Your Administration is, admittedly, in a conservative administration, in my view, one of the most conservative administrations in the history of this country.

Day after day, I hear on the television, hear on the radio, how the big, bad federal government should not be taking over the powers that folks closest to the people have, that we have got to protect States' rights, and so forth and so on. And yet, what I am hearing from you is that despite what the Attorney Generals of the United States want, despite what every consumer organization wants, you think that the federal government should crush the ability of state governments to protect consumers and fight and pass standards that are higher than the federal government.

Why would a conservative administration that tells us how bad the big, bad federal government is want to crush States' rights in protecting consumers' needs.

The CHAIRMAN. The gentleman's time has expired. The gentleman will respond.

Secretary SNOW. Congressman, I think you know we are not alone in this view that these uniform standards should be applied in the preemptive way that has been suggested.

It has come to my attention that the Conference of State Bank Supervisors, that is all the state bank supervisors themselves, support the legislation that is pending here and the Administration proposal. And they do so because they recognize the greater good that comes from the existence of these——

Mr. SANDERS. Then, answer my question why a conservative administration——

Secretary SNOW. Well, because of the greater good.

The CHAIRMAN. Gentleman's time has expired.

Mr. MURIS. Mr. Chairman, could I say something about that.

The Federal Trade Commission has four Clinton appointees and one Bush appointee. And the recommendation to support these proposals is unanimous.

Mr. FRANK. Well, that would explain their disregard for States' rights.

[Laughter.]

Mr. MURIS. Well, I would be glad to respond to that. It was a two-part question. One is how the conservatives—I don't think the four Clinton administration appointees—but could I respond to——

Mr. FRANK. That is my point. Sure.

Mr. MURIS. Just as one of the most important things that happened in our country was in 1787, when they formed the Constitution. One of the main purposes of that was because the States were preempting a national economy. The states had individual tariffs. They had individual standards.

National credit standards, although not as important as prohibiting states from imposing tariffs, I think national credit standards are extraordinarily important. And it is that uniformity which provides enormous benefits for consumers.

If we need more consumer protection, and I think we do, it should come as part of national standards.

Mr. FRANK. Just for 10 seconds. If you could, maybe, send me the reference in Bailyn's Debates on the Constitution to credit reporting, I would appreciate that.

The CHAIRMAN. Gentleman's time has expired.

The gentleman from Connecticut, Mr. Shays.

Mr. SHAYS. Thank you. I thank both of you for your good work to our country and the sacrifices you make in serving our country.

I just would like you to respond as clearly as you can to the consequence of not taking action.

Secretary SNOW. Well, I think, Congressman, that the consequences of not taking action would be to, in a far-reaching way, undermine the performance of the American economy. I think these national standards are integral to the enormous success of the American economy, because they underpin credit, and we are a credit-based economy. They underpin, as we talked about earlier, labor mobility, and labor mobility is a hallmark of the success of this economy.

The uniform standards make credit available to lots of people who otherwise wouldn't have it, which means they can get into the mainstream of economic activity in this country. And I don't have the econometric studies' results in my mind, but it is pretty far reaching, something like 3 percent reduction in the total credit availability in the country and something on the order of a 50-basis-point increase in the cost of credit. Fifty-basis-point increase in the cost of credit on a $7 trillion credit economy, we are talking gigantic numbers and far-reaching negative impacts on the economy if these national standards aren't maintained.

Mr. SHAYS. Yes, sir?

Mr. MURIS. Just to make a brief amplification, the economy compared to the rest of the world, our economy has a few simple reasons why it is so much better than many other economies, and two of those reasons are our labor markets are so flexible, and another is our credit markets are so flexible. And I think that flexibility

crucially hinges on having national standards in the credit markets.

Mr. SHAYS. I have had 13 years in the Statehouse, and I know the argument for states being allowed to pass its own laws and supersede what the federal government, and now I have had 16 years in the federal level. But it seems to me this issue is so crucial that we can get into the ideology of States' rights versus federal, and in the process we risk, frankly, putting our economy in danger.

I, Secretary Snow, want to just voice a concern about a lack of clarity on the Department of Treasury as it relates to Jesse's. And I want to understand what your position is as it relates to why we would allow Freddie Mac and Fannie Mae to not have the same kind of disclosures as any other Fortune 500 company. And I would like to know when this lack of clarity will be clearer.

Secretary SNOW. Congressman, that is an issue that we are reviewing right now, and in the context of the recent disclosures that have made the news at Freddie Mac. We have always articulated the need for disclosure, and have been in the forefront of pushing for the disclosure under the 34 act. And I am pleased that Fannie Mae has now done that and is submitting the 34 act information. And once you go into 34 you don't come back out.

Mr. SHAYS. Right.

Secretary SNOW. So they are permanently under 34.

Mr. SHAYS. But what confuses me is you have Alan Greenspan making it very clear he sees no reason why they also shouldn't be under the 33 act. And I am just wondering why there would be any argument that they shouldn't be under it.

Secretary SNOW. Well, there doesn't seem to be any current difficulty with their issuances.

But clearly, there needs to be transparency, disclosure and good transparency, and effective regulation.

Mr. SHAYS. Well, I thank you all for looking at it.

Secretary SNOW. And that whole subject is, of course, being looked at by the Committee.

Mr. SHAYS. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired.

The gentlelady from Indiana is recognized. Ms. Carson? No questions?

The gentlelady from California, Ms. Lee.

Ms. LEE. Thank you very much, Mr. Chairman. And let me say I, too, am very happy to be able to listen to this testimony today and have many of the same concerns that many members, of course, on our side have raised.

One is I would like to ask Secretary Snow a little bit more with regard to the issue raised in terms of credit scoring, the proprietary information, and I think what Mr. Sanders indicated with regard to the fact that this is personal information, private information, that is now being packaged, really, and being sold.

One is do consumers really know that this information is now a commodity and that their entire private information is actually a product, and that this product is being sold? Is that information we know?

Secretary SNOW. You know, I don't know what percentage of the general public knows that. I would distinguish between the credit

report, the data that is in the file that the credit bureaus have, which you should have access to, and which under the proposed proposal you would have access to, free access to. All you have to do is request it.

But I would distinguish that, and this is clearly something people can argue about, that and the score. Your information is your information, it is your records, but the score, which really comes from somebody else, is their application of their methodology, it is their undertaking, it is what they have done to evaluate those records.

Now, we think people ought to understand more about how that is done, and how scores are set.

Ms. LEE. Sure, but Mr. Secretary, what I am asking is do consumers have a right to know that this, whatever this methodology is is a methodology that is being packaged as a product to be sold to make money?

Secretary SNOW. Yes, they absolutely should have the right to know that their records are, and they should have access to those records.

Ms. LEE. Access to the records is one thing, Mr. Secretary, but I am asking with regard to the right to know how this scoring information is being used in terms of the sale of it. Should they have a right to know that, and if they don't, then just, they don't.

Secretary SNOW. Well, they certainly have a right to know that people are putting scores on them.

Ms. LEE. But that the scores are being sold?

Secretary SNOW. And there is a market in these scores.

Ms. LEE. Sure.

Secretary SNOW. I mean, there are, these companies are selling these scores, and they will sell them to you, as an individual.

Ms. LEE. Sure, but do consumers know that? All I am asking is should, and does the Administration and under the bill——

Secretary SNOW. You mean, should there be a disclosure?

Ms. LEE. Should there be a disclosure that this scoring——

Secretary SNOW. That there are scores, that scoring goes on?

Ms. LEE. That there are scores, and that the scores are proprietary information——

Secretary SNOW. I have no objection.

Ms. LEE.——and that this proprietary information is being sold?

Secretary SNOW. Well, I think if you read the newspapers, that is daily fare in the newspapers.

Ms. LEE. Well, Mr. Secretary, I really want to just know, do you think we should work on this a bit in this bill, and maybe tighten it up and make some——

Secretary SNOW. Well, I don't, I would not recommend mandating making the scores available for free. I would recommend, as we have, making available on request the records.

Ms. LEE. But making available the information that the scores are being sold to make a profit, should consumers just know that as they apply for credit? They may choose not to apply.

Secretary SNOW. Well, I think sure. I don't see anything fundamentally wrong at all with disclosure: The data goes into the compilation of scores.

Ms. LEE. Then we would like to work with you on an amendment, on a disclosure amendment.

And let me just ask Mr. Muris one thing with regard to adverse actions. With regard to multiple credit inquiries, oftentimes consumers attempt to find the best deal, the best rate, the best terms. I know for a fact many individuals have called and indicated to me that as they do this they are notified that there is an adverse action now because they are attempting to find the best loan. Why is it that multiple credit inquiries become ultimately a negative on your credit report when really you are trying to find the best product? And what can we do to correct for that in this bill?

Mr. MURIS. Well, my understanding is this is an issue that only comes up—the credit's only concerned about if you are doing it a lot in a short period of time.

And I can understand their concern if that is true. If you are applying with several people or making inquiries with several people at once, that is something that creditors would want to be aware of.

Ms. LEE. So why would it be a negative when the consumer's attempting to find the best interest rate and the best terms?

The CHAIRMAN. The gentlelady's time has expired. The gentleman may respond.

Secretary SNOW. Mr. Chairman, can I clarify one——

The CHAIRMAN. Of course, sure.

Secretary SNOW. As I think we are in agreement on at least making available the scoring process. I mean, we support making available knowledge of the scoring process. So if you are asking do we want people to know they are getting scored, the data is being used to make scores, yes, we do. The only place that we may have a difference here is making the score itself available——

Ms. LEE. But also making available the information that that is being sold——

Secretary SNOW. Well, sure. Because what we are proposing to do is to make a free report available along with the knowledge of how the scoring process works, so you will be informed that there is a scoring process with respect to these records.

Ms. LEE. And that it is being sold.

Secretary SNOW. Well, sure, these people are in business.

The CHAIRMAN. The gentlelady's time has expired.

Mr. MURIS. If I could respond?

The CHAIRMAN. The gentleman may respond.

Mr. MURIS. Because I think I—right before Secretary Snow responded—I think I misunderstood your question. I was thinking of multiple applications. If it is multiple inquiries, I think you are correct. And I think the practice now is to treat multiple inquiries in a short period of time as one inquiry. If people are treating it otherwise, I think there is a problem——

Ms. LEE. I would like to work with you on that, Mr. Muris.

Mr. MURIS. Sure, and I agree with you.

The CHAIRMAN. The gentleman from Texas, Mr. Hensarling.

Mr. HENSARLING. Thank you, Mr. Chairman.

Mr. Secretary, we have heard lots of evidence at the subcommittee level about the fact that as Americans we enjoy the

greatest access and the lowest cost of credit available. I am not really sure that anyone cares to debate that proposition today.

I have a specific question. Now, as a member of the subcommittee, I actually attended what I believed the Chairman described as the exhaustive six hearings, and actually learned something by attending these hearings. I heard evidence from the Hispanic Chamber of Commerce that 7 out of 10 small business in America are capitalized with less than $20,000, and that 45 percent of them use credit cards as a major source of financing for their capital formation or their capital for expansion. And so the question I have is, has Treasury seen similar data? And if so, do you have an opinion on the possible adverse impact on employment should we fail to reauthorize FCRA?

Secretary SNOW. Well, I am generally aware that credit cards play a critical role in the financing of small business.

And the virtue of these uniform standards is that they allow the pooling of information, which reduces the uncertainty of the credit furnisher. And that particularly helps those who have the most difficult time getting credit. Some small businesses would certainly tend to fall into that category.

So I think the failure to extend these standards and I would hope make them permanent, the failure to do that, extend the standards, I think would have a differentially adverse effect upon small business, certainly, and Hispanic small business would probably fall into that category particularly, yes.

Mr. HENSARLING. Chairman Muris, a lot of folks on the Committee obviously have a concern about identification theft, as do many of our constituents. I am actually one of the members of this Committee who has been victimized by identification theft. Frankly, I was one of the lucky ones in being able to recover the losses and to ensure that my credit rating was not adversely impacted.

And although we have heard a lot of testimony, I think it really comes down to a critical question, and that is when it comes to the subject of ID theft are we better off with or without the reauthorization of FCRA? I am curious of your opinion and why you hold the opinion.

Mr. MURIS. Well, I certainly think in terms of the national standards we are better off. We are certainly better off with the ability of businesses to share within affiliates, for example, information freely. I think that helps in terms of identity theft.

I do think there are some provisions where we can strengthen the law within the context of the national uniform standards, and we and Secretary Snow have proposed several. I think they would help on identity theft.

There are things outside this bill or outside—criminal, increased criminal penalties, for example—we have supported, and I think that would help on identity theft as well.

It is a very serious problem. We are charged by the Congress with providing assistance to consumers. We have taken a lot of steps.

As a minor example, we publish a booklet that we can't keep in stock, because there are just so many people who request it: How to Deal with Identity Theft, How to Protect Your Good Name. We have recently just started publishing it in the last year or so in

Spanish. And the consumer education is a very important part of what we do, but also the legislative proposals we have here, I think, will help on identity theft.

Mr. HENSARLING. Although I am a veteran of six of these subcommittee hearings, I still find it a little challenging to get my arms around the number of inaccuracies that may be appearing in a consumer's credit report. I am curious about what data you may have, because there have been some accusations that a huge number of reports contain inaccuracies.

I am curious, Mr. Chairman, about what information you have on this matter. To the extent that these inaccuracies exist, is it mainly in the nature of a wrong telephone number or an address due to a fairly mobile society? What portion of the information may actually be used in an adverse action against a consumer?

Mr. MURIS. Well, I think the implication of your question is the materiality of inaccuracies is extremely important, and let me focus on that.

But first there have been some recent studies, and although I generally get along and am supportive of and supported by my many friends in the consumer groups, this is an area where I disagree with some of the recent studies.

What you have here are different companies with different standards, and if you pull a credit report on different individuals the information may be reported differently, there may be somewhat different information.

The key to the Fair Credit Reporting Act we think is in the adverse action notice, which is why we support increased use for new techniques of adverse action notices, because what I call the self-help feature is extraordinarily important.

The consumer needs to know when they are denied a benefit based on what is in their credit report, because then they are put on notice that if there is something wrong, you know, they say, well, there is nothing wrong with my credit, then they know that they should look at that report and dispute it.

That is the heart, I think, of the very ingenious system that Senator Proxmire set up over 30 years ago. But I think because of changes in credit, we need to expand the use of adverse action notices, and we have made that proposal.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Illinois, Mr. Emanuel.

Mr. EMANUEL. Thank you, Mr. Chairman. Thank you for holding this hearing.

My colleague from New York, Congresswoman Kelly, talked about health information. I actually have an amendment that when we get to marking up the Chairman's mark and offering it. It is a bipartisan amendment that deals with, in fact, health information, which I think we need in the area of health information to provide consumers, I think, this safe harbor. And it gets beyond the issue of the opt-in and opt-out, but creates what I call a blackout as it relates to health information, particularly when it is in the credit granting process or in the selling of relevant financial information or services. Obviously, if it is relevant to life insurance, that is one thing, but it is not relevant—there should be a blackout on health information.

I think that is essential to giving some consumers in a changing environment that we have and the technology's that advancing, that safe harbor that that information that is relevant, that their health information not be used against them in the credit process.

And I know it wasn't in the Administration's bill of recommendations, but your openness to that, I think, is essential. We have a bipartisan amendment. I think it is based on common principles that your health information should not be used against you in this process.

Secretary SNOW. Congressman, I think I indicated in response to Congresswoman Kelly that we would be open to talking to you about that and working with you on that score.

But it should be looked at in terms of those criteria that I laid out. What does it do for the security and accuracy of information? What does it do for general credit availability?

Mr. EMANUEL. To that standard is what does it do to help our consumers? Because my view is if you can't give the consumers in this changing world some sense of a safe harbor, it also has an impact.

This bill has been developed in a bipartisan fashion, we continue that effort here. It is one of the things that Ranking Member Frank and also Chairman Oxley have talked about the importance here. I think this amendment would go a long way toward doing that and meeting the standards that you have set out.

Secretary SNOW. We would look forward to working with you on that.

Mr. EMANUEL. Okay. The other matter is I also want to compliment you, although unrelated to this subject, is working with you on the Earned Income Tax Credit and the ability to deal with making it simpler so we get more people involved, reduce fraud, and simplicity. And want to compliment you and your agency and the people involved for working with you on that very important matter.

Secretary SNOW. That is another area where we want to continue to work with you.

Mr. EMANUEL. If this continues we are going to start singing Kumbaya at some point.

[Laughter.]

So with that, I have no other questions.

The CHAIRMAN. Don't push your luck.

Mr. EMANUEL. You know the words?

[Laughter.]

Do you think he knows the words, though? We give you a little cheat sheet on that.

[Laughter.]

The CHAIRMAN. The distinguished Chairman of the subcommittee, Mr. Bachus.

Mr. BACHUS. Thank you, Mr. Chairman.

One of the ways to combat identity theft that we are using in this legislation—in fact, the Administration and the agencies have also talked about—the use of so-called red flags to detect or inhibit identity theft. And there has been a debate on this Committee as to how we best institute the use of these red flags.

We have seen cases where when we have too rigidly proscribed what the financial institutions will do that it actually inhibits their efforts to combat identity theft, because they don't have flexibility. You know, they have a lot of knowledge. They have a lot of experience in how to identify these things themselves.

And I notice that, Secretary Snow, many of your proposals rely on best practices approach or an approach that allows the regulators to come up with the use of red flags. But although it gives specific direction to the financial institutions, it provides them with flexibility to achieve the desired result.

What are the dangers of prescribing a rigid approach, as opposed to leaving flexibility in dealing with the financial institutions in exactly what they do?

Could it actually hurt our efforts if we are too rigid, or we prescribe too much?

Secretary SNOW. Well, that would be our view, Mr. Chairman. Because we need to be continually creative and find new and better solutions to deal with the creative people who are out there on the other side trying to engage in criminal behavior.

They are determined, they are smart, they are capable and they are ruthless, and the red flag idea should be embraced by the banking community, but improved upon.

I mean, it seems to me they are the experts on the use of internal financial information and how best to use it to accomplish the objective they have in mind, and their consumers have in mind.

If somebody is likely to be a victim of this, spread the information quickly, raise the red flags, get it out there. And I think the banking institutions themselves are probably better at evolving the best way to deal with that.

That has been a rule that was written at a point in time that can't by its very nature evolve. That would be our basic thinking.

Mr. BACHUS. Right. In fact, yes, I have heard from talking to some of the financial institutions, and actually some of the law enforcement community, that sometimes the law, if it is too structured, it is 20 years behind the criminals, or that they actually use the definition of, you know, if it is too carefully prescribed, and they know what that definition is, to get around it.

And I would hope that the Committee would give flexibilities to the regulators, and that you, in turn, would give flexibility to the financial institutions.

Secretary SNOW. That is very much where the Administration is coming from.

Mr. BACHUS. Thank you.

Chairman Muris, some have suggested that this 30-day time frame for investigating consumer disputes about accuracy of information contained in their credit reports is too long and should be shortened to 15 days.

Does the FTC have a position on such proposals? Are there any negative consequences to the uniform credit reporting system that might flow from truncating this reinvestigation process down from 30 days?

Mr. MURIS. Well, we have not taken a position on shortening. We are supporting the law as it is. My personal view is that there

could be serious consequences from reducing the time, particularly by that dramatic of a reduction.

First of all, this is a voluntary system.

And a second problem is that we see something called credit repair scams, and one of the things that these people tell you to do is to dispute everything in the hope that the clock will run out. And if we shortened the system that much, I think that might facilitate that sort of tactic, which doesn't do, you know, the majority of consumers who pay their bills any good at all.

Mr. BACHUS. I thank the panel.

I would like to say to the members, and to the panel, that the legislation as drafted, and I have discussed with Mr. Moore and Mr. Davis, as far as credit scores, it was the intention in drafting this legislation, that is the credit reporting agencies had credit scores that that would be revealed. Not only would the credit report go to the consumer, but also the credit scores. So there is some concern that has been expressed here earlier that the legislation may not do that.

It is an intent, and we will continue to work, because if the consumer is not given the credit score along with the credit report, much of the philosophy behind allowing consumers to be able to have, to be educated and improve their credit scores. If they don't know what their score is, it is pretty impossible to improve that score.

So it is our intention that they do receive their credit scores, and I will work with members on both sides to see that that is done.

The CHAIRMAN. Thank you. The gentleman's time has expired. The gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you very much, Mr. Chairman.

Secretary Snow, I would like to ask you a couple of questions on two of the points that I think have been sort of points of contention here, one, the scoring, and the other, the free credit report.

First of all, we are all aware, and I think you mentioned in your remarks, the need for consumers to be educated about their credit scores. Chairman Bachus has just indicated the willingness to work on this issue a little more.

But I would like to call your attention to the fact that too often consumers are not even aware that they have a credit score until that credit has been denied.

What efforts specifically can the Administration take to educate consumers and raise awareness about their credit scores before that credit is denied?

Secretary SNOW. Well, the proposal that we have very similar to what Chairman Bachus talked about, would give consumers the opportunity to review their credit reports for accuracy and for completeness. They would also be given more information about their credit scores and would be informed on what they can do to improve those scores, improve effectively their credit profiles. I am not sure where the differences are, if any, between where the Committee bill is the Administration on that, but I will look at that. I don't think we are very far apart at all on that.

We want people to know their credit reports. We want them to know that this information is being used to create scores. We want them to have a sense of how the scores are being created. We want

them to have a sense of what they can do to improve their credit profiles. And it seems to me, you go to the identity theft issue, it is very important they have these records so they can correct them if they are wrong, and wrong information doesn't continue to be circulated in the credit system.

Mr. SCOTT. Let me ask you another question, because my time is slipping, and we have to go vote. But I want to ask you something about the expanded use of giving free credit reports, which is very important, we support.

But there is another side to this. There is some concerns. In my district we have Equifax. You are familiar with Equifax as a company, very reputable company in my district and a leader in this whole credit reporting industry. They have raised concerns with me, and I would hope that they have with you and, if not, I am sure that they will, but, I hope, we need to address that, about the potential cost of complying with the requirements as they are now drafted and written into the law, that there has not been an adequate benefit cost-analysis being given to that. And in order for this very important tool of accessing a free credit report, I think it has to be done within a way that the industry that is in this business can do it in a successful way.

It appears to me right now that the regulations, or the way it is written, are rather loose, that not only would it make it somewhat difficult and problematic for those businesses that are in this business and make their business giving credit reports, put this requirement on them, but not do the job that we needed to be done, to do what needs to be done if the industry that has to give these free reports is not done in a way in which they can maintain their business as well.

And I would like for you to address that in terms of how the benefits might outweigh the costs, and specifically if you could address Equifax's concerns.

Secretary SNOW. Well, Equifax is one, as I understand it, one of these three major credit bureaus that do such a good job of collecting this information and then making it available to credit issuers. And they play a very important part in all of this.

Today, under a variety of circumstances, free reports are available. We are expanding some upon requests. How many requests will be made? I don't know. Certainly, if you have been turned down for credit, you can get it free today. Or if you failed to get a job because of a financial credit report on you, you can get it free today. We would propose expanding it. The Bachus bill would propose expanding it as well.

I don't think on a cost-benefit basis, Congressman, this will fail to be advantageous to the credit bureaus, because they have such a stake in accurate information.

And what the free reports will do is give anybody who has got a question about his credit report a chance to go back and look at it, understand how it was created and then try and get it corrected. I know there is some concern among the reporting agencies that this will be unduly costly. I would hope they would look at the benefits they would get, because they have the biggest stake of anybody, next to the consumer himself, in making sure these reports accurate.

The CHAIRMAN. Gentleman's time has expired.

The Chair would announce there are two votes on the House floor. It would be my intention to recognize two more members for this panel, then dismiss this panel and reconvene at 1:00.

So we will now recognize the gentleman from California, Mr. Royce——

Mr. ROYCE. Thank you, Mr. Chairman.

The CHAIRMAN.——for four minutes, hopefully.

Mr. ROYCE. Appreciate that.

Welcome Secretary Snow. And I wanted to ask you specifically, I know from public statements that you and your team are studying the issue of government-sponsored enterprise regulatory reform.

Secretary SNOW. We are.

Mr. ROYCE. And with that in mind, I am not trying to get you to comment specifically on the topic before you all complete your study; however, I would like to know, in your view, what are the attributes of an effective world-class regulator in respect to GSE oversight.

Secretary SNOW. Well, Congressman, I think the attributes would be the ability to understand the risks in the enterprise, the ability to understand the business, a command of the facts of a business, a command of the facts with respect to the risks that the capital structure of a business poses, the ability to get at the information you would need to have to know that.

So transparency, disclosure, and as with all regulators, the ability to hold the attention of the regulatee, to bring sanctions for conduct that poses risks to the system, to the financial system. So ability to lay in credit standards, risk standards, capital standards, and then sanctions to see that the standards are observed.

Mr. ROYCE. The other question I was going to ask of you, I was pleased that the SEC recently approved the New York Stock Exchange and Nasdaq rules that require companies that are listed on those exchanges to obtain shareholder approval for stock compensation plans, for management or for their employees.

Do you see the need for additional compensation reform, or do you believe that the new corporate governance rules are sufficient to protect shareholders from potential excess in the system?

Secretary SNOW. Congressman, you are now speaking generally, corporate America, right?

Mr. ROYCE. About corporate America in general.

Secretary SNOW. Yes. I think the issue of corporate compensation ultimately has to be a critical priority for boards, and particularly compensation Committees, because ultimately they have to make these decisions on how to retain, how to attract and how to motivate senior management.

So I would not be in favor of highly prescriptive set of rules, but I would hold boards of directors, and particularly compensation Committees, to very high standards of conduct.

The CHAIRMAN. Gentleman's time has expired.

The gentleman from Kansas, Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Very quickly, Secretary Snow, the Administration proposal includes a direction to the FTC and bank regulators to make opt-out

notices for pre-screened credit officers simpler and easier to understand. And I really appreciate the Administration's position on that.

Several of my colleagues, and I recently wrote a letter to the regulators asking them to create a simple, understandable privacy notice. Would you agree that it might be—can you agree that it might make sense to have both of these in simple English that consumers could understand and have an understandable right to opt out in both areas?

Secretary SNOW. Congressman, I am all for plain English.

Mr. MOORE. And I am a lawyer. So am I.

Secretary SNOW. And we get too little of it, I think. So that people understand the rights and privileges that are being made available to them.

And I would be happy to look at what you have in mind, and give you my comments on it.

Mr. MOORE. Very good. We will do that. Thank you, Mr. Secretary.

The CHAIRMAN. I Thank the gentleman. The gentleman's time has expired.

Gentlemen, we most appreciate Mr. Secretary and Mr. Chairman for an excellent presentation, and the Committee stands in recess until 1:00 p.m., at which time we will take up the second panel.

[Recess.]

Mr. BACHUS. [Presiding.] I want to welcome you all back from the noon break.

At this time we are going to call the second panel. The Committee is meeting today, the Financial Services Committee, to hear testimony on H.R. 2622, which was introduced by Representative Hooley, Representative Biggert, Representative Moore and myself, and has 28 co-sponsors on the Committee: 14 Democrats and I think now 17 Republicans, so a balanced group.

I very much look forward to the testimony of our second panel. From left to right I want to identify the panelists. We have Mr. Mallory Duncan, Senior Vice President and General Counsel for the National Retail Federation; Mr. Michael F. McEneney, partner, Sidley Austin Brown & Wood. And you are testifying on behalf of the U.S. Chamber Of Commerce—we welcome you—Dr. William Spriggs, Executive Director of the National Urban League Institute for Opportunity and Equality; Mr. Stephen Brobeck, Executive Director, Consumer Federation of America; Mr. John C. Dugan, a partner in Covington & Burling, on behalf of the Financial Services Coordinating Council; and Mr. Stuart K. Pratt, President, Consumer Data Industry Association.

I want to welcome all of you gentlemen. We have no ladies on our second panel. So I want to welcome each of you all.

And at this time, Mr. Duncan, we will start with your testimony.

STATEMENT OF MALLORY DUNCAN, SENIOR VICE PRESIDENT, GENERAL COUNSEL, NATIONAL RETAIL FEDERATION

Mr. DUNCAN. Thank you, Mr. Chairman.

My name is Mallory Duncan. And I am testifying today on behalf of the National Retail Federation, where I serve as Senior Vice President and General Counsel. NRF is the world's largest retail

trade association. We greatly appreciate the opportunity to present our views on H.R. 2622, the FACT Act of 2003.

I would like to preface my discussion with a brief illustration of the credit underwriting process. The seven preemptions currently contained in the FCRA are the underpinnings of the modern credit granting system. If we have a clear understanding of the underwriting process, it is much easier to analyze the vital role of the policies contained in the FCRA.

For example, attached to my written testimony there are two simple revolving loan portfolio examples, each containing 100 loans of $1,000 a piece and each paid off within a year. One has an interest rate of 5 percent, the other a rate of 18 percent. If one loan in the 5 percent portfolio were to immediately default, whether because of identify theft, consumer bankruptcy or poor judgment on the part of the lender, it would take the interest payments from approximately 41 performing loans to compensate for that default. The credit granter can, if it has enough capital to make 41 new loans, and hope that they all perform, or the credit granter can live with a much lower rate of return.

If as few as three borrowers default, the credit granter is completely under water and will lose money even before facing the expense of maintaining those 97 other loans.

If one loan in the 18 percent portfolio defaults, it takes the interest from 12-plus performing loans to compensate for that one default. Even if that credit granter gets it exactly right 92 percent of the time, no matter how well those 92 other consumers pay their bills, the credit granter is in serious trouble. That is why retailers expend so much effort to get it right.

Now, the complicated part in my example occurs when trying to fit the maximum number of borrowers in that continue of rate between 5 and 18 percent while keeping defaults to a minimum. Anything that enhances this process is obvious consumer benefit. Since 1996, the seven preemptions of the FCRA has enabled retailers and other lenders at a national level to take advantage of the technological advances to serve their customers while greatly refining their ability to fit the borrower to the right rate.

Mr. Chairman, as you indicated, in effect, the FCRA and the 1996 amendment have created an interstate credit superhighway that has done an outstanding job of delivering unprecedented volume of credit more cheaply and more quickly to more people at all income levels.

Is the system perfect? No. There are bumps, potholes and accidents along the highway, but very few overall, and especially so given the magnitude of the system and the speed at which it operates.

It seems to us that the policy question today is how much do we want to impede credit traffic flow and increase costs for highway users in hopes of further reducing the number of accidents and bumps? We have reviewed the provisions of H.R. 2622 with this in mind, along with the criteria suggested by the Department of Treasury. And I would like to just briefly make a few comments there.

The NRF applauds the inclusions in H.R. 2622 of the critically important amendment that makes permanent the national uniform

standards under FCRA. The bill also includes a number of provisions to address specific scenarios that involve identity theft. For example, the bill imposes new obligations in connection with certain address changes, fraud alert and address discrepancies. The NRF supports efforts to address these issues and looks forward to working with the Committee to functionally strengthen these proposals.

A common theme of our recommendations to these provisions centers on maintaining flexibility to address these potential identity theft scenarios. In particular, we are concerned, as you mentioned, that if the methods for addressing identity theft are rigidly specified in the bill, credit granters will be forced to devote resources to complying with those methods, even if they become ineffective or if more efficient alternatives become available.

Therefore, we recommend that the bill maintain its approach of specifying a particular method for addressing each potential identify theft problem, but also include new provisions that would enable credit granters to develop reasonable alternatives with guidance from the federal agencies. This is the approach taken in the USA PATRIOT Act, Section 326, designed to combat terrorism, at least as important a problem.

In short, we need to maintain the flexibility to change our method as rapidly as the criminals change their scheme.

Now, some examples where the bill would benefit from this approach include the provisions for investigation of change of addresses and those governing conflicts where consumer fraud is present. Retailers are particularly concerned if the bill's provisions do not inadvertently frustrate consumer's ability to use their existing accounts or open up the opportunity for unscrupulous credit people to manipulate the system, to the detriment of millions of honest consumers. We submitted suggestions to the Committee and look forward to working with them on this very important issue.

In closing, I would like to emphasize the retail industry's strong support for permanent reauthorization of the seven areas of preemption contained in Section 624. Without the extension of nearly uniform national standards, it would be harder to judge with any confidence the credit worthiness of each individual. It would slow the credit process and lending rates would rise. Consumers have come to expect instant access to credit when purchasing everything from automobiles to consumer goods, such as furniture, appliances and apparel.

In the final analysis, we in the retail industry have a real concern that a more fragmented approval process for credit underwriting would negatively impact consumers and, as a consequence, retail sales, ultimately costing jobs and hurting the economy as a whole.

Thank you again for this opportunity. Be happy to answer any questions.

[The prepared statement of Mallory Duncan can be found on page 148 in the appendix.]

Mr. BACHUS. Thank you, Mr. Duncan; and Mr. McEneney?

STATEMENT OF MICHAEL MCENENEY, PARTNER, SIDLEY AUSTIN BROWN & WOODS LLP, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. MCENENEY. Thank you, Mr. Chairman and members of the Committee.

My name is Mike McEneney, and I am a Partner at the law firm of Sidley, Austin Brown & Wood.

I am pleased to have the opportunity to appear before you today on behalf of the U.S. Chamber of Commerce. I would like to commend the members of the Committee for their efforts to protect the security of consumers' personal information and ensure access to credit at low cost. I would like to commend the sponsors of H.R. 2622 for their leadership in crafting an important foundation for addressing identity theft and FCRA issues.

The FCRA and its national uniform standards have provided a robust framework for the most advanced consumer credit and insurance markets in the world. Indeed, the benefits of the FCRA were highlighted in a recent information policy institute study, which found that the national uniform standards established by the FCRA have contributed significantly to the consumer benefits of the current credit marketplace.

The study concluded that the loss of the existing framework of uniformity would threaten the current consumer benefits and that Congressional action is necessary to ensure the continuity of our national standards.

We applaud the sponsors of H.R. 2622 for taking such action. The national standards established by the FCRA are also an important component of protecting the security of consumers' personal information. For example, the national uniform provision under the FCRA ensure that financial institutions can have access to reliable credit report information for identity verification and other identity-theft prevention measures.

Although renewal of the FCRA national standards is an important step, we agree with the Committee that more can be done. The proposal legislation includes provisions to address a number of potential scenarios involving identity theft. The Chamber strongly supports efforts to address these important issues and appreciates the opportunity to provide comments on the legislation.

In general, we believe that there is a common theme that may be helpful in guiding consideration of provisions to combat identity theft. In particular, as Secretary Snow mentioned earlier, the methods used to address potential identity-theft scenarios should be flexible, allowing companies to utilize the most efficient means to thwart identity thieves.

We believe that this goal is embodied in several provisions in the bill. For example, the legislation includes a provision requiring federal banking agencies to develop so-called red flags for use in detecting identity theft. This provision relies inherently on recognition that a one-size-fits-all approach may not work.

The red flags presented by identity thieves will invariably change over time, and the tools used to combat the thieves should change as well. The legislation takes important steps in the direction of providing this flexibility, and we hope that this theme can be further explored.

The bill also addresses the important issue of a consumer's ability to access his or her credit report. The Chamber welcomes consideration of how to make credit reports more available to consumers.

We believe, however, that this issue requires careful study before next steps are taken. In particular, there should be a full examination of the cost associated with a free report in order to ensure that there are no unintended consequences, particularly for consumers.

Moreover, the frequency and volume of demand for free reports will be difficult, if not impossible, to predict since a widely circulated press report or e-mail could drive extremely high volumes in short periods of time. Given the inherent unpredictability, it is unclear how credit report companies would be in a position to adequately manage this problem. For example, even the most basic issues, like establishing adequate staffing levels, are difficult to address when you cannot predict the volume of the demand.

The Chamber is pleased that the bill includes the provision that would make it clear that companies can conduct investigations of wrongdoing in the workplace without the inappropriate application of the FCRA. Because of the difficulties in conducting an investigation while complying with the FCRA's requirement, the FTC interpretation on this issue deters employers from using experienced and objective outside organizations to investigate workplace misconduct.

While the FTC's interpretation affects all businesses, it is particularly damaging to small and medium businesses that do not have in-house resources to conduct these investigations themselves.

Once again, I would like to commend the Committee for its efforts to maintain the consumer benefits of our current financial marketplace, while also protecting the security of consumers' personal information.

The Chamber looks forward to working with the members of the Committee as the legislation moves forward, and I thank you again for the opportunity to appear before you today. I would be happy to answer any question you may have.

[The prepared statement of Michael F. McEneney can be found on page 195 in the appendix.]

Mr. BACHUS. Thank you, McEneney. And Dr. Spriggs, we welcome your testimony.

STATEMENT OF WILLIAM SPRIGGS, EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE INSTITUTE FOR OPPORTUNITY AND EQUALITY

Mr. SPRIGGS. Thank you, Mr. Chairman. My name is William Spriggs. I am the Executive Director for the National Urban League's Institute for Opportunity and Equality.

The National Urban League is the nation's oldest and largest community-based organization dedicated to moving African-Americans to the economic mainstream.

We are very encouraged by the language in H.R. 2622 that seeks to ensure that consumers can get a summary of their credit score and information on how it was derived so that the score can be approved.

We applaud the Committee for that step. And I was very encouraged by your comments earlier in the first panel that you also meant the credit score to be available along with the credit report.

We would like to see the Committee go one step further, however. Credit scores have now dominated the way in which home mortgages are made. Home mortgage is, of course, important to home ownership, and home ownership is at a record level in the United States.

While 75 percent of white non-Hispanic households are home owners, for African-Americans that is only 47.7 percent, and for Hispanics it is 46.7 percent.

Part of that differential seems to be a persistent gap in access to home mortgage, and the loan denial ratio unfortunately has stayed constant for African-Americans, at around 2 to 1, and for Hispanics at 1.5 to 1, compared to whites, this despite the fact that in 1995 there was a mushrooming of the use of credit scores.

Many people believe that credit denial took the form of differential treatment using credit scores everyone is now convinced has not just been for differential treatment, but we must remain on guard for differential impact.

So it is not just access to the scores; it is access for the Committee and for the FTC and for the American citizens, and to understanding the accuracy—not just the tendency, not just the averages, but the accuracy of the scores themselves.

We need to have transparency of the score creation in the same way that we have transparency with HMDA data. This has allowed us to look behind the veil at how home mortgages are done. We need to be able to look behind the veil of the credit scores, as well.

Now, the credit scores is a statistical thing, and it is subject to all sorts of statistical problems. I just want to mention a few of them. They really aren't race-specific, they really deal with consumers.

You have had a series of reports presented to you on levels of accuracy. All statistical models assume that the data is accurate. It is very difficult to deal with statistical models when you start with data that has measurement error in it.

It is important for outside researchers, it is important for Congress, it is important for the FTC to understand how the scoring industry treats this measure and error, because how that gets treated is very important as to whether there would be an introduction of bias into the system.

Missing data. You have also heard information presented to you at other hearings that for a number of reasons, either credit card information, or sub-prime loans in the mortgage industry, don't get reported to the credit bureau.

So how does the industry handle missing data? Again, there can be a great introduction of bias when it comes to what is the way in which missing data is handled.

Finally, there are omitted variables, variables that you would imagine ought to be in the model, things like employment, things like even regional variations in terms of the economy's performance.

But they aren't in the model. And it is not possible for us to understand, for instance, if there is a slow-down in manufacturing in Illinois, as an example.

Are those workers' credit records really the same if they fall behind as an employed worker living in northern Virginia, where the unemployment rate is 0.1 percent, who falls behind?

Do they really present the same credit risk if we are looking forward? Probably not. But the way that the scores get treated if we don't understand the model means that we could have unexpected differences in credit scoring across the country that are unintended. But we need to be able to have access to that information.

Now, what is the importance here, as people would say that the credit scores now allow people to get credit? But it is credit at different prices. So accuracy matters. Just yesterday, when I was preparing, I looked at the Fair Isaac Web page. The difference between a 699 score, which is a decent credit score, not great, and 720 would be 0.66 points on your mortgage. That is enough everybody here would rush out and refinance their mortgage over 0.66. That is just 21 points different in your credit score.

So it is really important that the FTC, that Congress, that government have access, bring some sunshine to these models, and then provide us with a report card so that consumers, so that regulators have a better understanding of what has been going on.

In that respect, we have a series of things we would like to see the FTC report in this report card. We want to make sure that there isn't a disparate impact of the credit scores, and we have not liked the information that has been provided so far on that.

The issue isn't average tendencies, it is not just that, yes, the models will predict equally well the average tendency for default rates, it is the mean prediction error. Is it the same for all subgroups? And if it is not, why models have been considered, which ones ended up on the cutting room floor, which ones ended up being the models that were used? And if we look at the mean prediction error of those models by subgroup, is it possible that some of the scoring methods that aren't used were better for some subgroups? We need to have that information.

We need to have information on how errors were handled. We need information on the relative performance of the models that were rejected but not accepted. All of that needs to be in place so that we can understand what is going on.

The day has now changed. Getting your credit report doesn't tell you anything anymore. This credit explosion is really the result of the ability to use credit scores. And the credit information industry has in many ways now moved beyond the legislation. So giving information to consumers on what is on your credit report doesn't give them what they need. They need the credit score, and then we need the information on the accuracy of those credit score models.

And I will be happy to answer any questions.

[The prepared statement of William E. Spriggs can be found on page 248 in the appendix.]

Mr. BACHUS. Thank you.

Mr. Brobeck?

STATEMENT OF STEPHEN BROBECK, EXECUTIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. BROBECK. Thank you, Mr. Chairman.

Mr. name is Stephen Brobeck. I am Executive Director of the Consumer Federation of America. And my testimony today is on behalf of my own organization and Acorn, Center for Community Change, Consumer Action, Consumers Union, U.S. PIRG, and the low-income clients of the National Consumer Law Center.

At the outset, we want to commend the Committee for holding the comprehensive series of hearings on the Fair Credit Reporting Act. These hearings have established the huge and growing influence of credit reporting in the lives of Americans related to consumer access to affordable credit, insurance, rental housing, utilities and even to employment; to consumer vulnerability to socially unacceptable invasions of privacy involving medical information, as well as financial information; and to consumer vulnerability to the horrific experience of identity fraud.

The extent, frequency and severity of problems in these areas, well documented in your hearings, must never be forgotten in seeking solutions that are considered by financial services providers to be inconvenient or even somewhat disruptive.

At the outset we also want to commend you and other sponsors of H.R. 2622 for including in your legislation important new consumer protections. For example, there is no question that measures designed to curb identity theft would reduce its incidence. While we believe these measures need to be strengthened, they would require credit bureaus and lenders to make more serious efforts to reduce this theft.

Similarly, the requirement that bureaus make available a free credit report annually would increase the ability of consumers to detect and correct errors.

While we believe more adequate government regulation of bureaus and lenders is also needed, the greater involvement of consumers in what is largely a self-regulated system would ensure a more accurate, fairer system that would benefit lenders in the long run, as well as consumers.

We also believe, however, that these protections could be improved in ways outlined in our written testimony that would further reduce abuses against consumers while not imposing unreasonable burdens on credit bureaus and lenders.

Let me give just two examples. It is not enough to give adversely impacted consumers free access to their credit reports and scores through credit bureaus. It would not only greatly increase consumer access to the actual reports used by lenders, but would actually ease the burden on credit bureaus if lenders were required to provide to adversely impacted credit applicants the merged files and scores that served as the basis for their decisions.

Typically in the purchase of mortgage and installment loans, this would require nothing more than a loan officer handing to the applicant a copy of the file. In most cases, they would probably also help explain this file, urge the applicant to check for errors, explain how to correct any errors and perhaps even assist in this correction. After all, lenders would prefer to make, not deny, loans.

Second, consumer remedies against inaccuracies and abuse need to be more effective. Certainly, regulators need to be given more responsibility and authority for addressing credit reporting abuses against consumers, but they cannot conceivably resolve more than a small fraction of individual problems. It is also essential to empower consumers to resolve their won legitimate grievances. That could be largely accomplished by giving them the ability to seek first, minimum statutory penalties of, say, $100 to $1,000 per violation and, second, injunctive relief to stop reporting agencies from spreading false information.

In our opinion, however, the greatest weakness of H.R. 2622 is its permanent limiting of the ability of states to pass needed protections. The states need this ability to address regional concerns, to respond quickly to new credit reporting problems, and to experiment with protections not contained in federal law. Any increase in efficiency, whose claims we believe to be wildly exaggerated by credit bureaus and lenders, is a small price to pay for the many benefits of the ability of states to remedy abuses. And we do not understand why the legislation would also make preemption permanent when it directs agencies to undertake studies that are intended to examine problems and remedies.

At the very least, the preemption should be sun-setted shortly after the completion of these studies. Principally for this reason, we cannot endorse H.R. 2622 despite its many merits, but we would urge its sponsors, as well as all members of this Committee, to reconsider this provision as well as the others that were the subject of our written testimony.

In conclusion, because both industry and consumer groups basically support the passage of legislation, Congress has an historic opportunity to reduce serious and growing abuses in the credit reporting system. It may not have this chance for many years to come.

Thank you for the opportunity to provide this testimony.

[The prepared statement of Stephen Brobeck can be found on page 119 in the appendix.]

Mr. BACHUS. Thank you, Mr. Brobeck.

Mr. Dugan?

STATEMENT OF JOHN DUGAN, PARTNER, COVINGTON AND BURLING, ON BEHALF OF THE FINANCIAL SERVICES COORDINATING COUNCIL

Mr. DUGAN. Thank you, Mr. Chairman.

My name is John Dugan. I am a Partner with the law firm of Covington and Burling. I am testifying today on behalf of the Financial Services Coordinating Council, the FSCC, whose members are the American Bankers Association, the American Council of Life Insurers, the American Insurance Association, and the Securities Industry Association. These organizations represent thousands of large and small banks, insurance companies and securities firms that, taken together, provide financial services to virtually every household in America.

The FSCC strongly support H.R. 2622, which renews and strengthens the Fair Credit Reporting Act. We believe its core provisions strike the right balance in preserving the FCRA's uni-

formed national standards in adding strong new provisions to deter and remedy identity theft. Our member trade associations pledge to work hard for the enactment of this critical yet measured approach to FCRA reauthorization.

While the FSCC recognizes that the legislation is still a work in progress, we believe it is imperative that it retains this balanced approach throughout the legislative process.

For example, we would strongly oppose addition of the types of restrictions, however well intended, that would substantially increase consumer costs without commensurate consumer benefits, or ones that would deter financial institutions from making the type of full and voluntary information submissions to credit bureaus that they do now. At the same time the bill's provision should preserve adequate flexibility for the industry to address legitimate concerns in the most efficient manner possible.

In addition, our members have technical concerns with some of the bill's provisions that we hope can be addressed. Let me now provide detail about each of these points.

Title 1 of H.R. 2622 makes permanent the uniform national standards that underpin the FCRA. These standards make our extraordinary credit insurance markets truly national, which, in turn, have brought unprecedented benefits to Americans throughout the country. By virtually any measure, the 7-year experiment with uniform national standards has been a resounding success, stirring strong industry competition that has resulted in, among other things, more and cheaper consumer credit and insurance, a wider variety of consumer products and, most fundamentally, economic growth.

By improving the performance of the entire market, as described in more detail in my written statement, FCRA's uniform national standards have lowered the cost of credit and increased the numbers of Americans who qualify for credit.

Accordingly, the lynch pin of the FSCC's strong support of H.R. 2622 is the permanent extension of all of the FCRA's core uniform national standards.

Let me now turn to identity-theft provisions and other key provisions in the bill.

Stopping identity theft before it occurs and resolving those unfortunate cases that do occur is of utmost importance to the financial services industry. As technology and the Internet have made more information readily available, financial institutions have redoubled efforts to help educate consumers about how to prevent and resolve cases of identity theft.

That said, the financial services industry has no illusions about the enormity of this problem. The FSCC fully appreciates why the Committee is now considering the identity-theft provisions in this bill, which are woven through the fabric of most of the title.

In addition, several of the bill's provisions provide consumers with greater access to credit report information and address related consumer protection provisions.

Before commenting on these provisions that affect our financial institution members most directly, let me note that many of the bill's other provisions impose new responsibilities on consumer reporting agencies. While the indirect effect of these credit bureau

provisions could result in significant new costs for our members, we believe the credit bureaus themselves, who are also testifying here today, are in the best position to address practical issues or concerns that are raised by such provision. We do implore the Committee, however, to recognize that none of these provisions, however beneficial to particular consumers, comes without cost. And these new costs must ultimately be borne by consumers.

The FSCC believes that, before taking action on any of these credit bureau provisions, the Committee should weigh carefully the expected all-end cost to consumers as well as expected benefits because, in some cases, the ultimate consumer cost may, in fact, be quite substantial.

Section 201 includes specific statutory procedures that require a credit card issue or that receives a request for an additional credit card within 30 days after receiving a notice of a change in address to notify the cardholder of the request. While FSCC supports the intent of this provision, one possible improvement would be to delegate greater authority to the Federal Reserve to craft regulations to address the problem, which could be adapted to changing circumstances over times much more easily than could specific standards codified in statute.

Section 202 addresses fraud alerts, which the FSCC agrees are a critical tool for containing the magnitude of losses caused by identity theft. We believe the provision should be clarified, however, so that once a fraud alert is placed in a file, it does not require separate authorization each and every time a consumer uses a credit card, which we think would be unworkable.

Instead the provision should apply to the making of a new loan or a new credit account. Further clarification would also be useful regarding the duration of the fraud alert.

The FSCC also supports Sections 203, requiring truncation of credit and debit card numbers, and 206 requiring regulators to issue red flag guidelines to identify possible identity theft.

In connection with the guidelines, however, the provision should be modified so as not to duplicate the account opening requirements imposed by the banking regulators under the USA PATRIOT Act.

The FSCC also supports Section 301, regarding coordination of consumer complaint mechanisms, and Section 303, which requires a study of investigations of disputed consumer information.

In both cases, we would urge more direct coordination and cooperation between the Federal Trade Commission and the federal banking regulators, and with respect to the study, we believe the financial services industry should be provided the opportunity to provide input before it is finalized.

Finally, Section 402 would prevent furnishers from providing information to a credit bureau where the furnisher knows or has reason to believe that the information resulted from fraudulent activity.

The FSCC remains concerned that the reason-to-believe standard, while seemingly sensible, would in fact be triggered too easily in some circumstances where a financial institution was truly acting in good faith.

We believe that is not the Committee's intent, and we hope to work with you and your staff in the coming week to see if there is an appropriate way to address this concern.

Indeed, since our credit reporting system depends on voluntary submissions of information to credit bureaus, it would be counterproductive to impose restrictions on furnishers that would make them more reluctant to provide information in the first instance.

As described at the outset, our hope is to provide additional comments on provisions in the bill as it proceeds to its first markup. Again, the thrust of our comments will be to preserve adequate flexibility for provisions to adapt over time to changing circumstances, to weigh carefully potential costs, as well as potential benefits, and to preserve the incentives for information furnishers to voluntarily provide full information to credit bureaus.

And with that, thank you very much.

[The prepared statement of John C. Dugan can be found on page 135 in the appendix.]

Mr. BACHUS. Thank you. At this time, Mr. Pratt, actually as our witness representing the credit bureaus, and I hate to segment that testimony, but Mr. Pratt, you all have sort of been singled out for a lot of——

[Laughter.]

A lot of the burden of this legislation is going to fall on the credit bureaus. And, in fact, I think we are pretty far, pretty close to the line, if we are not over the line, on you being able to handle that burden.

But we do have votes on the floor, we have about three and a half minutes left, so we are going to dismiss the hearing at this time. we will come back and we will hear your testimony, and then we will have questions.

So at this time we are recessed, hopefully for about, let us just say until 2:15 p.m. Thank you.

[Recess.]

Mr. BACHUS. We welcome the second panel back.

And at this time we will hear the testimony from Mr. Stuart Pratt, who is the President of the Consumer Data Industry Association; to most people that means the credit bureaus. And as I said before the break, many of the burdens and requirements are going to fall quite heavily on the credit bureaus, and I know that there is quite a bit of concern there. So we recognize you for your testimony, Mr. Pratt.

STATEMENT OF STUART PRATT, PRESIDENT, CONSUMER DATA INDUSTRY ASSOCIATION

Mr. PRATT. Mr. Chairman, Ranking Member Frank and members of the Committee, thank you for this opportunity to testify before you today on the subject of H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.

For the record, I am Stuart Pratt, and I am President and CEO of the Consumer Data Industry Association. And Mr. Chairman, as you indicated, we do our represent what are sometimes called the big three consumer credit reporting systems in this country. We represent all of the major check acceptance system, all of the major mortgage reporting systems in this country as well. So a lot of dif-

ferent companies involved in this consumer credit marketplace, providing the information that has been in large part the subject of the many hearings that you held over the course of June. That was quite a marathon.

We join with everyone else who has applauded you and the Committee at large and those who have sponsored the bill for the introduction of H.R. 2622, and in particular for Title 1, Section 101, which does reauthorize and make permanent the national uniformed standards which are so essential to the continued success of our nation's economy.

Reauthorizing and making permanent these standards under FCRA ensures that consumers can continue to enjoy $30 billion in additional disposable income per year, due to increased competition and due to the availability of credit that we see today in the marketplace.

Your bill also looks at and takes a serious look at the question of identity theft. And we agree with many other panelists that identity theft is a serious problem. It is one that requires serious solutions. And we applaud a number of the ideas that are provided for in the FACT Act, including the idea that fraud alerts can be an excellent deterrence. We agree with that. Our members do administer fraud alerts, and we see value in that being codified on a go-forward basis.

We do believe, like others, that the fraud alerts should be time limited on the file, because they should operate more like a red flag. They should operate during a period of time when there is a heightened sense of urgency, of concern. If they stay on the file in perpetuity, we begin to have a cry-wolf kind of effect, where they stay on forever and eventually a lender has to try to pull apart the wheat and the chaff, and that becomes progressively more difficult. So we suggest that there is a time limitation for fraud alerts if they are to remain on the file.

You suggest a summary of rights for consumers relating to, candidly, some of the changes you are making in this act and also relating to the Fair Credit Reporting Act and other acts as well. Consumer reporting agencies are always willing to deliver the right notices to consumers that explain their rights under, particularly the FCRA.

Some of the other statutes that were cited simply are not statutes that regulate us. If consumers were to receive a notice from us about those laws, our consumer relations folks just wouldn't know how to answer questions about those.

I think some of that may be covered under the FTC ID theft clearinghouse and the fact that they, too, provide a great deal of information. That might be a better solution for how some of the notices are delivered.

Blocking information with police reports, I think, is a good idea. It is one that we can effectuate for the national credit reporting systems in our marketplace. It is an idea that works well for that type of consumer reporting system. You will find throughout our testimony and throughout our work with the Committee, there are times where consumer reporting agencies of various types don't fit as well with one duty or another duty. And that these duties will

have to be custom fit to the type of consumer reporting agency that we really want to focus on.

Coordination of consumer complaint investigations in Section 301, again, makes sense for nationwide consumer reporting agencies. It allows us to allow a consumer to make a single phone call and to have fraud alert information, if you will, transferred between other nationwide agencies.

Your bill does have some proposals in it. The bill does suggest some things that we want to visit with you about here today in the time I have remaining. In particular, two items under Section 5, Sections 501 and 501, propose free reports for consumers and a score disclosure requirement of sorts for consumers, as well. And I think there has been some discussion today of the intentions of that provision relative to scores. And let me just share a few thoughts on each one.

Free reports are provided widely today. In fact, 16 million free file disclosures are given every year in this country. The 1996 amendments to FCRA did address free file disclosures for a wide range of consumers who had particular need. And we think that that was the balance that was necessary then, and we think that is roughly the balance that is necessary now.

That law, in our mind, is working very well because, again, 16 million consumers every year are getting their files for free. The vast majority get it free of charge. Very few consumers seem to be harmed or impaired by the way the act is operating in that area.

Score disclosure concerns us because in fact, we don't own many of the scores that I guess consumers think we have or that others think we have. And in fact, in many cases, we would have to purchase scores from others if score disclosure was to take place. And that is one of the points of confusion.

That, plus in our testimony we do offer some context for how the marketplace seems to be providing consumers quite frequently to scores, access to advice, access to how scores are analyzed, credit history information and so on and so forth.

So you will find us looking forward to continue to work with you on the file disclosure issues, the score disclosure issues. And we applaud the fact that this bill does, again, make permanent and reauthorize those national standards under the FCRA. And we thank you for the opportunity to testify here today.

[The prepared statement of Stuart K. Pratt can be found on page 224 in the appendix.]

Mr. BACHUS. Why, thank you.

With that, we will go to questioning. And I think my first question will be actually to you, Mr. Pratt. What I think Title 5 of the bill says is that if you have those credit scores, you disclose them. So, you know, if you have them, you would be required to disclose them. Obviously, I don't think we can require you to disclose something you don't have. That would be my interpretation.

We have heard from your members about their concerns about the cost of providing the free credit reports.

And I think, as you have said, the present law requires a broad range of free credit reports: people that have been denied credit, been denied a job, several other exceptions. Do you have any idea

how much it would cost to supply these reports? And what if they were done online? What are some provisions?

Mr. PRATT. Two questions: Let me break that down, if I may, Mr. Chairman. We are still trying to run the numbers based on a whole range of factors that we tried to outline here in our testimony, but let me go through some of those. Some of the factors are simply the fact that if free is free for everyone, National Media could create spikes of activity. By parallel example, today even with the opt-out number we use for prescreened offers of credit, an e-mail circulates every year. During any given year, the opt-rate spikes by as much as fourfold from what it is today.

We estimate that we might have as much as a fourfold increase in files disclosed for a range of reasons. Security breeches, which we have discussed in a hearing that, in fact, you co-chaired earlier this year. We talked about the fact that a single security breech cost our members each respectively about $1.5 million. I think we are approaching numbers that are a quarter of a billion dollars in incremental cost increase for the cost of file disclosures.

Mr. BACHUS. How much?

Mr. PRATT. A quarter of a billion.

Mr. BACHUS. A quarter of a billion? Okay.

Mr. PRATT. And that is based on the information I have. I have been visiting with the CEOs of the major systems. And this is based on what we know are the unit costs for disclosure and the estimated number of disputes that would follow and the servicing and the requirements of law that we know that we must comply with today. And it doesn't entirely allow us—even that doesn't really tell us whether we are going to be successful.

If, for example, we have a rush of consumers who decide to make a phone call, and you can look at the parallel of the numbers of folks who have been trying to us the new FTC Do Not Call List——

Mr. BACHUS. Of course, that was a one-time——

Mr. PRATT. It was. And candidly, I guess, the question is, how often will we have that sort of one-time event to occur over and over again?

Mr. BACHUS. But maybe we could build something into the legislation to——

Mr. PRATT. Maybe so. Those are the kinds of issues I think our members—we are not trying to be arbitrarily against access. We are all for access of files.

Mr. BACHUS. You have been very cooperative. Your industry has been very cooperative in working with us on this legislation.

Mr. PRATT. To your other question, certainly delivery online is going to be vastly less expensive than the production of paper.

Mr. BACHUS. But would that hurt you competitively? For instance, if you could get that information online, some of the people that you now sell reports to, institutions, could they not go online and get those reports? Is there a danger of that?

Mr. PRATT. You know, that is a good question. I don't know. I suppose large institutions tend to have very high-tech hookups between the national systems that are highly secured and encrypted. And I don't know that would happen.

Absolutely, some smaller institutions would probably think that maybe pulling a free file disclosure would be the way to go, and

that would be perfectly fine for their credit lending purpose. And so, yes, that could poach on traditional business. That kind of idea would poach on the current, direct to consumer marketplace, and some companies estimate tens of millions of dollars in lawsuits from that as well.

Mr. BACHUS. Right.

Mr. Dugan, I think, you and Mr. McEneney have both mentioned idea of not too rigid of standards, flexibility built into the system. And I believe that is going to be a key to being able to modernize and keep up with the criminals in ID theft cases. I think if we adopt too rigid of standards, we really put our law enforcement efforts and our efforts to identify these people in a straight jacket.

And as you know, we have just addressed check truncation in this Congress, this session, even though the marketplace has probably been there for 20 years. So it is sometimes not encouraging how long it might get around to us if we put something in concrete, it might actually inhibit efforts.

Mr. DUGAN. Well, that is exactly our concern, Mr. Chairman.

And we know that in the provision that does the red flag guidelines, that does have quite a bit of flexibility and vision that you are not trying to proscribe those things at once. It will have to evolve, and you have given authority to the regulators to do that. That is the kind of thing in some places that we think is a useful way to look at things.

Mr. BACHUS. Your testimony, I think, has been very helpful in identifying areas that we need to address.

You all have followed the hearing and where we are going on this, and we do get suggestions for provisions on almost a daily basis.

It might help one consumer in a particular circumstance, but when we run that down and we balance it, we find that the end result of that would be shutting down our national uniform credit reporting system as we know it now today.

And that would have a detriment on literally millions of consumers each day. In an earlier panel, and I think someone that needs bearing in mind, is that today in America you can walk in and you can get a car loan in an hour, or thirty minutes.

You can get credit extended in a matter of 30 seconds. In countries, in Europe particularly, where they have much more stringent requirements, credit availability, particularly to low-and middle-income citizens, is simply not there like it is here.

If it is there, it is at a much greater cost, and they may be able to get credit, but the result may be at a 1 or 2 additional percentage differences.

So we certainly want to establish some meaningful standards, but give the regulators, the financial institutions and even the credit bureaus flexibility to address these issues. One thing that I think we have seen from these hearings is the you all are very motivated to address these issues because they affect you, too.

Even when we have had our two identity theft witnesses, both said they had lost over $40,000. Now, when they said that actually a credit card company in both cases took 90 percent of the actually that $40,000 of bad charges, the credit card companies took those hits.

Now, they did have quite a considerable expense. It was a nightmare situation for them. But everybody took a hit. I mean, the institutions took a hit, the credit card companies took a hit, and they took a hit, so there is quite a bit of identity of interest there.

So I think that as we go forward you can help us to refine this approach, and then I would hope that we would maintain flexibility.

At this time, we recognize Mr. Frank.

Mr. FRANK. Thank you.

Mr. BACHUS. I was hoping to recognize you before you were prepared to go home.

Mr. FRANK. That is okay. I was going to defer, I was going to be outside, but I will be quickly here. To Mr. Brobeck, and I apologize for not being able hear all the testimony, but I have made a point of reading it.

You address, what seems to me to be the biggest current weakness of the system now, which I believe generally works well. But there does seem to be this weakness.

You talk about the failure to guarantee the accuracy of credit reports. Now, the knowledge I have gotten from both from reading and talking is that people acknowledge that there are situations where you the consumer learn that there is inaccurate information about you. And one of the good things about the bill, and there is a great agreement that we should give the consumer more information, so as a result the consumer is likely to be able to discover that there was inaccurate information.

The problem then comes is, okay, well, what can you do about it? And I am beginning to think in some of these cases from the peace of mind of the consumer she might be better off not knowing, because in some cases she just can't do anything about it.

And I am told that there are situations in which you the consumer learn, and I am working with the gentleman from New York and others, make the going even more quickly, that there is some inaccurate information about you, but that there are really no adequate means for you to combat that in every case.

That is, you can contest it, as I understand it, you contest it to the consumer reporting agency, and you can submit a lot of documentation, and the consumer reporting agency individual may have literally only a few minutes to review your information, then sends a two-letter code to, in some cases, the furnisher of the information. I must say, as I thought about that, various combinations of two letters came to mind to describe what was happening, but, then the credit furnisher, in effect, checks his or her own arithmetic and spelling.

And if the credit furnisher determines that, yes, I did tell the credit reporting agency that, that is considered to be the reinvestigation, and that is where we stand.

Now, and I am told that in many cases the credit reporting agency will then accommodate the consumer by accompanying the negative information with the consumer saying, it ain't so.

Am I correct that there is not now in the system a way for you to document the inaccuracy and to show that even though they may have correctly reported what they had reported, that the un-

derlying data was incorrect? And if that is true, what can we do? What is a way to break out of that?

As I said, I think it probably occurs in a fairly small percentage of the cases. But I would say to those on the industry side, the smaller the number of cases, the less you have to worry about it. The less the burden ought to be. But it just is unacceptable to say that the few individuals—of course, a few when you cover the whole country is tens of thousands, hundreds of thousands—won't have to pay that burden.

So, Mr. Brobeck, am I accurate in the facts? And what do we do about it?

Mr. BROBECK. Certainly, there are inaccuracies that are detected in a small minority of cases. We would argue that there are a number of inaccuracies that adversely affect consumers, who purchase sub-prime mortgages, other sub-prime loans, or are denied credit, who are not aware of these inaccuracies. And that that number is far larger than the number——

Mr. FRANK. Right. We now understand. With credit, it is not just either-or, but more-or-less, and that it has been a conceptual view that credit was an either-or situation, but we are now into a more-or-less situation.

Mr. BROBECK. So there is no question there is a minority, but we think it is a larger minority than most people assume currently. And it is true that even the minority have trouble getting redress. So how do we fix the problem?

Well, there is no magic bullet. One way is a combination to give everybody the ability to access their credit report for free and if they find, in fact, that there are a large number of errors, that will basically create a pressure group for the industry to fix the problem. And if they don't, we will be back here in 7 years.

It comes down to, they have to make a sufficient commitment. That is to say, you have got to require them to do certain things, including spending enough money to correct any inaccuracies. We have heard estimates of what seems to me to be far too large an expenditure, but even that $250 million suffers in comparison with the tens of billions of dollars——

Mr. FRANK. What is his number, $250 million?

Mr. BROBECK. It is $250 million to basically provide everybody with a free credit report. I can't believe that——

Mr. FRANK. In the context of all the great good that this does for the country, after all, the economy in the United States is, apparently, from what I read, substantially dependent on this. What was the gross domestic product? What percentage of the gross domestic product is $250 million? It seems to me we are talking about rounding errors.

Mr. BROBECK. Some mountain track will be socialized throughout the systems, and all lenders will pay a little bit. And then, consumers will end up paying a little bit. And nobody will really feel the difference.

So even if it is high, it is $250 million, always keep in mind the cost of tens of billions that consumers——

Mr. FRANK. I understand, but I really want to focus.

Are there things we can do in this bill that would mandate a better performance in the collection process?

Mr. BROBECK. Yes. Consumers need better, stronger individual remedies. And we would recommend a couple here.

They need the ability to obtain injunctive relief. And instead of having to prove that there are damages, there should be statutory violations of relatively small amounts, $100 to $1,000, that would act as an important deterrent to the repositories and the lenders.

Mr. FRANK. Let me ask you. This would have to be in federal court. Right? Because this is a totally federal operation.

Mr. BROBECK. I am not certain.

Mr. FRANK. Part of the problem is that we don't have jurisdiction over the remedies. I almost wish we could create sort of a small claims court to deal with this. Because this is really what we are talking about. And that may frustrate us to some extent because the Committee on Judiciary would have jurisdiction over some of the remedies.

But I would be interested, from you or anyone else, and that includes people in the industry. Remember, I want suggestions for how to fix this. If the suggestions for how to fix it only come from the consumer groups, then the industry is going to say they are too harsh. So the way to deal with that is to send me your solution.

But I will fight very hard against allowing this bill to go forward if we don't do something to improve the ability of consumers to deal with this. We are doing a lot in the bill, I believe, and will do a lot better to inform consumers about the inaccuracies. And I don't think the inaccuracies are rife, but I do think that we need to tell people.

We give incentives. You give incentives for people to get the data a little bit right in the first place.

So I agree with you. This is the cost which when socialized throughout the entire economy, is bearable. And I would be welcoming of any specifics about how we improve the process by which corrections are made.

I don't know of any other place where I have been involved as a public official where I have been told, well, you have to tell people that the answer is "tough," that in the interest of the old system, there may be some inaccuracy about them, and there really isn't any way that they are going to be able to prove that it is an inaccuracy. But we will manage to tell people that they think it is inaccurate.

I would not be content for it to rest that way.

Thank you, Mr. Chairman.

Mr. DUNCAN. Congressman, may I take a quick stab at that?

Mr. FRANK. Yes, sir.

Mr. DUNCAN. And that is if you look at the bill, there are really three things going on, the current and the FACT Act.

The first of those, of course, is that there is this dispute process you mentioned. The consumer can avail themselves of that, and many, many disputes are resolved in the consumer's favor.

The second thing is that as a retailer, we have multiple reasons to want to have someone shop in our stores. You do not want a situation——

Mr. FRANK. Multiple reasons?

Mr. DUNCAN. Multiple reasons. I mean——

Mr. FRANK. I was thinking of one, but it is a pretty big one: money.

You like their company? You are lonesome? You are there to make money. That is a good thing. Don't apologize.

Mr. DUNCAN. But the bottom line is that is you have someone as a credit customer, you also have them as a retail customer. And if that customer complains that there was something and they file a dispute, most retailers will put a thumb on the scale in favor of that customer because they want to keep that customer as a shopper in their store. So it is more often than not, it is going to be resolved in the customer's favor.

And then the third thing is this unusual "he said, she said" situation, which occurs very seldom as you mentioned. It is often the result of identity theft. One of the advantages of 2622 is that there is now a provision that would allow someone to follow the port and have that trade line blocked so that no one would get what they claimed to be that false information.

So we think there really is a remedy right here.

Mr. FRANK. Well, I agree. But the fact that it is sometimes as a result of identity theft strengthens my view that we have to be very protective of the consumer.

Yes?

Mr. PRATT. My only addition was that the bill does require a study of the re-investigation process to make sure that it is working well.

Mr. FRANK. I have great faith in a variety of studies around here, but that is still not nearly as reassuring to me, as it apparently is to you.

Mr. PRATT. Well, I don't know if it is reassuring to us either, but I think the most important part of this that re-investigations can be complex, particularly in the situation that Mr. Duncan described. We think a study is the best place to try to look at that issue to try to pull it apart and understand the——

Mr. FRANK. The effect of a study is status quo.

Let me say. I might be willing to go along with a study if the extension of the preemptions was co-terminus with the period of the study. But if you get a permanent extension of the preemptions, then the study becomes less attractive because the leverage to enact the results of the study is attenuated.

So if you wanted to have a short-term extension of the preemption while we study this and decide what to do, okay. But a permanent extension of the preemption attenuates the value of a study because given the way this works—you know, people talk about, well, money is the most important thing in the legislative process, politics is the most important thing in the legislative process.

We don't talk about that inertia is the most important thing in the legislative process. And once these preemptions are made permanent, that is the end of the ball game. So the study doesn't do me any good at that point.

Mr. BACHUS. I thank the gentleman.

One thing that, as Chairman, and I know Chairman Oxley is committed to continuing to work with you and with Mr. Ackerman and Mr. Sanders and others to try to come up with wording on im-

proving—I think we can probably do that. I appreciate that. I think we will do that.

Our problem, I think Mr. Brobeck, you know, we have not been able to come up with that magic solution or the wording at the present time that doesn't impact the delivery of credit reporting, of reports and the free flow of information. So we are still searching for the solution.

Gentlelady from Illinois, Ms. Biggert.

Mrs. BIGGERT. Thank you, Mr. Chairman.

One of the questions that I had wanted to ask Secretary Snow when we had to adjourn, in a recent appearance he had said that "Another goal of the uniformed standards of the Fair Credit Reporting Act is to help consumers learn how to manage their credit to obtain the best outcomes for their personal finances. In the modern American economy, smart credit management is an elementary lesson in financial literacy."

And I would like to ask you if you think that the FACT Act does adequately address this issue? For anyone that would like to respond. Dr. Spriggs?

Mr. SPRIGGS. If I may, Congresswoman? That is my concern where the legislation doesn't go far enough in looking at credit scoring. Because the reality is that with consumers today, their score is so much more important than just the report. And as you heard just a moment ago, you are directing the credit bureaus, but they don't own the credit scores.

And earlier questions got to the issue of who owns the credit score, they get to sell them, et cetera. This is a portion of the industry that is not being adequately covered here.

And for a consumer to make a difference in their home mortgage, as an example, the example I gave when I talked earlier, it means a 21 point difference in your credit score means a lot of money to a consumer. And so, I think we have to bring the credit scoring industry in the same way that we are very concerned about what the credit bureaus do.

And we have asked them to be accurate, but we have no data or measurement made public about the accuracy of the credit scoring mechanism. Some of the concerns about inaccuracy within the credit bureau data get magnified in ways we don't know within the scoring, because we don't know what the weights exactly are.

So I think if we want to educate consumers, we have to have a far more transparent scoring system so that consumer groups or that the government, so that others can talk about: What are the indicators? What are the real ways that you can clean up that score? Because the score has now become so much more important than the report itself.

The Consumer Federation of America's report points out—and I think some you have experienced this when you go to refinance your home—you can get three or four different credit scores on yourself and they are all over the place. So you know, different scoring companies will score you differently.

And without having the transparency, without the overlay so that you can talk about what do those differences mean. It is very hard for consumers to get that education to manage that.

Mrs. BIGGERT. Well, in the legislation then, how would you propose putting that in? Is that just elementary financial literacy for consumers? Or is there something that needs to make sure that an agency doesn't have to report a score or explain a score when they really don't have the proprietary rights over that?

Mr. MCENENEY. Congresswoman, could I——

Mrs. BIGGERT. Mr. McEneney?

Mr. MCENENEY. Yes, if I could just make a comment here. This hearing is obviously to focus on the Fair Credit Reporting Act. But there is another statute here that I think is relevant, and that is the Equal Credit Opportunity Act, which prohibits discrimination in any aspect of a credit transaction.

And also has that same effect in the context of the use of credit scores. Any credit scoring model has to be developed in a way so that includes only factors that are neutral, don't include race or any other prohibited basis.

The banks that use those credit scores are examined for compliance with those standards. So the agencies are looking at these issues.

Also, you mentioned that it might be helpful to have a mechanism for consumers to understand how these scores affect them. Well, the Equal Credit Opportunity Act does that as well. One of the things it provides is that if a consumer is denied credit, that consumer is entitled to receive the principal reasons for the denial.

Now, if a credit score was involved in that denial, what that consumer must have access to under the ECOA are the principal reasons that went into that score that created the denial for the consumer. And the idea behind that is to focus the consumer in on the most important information, which are the principal factors that are holding back the consumer score.

Mr. BROBECK. Congresswoman?

Mrs. BIGGERT. Mr. Brobeck.

Mr. BROBECK. In terms of educating consumers, making available a free copy of a credit report will do more than just about anything that I can think of for two reasons. First of all, it would generate an enormous amount of media coverage, which people will have difficulty avoiding. It will also stimulate a great deal of consumer demand for information about the data in the credit report and scores. And if that is properly explained by the repositories, that will represent a very useful educating mechanism.

And then we would also, as I indicated in our testimony, recommend that those consumers who are adversely impacted by a credit decision be given the file that is used by the lender and the score used by the lender. And in most cases, because lenders are interested in lending money, not denying credit applications, they will probably help the applicant to understand their credit file and perhaps even advise the applicant about how to improve the accuracy of that file.

Mr. PRATT. If I could just respond to the—we continue to talk about the file disclosure. And we have always agreed as the industry that access to files is important for consumers. It is part of how I learn about all the different—in fact, sometimes consumer discover they have more open lines of credit than they may have re-

membered just because some are less active and maybe not in their wallet as frequently.

We are still struggling with why the current approach that the law has in it is not working. We are giving away 16 million files a year to consumers. That is a good number of files for consumers. They are educating a lot of consumers. We think the educable moment is quite often, and Mr. McEneney referenced this to one extent, is the point I want to look at my file when something has happened, when there is a question that I have about what my record looks like.

What we seem to be losing track of is the literally tens of millions of transactions that go through successfully every year in this country. And the system does work well. And of course, all of us have a right of access to our file. And the fee is capped and determined by the Federal Trade Commission under the current FCRA.

There is a lot of free file disclosures that are available today. We are just still struggling with why free seems to be the panacea solution for all the ills that we seem to be suffering when it comes to financial literacy. We don't think that is the case because consumers certainly can have access to files and certainly can, in many cases, free and in some cases not.

Mrs. BIGGERT. Still the question that you had was the proprietary that is not right.

Mr. PRATT. That is more difficult, that is true. We can't disclose another company's score. And that is so important for the Committee to know that. Our members do develop scores ourselves. We compete in that marketplace. But we can't disclose another company's score, their intellectual property.

It is just the way the law works. I think and generally that is probably the right way for the law to work.

Mr. SPRIGGS. Excuse me, Congresswoman.

And again, that reiterates my point that that is the industry that is not brought to the table here and why the credit score access for consumers needs to be there. But if the FTC could issue a report card—it is not enough—unfortunately, the Equal Credit Opportunity Act doesn't get enforced properly on this issue of the credit score because of the issue of disparate impact.

A consumer who gets denied who may think that there was some racial bias on the score gets their report and is told maybe this is the key ingredient. But they don't get a report card that says if I look at the Fair Isaac model, if I look at somebody else's model and I see three different credit scores for myself, I don't get the objective view of someone like the FTC might be able to provide and say, look, if you look at how well this one predicts and how well this model predicts and these are the key elements and this is how they handle errors and this is how they handle missing data. That gives me a lot of clues as a consumer, and to you as policy makers, about well what do we think is wrong here and what can we improve.

Currently, because we don't have that on the table, we can't even really talk about some of those elements. So I think the first thing is that we need that report card from the FTC evaluating the score, the different score companies. And then if they sell my score in the same way that we stick it to the credit bureaus and say if someone

looked at my report, they have to give me the report, then the scorers need to give me my score.

And that—and if I get that score with the FTC report attached to it, that is going to give me a lot of clues as a consumer about how my credit rating really works. Because, again, if I get that credit report and I haven't used five lines of credit in the last 10 years, I maybe got a credit card when I was in college and I left it open, I don't know about it. That hurts my credit score.

Now, as a consumer and I look at that and I say, well, I am not even using it. It has got a zero balance. What is the problem here? I don't see why I am being denied credit. Okay, I have got 10 lines of credit out there, but I am not using any credit cards.

As a consumer, I am not really being made intelligent enough about it until I see a credit score that says, boom, that is bad. You are being a bad boy. You don't need 10 lines of credit.

And so, that is why, again, you need to bring the credit score in, regulate them like you regulate the bureaus, if someone gets that information or uses the credit score, then they have to be as accountable as the credit bureaus and say, okay, you got denied because of the score, here is your score, here is the FTC report card with all the different scoring mechanisms, here is how these models work, here is how they predict, and that will inform the consumer.

Mr. HENSARLING. [Presiding.] The gentlelady's time has expired. The Chair now recognizes Mr. Sanders.

Mr. SANDERS. Thank you, Mr. Chairman. Let me ask, to start off, Mr. Brobeck, over the weeks we have been hearing an enormous amount of testimony from the industry, and today from the Secretary of Treasury, that Western civilization would collapse as we know it if states were given the full power to protect consumers in this area.

Do you think civilization would collapse, or do you think maybe consumers might get some benefit if we had attorneys general throughout this country, and legislatures and governors, who wanted to stand up and pass a stronger consumer protection law than Congress is apt to protect? Can you comment on that, please?

Mr. BROBECK. Mr. Congressman, I don't even think a small part of civilization would collapse. After all, before 1996 a number of states passed some very strong measures that were grandfathered into the 1996 law, and the sky did not fall, the industry adapted. In fact, they ought to be better able to adapt now because of technological improvements.

In the area of provision of social services, because of computers, we have dramatically lowered cost. I can't imagine that those cost savings are not available to the industry, as well.

And there is going to be a small cost here, some inefficiency, but I would urge this Committee to ask the industry whenever they allege that the sky is going to fall on them that they document carefully the cost of interventions by the States that they have already taken, that are enforced right now, and that they then compare those costs with the benefits that have accrued to consumers as a result of those interventions.

Mr. SANDERS. Now, what am I missing, Mr. Brobeck, when I think that if there are particular problems in a state, whether it

is Alabama or Vermont or California that the legislatures and the Attorney Generals of those states might be able to respond more effectively and quicker at the statewide level than waiting for the United States Congress to move? What am I missing in terms of the needs of consumers?

Mr. BROBECK. We don't think you are missing anything. In fact, our federal system is wonderful because it gives the States an ability to respond more quickly, which they often do, because there are 50 of them, rather than just one U.S. Congress, to problems that arise.

Sometimes those problems are local or regional, so there is more interest in that state in responding to a problem than there is, say, in Washington.

But, I mean, where is the harm? We have, we have seen the macro-economic analysis that ascribes the growth in our economy in the 1990s to the credit reporting system.

I would argue that there are many other far more important factors. One could even perversely argue that the credit reporting system is somehow related to the rise in consumer bankruptcies, because, after all, if consumers' scores are inaccurately high, then they are more likely to take on credit that will lead to default.

If they are inaccurately low, the creditors will turn around and charge them higher rates. In both cases, that will tend to drive borrowers into insolvency.

Mr. SANDERS. Let me take that statement and lead to a second question, and Mr. Spriggs, Dr. Spriggs, or anyone else can comment on it, but let me address it to Mr. Brobeck again.

I have been concerned about a scam which I call switch and bait, bait and switch, by which companies, credit card companies say, we are going to give you, Mr. Brobeck, 3 percent for a year.

You pay every month faithfully what you owe the credit card company, and lo and behold, after four months of paying on time, suddenly your interest rates have gone from the 3 percent they promised to 25 percent.

And the reason that they will explain to you is that you borrowed more money because your wife was ill, and so forth and so on. What do you think about that type of action, and what should Congress do to address it?

Mr. BROBECK. Well, we think that is unfair. What is driving that is that in a certain sense credit card markets have become more competitive, and the so-called traditional rates, they are basically tiered rates, the promotional rates being under 5 percent, typically, traditional rates, traditionally were 18 percent, but now they are as low as 10 or 11 percent.

And then you have the penalty rates. Well, competition in middle markets and upper markets basically drove the traditional rates down. That squeezed the margins of the creditors, so they looked for other income opportunities, and what they did is they raised the fees and they created this penalty rate category, and now what they are doing is figuring out clever ways to move people from the traditional rates into the penalty rates.

And unfortunately, they are using credit scores as an excuse to do that, or other material in credit records.

Mr. SANDERS. Right. Dr. Spriggs, do you want to comment on that?

Mr. SPRIGGS. Well, I did, because it gets right back to the issue of the credit scores, because that drives the market so much more than just what comes out of the credit bureau.

And that intermediary effect is what gets you out of that, allows them their out, because probably in that fine print that you didn't observe.

It is not as unilateral as it may appear is something to deal with your credit standing. And the moment that extra loan came, your score changed. So they may not be making as unilateral a switch as it at first appears.

That issue is important because we don't know what is in the models. We don't know—maybe after you looked at the models, you might say I see their point, it looks valid. But you may also look at their models and say, well, if you modeled it different, and here is a different scoring company that models it differently, they wouldn't have scored me that way. Why does this model say that that is bad?

We could have that exchange. But we can't have that now, and so we need to get them out of that loophole by making this more transparent.

Mr. SANDERS. Does anybody have an idea—I am kind of curious, that when—we understand that about 5 billion applications, credit card applications, are sent out a year, which is an astronomical number. I would be curious to know if we have some figures on what percentage of people who sigh up for one promotion or another end up paying higher rates than was on the original promotional application. Does anybody have a guess on what percentage? I mean, if they come to me and they say, Mr. Sanders, you can have 3 percent for a year and they raise me to 20 percent, what percentage of the American people are in that box?

Mr. MCENENEY. You know, Congressman, I don't know. But I just want to mention that I think there is a law on the books today that squarely addresses the issue that you raise in the context of the potentially bait and switch scenario. The Truth in Lending Act requires, pursuant to a recent Federal Reserve Board amendment to Regulation Z, that any credit card account that offers an introductory rate, that introductory rate has to be disclosed on those Schumer box disclosures and the penalty rate has to be disclosed as well.

Under those—and the circumstances under which the penalty rate may be imposed must be disclosed also.

Mr. SANDERS. Excuse me, let me just ask you for clarification. Is the penalty—if I borrow money from another source, is that considered now a penalty?

Mr. MCENENEY. Well, actually I think what you are referring to is risk-based pricing.

Mr. SANDERS. Yes.

Mr. MCENENEY. And what can happen in a risk-based pricing scenario is a creditor obviously has one view of a particular consumer's experience with that creditor. What it will do, in some circumstances, is go out to a consumer report to see if there is a more

complete picture that gives a better understanding of that consumer's risk.

In some cases they may find that the consumer has defaulted on several other loans, therefore presents higher risk. And the creditor at that point has a couple of choices. It can either allow the other consumers in the portfolio to pay for that consumer's risk or can price that consumer's product, so that that consumer pays for the risk that consumer presents.

Mr. SANDERS. Bottom line, let me ask you this, and then I will give back the mike here. Is that if I signed up with your credit card company and I faithfully pay you every month what I owe you, do you believe you have the right to double or triple my interest rates even though I have never missed a payment with your company?

Mr. MCENENEY. Well, I can't get into the doubling or tripling.

Mr. SANDERS. That is what happens.

Mr. MCENENEY. But I am aware that what will happen is that when that introductory offer is made, what will be disclosed to the consumer is the fact that this rate, this introductory rate, may go away under certain circumstances. And under the Truth in Lending Act, the creditor has got to describe those circumstances before the consumer even applies for the account.

Mr. SANDERS. But sometimes those—that language is written in very, very tiny writing, is it not?

Mr. MCENENEY. Well, actually, these disclosures, under that recent Federal Reserve Board amendment I mentioned, have to be in a certain type size.

Mr. SANDERS. Thank you, Mr. Chairman.

Mr. PRATT. Mr. Sanders, if I could just respond to one comment that was made about the credit reporting industry as though it was somehow responsible for bankruptcies in this country. And I just can't leave the record void on that.

That literally 2 billion consumer reports are sold every year in this country. Sixteen million consumers look at their files every year in this country. Less than half those consumers ever even call the credit bureau back, although they have toll free numbers and access to live personnel. And for us to be left with the impression here on this hearing record that somehow whole cloth credit reporting systems are vastly inaccurate and somehow contributing to bankruptcy is just a falsehood.

Mr. SANDERS. Well, I think Mr. Brobeck was attempting to do what some in industry have done and suggest that if we give the States the right to protect consumers, somehow this will be causing devastation. He was being a bit hyperbolic, I guess, is the word, right.

Mr. BROBECK. I was trying to analyze the last 7 or 8 years and suggesting that was one plausible explanation for the rise in consumer bankruptcies. One of many.

Mr. SANDERS. Okay. Thank you very much.

Mr. GILLMOR. [Presiding.] We will go to Mrs. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman.

Gentlemen, I, in my subcommittee, held two hearings on this. This is now the sixth hearing that we have held on this topic in this subcommittee. The problem—it is obvious that this is a pretty

sticky wicket. And I would like to address something that was just said.

One of the problems is that the public does have access to a lot of information right now. The problem we, I believe, have is that we have a financially illiterate population in the United States of America. I think we need to also ask you all to go back and do everything you can to teach people to protect themselves with regard to some of these issues.

This is a very sticky wicket with people who want to have credit. They want to get life insurance. They want to get mortgages. And to do that, they are going to have to give up some information.

But one of the interesting things here that Mr. Sanders was just talking about was the fact that we need more transparency. We need it in A, B, C. We need it so that people can read it, understand it and grab hold of that information and use it in the way it should be used.

My concern here goes to the other part and that is the blocking of a certain amount of information. I believe that when you order a credit report, there ought to be a way that we can block certain specific things. One of them is the medical information.

And I would like to ask you, Mr. Pratt, because I am concerned about that, if, for example, if an employee okays the information being delivered.

And that employee's investigation goes on into the credit history by the employer. I would like to know what you think about the trade lines for the health care providers that were showing up, like a cancer center, or a substance abuse clinic, don't you think that could create a possibility of discriminatory treatment here?

And don't you think it would be possible for us to encode things like that, so that, on the trade line report, so that it gets the information that is necessary with regard to financial information, gets there, but we are able to encode on the trade line report the names that get provided to the users other than the consumer?

Mr. PRATT. I think we share your concern about making sure that information like that doesn't end up easily displayed on a credit file today.

Very few health care providers are reporting any kind of regular information to credit bureaus. The majority of data that might have some medical information on it, I suppose, would be through debt collection.

Even there, we provide advice to all data furnishers in the marketplace about how to make sure that they do not give us information that would otherwise be an indicia of some sort of treatment that consumers, you and I both individually, would prefer not to have on a credit report.

We also have tables of key words that are used to scan incoming data to strip out data like that, so, for example, psychiatric, cancer, and those sorts of tables are used today to strip data out of the credit reports, which I think tells you that we, in essence, share your concern about trying to make sure that a credit report is for the decision at hand, but that the medical aspect of it is not relevant, in our opinion, either.

It would be up to lenders to decide how else they might need to use medical information, but that would not be found on a credit report, the way our credit reports operate today.

Mrs. KELLY. Having once in my very far distant past started out programming on computers, it seems to me that there are possibilities, we can do things with that type of information as it is transferred around to help get the amount of information to the people who need it without indicating certain things about people that they would rather not have known.

And I would like to work with you, if possible, on some wording that I think might very well solve this problem. I think that words are a nice thing, but I think there may be a way that my concern also attends to the liability of who is doing the reporting, and I want to make sure that we have very clear indications of that liability, as well.

So perhaps you would be willing to work with me on some language. We have some, and perhaps you would review it for this.

Mr. PRATT. We would be happy to work with you to see——

Mrs. KELLY. I thank you very much. I really appreciate this panel being here. Your testimony has been very interesting. It is, as I said, a sticky wicket. I hope we can get there. I think we have a pretty good bill here, it perhaps needs a little more tweaking and this is one area where I would like to do that.

Thank you. I yield back the balance of my time.

Mr. GILLMOR. The gentlelady yields back. The gentleman from New York, Mr. Ackerman.

Mr. ACKERMAN. Thank you very much, Mr. Chairman. I have a quick question, I think, for Mr. Pratt. Under the Fair Credit Reporting Act, the credit bureaus are required to remove inaccurate information from a consumer's credit report, the word is in the law, promptly.

Mr. PRATT. That is right, sir.

Mr. ACKERMAN. Is there a definition for promptly?

Mr. PRATT. Not that I am aware of. In other words, case law might give you some indication of promptly, if there was case law in that area. I just don't have that information at my fingertips to be able to give you a more, a finer point, if you will, on what that means.

But promptly means promptly. You need to get it into the file, obviously, in order to ensure that the consumer's file is brought back to a correct standing.

Mr. ACKERMAN. And you would be amenable to putting some kind of reasonable definition in the law on what promptly might mean?

Mr. PRATT. We would be happy to have that discussion with you in order to understand how that would work.

Mr. ACKERMAN. If promptly meant taking it out as promptly as the average for putting in negative information, you would be in favor of that?

Mr. PRATT. Promptly for us means taking inaccurate information out of the file in a timely manner in order to ensure that the consumer's file is brought back to accuracy.

Mr. ACKERMAN. If somebody reports negative information and that gets reported to the credit bureau and is made public through

the agency within a matter of two weeks or 60 days or 30 days, and that was the average, it is pretty prompt to get it in there, would it be fair to say that we should be taking it out if it is inaccurate——

Mr. PRATT. Well, I think the law——

Mr. ACKERMAN.——within that same time frame?

Mr. PRATT. Well, I think the law sets the outer limit. We have got to get this done in 30 days. That was something that was done in 1996, because prior to that——

Mr. ACKERMAN. So you would be in favor, if 30 days was not the outer limits for promptly, you would be in favor of 30 days, at least?

Mr. PRATT. I think it is the wrong place for me to be negotiating the details of an amendment, but if you are saying, are you interested in looking at the issue of promptly, and is there something better than the word promptly, we are happy to have that discussion. But I can't start negotiating an amendment here.

Mr. ACKERMAN. We will schedule it promptly, then. On the FICO and other related scores, this is for the whole panel, I don't know if anybody here can help me, I don't know if anybody wants to, but it is still very perplexing as to what goes into this, and why people are interested in it from other agencies, such as the Transportation Security Administration.

I am in the process of refinancing some properties, and was told that my FICO score was in the, let me just say, the high-700s, and my wife's was in the mid-700s.

I don't know what went into my score that is different than her score, because basically everything is, but this has caused a lot of family tension, and she thinks I am holding out on her.

[Laughter.]

And I don't know what is in her report that is not in my report, but everything is joint, and all that kind of stuff. And if it is the same formula by the same company, it gets confusing to a lot of people, and to make her a better consumer she would like to know what she would have to do to, because she is very competitive, to at least have the same score that I have, and nobody can tell me; although you can tell me the ingredients, you can't tell me the exact recipe.

The use of the FICO and other scores like that by the transportation people to make determinations as to who are better risk to put on the transportation system is baffling.

I don't recall any question of it being asked when I applied for a credit card or a mortgage or a car loan or anything like that that would give away whether or not I ever hijacked a plane or derailed a train or committed an act of piracy on the high seas. I don't know that you put down that I was late in paying for my latest shipment of nerve gas or something. I could understand that being a clue to those people.

But what is it in your reports, or the reports? Is it just that people who are not as economically or financially dependable are greater risks for terrorists? What is in—to be terrorists? And if my score was so high, can I get upgraded to first class? I mean, you know, what is their interest in this?

Mr. SPRIGGS. If I can, Congressman, I mean, what people have done with the scores is the scores, in many instances, have replaced the credit report. It is viewed as an objective way of summarizing the information and taking away the discretion that some people felt, maybe even me, was discriminatory in the way that people might have evaluated that information. In that sense, they may be putting a lot more into the score than what deserves to be in the score.

The fact that it is proprietary, to me, again, if not excuse enough, we need to have transparency. We need to have the FTC scoring the scoring cards. Maybe if they understood it over at TSA, they would rather have the credit report and not have the credit score, because again, the credit score is going to include judgments about whether in the future you would default on the loan, which may be different than the type of reliability, responsibility that was implicit in——

Mr. ACKERMAN. We are in total agreement. I just don't know what people think is in there, and I don't know what is in there because nobody is really telling me, that would indicate that a person might be a greater risk to be a terrorist if he missed a payment on his car loan.

Mr. SPRIGGS. And the score may not be telling that at all.

Mr. ACKERMAN. Darn, I missed that—they repossessed my car, I think I will go blow up a boat.

Mr. SPRIGGS. But again, the score may not be even telling you that you missed a payment. Your score can be lowered for a number of factors dealing with how that model predicts your total outstanding liabilities to your income whether you access that credit line or not.

Mr. ACKERMAN. You cited before the Equal Credit Opportunity Act and that prohibits discrimination. Now, why can—if that is the case, why can the federal air transportation security people discriminate against somebody with a low FICO score?

Mr. SPRIGGS. Well, again——

Mr. ACKERMAN. Is somebody going to, you know, make me take my shoes off again because I missed a mortgage payment this week or something?

Mr. SPRIGGS. The problem is I don't think that—given we don't ask the right information of these credit scorers, I don't think that we know whether they comply with the Equal Credit Opportunity Act. Because the issue isn't just do they on average not discriminate and have an average disparate impact, to measure whether they have a real disparate impact, you would have to know the mean prediction error by each subgroup that is protected under the Equal Credit Opportunity Act.

And we don't have that kind of information. We don't have information on how they use missing data. Many credit cards, many mortgages aren't being reported.

Mr. ACKERMAN. Well, you and I are on the same wavelength. There is a complete lack of transparency. But the people who are looking into terrorism and, you know, blowing up planes and things like that seem to think that there is a message in that score for them. And I don't know that they just think that poorer people or people with less credit or people who can't meet their financial obli-

gations as quickly are more predisposed to be terrorists. I have not seen that study.

And you know, maybe those people who know what is in the report here can tell us what the indication is that they are looking for. What is it that helps them?

Anybody?

Mr. DUNCAN. Congressman, I cannot speak on the use of the scores by the TSA. And it is quite possible that they are misusing scores. But the broader issue is what is a score? And I think Ms. Kelly was on the right track when she said we need broader information and broader education for consumers.

Now, one way that might be accomplished is similar to methods used in California, is to come up with a composite score and explain how that composite score is developed so consumers can get a sense of what the factors are they should be looking at in seeing those scores develop and how your wife, for example, might drop one of the credit lines that is in her name and not in yours, and that might change your score.

But we don't need to have the specifics of each and every score that is developed in order to provide general information any more than we need to have each college that admits people go into great detail about the factors they use in making a decision as to whether to weight your grade point average versus your SAT versus your outside academic activities.

So a general education is needed, but not this great specificity.

Mr. ACKERMAN. Without beating this issue to death, it would seem to me you are absolutely right. And we are not getting a lot of help from the industry as to how one might improve that score, as far as educating the public. I would like to know, and I think this information that can be provided by some of the people here, how many files of scores have been actually requested and turned over to the Transportation Security Administration?

You probably don't know that, anybody, off the top of your head. But could I ask those of you who have access to that information to provide it to the Committee? Not just FICO, but any of the like kinds of scores.

Mr. MCENENEY. I can say that we would absolutely be willing to follow up. I am not aware that TSA has access to any of these scores, but be happy to follow up and see what we can learn on that and get back to you.

They have interpreted the PATRIOT Act as allowing them not just to access banking financial information, which was the intent, but to go to any agency that does any kind of record-keeping. And the Transportation Committee staff has been briefed. And unless their member was on both that Committee and this, they are much more in the dark about FICO scores. They didn't even know what it meant.

But the answer to your presumed question is yes, they say they have the authority under the law. They have found that loophole. And being that the briefing took place, it is presumed by us that they have made the request.

And my request to each and every one of the panelists is to go back, find out what has been requested. We don't need the names

or any of the specific details, but how many files actually were turned over.

I know that we can buy that list. If I wanted to get everybody that was 65 or over, you probably will sell it to me, with the names and addresses.

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

The Chair will recognize himself for some questions.

I want to deal with one area. And that is something which surprised me and, I think, a lot of other people when I learned it. That your score is lowered if somebody makes an inquiry about your credit.

I guess to me, I see no relationship between somebody making an inquiry about credit and the likelihood of repaying. Could somebody explain to me or justify or condemn, as appropriate in their view, why that happens and what is the justification?

Mr. MCENENEY. I would be happy to respond.

There are, I think, questions about the circumstances under which an inquiry will result in an impact on a credit score. And there are variations in terms of how scoring models look at those developments. But let me give you one example of how this can be relevant to someone's credit history.

If a creditor has a relationship with a consumer, obtains a consumer report on that consumer, and learns that the consumer is applying for a variety of different credit accounts in fairly rapid fashion in a short period of time, that may indicate that the consumer is overextending himself or herself and thereby presenting a risk to the creditors.

That is one situation where that can occur. Now in the past, there have been concerns about issues that might occur with somebody shopping for a home mortgage, for example. In a home mortgage context, I may go to three or four or five different lenders in a short period of time. And those lenders may make inquiries to the bureau, separate inquiries to the bureau.

What is happening today, as I understand it, is that creditors are identifying those multiple inquiries of the type I just described, that happened quickly, and treating them as one, recognizing them for what they are, somebody shopping around for the best deal, treating them as one and not creating that adverse, potential impact on somebody's credit score that might happen in other situations where the multiple high velocity of inquiries suggests a risk.

Mr. SPRIGGS. Again, Congressman, because the models are not transparent, neither you nor I can say with certainty what they are really doing. And that is the problem.

If we saw their model and saw the explanation, then we might agree with the explanation we just heard, that this is a risk factor because this is someone who is trying to extend their credit.

We might look at their model and go, You are kidding me?

But without the data to analyze the model and see whether the introduction to that variable adds anything measurable or not and what is the bias of that? Does it affect all subgroups in the same way? Does it affect first-time home buyers as folks who already have mortgages who are out refinancing?

We need that transparency. We need the FTC to have the specific scores. It is not enough for consumers to get a general process.

I think most consumers can get the general process quickly. But because of the type of question you just asked, a lot of consumers will do some things like that because they don't know specifically what is in the model. And you may look at your credit score and go, I pay my bills on time. How did this happen?

Because maybe it took you five months to look for a house, and so it didn't clump. Maybe you had three inquiries here and three there and three there, and suddenly you found your score lowered.

Without the transparency, we can't have that kind of debate. It would be the same as if the credit bureaus were being asked, just to say, we got a report on you, and it was blank. That would be the equivalent.

Well, the answer to the question was that it would only apply if those inquiries were bringing out evidence of other things, which is multiple application for credit. But we don't have any assurance that that is true. It may be just somebody inquired, or that different people inquired.

Do you want to respond to that?

Mr. MCENENEY. There are different types of inquiries. One inquiry, for example, occurs when a consumer's file is accessed for pre-screening. Another inquiry is an inquiry is registered when an existing creditor, for example, obtains a consumer report on the individual, not at the consumer's initiation, but because the creditor wants to assess risk with respect to the consumer.

Those two types of inquiries are set aside. The consumer has access to those. But other creditors or other users of the consumer report don't. So they do not impact in any way the consumer's credit score or credit history. But obviously, the consumer is entitled to see who is looking at the account.

So that leaves, in large part, the types of inquiries that I talked about where the consumer initiates some contact with someone is seeking to obtain some financial product or service. And that organization, after being contacted by the consumer makes an inquiry on the consumer.

Mr. GILLMOR. But you cannot ensure me that in arriving at these scores that nobody is just taking an innocent inquiry and lowering the score, can you?

Mr. MCENENEY. If I understand the question correctly, is it possible that there are some out there who have scoring models that when I go and visit one consumer, one creditor, rather, and that creditor pulls a single report? If what you are asking me is might it be the case that another creditor looking at that single inquiry might have a scoring model that treats that single inquiry as risky, I can't assure you that that doesn't happen. I am not aware of it happening. I would be happy to look into it and see if we can't find whether that is the case.

Mr. GILLMOR. Well, suppose somebody wanted to—didn't like you or somebody else and the orchestrated multiple inquiries just to drive your credit down? You can't assure me that wouldn't be successful, can you?

Mr. MCENENEY. Well, actually, I think the existing law provides strong assurances that that doesn't happen. Under the FCRA, a person is entitled to obtain a consumer report only for limited permissible purposes. And the example you described clearly would

not be a permissible purpose. That would be someone obtaining access to a consumer report without permission and there are significant penalties under the FCRA for doing so.

Mr. SPRIGGS. But again, Congressman, your question is no point. If I am searching for a job and my employer, as we heard about TSA, requires a credit report on me and it is not clear whether the modeler is being fine tuned enough to say, you know, here is a company making a credit request on this person. They got five out there because I am looking at five different potential employers. We don't know whether the modeler is discerning those credit inquiries differently than they would any other credit check on me.

So again, we have to have the transparency. We don't let the credit bureaus give us blank reports, and we can't really let the scoring companies give us the blank reports that they give us. We have to have an understanding of is that what you did? Is that in your model?

And then we could get into an agreement or a disagreement with as to whether enough added reduction in error from adding that variable was present so we could feel comfortable that maybe we could live with the one or two times that might happen. Maybe we might look at their model and say for the increased accuracy of adding that, we think there are so many more costs that we don't agree with why that is in your model. That is why we have to have the transparency.

Mr. GILLMOR. My time—over my time. I will just follow up with one thing. Just very briefly, how would you assure that transparency which you describe?

Mr. SPRIGGS. I think to give some respect to the proprietary nature of the data, that the FTC was required to run their model, was required to give us a report card and let us know which variables were in, how those variables were treated, what they do with missing values, what do they do with discrepancies, if they get a report that says that the delinquency was being disputed.

If we could get a report card so that we would have enough information on the various models that are out there, how they were making their decision, then we could be able to have a better discussion about what would need to be regulated about that industry.

Mr. GILLMOR. Yes, I think nobody has any problem with really relevant information. But when you have a bad score partly dependent on irrelevant information, it is a real injustice.

The gentlelady from Texas.

Ms. LEE. Thank you, Mr. Chairman.

And I would like to follow up with that line of questioning. I don't want to be redundant, but I want to continue to pursue this whole issue with regard to credit scoring, and I guess it also could speak to financial literacy in terms of the public, one, knowing up front that credit scoring is proprietary information and that in fact this is a product for sale.

Now, those who are financially literate may know that. But I think that it is very important that somehow as we move forward that those disclosures are somewhere on credit applications so that a consumer who may or may not know this may or may not want to apply for credit.

I mean, I would like to get, I guess from Mr. Pratt, your feedback on that because certainly this is a business. Some of us know this, many don't. And when you have such personal, private information that is packaged for sale, certainly minimally the consumer, I think, should know that it will be sold.

Mr. PRATT. Well, I think we are going to probably revisit some of the ground we have covered previously, but only because I want to make sure I am answering the question properly along the way.

The credit file that you and I have in the credit reporting systems has all the information about how I pay my bills and I suppose, how I don't pay my bills if I happen to be somebody who chose to do that. And the scoring model is this mathematical algorithm over here. And Dr. Spriggs has talked quite a bit about how he would like to see or understand more about that model.

And so when a lender orders a credit report and a score, or orders a score, the score—the credit file data—is run through the scoring model and a score then pops out on the other side, if you will. That is sort of the layman's version of it, which is good enough for me.

So the score itself doesn't contain personal information about you. It just looks at your credit report and looks at risk factors, statistically validated risk factors, and says this is the level of risk we think you have with this consumer based on the credit report.

Ms. LEE. But it is a formula that provides that information.

Mr. PRATT. Well, the formula doesn't—the information that is in your credit file, so in that sense, you have transparency. You can look at your file, you have the right to. We know that, we have it under law today. You can access your file and you can see it and you can look at it and dispute it and correct it and so on.

If you wanted to look at them, the mathematical model is just that, it is just a formula on a page, or on pages and pages, depending on how complicated it is.

It wouldn't tell you, you may be a mathematician, it wouldn't tell me a lot, because it is just a mathematical formula which is used to then analyze the data.

Ms. LEE. Yes, I understand that. All I am saying is that we need to go one step farther, and at least provide information to consumers that, in fact, this score is being sold. It is a product.

Mr. PRATT. Or being used. Is your interest in the use of it, meaning a lender using a score, or——

Ms. LEE. Well, how does the lender get the score? It gets the score, it pays for it, right?

Mr. PRATT. Well, lenders may have scores on their own technology platforms that they built themselves, lenders may buy what might be called a credit bureau score, a credit score from a bureau.

The bureau actually doesn't own that score in all cases, sometimes that is a score developed by Fair Isaac.

Ms. LEE. Who owns the score?

Mr. PRATT. Fair Isaac, for example, would build a score, and the credit bureau would, it would be built based on credit history data, but FICO, the common term for the company, owns the intellectual property, which is this mathematical formula.

And so, every time the bureau a file is ordered, the credit bureau, in order to use that score, actually pays a royalty to Fair Isaac.

Ms. LEE. All I am saying is don't we have a right to know that? Don't consumers have the right to know that? Or shouldn't they know that?

Mr. PRATT. I think the idea of making sure consumers understand scores are used in the marketplace seems like a good——

Ms. LEE. Yes, that is all I am saying.

Mr. PRATT. I don't, you know, we are working hard at this to get there, but——

Ms. LEE. Yes, that is all I am asking. I would think that people——

Mr. PRATT. Using scores are very common, and having consumers understand that scores are used is very common. In fact, there is a whole marketplace of Web-based, you know, scoring systems where I can go and I can learn about a score and I can——

Ms. LEE. So a notation saying that your credit score will be, could possibly be, sold is very sensible.

Mr. PRATT. I don't——

Ms. LEE. Okay. What prevents the sale of credit reports that are really faulty? I mean, how——

Mr. PRATT. Well, the Fair Credit Reporting Act does two things. I mean, the FCRA has always said that a consumer reporting agency must employ reasonable procedures to assure the maximum possible accuracy of the report.

And that would be the liability, if you will. That is the duty, and hence the liability for the credit bureau. In 1996, the Congress enacted a new section of law which said that the data furnisher, the company that provides data to the credit bureau, and this would be the basis for your credit report, those companies, too, have a liability for the accuracy of the information.

Ms. LEE. So can a consumer seek injunctive relief now? Can they go to court?

Mr. PRATT. Well, they do have private rights of action under the FCRA for willful and negligent standards, and states attorneys generals all have enforcement rights under the federal FCRA, as well. And the FTC has enforcement.

Ms. LEE. Mr. Brobeck, let me ask you, what is your response to that in terms of consumers seeking injunctive relief through the court system for the——

Mr. BROBECK. My understanding is that they have to prove damages, and that is very difficult to do in many cases. And so it doesn't happen. And as a result, there are massive amounts of inaccurate information that is distributed, despite the best efforts of the repositories.

Ms. LEE. Okay, and finally, Mr. Chairman, let me just close with regard to going back to the multiple applications, or multiple inquiries. I know there is a difference between multiple applications and multiple inquiries.

But in terms of adverse actions, again, Mr. Spriggs, I understand what you are saying in terms of transparency, and I certainly think we need to get there, but I also think we need to know sooner or later, I mean, before, because this is going to take a while, but I

think very soon, and maybe with this bill we should at least provide the consumer the ability to understand the fact that if they do apply three or four times within two weeks they are going to get an adverse action on their credit report. Or how do we make sure that people know that they will get dinged if, in fact, they are trying to find the best interest rate, the best terms, if, in fact, they do apply to Visa, Discovery, MasterCard, to see which credit card company has the best terms?

I mean, that is a reasonable way to live. You are, I mean, right now, it is assumed that the consumer, it is on the negative, they are overextending themselves, they may be a risk, without giving them the benefit of the doubt.

I mean, this gives the credit card company, or the financial institution, the benefit of the doubt. And so I am trying to figure out how we can make sure that in this bill we change that.

Mr. SPRIGGS. The language currently asks for a credit score with the waits and the explanation of how you might improve the score. And if the language gets, I don't think you want the language to get too specific, because these models do change.

The Fair Isaac model today isn't the Fair Isaac model 5 years ago, so I don't know that I want to have you get too specific. But you may want to get a little more specific as to what you mean by waits and what the consumer could do to improve their credit score.

Now, the other problem you have, though, is that, as Mr. Pratt pointed out, they don't, the credit bureaus, don't always own the score. They don't own the FICO score.

And so I think you may want to look for a provision that said, if a negative action was taken because of the score, and you have to get creditors to, try to get lenders, to be more honest about whether they were looking at the credit bureau report or whether, as many of them are doing now, getting much more mechanistic and looking at the score, if a negative effect was taken on the score then you got to give me the score——

Ms. LEE. But I am not talking about——

Mr. SPRIGGS.——and tell me what were the waits and what do I need to do. Because if they did that, then when I get my report I would see these are negative factors, applying too many times for credit, having too many balances, even if they are zero balances, even if you pay them all on time you have too many balances out there.

I mean, those types of things should be with that score to the consumer, so I just don't know how specific I would want you to get in that language.

Ms. LEE. But that is after the fact, after a consumer has been denied. What I am saying is, on the front end, Madam X wants to apply for a mortgage from financial institution A, B, C and D, to see which financial institution provides the best rate and terms.

By the time Madam X gets the to financial institution four, financial institution five that she is getting ready to apply to says, Oh, you have already, you know, put in four applications, and so you are a credit risk.

And at that point I would have to——

Mr. SPRIGGS. If the FTC gives us that report card sooner rather than later, we can have that information out there.

Mr. MCENENEY. Congresswoman, I actually think the level of detail that Dr. Spriggs is talking about could, if you give it to the consumer, be counterproductive, but I hear exactly what you are saying, and I think the key is educating consumers.

Now, there are a variety of ways to do that, but if you look at the protections that exist under the FCRA, the consumers actually are empowered today to do almost everything you are talking about.

They can go and whenever they want gain access to the information the credit bureaus have on them, and it is that information that forms the basis for the credit scores.

So they can look at that. There are products out there that help educate consumers on what a score means. Today, and I know this is after the fact, but today if a consumer gets denied credit, and it is based on a score, the creditor has to make available to that consumer the principal reasons that went into the score, so that the consumer can do two things, one, figure out whether there is any discriminatory issue that resulted in the decline, but two, in this context focus on those aspects of their credit history that are causing the score to decline.

And just to use your example, if one of the reasons that the score failed to enable the consumer to get credit was too many inquiries, the consumer would have to be told that.

Ms. LEE. That is after the fact. They have been denied.

Mr. MCENENEY. Absolutely, so then I think the key is——

Ms. LEE. The purchase of a home would be put on hold.

Mr. MCENENEY. I agree with you, Congresswoman. The key is educating consumers on what tools they have under the FCRA today, because I think it gets them pretty much where you want them to go on this under existing law.

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

Mr. BROBECK. Could I——

Mr. GILLMOR. Very briefly.

Mr. BROBECK. I am going to address your question, as well, Congressman.

There is a fundamental issue here, and that is the actuaries are really interested in establishing strong correlations, not causal relationships. And though it may be beyond the scope of the legislation, and we have had this debate in the insurance area for decades—we need to establish the principle. That there needs to be causation before a factor is considered to be a risk factor that affects pricing.

Ms. LEE. Thank you.

Mr. GILLMOR. Thank you.

The gentleman from Texas?

Mr. HENSARLING. Thank you, Mr. Chairman.

As a veteran of the subcommittee, I have sat through six different hearings and this full committee hearing will be my seventh. I have heard a wide range of testimony as we consider the reauthorization of FCRA. Obviously the Committee is focused on a number of consumer protections.

Paramount to me is the consumer protection of having a competitive market place for the extension of credit. I think the testimony has been overwhelming that we do enjoy the greatest access to credit at the least cost of any nation in the world.

That one principally seems to be off the table.

Another concern we have obviously is identification theft. I have said before that I am a member of this Committee who has actually been victimized by this. It is something I take very seriously.

But at least at the subcommittee level we have heard testimony from a number of different law enforcement officials, as well as the Federal Trade Commission, all who seem to be of the unanimous opinion that we are better off with the reauthorization of FCRA as a tool to combat identity theft. Perhaps there is still some debate on that.

That really leaves us to the questions of accuracy and privacy. I would like to focus, Mr. Pratt, as representing the credit reporting industry, on one of the questions I asked at the subcommittee level. I am still grappling with this somewhat, but you hear a variety of opinions on the extent of inaccurate information contained in these credit reports.

And so from the credit reporting industry standpoint, what measurement do you have?

Mr. PRATT. We actually recently have looked at a couple of different measurements. Let me share those with you. And if you would like me to provide more information in writing, we can do that for the record or in some way that you might like.

We recently asked one of our resellers or several of our resellers who are in the mortgage reporting area to look at credit reports as they went through their systems, because they are in fact in this situation where there is greater involvement with the mortgage broker, the realtor, the loan officer. It is more labor intensive. It is a different system, although maybe more mechanistic than it has been historically.

And we had—we asked the reseller to do two things. One was to say, How often are you dealing with the file because something is accurate that needs to be updated, versus, how often is it really wrong because it was just reported wrong in the first place? The account never should have been on the file or the balance was never right, or I never missed a payment, according to the consumer?

Out of the 500 and some odd files that were reviewed, about 32 percent of the time there was an update of information that the reseller was engaged. And I think that speaks well for our reseller members in our association, who provide a valuable service of making sure in the mortgage lending process data is as updated as possible.

But it also—in only 1 percent of the cases was there an actual identified inaccuracy.

We then went back and looked at several populations of consumers, because similarly the consumer groups have often said, Well, let us sit down with consumers and have consumers look at reports and see how those reports look. And let us try to identify what is right or wrong with those. And in this case, we picked out several sets of data, gathered one over a 24-month period of time.

And these were consumers who, at the rate of 100,000 a month were in fact ordering credit files, their file disclosures, because they were concerned about fraud. And we asked the question, How many ever contacted us afterwards?

In other words, these are consumers who really looked at their files. That is a good measure. And only 10 percent of the consumers ever called us back, even called us back, not necessarily disputed something, but called us back to ask a question.

We looked at another population of consumers, 180,000 consumers. And we asked the same questions and we said how—they got their files. They literally ordered them. They were not adverse action oriented. In other words, these aren't consumers who got a negative notice saying that, You are getting this file because of adverse action.

And again, we asked the question, How many of you called us back? The rate was 5 percent.

Now we drill down and look at the rate of disputes and then you can—there is a lot of other data. And I don't now how far you want me to go into this. We aggregated those several sets of data to begin to get a better sense of what accuracy really means. And we did it from a market perspective with mortgage reporting. We did it from a consumer's perspective, using populations of consumers who literally order their files, exercise their rights under FCRA and looked at their file.

They had access to toll-free numbers. They had access to live personnel. It was not a complicated process for them to have disputed information. And again, the percentage response rates were quite small in these two populations.

Mr. HENSARLING. Mr. Duncan, you represent the National Retail Federation, which I assume has countless, countless members across the nation. My assumption would be that those who use credit reporting services, have an interest in those reports being accurate. Do you perceive that there is has been competition among the players in the marketplace, in the credit reporting services?

In other words, would a company that consistently produced inaccurate information to your membership, would they be punished by the marketplace?

Mr. DUNCAN. There is actually quite a bit of competition in the marketplace for accuracy of scores. And you are absolutely correct, the major bureaus come to our members all of the time arguing that their reports are slightly more accurate than the next guys report, or much more accurate than the next guys report.

And there is quite a bit of competition. And our members in fact will sometimes pull two or three and compare them and run models themselves to determine which might be more accurate. And they may find that that varies slightly from area to area within the country.

Mr. HENSARLING. So the people who are using these reports, like your membership, have an interest in accurate information as well as the people who produce the report, assuming they are logical profit-making ventures.

And assuming the consumer wants to receive the credit that he feels he is due, he has an interest in seeing that there is accurate information in the system. I guess I am trying to figure out who

has the incentive to put a lot of inaccurate information in the system?

I see that my time is just about to run out. Let me ask one more question.

And that is to you, Mr. Pratt. The issue of offering free credit reports has arisen. And I believe you gave testimony that, if I heard you correctly, the vast majority of credit reports that are issued today already are free. Did I hear you correctly?

Mr. PRATT. Yes, sir. About 95 percent of the 16 million files that are given to consumers each year are given free of charge.

Mr. HENSARLING. Well, I certainly have an open mind on the issue, but I am just curious, if that is indeed accurate data, if this is maybe a remedy in search of a problem, considering we already have 95 percent of the credit reports being issued for free, in the first place. Obviously, identity theft is a very serious matter, but increasing the cost in the system that would raise the cost of our credit or make it less accessible is still an open question in my mind whether this is a good method by which to attack that problem.

And with that, I will yield back the balance of my time, Mr. Chairman.

Mr. GILLMOR. The gentleman yields back.

The gentleman from Washington.

Mr. INSLEE. Thank you.

Just following up on what Mr. Ackerman brought up a while back about access to credit reports for use by the Transportation Safety Administration for deciding who gets on airplanes, I just want to tell you at least one member has a real concern about that because the whole TSA system is broken. And we are keeping people off airplanes right now because of the failures in our system?

We had a city administrator and a police chief from a little town, Bothell, Washington, where I am from, couldn't get on a airplane because the computer system is so fouled up with the TSA and the airlines cannot guarantee the correct identity of the decision whether to let you on an airplane or not. And if you happen to have the name of somebody who is under suspicion, you have had an identity theft and a sort of travel theft by the U.S. government.

So I want to tell you there is real sensitivity about this. And we are—at least I am going to try to work to make sure that we don't allow this system to get out of hand as it is right now preventing people from getting on airplanes.

But I want to ask you a deeper question and that is whether the fair credit reporting system is really just going to become a nullity, give the consolidation in the industry? And the reason I ask you that question is that we have substantial rights for consumers that are guaranteed by this act as long as there are not affiliates involved in interpreting or scoring their credit or providing their services.

But where we have—and which I believe we will now have very significant consolidation in the industry where we have affiliates both involved in lending and selling insurance and providing securities and a whole host of other services, we don't have that same level of protection, or any of those protections for consumers, either from the sharing of transactional experience amongst affiliates,

which consumers can't stop even if they wanted to, under federal law. And the situation where they are going to get opt out notices that nobody can read or understand.

And basically, all of the protections that all of the 60 members of this Committee that are assiduously trying to protect aren't going to exist for a significant number of our consumers once they become customers of a consolidated industry.

Essentially, basically, what we have told consumers is you don't have these rights vis-a-vis any credit authorizing or granting organization that has affiliates as to transactional experience. And as to all of your other experience, unless you are smart enough to read a five page disclosure opt-out statement to opt out of that, you won't have any rights in that regard.

So we are really going to a two-tier system of consumers in this country. Those who deal with non-affiliated credit authorizing and issuing organizations, they have certain rights under the statute. But those who deal with other consolidated parts of the industry do not in real life.

Now, is that a valid concern? And if it is not, why not? And if it is a concern, how do we move to a situation where the general thrust of the whole credit reporting protecting system will include those consumers who deal with what I believe are efficient systems of consolidating these multiple organizations?

It is a big question. I will just throw it open to the panel.

Mr. MCENENEY. Congressman, if I may provide some feedback on that.

First of all, I don't see a situation where affiliated entities would ever be in a position to forego the information that is provided by credit bureaus. And the reason I say that is even the largest affiliated entities only have limited contact with their customers. They need, for risk assessment purposes, including identity theft and credit control purposes, to access the other portions of a consumer's record which they don't have. And the source of that information is the credit bureaus.

So I don't see it being at risk for consolidation where those with affiliated entities can forego the products that are subject to the protections of the FCRA.

In the context of affiliate sharing, though, it is clear that in 1996 Congress set up a mechanism where affiliates could share information amongst themselves about individuals so long as they gave those individuals certain rights, namely the notice and opt out right that you mentioned.

Now, the FCRA notice and opt out right is a simple one. I understand that there have been some complications as a result of other disclosure requirements that perhaps have reduced that simplicity. But in at least one respect, consumers in an affiliate sharing context have a more powerful tool than exists for them with respect to more traditional FCRA situations. And that is the tool to opt out, to say, affiliated entities, you may not share these types of information at all with your affiliated entities. It is a very powerful consumer protection tool.

The other thing I would point out is that the whole reason for affiliate sharing is to try and enhance and expand customer relationships. And so these affiliated entities have very powerful incen-

tives to make sure that the way they use this information meets those goals. And I think that is a significant impediment to the sorts of problems arising that might arise in other contexts like where you have a credit bureau that doesn't have customer relationship with the individual.

Mr. INSLEE. Let me—since you volunteered for this duty, let me just ask you a follow-up question. What do we tell consumers—I have just read some testimony in the Senate Banking Committee by a particular financial group, I won't name them here. And it says that "It is able to use the credit information and transaction history that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit."

Now, I understand what they are saying is that they are able, if I understand the testimony, they are able to create internal credit scores and models that determine credit worthiness and whether or not to issue certain products, whether to actually make a solicitation for a product, without being subject to the protections to consumers that are outlined in this act.

And I suspect that that will increase over time with the further consolidation in the industry. If that is true, shouldn't we be concerned to somehow expand these protections to this increasing, what I understand to be, internalization of this credit worthiness in the recording system?

Mr. MCENENEY. Well, I am familiar with the testimony of which you speak. And my understanding of how that works is as follows.

Yes, it is possible to use this information, shared among affiliates, to develop models, for example, to decide who you may want to market to. Now, the decision of whether or not to solicit somebody for a product typically is not viewed as adverse action. In fact, there are some consumers out there who may view not being solicited as a positive thing.

I am also aware that what typically happens in the affiliate sharing context is once the solicitation goes out, there has been information that may be shared amongst affiliates. And a consumer responds. Typically, what happens is a credit report will be pulled from the credit bureau to make a fresh assessment as to whether or not the consumer meets the risk profile based on the consumer's entire credit history, not just what was had by the affiliates up front.

And of course, under those circumstances, all of that information in the credit report is subject to full protections under the FCRA. And if that credit report results in adverse action, the consumer receives an adverse action notice indicating that the report was used for the adverse action and tells the consumer the consumer's got the right to a free report by going to the credit bureau that furnished the report.

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

Mr. BROBECK. There is a risk that among these large financial institutions that they will try to identify sub-prime borrowers, and they will use their own credit scores that may not be accurate as a basis for targeting customers to try to sell them high-priced loans. And then, if they do not utilize the credit scores and the information in the repositories, the consumers will not have the right

to that information that is in the repositories and they will not know that, perhaps, the reason that they were only offered a subprime loan, is because of inaccurate information within that large financial institution.

Mr. GILLMOR. Mr. Dugan.

Mr. DUGAN. The premise of the question is that it is somehow a bad thing to share information from one affiliate to another to offer another product to the consumer. And I think that is the thing that our industry would take issue with.

Mr. INSLEE. I am not saying that.

Mr. DUGAN. Well, I guess the kind of thing that we see is someone has a loan with a bank, for example, and realizes that if they share that information with their mortgage lending affiliate, based on the information that they know about their consumer, they could put them into a loan, a home equity loan, say, at a lower interest rate that is tax-deductible, that is in the consumer's interest. And that is exactly the kind of thing that affiliate sharing allows. It is a good thing.

And the distinction between the bank and its affiliated mortgage bank is not one that we think the consumer is aware of, thinks is a meaningful distinction, treats it all as one entity, and is appropriate. That is the reason why diversified companies are able to offer those sorts of products. And we think it is a good thing, not a bad thing.

Mr. DUNCAN. If I may amplify on just one point that Mr. McEneney made. And that is typically retailers use affiliate sharing to extend their reach to the customer, to expand on the services offered.

I am aware of one retail creditor, a traditional retailer who has credit in the back operation. They have an affiliated catalogue operation. What they will do is that if a consumer who doesn't quite have a high enough score to qualify for a credit card with them, they will look at their affiliated entity, in this case the catalogue operation, and say, This is someone who has been shopping with us regularly through the catalogue. This is someone we would like to have a long-term relationship.

And they will give them a few extra points so that they will qualify, thus bringing more people into the credit market and more people into the system.

The goal in affiliate sharing is to become closer to your customer, certainly for retailers and I know it is true for others in the business as well.

Mr. INSLEE. Sir, can I make one brief comment.

I respect all you said about the benefits of affiliate sharing and the marketing incentive that folks have. I just think there is a valid concern here while the combination of greater use of transactional information together with what I consider sort of a defective process of opting out will not assure the consumer that the correct information is used in credit, life insurance and other decisions. And I just think there is some fat process we need to go into to assure that.

Thank you.

Mr. GILLMOR. I thank the gentleman. The gentleman's time has expired. All time for this panel has expired.

And I want to thank all of our panelists for your very helpful testimony. And we will proceed to the third panel.

I would like to welcome panel three. And without objection, all of your written statements will be a part of the record. And you will be recognized for five minutes to summarize your testimony.

Mr. Joe Belew?

STATEMENT OF JOE BELEW, PRESIDENT, CONSUMERS BANKERS ASSOCIATION

Mr. BELEW. Thank you, Mr. Chairman.

In the interest of time, I am going to drastically shorten my testimony.

Mr. GILLMOR. All will be very grateful and appreciative.

Mr. BELEW. My name is Joe Belew.

Mr. GILLMOR. And give your testimony much more weight because——

[Laughter.]

Mr. BELEW. I thought it might be taken more seriously.

My name is Joe Belew. I am President of the Consumer Bankers Association here in Washington. Our members include most of the nation's largest bank holding companies, as well as regional and super-community banks. Those members collectively deliver about two-thirds of all bank-issued consumer credit in the United States.

Thank you very much for the opportunity to testify on the importance of extending and improving the Fair Credit Reporting Act. This is one of CBA's top priorities, if not the top priority this year.

We do have numerous suggestions for improvements in the bill to refine it. But the authors and co-sponsors really are to be congratulated for the incredible amount of time and effort that has gone into this so far. They are also to be congratulated for trying to move this piece of legislation which is so critical because of the sunset provisions.

The two most important items for us are that the bill recognizes the need for an efficient, nationally uniform credit reporting system, and it also provides new tools to fight identity theft. We also are pleased that the bill addresses the ways that disputed credit information is handled, the accuracy of credit files and the issue of credit scores. We should note that we have also written a letter to Speaker Hastert asking that he be on the ready to provide floor time in a speedy fashion when the Committee has, with all due process, considered the legislation and hopefully passed it out.

Let me talk for a moment just about national uniformity and rules governing credit information and procedures, because they truly are essential. They ensure that lenders have consistent information about consumers throughout the country that can be used to make fair and equitable credit decisions on highly competitive prices and terms. Without preemption, the States could establish different rules for the reporting of late payments, defaults or other information in a well-intentioned, but mis-directed, effort to protect their consumers.

Lenders today can rely on the accuracy of reports, and that is why we have record rates of home ownership and greater access to credit by all sectors of society. This is especially true for low and moderate income borrowers.

I do want to go on the record as pointing out that far from being a "grab of power" by the federal government, there is no new preemption. We are simply extending the status quo. There are no new restrictions on the States.

Secondly, thank you very much for addressing the issue of identity theft. CBA and its members have been actively working with the Treasury Department, the banking agencies and other industry groups on this critical subject. We would remind the members that we have financial concerns, as well as altruistic ones, since our members must absorb the losses from these frauds. We also want to spare our customers the serious problems that follow ID theft. And regrettably, we also must make sure that the solutions we end up with don't actually aid the fraud artists.

The bill's formalized system for fraud alerts on credit reports is an important part of any solution. They will warn financial institutions and other lenders of past identity theft and we endorse this concept.

Again, however, there is a cautionary note. Consumers must be forewarned that fraud alerts are serious and they should only be used where it appears that ID theft has actually occurred. These alerts will likely impede the consumer's ability to get the fast credit that they have become accustomed to. Still, we support the concept.

The bill helps consumers keep fraudulent information from being placed in their file, which is good, through Section 205. Again here, CBA members have one caution. We also must acknowledge the existence of unscrupulous so-called credit repair clinics that try to delete accurate but unfavorable information in credit files. This area may need still more scrutiny.

We support and encourage the development of best practices and especially enhanced efforts for consumer education. CBA in particular has been in the forefront of tracking and encouraging financial literacy efforts by financial institutions. And in this regard, the Federal Reserve Board should also be recognized, along with the FTC, for their good work to date.

Third and last, we would ask that particular attention be given to coordinating this bill with existing law and with the banking regulators' roles. For example, one section directs the federal banking agencies to establish procedures for banks to spot possible identity theft. We really need, as has been mentioned earlier today, to coordinate that with Section 326 of the PATRIOT Act.

And I will offer one other example: in Title 3, banking regulators, and not just the FTC, should be charged with developing model procedures for consumers to contact creditors and agencies regarding fraudulent information in their files.

Mr. Chairman, as you know, we have a great number of other comments. They are in the written record. But we congratulate you and the Committee and will certainly take questions when it is appropriate.

Thank you.

[The prepared statement of Joe Belew can be found on page 102 in the appendix.]

Mr. GILLMOR. Thank you.

Ms. Kayce Bell?

STATEMENT OF KAYCE BELL, CHIEF OPERATING OFFICER, ALABAMA CREDIT UNION, ON BEHALF OF THE CREDIT UNION NATIONAL ASSOCIATION

Ms. BELL. Thank you, Chairman Gillmor.

Good afternoon. And as did Mr. Belew, I will strive for brevity.

It is an honor to be here to present testimony for you today on the Fair and Accurate Credit Transactions Act of 2003. I am Kayce Bell, the chief operating officer of Alabama Credit Union in Tuscaloosa, Alabama. I am here on behalf of the Credit Union National Association, which represents more than 90 percent of the nation's 10,000 credit unions and their 84 million members.

My written statement submitted earlier addresses most of the provisions of this important legislation in full detail. But because of time constraints, I would like to address only certain portions of the bill.

CUNA and America's credit unions wholeheartedly support Title I of H.R. 2622, which makes permanent the reauthorization of the expiring uniform national standards of the Fair Credit Reporting Act. If the broad set of preemptions that apply to the seven key provisions of FCRA are not reauthorized, consumers will be subject to a confusing and overwhelming patchwork of requirements.

Consumer's personal information would be less accurate and secure in a Balkanized, patchwork national system. And there could be proportionately greater harm by lack of access to credit for those of low to moderate incomes and for small business owners.

CUNA therefore applauds the Committee's efforts to make the uniform national standards permanent. We also commend the sponsors of this legislation for addressing the very serious problem of identity theft. We support the identity theft provisions of H.R. 2622 in general and think that they will significantly reduce the occurrence of identity theft. With regard to some of the specific provisions, the Section 201 investigation of changes of address will be a sound identity security practice. However, we will need some time to change our systems and would recommend 1 year before this provision would become effective.

Section 202 requires the consumer reporting agencies to include a fraud alert in the consumers file, when requested, and to notify all users of the existence of that fraud alert. We support this provision because it provides protection to consumers.

However, we would like to draw your attention to the fact that Section 202 does not address under what circumstances and procedures the fraud alert would be removed and the users would no longer be subject to Subsection 3.

Section 203 calls for the truncation of credit card and debit card account numbers, and we feel this is another sound security practice.

Section 205 calls for the blocking of information by the consumer reporting agencies resulting from identity theft. We support the provision, but we are concerned that some consumers may file bogus police reports to either remove or correct derogatory information on their credit report to obtain credit.

We recommend that the consumer reporting agency also be required to notify the furnisher of information when the agency declines or rescinds the block under this section.

Section 206 requires the establishment of procedures for depository institutions to identify possible instances of identity theft, i.e. red flag guidelines.

The red flag guidelines will be a very useful tool, but we request that there be a good-faith standard in any compliance requirement imposed on depository institutions to protect against unwarranted liability.

Section 301 requires the FTC to prescribe rules for the coordination of consumer complaint investigations. We think this idea is an excellent one, particularly if it results in a system whereby the victim need only report the identity theft to a single entity.

We support Title IV, as well, pertaining to accuracy of consumer records in general. Section 402 provides that furnishers may not report information to CRAs if the furnisher knows or has reason to believe it resulted from fraudulent activity, including identity theft.

While we certainly understand the intent, we are concerned that the reason-to-believe language is problematic and may well result in an interpretation that leads to more lawsuits and/or enforcement actions.

We support Title V in general, too, and commend its sponsors for providing consumers, upon request, with a credit report and credit scores, including a summary of how the scores were derived and how the consumer can improve the scores at no charge and on an annual basis.

We fully recognize that providing consumers upon request with the aforementioned information will result in indirect costs. We believe, however, that such costs will be significantly outweighed by the benefits to our members in terms of a better understanding of their credit status.

In conclusion, CUNA strongly supports the permanent extension of the preemptive provisions of the Fair Credit Reporting Act. In that regard, we also welcome the Administration's support of this important goal, as well as several of their ID theft suggestions.

Although the consumer groups do not support preemption, their testimony does include several suggestions worth serious consideration. But making these national standards permanent is a critical claim in assuring that our nation's consumers have easy access to credit, and to ensure that they receive fair and appropriate protections of their financial information, is extremely important to us.

And nearly as important are the provisions to provide greater protection to our consumers against identity theft. Our economy depends on it, and our citizens deserve it.

Thank you, and I will be happy to answer any question of the Committee.

[The prepared statement of Kayce Bell can be found on page 111 in the appendix.]

Mr. TIBERI. [Presiding.] Thank you. Mr. Hilary Shelton, thank you.

STATEMENT OF HILARY SHELTON, DIRECTOR, NAACP, WASHINGTON BUREAU

Mr. SHELTON. Thank you. Thank you for inviting me here today, Chairman Oxley, ranking Member Frank, ladies and gentlemen of

the Committee. As you mentioned, my name is Hilary Shelton, director of the NAACP's Washington bureau.

The NAACP is our nation's oldest and largest and most widely recognized civil rights organization in our country. Over 2,200 membership units across our country, 500,000 card-carrying members and branches in each of the 50 states in our nation.

Credit and the ability to obtain credit is crucial to our nation today. Thus, I was especially pleased to be invited by the Committee to talk to you about the unique problems faced by racial and ethnic minority Americans in obtaining and maintaining a solid credit rating.

Despite years of civil rights progress, laws and education, racial bias and discrimination are still crucial problems in the United States today.

It is in our nation's financial arena that this is especially true. Race, national origin and gender continues to control the type and terms of credit availability to any individual.

Unfortunately, there seems to be a quiet acknowledgment and acceptance on the part of credit report providers that credit scorers, the lenders and the regulators that racial and ethnic minorities on average have significantly worse credit reports and lower credit scores than their Caucasian counterparts.

This, in turn, means that lenders today disproportionately reject racial and ethnic minority applicants, or on the whole racial and ethnic minority Americans end up paying more for credit.

In the spring 2000 edition of the Federal Reserve of Boston's newsletter, Peter McCorkell, the executive vice President and General Counsel of Fair Isaac and Company, was asked if credit scoring resulting in higher rejection rates for certain racial and ethnic minorities than whites.

His response was, yes. He then went on to justify this response by stating that, unfortunately, income, property, education and employment are not equally distributed by race or national origin in the United States.

Since all of these factors influence a borrower's ability to meet financial obligations, it is unreasonable to expect an objective assessment of credit risk to result in equal acceptance and rejection rates across socio-economic or race, national, origin lines.

This assumption, that low-income and racial and ethnic minority Americans are less likely to meet their financial obligations, is simply wrong.

Studies have shown that the majority of low-income people pay their bills on time, and that, in fact, low-income Americans have lower default rates on their loan and credit card bills than their wealthier counterparts.

This acceptance of the existing racial bias furthermore also failed to recognize the fact that many middle-and upper-class income Americans are subject to predatory lending at a higher rate than low-income white Americans.

When racial and ethnic minority Americans are blocked out of receiving loans or are charged more in interest, they have less to invest and their wealth-building capacities are diminished.

Thus, not only is the current system blatantly unfair to racial and ethnic minorities, but it is self-perpetuating, as well.

In my written testimony, I have provided just a few of the many reasons that we can identify that are behind the racial and ethnic disparities that exist in credit reporting and credit scoring.

For the sake of time, I will not repeat them here. But I hope that all of the members of this Committee will take the time to review my written submission.

In summary, let me just say that disparities in credit reporting and credit scoring is becoming more and more problematic as credit reports and credit scoring are being used increasingly for more than mortgages. They are also being used now to determine if homeowners or automobile insurance will be underwritten and at what rate, for car loans, house or apartment rentals, utilities and in some cases, even hiring decisions.

Lastly, while I was invited here today to primarily discuss the impact of credit reporting and credit scoring on racial and ethnic minority Americans, as well as some of the reasons behind the unfairness, the NAACP would also like to make a recommendation for improving the process.

It has long been the contention of the NAACP that openness, transparency and sunlight help us understand what we are up against. It also intends for companies to be more sensitive to the needs of racial and ethnic minority communities.

The NAACP would love to see the process behind credit reporting and credit scoring more open, better regulated and better understood by the American public, the people being rated and scored.

Specifically, the NAACP joins other groups such as the Center for Community Change in recommending that the Congress establish an effective federal oversight process of all statistical scoring systems. Such oversight should be conducted on a regular basis, and should focus on fairness and the validity of all systems. We also support any and all initiatives that create credit reports making them more available to individuals on a consistent basis.

If we are a nation—if we as a nation are going to meet our full potential, we need to ensure that the opportunities are made available to all Americans regardless of their race, national original, gender or age.

Ensuring that they have access to credit would be a big start.

I would like to again thank the Committee for the opportunity to be here with you today and to discuss the impact that credit reports and credit scoring has on racial and ethnic minorities.

I join with the leadership, the staff and the general membership of the NAACP in offering my assistance to develop national policy that will help all Americans regardless of their race, age, gender, ethnic background or other to obtain a solid credit rating.

I also thank you for the opportunity to be here today, and welcome the opportunity for questions.

[The prepared statement of Hilary O. Shelton can be found on page 238 in the appendix.]

Mr. TIBERI. Thank you, Mr. Shelton, for your testimony.

Mr. Taylor?

STATEMENT OF D. RUSSELL TAYLOR, CHAIRMAN, AMERICA'S COMMUNITY BANKERS

Mr. TAYLOR. Yes, good afternoon. Thank you, Mr. Chairman. And thank you to the Committee.

My name is D. Russell Taylor. I am the President and CEO of a state-charted mutual savings bank located in New Jersey, a $431 million state-charted mutual savings bank located in Rahway, New Jersey, and have the privilege today of testifying on behalf of America's Community Bankers, serving this year as its chair.

I would like to thank you for the opportunity to testify today on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003. ACB wholeheartedly endorses H.R. 2622 and urges Congress to pass this legislation expeditiously.

First and foremost, ACB supports Title I's permanent reauthorization or the FCRA's uniform national consumer protection standards. The preservation of these uniform national standards is imperative to maintain the efficiency of consumer credit markets and the competitiveness of the economy as a whole.

FCRA is too often evaluated in the context of large financial institutions. This does not paint the whole picture. For example, the Rahway savings family of companies includes both the bank and an insurance agency. We are by no means a large financial institution. Yet FCRA's uniform national standards helps small and medium-sized companies like mine better serve our communities.

As both a bank executive and also a victim of identity theft, I also appreciate the tools provided in Title II for banks and consumers to address the growing problem of identify theft. We are concerned, however, about the new legal liabilities Section 202 would place on the users of credit reports.

Credit reports currently include an alert facility allowing consumers to indicate they have been victims of identity theft and to caution lenders that credit applications could be fraudulent.

Because their alerts have a variable degree of accuracy or completeness, lenders should not be bound by specific instructions found in the fraud alert.

Instead, lenders should be permitted to use whatever reasonable and practical measures are appropriate to verify the identify of the person, rather than blindly adhering to specific instructions found in the fraud alert, which may or may not be complete.

Section 202 should also be clarified such as the new penalties apply only to credit fraud, and not to legitimate credit applications.

ACB understands that the accuracy of credit report information is the foundation upon which our national credit reporting system is built.

It is in the best interest of all parties that information be as accurate as possible, errors be corrected quickly and consumers identified theft claims be handled in an efficient and timely manner.

We believe that title four will help improve the accuracy of credit information.

The continued integrity of the national credit reporting system demands that credit reports be as accurate as possible. In our June 12 testimony, ACR supported empowering consumers to proactively manage their credit information by providing them access to free

annual credit reports. Such access is already available in six States, including my home State of New Jersey.

We are pleased that this bill will offer this to all Americans as well as provide consumers with information on how a credit score is derived, and how their credit score may be improved.

ACB also believes that H.R. 2622 should include a general effective date of 1 year following the bill's enactment. For provisions of the bill requiring the issuance of regulation, the effective date should be 1 year after the regulations are issued. The removal of the sunset provisions in Title I of the bill should take effect immediately.

Given that the FCRA's uniform national standards for consumer protections are scheduled to expire by the end of the year, we sincerely hope that consideration of other issues will not slow down or threaten the passage of this legislation.

One subject the Committee will likely consider is an issue previously raised by Congressman Gary Ackerman. ACB and others in the industry have significant concerns about the impact this amendment would have on paperwork burden, operational costs, and the continuing commitment of furnishers to provide accurate credit report information.

We continue to work with members of the Committee to resolve the concerns on both sides.

ACB believes that provisions in the bill, such as access to free annual credit reports and the threat of stronger penalties on both users of credit reports and furnishers of credit report data, will help address the concerns raised by Representative Ackerman.

In conclusion, ACB believes that H.R. 2622 strikes the appropriate balance of protecting consumers and properly regulating information sharing practices. We commend the authors of this legislation for crafting a fair, balanced and effective bill to improve FCRA and our nation's credit system.

ACB strongly endorses H.R. 2622, and urges the Committee in the 108th Congress to pass this measure as expeditiously as possible.

Again, we thank you for the opportunity on behalf of ACB to be able to testify today, and we look forward to your questions.

Thank you.

[The prepared statement of Hon. D. Russell Taylor can be found on page 253 in the appendix.]

Mr. TIBERI. Thank you. You get bonus points for finishing for under five minutes.

Thank you very much.

Mr. Hoofnagle?

STATEMENT OF CHRIS JAY HOOFNAGLE, DEPUTY COUNSEL, ELECTRONIC PRIVACY INFORMATION CENTER AND MR. L. RICHARD FISCHER, VISA U.S.A.

Mr. HOOFNAGLE. Thank you, Mr. Chairman, for extending us the opportunity to testify today on H.R. 2622, the FACT Act of 2003.

My name is Chris Hoofnagle, and I am deputy counsel with the Electronic Privacy Information Center. We are a Washington-based research group that was founded in 1994 that concentrates on privacy and civil liberties.

Our written statement for the record today has been endorsed by the Privacy Rights Clearinghouse, Junkbusters Corporation, Computer Professionals for Social Responsibility, Privacy Times, Consumer Action, Privacy Activism, the Electronic Frontier Foundation and the National Consumers League.

We are unified today in stating that the FACT Act does not go far enough to address the problems identified in the House and Senate hearing records. The record shows that there is a widespread public concern about the relationship between information sharing and identity theft, that there is a desire amongst the public for real protections for privacy, and that there is a renewed concern that credit scores undermine the openness principles of the FCRA.

We believe that the Congress can address these problems and urge the Committee to go farther, to create more protections in 2622.

First, we recommend that Congress should not tie up state legislators by preempting State law. We strongly believe that the case has not been made for permanent preemption. As was pointed out by previous witnesses this year in the hearing record, the 1996 amendments themselves create an uneven State landscape. The 1996 amendments specifically exempt three States from some requirements. And they also allow the settlements of the attorneys general to stand.

There is not a nationwide standard for credit reporting. We should not pretend that it exists. Nor should we pretend that creating a nationwide standard promotes consumer protection principles.

We have heard a lot of talk about this issue today, but I would point out that there are seven separate provisions that are going to be preempted if this bill passes. And there hasn't been an analysis of all these seven provisions and whether or not all of them are appropriate for preemption.

Take the example of pre-screening, it would be very easy to comply with an uneven landscape, where different states made an opt-in standard for pre-screening. However, representatives of the industry have made it sound like compliance with an opt-in system would be impossible. And that is simply not the case.

We have also heard that the industry would like flexibility and that they don't want a one-size-fits-all solution for identity theft. But at the same time, they are asking consumers to accept a one-size-fits-all standard for affiliate sharing and for other preempted provisions.

They get flexibility whereas consumer protections are cut off on their procrustean bed. Eliminating States' ability to develop additional safeguards for privacy is a dangerous precedent, and it has only occurred in a few privacy statutes.

By and large, federal privacy laws operate and allow states, the laboratories of democracy, to develop innovative safeguards as required. Accordingly, we strongly recommend the Committee remove Section 101 from the bill in its entirety.

Second, substantive privacy protection should be added to the FCRA to protect individuals against identity theft. H.R. 2622 does not include these protections. Let me suggest some just briefly.

If credit grantors were required to spend just a little bit more time before granting credit, evaluating accuracy of the application, a lot of identity theft would be prevented. Beth Givens of the Privacy Rights Clearinghouse estimates that, perhaps, the majority of identity theft could be prevented if credit grantors were simply required to inspect credit applications more carefully and make sure that there are not inconsistencies with information on the CRA file.

We also strongly recommend that consumers receive notice whenever suspicious activity occurs on their report. Suspicious activity includes multiple inquiries in a short period of time or when negative information is furnished to the CRA. Giving notice to the consumer will allow the consumer to take proactive steps to protect privacy.

Our third recommendation is to make substantive improvements to the credit reporting systems to minimize inaccuracies. Documents obtained by EPIC under the Freedom of Information Act indicate that the number of consumer complaints to the Federal Trade Commission regarding the credit reporting agencies is increasing dramatically.

In 2001, the FTC received over 8,000 complaints. Last year, it received over 14,000. We received these documents just a few days ago, and we request they be placed in the hearing record.

In our written statement, we detailed the frustration that consumers face when dealing with the consumer reporting agencies. In sworn statements before courts that we have included in the record, former employees of the CRAs claim that they were required to handle 100 consumer files a day. That means that they only had four minutes to dispose of each consumer's case file.

Clearly, investigation and reinvestigation cannot be done in four minutes. We think that there is an opportunity in the FACT Act to improve reinvestigation duties.

As I am running out of time here, let me conclude by urging the Committee to carefully reconsider the record based on this debate. We think that the FACT Act fails to even mention many of the problems raised by the public interest community. It simply tends to require studies, rather than the creation of new rights and responsibilities. Consumers deserve and need more to protect themselves from identity theft, to protect their privacy and to ensure accuracy and fairness in the credit reporting system.

[The prepared statement of Chris Jay Hoofnagle can be found on page 175 in the appendix.]

Mr. TIBERI. Thank you.

Mr. Fischer.

STATEMENT OF L. RICHARD FISCHER, VISA U.S.A.

Mr. FISCHER. Good afternoon. The last panelist in the last panel.

My name is Rick Fischer. I am a Partner in the law firm of Morrison and Foerster. I am pleased to be here on behalf of Visa.

Visa is the largest consumer payment system in the world. There are more than 1 billion Visa branded cards in use. And at the present time, Visa transaction volume now exceeds $1 trillion annually.

I have submitted a very detailed statement, so that I am not going to repeat it here. What I am going to do is focus on two or

three points and then comment on some of the things that I have heard in this panel and other panels very briefly.

First of all, Visa supports the Committee's important work on H.R. 2622, particularly Title 1, which we think is essential, the reauthorization of the uniformity provisions of the FCRA, for the many reasons stated earlier, which I won't repeat.

Also, Title II establishing workable identity theft prevention measures is critical. Visa has long been active in protecting consumers from ID theft. You will see that set forth in the statement and the attachment. And obviously, Visa applauds the Committee strongly for its efforts in this area.

The fraud alerts, in particular, I think can be very helpful in this regard. But I do want to post one warning in that respect, because of the expectation that credit grantors will not grant new credit if a flag is posted without first talking with the consumer about it, or contacting the consumer in some way.

I think that that is perfectly appropriate with respect to new loans and new accounts. But with respect to existing accounts, it really is impractical.

For example, currently, Visa handles as many as 4,000 transactions a second, every second of every day. And while Visa successfully employs sophisticated neural networks to detect fraud, and in fact, many of you probably received calls at merchants or thereafter checking on fraud, it is simply not possible to check fraud alerts and to contact consumers in some separate fashion, certainly not 4,000 times a second.

Finally, in this respect, it is very important that the rules established under Title II be uniform across the country. It is simply not possible to have multiple rules dealing with fraud alerts, customer notices, locking of accounts. If we really want ID theft to be effective, then there has to be one set of rules.

Now, in terms of comments by others, I want to actually reemphasize a point that Mr. Hoofnagle raised just a second ago when he said that the FCRA is not uniform nationwide. And I applaud him, frankly, for saying that. That is absolutely right.

The point here, though, is that there are seven key areas of uniformity. Those are the ones up for reauthorization. I think it is critically important that they be reauthorized. And there still is plenty of room for the States to act in other areas, enforcement, score disclosures, additional notices beyond the seven areas. So there really is much room for the States left by the federal government.

Now, also, Mr. Shelton mentioned a Pete McCorkell study. I am familiar with that study. It is actually a statement that was made by Mr. McCorkell that was published on the Web site of the Federal Reserve Board—Federal Reserve Bank of Boston, I should say. I think it is very important that the Committee consider that report in its entirety.

The principal focus of the report was whether credit scoring is accurate even for minorities. And went into great detail to establish the fact that it is. And that, I think, is the critical factor here.

What is also important is what we heard earlier from Secretary Snow, and that there has been on the increase in the availability of credit for minorities. You have heard that repeated. There are

also studies by HUD and the Federal Reserve Board that go to this point directly, which I think are very important.

But Mr. Shelton said one point that is very important. And that is we have not done enough. And that frankly, I believe is true. He focused on predatory lending. And I would like to correlate predatory lending with ID theft, because they both get to the same point.

You both have wrongdoers. The predatory lender, the ID thief, they both hurt consumers. They both impact on consumer's credit bureau files. And therefore, they both impact adversely on credit scores. But I think the goal here really should be to get to the evil: the predatory lenders and the ID thieves and not really to focus on credit scoring as a wrong in this context, because, in fact, it is accurate.

Until we get at that, we won't get scores, that are equally appropriate for all. In this context, for example—and there have been questions that have been raised about who is looking at the credit scores in this particular context—I think the primary answer to that are the regulators. That the banking regulators, at least for financial institutions, will look at them regularly.

Thank you.

[The prepared statement of L. Richard Fischer can be found on page 157 in the appendix.]

Mr. TIBERI. Thank you for your testimony, last but not least.

Mr. Fischer, expand on something that you have in your written testimony. And you say that, in your written testimony, that banks have "an adequate incentive to prevent identity theft." Don't banks just internalize the cost of identity theft? Can you expand upon that?

Mr. FISCHER. I would be happy to.

Without any question, if a bank suffers a loss, then it must absorb that loss. So in that sense, they are going to internalize the loss. And for example, Visa has a zero liability rule. If there is fraud on credit cards or debit cards, zero liability. And that was mentioned earlier today. So banks are going to suffer those as well.

But to suggest that ID theft and fraud losses are acceptable because they are a cost of doing business, I think is not correct. And that is one of the reasons, for example, Visa strongly supports Title II. There are two victims. In fact, Chairman Bachus mentioned this, as did Chairman Oxley, the banks and the consumers. In this case, the banks need Title II as much as the consumers do.

Mr. TIBERI. I apologize for coming late to this hearing. Mr. Fischer, just one more question for you.

Past hearings we have heard from witnesses somewhat—and this is about the evils of affiliate sharing—can you comment on your perspective of affiliate sharing? How it might be evil and how it might be harmful if we eliminate the ability to affiliate share?

Mr. FISCHER. I would be pleased to.

First of all, I will give you just a couple of examples. Obviously, given the industry that I represent, it is not surprising that I support affiliate sharing, and, in fact, support it strongly.

The example that I will give you is a client, of course that I will not name, that came to me many years ago with the ultimate program that they had set up for a single unit within the holding com-

pany that would service customers from all of the companies and then could cross market at the same time.

Consumers called in and one unit could handle it on behalf of all.

And of course to do that they would need information from all of the organizations. And I said, Well, I am sorry, but it doesn't work. This was in 1992. It doesn't work—this was before the 1996 amendments—because either you are going to take all of this information and use it only for permissible purposes under the FCRA, and therefore you can't use it for marketing, or you can't have the information at all.

And I think one of the wonderful things, the benefits of the 1996 amendments, is the customer management, relationship management systems that exist today that could not exist otherwise.

In terms of possible evils, I think most of those were addressed in the 1996 legislation itself. There was a concern that people would not be told if decisions were made, adverse decisions, based on information from an affiliate. And that was corrected in the legislation. There is a notice requirement in that respect.

And the concern that perhaps information in those files might become stale over time—and I think that that was addressed in part in the last panel by the fact that financial institutions know that—to the extent that they have this information, they can make initial decisions about someone's possible qualification. But they really can't make decisions at all until they go back, get a new credit report or credit score, to make that decision.

And so I think the combination of possible evils, if you will, or problems that might develop have been addressed.

Mr. TIBERI. Thank you.

Mr. Belew, I am sorry I missed your testimony. Can you kind of, expand upon the issue of your companies—your member companies interest in fighting identity theft?

Mr. BELEW. On what?

Mr. TIBERI. Identity theft, fighting identity theft.

Mr. BELEW. Identity theft, indeed.

To amplify what Mr. Fischer just said, it goes beyond just the cost of doing business. Our members oftentimes are in the position of trying to help their customers, their good customers, get through this. We have been very interested in finding additional expedited procedures, both through our member banks using the credit bureaus and the entire system.

I have here something I would be happy to give you for the record. We did a little survey, certainly not statistically accurate, but a summary of some of the major banks' efforts. They have undertaken work in three areas: prevention, serving the customer needs and monitoring inside the bank.

In prevention, they are looking at all of their authentication practices and looking at record destruction. For the customers, they are doing ID theft awareness kits and remedial and preventative advice. And then they are also even doing what they call footprinting, which is fencing off employees on a need-to-know basis, almost like the Central Intelligence Agency.

There is a lot going on out there. We take it very, very seriously.

Mr. TIBERI. Thank you.

Final question for Ms. Bell. We have credit unions throughout the Hill complex here. If a member of a credit union today, if I went to apply for a car loan, my understanding, and I haven't done that here, my understanding is I could get it pretty quickly done if my credit was okay.

What happens for a typical credit union member if we don't extend the preemptions past the end of this year? If they expire and I go in and get a car loan, or try to get a car loan? Can you talk me through the process?

Ms. BELL. Unfortunately, it will delay that process.

Mr. TIBERI. By how long?

Ms. BELL. For example, just as you maintain a permanent residence in another state, so do many of our other members. The credit union then would have to have a relationship with credit reporting agencies, that could be up to three credit reporting agencies in that state, plus any other states where you may have conducted business. Unless you disclose those states to us, it may suppress important information that we need to use to make a credit decision, or credit pricing decisions.

So although the loan would still be obtainable, it could slow down your opportunity to buy the car that you just saw that you would really like to have for the weekend, or to take advantage of a cruise that you would like to give to your spouse for an anniversary gift. It slows the process down. It could be extensive.

Mr. TIBERI. How long does it take for an average credit union member to get a car loan today?

Ms. BELL. They can occur instantaneously. Our Internet lending site, for example, returns a response in as few as 15 seconds.

Mr. TIBERI. That is pretty quick.

Ms. BELL. We strive to be fast. Our members ask us to make credit available to them quickly and inexpensively.

Mr. TIBERI. Thank you.

I had more questions. I ran out of time and I am going to yield five minutes to the gentleman from New York.

Mr. ACKERMAN. Thank you very much, Mr. Chairman.

I have a question for Mr. Taylor, actually, who referenced the likelihood of an amendment that I would be offering to the bill next week, and the likelihood is very good that I will be doing that.

And I am sorry I missed your presentation, but I did read your testimony. Could you be specific as to what the concerns are that you have that you can——

Mr. TAYLOR. Certainly, Congressman.

To begin with, let me say we think that you have identified an issue. So it is not to suggest that the issue doesn't exist. It is a concern that is raised about how we might deal with the issue.

To begin with, for example, within the FCRA, there is the provision that consumers would have access to their credit reports. We are seeing that happen in New Jersey over the last few years. And we recognize that that has worked quite well. We feel it has worked quite well in New Jersey. When consumers have the ability to look at that credit report and judge whether or not anything——

Mr. ACKERMAN. We are on the same track there. But specifically, what are the problems in——

Mr. TAYLOR. Okay, specifically on that would be that there are certain operational issues within different institutions which may not allow that easy implementation. For example, I may have some loan products that I do not send out a monthly statement on, so I may not be able to provide that without additional costs or additional operational setup.

I may have another mechanism. Example, in my institution, not meant to be representative of the industry, but I would send out a late notice, perhaps, which I do, in letter form. In that letter I can certainly advise the consumer, and I already do, that what they are doing with their loan by not paying it on time could adversely affect their credit.

So it may be the mechanism or the manner in which consumers get that information that we just would like to deal with you and your staff on and talk a little bit more about it.

Mr. ACKERMAN. Let me in return say that you have identified, as well as others in the industry, some concerns that we did not anticipate in the drafting of the amendment. And we greatly appreciate the cooperation we have been having from various parts of the industry that have been sitting down and meeting with us. And as a matter of fact, Mr. Davis of your organization has been a part of that ongoing discussion, Bob Davis, and expressing what those concerns are.

And I think we have basically come to a point—and it is good that we are in the same room at the same time today because maybe we can come to a better understanding of where we are on this—the point you raise in your written testimony is the paperwork burden, the operational costs.

And I think those are the two.

Mr. TAYLOR. Yes, those are the main issues. Just that——

Mr. ACKERMAN. Let me just tell what we have done on that and where we are. And we are just waiting for a sign-off from you and a couple of others on specific language that would be suggested to be reported.

We have obviated the necessity of any costs of mailing other than the mailings that are currently done. And we have basically said in the legislation as contemplated, the amendment as contemplated, that in the statement prior to notifying the credit bureaus or even within 30 days after the credit bureaus have been notified, if I were on the business end of this, on your end, or on Mr. Fischer's end, and he was sending out a statement to somebody he wasn't getting paid from, that last statement, then I would even put it under the last three statements, leading up to the final time that I am about to report you to the, you know—if we don't get payment, and if you are not in compliance by such and such a date, we will report you to the credit agency.

I look at this not as punitive, but as a businessman. I used to be on that side of the table. But as businessman, you have got to be bottom line focused, and not say, The son of a B didn't pay me and I am going to get him somehow.

But the object is to get my money. And if you put in a statement in there that I am about to turn you over, people get into compliance a lot quicker knowing that there is a date certain. And they all know the rules and regulations. They all know it is going to af-

fect their credit. They all believe somehow you are not going to pull the trigger on it.

So if there is some kind of a statement, which clearly I put it in a neon sign in the biggest light that I could shine on it, and even on the envelope saying, On August 2, we are turning you over to the credit bureau if we don't hear from you.

And the worst thing that is going to happen is you are going to get paid.

It is the same effect of putting a police car on the side of a highway that has ongoing traffic. Everybody gets into compliance. You know it is about to happen.

So additional mailing is necessary. Put it on the same statement. Not even an additional piece of paper.

The entire statement is computerized. They program it; you know how late the guy is. There will be a statement there in some form where people will see it that says, Hey, you ain't going to pay this bill, good things are not going to happen next week.

But we have taken care of the cost of all that, the paperwork, et cetera. And it is just a computer function that gets done automatically just as everybody's individual interest and payment, the number and what they do is report it.

Mr. TAYLOR. I couldn't agree with you more. It is a good business decision and one that we practice in my institution to make sure that those concerns are alerted. The only thing we wish to bring up with that was to make certain that there wasn't a mechanism in place that put some at a disadvantage, i.e., those that might not do a monthly statement. They may do something that alerted the consumer, but make sure that we weren't in a technical non-compliance situation——

Mr. ACKERMAN. If you send out statements every two months, it could be two months, that could before—I would do a countdown, three months before, two months before. You know, Your time is up, buddy.

Mr. TAYLOR. Right.

Mr. ACKERMAN. You know, we are turning you over. You know, the idea is for you on the lending end is to get your money out rather than secretly turn the guy in——

Mr. TAYLOR. Absolutely.

Mr. ACKERMAN.—to somebody that is not going to help you, because he is not going to pay it if he doesn't know you have reported him, and probably believes half of the time that he is getting away with it.

Mr. TAYLOR. Yes.

Mr. ACKERMAN. So I think that you will find that very helpful, like the insurance people now who fought second opinions before going for surgery now won't even let you do anything until there is a second opinion, because they discovered the bottom line is helped tremendously by that which was forced upon them at a time.

But I thank you and others in the industry who have brought all of these kinds of concerns to the table that we didn't anticipate. We want this to be as quest free as possible, and as bottom line productive as it can be.

Mr. TAYLOR. Thank you.

Mr. ACKERMAN. Thank you very much.

Mr. TIBERI. Thank you, sir.

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 these witnesses and to place their responses in the record.

I would like to thank all six of you for patience and for your testimony today. And we begin next week marking up this bill in subcommittee.

But for this day, this hearing is adjourned.

[Whereupon, at 5:05 p.m., the subcommittee was adjourned.]

A P P E N D I X

July 9, 2003

Opening Statement

Chairman Michael G. Oxley
Committee on Financial Services

H.R. 2622, The Fair and Accurate Credit Transactions Act
July 9, 2003

The Committee meets today for a legislative hearing on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003 – the FACT Act – comprehensive legislation to reauthorize certain key provisions of the Fair Credit Reporting Act and make other needed reforms to our national credit reporting system. The bill was introduced just prior to the Fourth of July recess by a bipartisan coalition of 32 Members of this Committee, 18 Republicans and 14 Democrats, led by the Chairman of the Financial Institutions Subcommittee, Mr. Bachus, Ms. Hooley, Mrs. Biggert, and Mr. Moore.

The FACT Act grew out of an exhaustive series of hearings that Chairman Bachus' subcommittee has held on the FCRA over the past several months. Those hearings, which featured testimony from some 75 witnesses representing every conceivable perspective on the FCRA, has laid the groundwork for this Committee to act – hopefully later this month – to preserve the benefits of the national credit reporting system and give consumers important new rights in the process. I commend Chairman Bachus and all of the members of the Financial Institutions Subcommittee for their diligent – and very thorough – approach to this complex issue. The legislation that the Committee considers today is a testament to their months of hard work.

The Subcommittee's hearings have, in my view, established a compelling case for reauthorizing the FCRA's uniform national standards. As one of our distinguished witnesses at today's hearing, FTC Chairman Muris, has stated, the "miracle of instant credit" created by our national credit reporting system has given American consumers a level of access to financial services and products that is unrivalled anywhere in the world. According to the Federal Reserve Board, since FCRA's enactment, the overall share of families with general-purpose credit cards increased from 16 to 73 percent, with low income families achieving the greatest increase. American families' ability to buy a home has also increased, with ownership levels growing significantly from 60 to 68 percent, again with the largest gains achieved by lower income and minority groups. These improvements in the credit and mortgage systems have saved consumers nearly $100 billion annually, according to some estimates. The FACT Act is, first and foremost, an attempt to make sure that the considerable benefits of that system to consumers and to the U.S. economy do not go up in smoke at the end of this year when the FCRA's uniform national standards are set to expire.

Let me highlight just a few of the provisions that I was particularly pleased to see included in this important jobs and economic growth bill. The FACT Act incorporates a number of provisions – drawn largely from legislation introduced

earlier this year by Ms. Hooley and Mr. LaTourette – that aim to reduce the incidence of identity theft and protect those who are victimized by this increasingly common form of criminal activity. The bill prohibits the printing of complete account numbers and expiration dates on credit and debit card receipts and requires verification of certain address changes so that consumers are less likely to have their accounts stolen. It helps consumers who fear they have been victimized by identity theft to place fraud alerts on their credit reports to ensure that criminals can't access their accounts. And it allows identity theft victims filing police reports to block any fraudulent information from appearing on their credit reports, to protect their credit reputation from being destroyed. With these targeted reforms, the FACT Act will strike a serious blow against the identity theft criminals who have succeeded in victimizing millions of innocent Americans over the years.

The FACT Act also contains a number of provisions strengthening consumers' ability to dispute the accuracy of incorrect or incomplete information that appears on their credit reports. For example, perhaps the most fundamental protection the bill gives consumers is the right to a free annual credit report, accompanied by an explanation of their individual credit score and what steps they can take to improve it. This will not only help consumers guard against identity theft, but will empower consumers to ensure they will not be unfairly denied access to credit or other financial products before the need arises.

Let me again thank Chairman Bachus and the original cosponsors of his legislation for their leadership and exemplary work. Let me also indicate to Members that I fully expect this bipartisan consumer protection legislation to continue to be perfected as it moves through the markup process. The Ranking Minority Member, Mr. Frank, has stated that one of his priorities will be to ensure that the legislation includes heightened safeguards for consumers' health-related information. We have been working hard on that issue, and I am committed to continuing to work with Mr. Frank in the same bipartisan spirit that has characterized the Committee's review of FCRA thus far. Other Members on both sides of the aisle have thoughtful proposals addressing various aspects of the FCRA that also warrant the Committee's careful consideration.

In closing, I want to welcome Secretary Snow and Chairman Muris before the Committee, and thank them for their constructive role in this process. Just last week, Secretary Snow unveiled the Bush Administration's proposal for reauthorizing FCRA's uniform national standards, which included sweeping new protections for the security of Americans' personal financial information. And under Chairman Muris' leadership, the FTC has recently begun implementing its national "Do Not Call" registry – something that I and many Members of Congress have long supported to limit unwanted telemarketing phone calls. Judging from the millions of Americans who have signed up for it thus far, this Bush Administration effort appears well on its way to becoming one of the most popular consumer protection initiatives of all time.

I now recognize the Ranking Minority Member, Mr. Frank, for an opening statement.

STATEMENT OF THE HONORABLE WM. LACY CLAY
Before the
Committee on Financial Services
"The Fair and Accurate Credit Transactions Act of 2003"
July 9, 2003

Good morning Mr. Chairman, Ranking Member Frank, Members of the Committee, and witnesses.

The hearing today addresses issues that are most critical to the well being of the economy. We are making decisions that deal with access to personal credit information, accuracy of credit reports, protections from identity theft and other well documented subjects of subcommittee hearing under this committee. I thank the Chairman, Ranking Member, and others in leadership on this committee for having the wisdom to hold hearing on individual components of the FCRA rather than attempting to address so comprehensive an issue with one full committee hearing.

I served 17 years in the Missouri State House and Senate. I am an advocate of States Rights. I try to protect autonomy for the states in most decisions that I make. Having said that, I believe that it is possible, and absolutely essential that we carefully craft workable uniform national statutory standards to halt abuses in these areas. Additionally, by adopting or reauthorizing the preemptions to FCRA less privileged Americans can have even more access to mortgage loans in particular and States can have a legitimate role in helping to enforce these rules and in facilitating more and better consumer education, understanding, and protections in these various areas of concern.

Mr. Chairman, I ask unanimous consent to place my statement into the record.

Statement of the Honorable Rahm Emanuel
United States House of Representatives
Committee on Financial Services
July 9, 2003

Re: Hearing on H.R. 2622, *the Fair and Accurate Credit Transactions Act ("FACT Act")*

- I would like to commend the Chairmen and Ranking Members of both the Full Committee and the Financial Institutions Subcommittee for their leadership during the FCRA hearing process and on H.R. 2622.

- Like many of my colleagues, I believe that a reliable, uniform credit reporting system benefits both consumers and the economy, and I think H.R. 2622 makes important strides by addressing many of the serious problems that have arisen since the last time Congress examined the FCRA in 1996. The FACT Act gives consumers new rights and protections, and provides them with tools to fight identity theft. I strongly support these provisions.

- However, this legislation and the Administration's recent proposals do not address the important issue of health privacy. Ordinary Americans today are very concerned about the privacy of their most sensitive, private health information. In fact, most people consider information about their health to be deserving of the strongest protection under law. In a recent Gallup poll, 95% of consumers expressed concern that their health providers or insurers may be sharing their private information with others.

- With the concentration of information in large databases, the free flow of information on the internet, and gaps in the legislative scheme, data related to consumers' health and medical treatments can be accessed and used by companies and their affiliates without restriction. It is not difficult to imagine the scenarios that can arise from the current loopholes in FCRA. It is a gaping hole in the regulatory scheme that is wide open to abuse. A particular concern of many consumers is that they will be injured economically by a financial institution's use of their health information, either to withhold or withdraw credit or to raise the cost of other financial services.

- It is imperative that we address this issue now, while we are debating the reauthorization of the FCRA preemptions. There is simply no reason why financial institutions should have unfettered access to health information if it is not related to the transaction in question. It is time to make this information confidential and give individuals some control over what is off-limits and what is not.

- That is why I recently introduced legislation, the *Identity Theft Protection and Health Information Blackout Act of 2003,* that creates a "blackout," so that consumers have control over who may use this information and how it can be used. Medical and health information should not be used at all in the credit-granting process, or used

when making decisions on the sale of financial products and services. My bill limits exceptions only to situations where that information is directly relevant, such as in the case of life insurance.sc

- I look forward to working with my Committee colleagues as we consider these issues during the upcoming markup of H.R. 2622. Thank you.

July 9, 2003

Hearing: Full Committee Hearing on H.R. 2622, The Fair and Accurate Credit Transactions Act of 2003 (reauthorization of FCRA; Rep. Harris original cosponsor)

Rep. Katherine Harris' Statement:

Thank you, Mr. Chairman. I wish to express my appreciation for your willingness to conduct this hearing on H.R. 2622, The Fair and Accurate Credit Transactions Act of 2003.

A fair and accurate credit reporting system remains critical to the health of our economy, as almost every transaction involves the extension of some type of credit. By reducing the risk associated with certain lending practices, the FCRA has helped produce lower interest rates and greater choice for consumers.

I wish to thank Congressman Bachus for the outstanding leadership he displayed in producing this bipartisan legislation, which preserves the critical balance between the reauthorization of the expiring provisions of the FCRA and the protection of consumers from identity theft. In particular, I also wish to commend him for the determination and perseverance he demonstrated through the six hearings that occurred in his subcommittee.

This bill provides consumers with the tools they need to enhance their financial security, such as the provision that entitles them to one free credit report per year and the section that enables them to limit unsolicited offers for credit.

I wish to express my appreciation to the individuals on today's panel for their insights. Moreover, I look forward to our healthy debate regarding this critical matter.

Thank you.

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COMMITTEE ON
FINANCIAL SERVICES
SUBCOMMITTEES:
CAPITAL MARKETS, INSURANCE, AND
GOVERNMENT-SPONSORED ENTERPRISES
FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT

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Statement of Congressman Steve Israel
Committee on Financial Services
Hearing on H.R. 2622, the
"Fair and Accurate Credit Transactions Act of 2003"
July 9, 2003, 10:00 a.m.

Mister Chairman, thank you for holding this important hearing on Fair Credit Reporting Act legislation offered by Chairman Bachus. As you know, this hearing is the last in a long and very educational series of hearings in which I was proud to participate at the subcommittee level. Secretary Snow, Chairman Muris, all of our other witnesses, thank you also for coming today. I know that getting to this point has been a long time in the coming and I look forward to hearing your views on this critical piece of legislation.

As you know, Mr. Chairman, I am an original co-sponsor of H.R. 2622, the Fair and Accurate Credit Transactions of 2003. When Chairman Bachus spoke to me about this bill, I had one concern: can we re-authorize the expiring FCRA pre-emption and give consumers added protections? He assured me that we could.

When I carefully examined the bill in my office, I found that he was good to his word. This bill allows --for the first time ever-- any consumer to get a free credit report every year. This is a critical improvement in the Fair Credit Reporting Act, and something I believe that is long overdue.

The bill also makes a good faith effort to attack the issue of identity theft. By working with our colleagues, especially Ms. Hooley and the other New Democrats and Blue Dogs, we were able to get strong identity theft legislation into the bill.

This legislation also has some important consumer dispute language that I am proud to support. In particular, this bill makes it possible for consumers to make a single phone call when reporting fraud or identity theft. Under current law, consumers would have to notify all of the credit bureaus to get redress. This bill makes life easier for victims of identity theft by allowing for "one-stop" reporting, a major consumer advance.

There are other important parts of this bill, and I am sure we will hear all about them from our witnesses, but by and large, this bill is the result of true give and take between both sides of the aisle, and I commend Chairman Bachus for his bi-partisan cooperation on this legislation.

I would like to once again raise a particular issue in the Fair Credit Reporting Act that I have raised several times in this Committee, and which I know is of great concern to several of our witnesses. That is the outrageous treatment some of our service-members have faced when deployed to Iraq or other places. I offered an amendment to the regulatory relief bill we considered in May that would have addressed this problem. With the Committee's consent, I withdrew my amendment with a commitment from the Chairman to work with me on stand-alone legislation addressing the issue. Since then, I have been working with our colleagues from Pennsylvania Paul Kanjorski and Robert Brady.

I am happy to say, Mr. Chairman, that our staffs, together with industry representatives, have been working toward an agreement on this stand-alone bill. While it is not my intention *–at this time–* to offer the language we have developed so far as an amendment to this bill, when we come to a final product I hope that we will be able to move it rapidly through the Committee, either as part of H.R. 2622 or on its own.

Mr. Chairman, there are other issues that I am sure we will address when we mark up this bill. For example, my friend Gary Ackerman will be offering language I hope we will all be able to come to agreement on. Others will offer language, I am sure, on every section of this bill. While I cannot say right now how I will vote on these amendments, I believe that this bill is an excellent first step and look forward to continuing to work with you and Chairman Bachus.

Again, thank you Mr. Chairman for holding this hearing. And thank you again to Secretary Snow, Chairman Muris and all of our witnesses for taking the time to see us today.

WRITTEN STATEMENT OF

JOE BELEW

ON BEHALF OF

CONSUMER BANKERS ASSOCIATION

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

JULY 9, 2003

Chairman Oxley, Ranking Member Frank, and Members of the House Committee on Financial Services, my name is Joe Belew, I am president of the Consumer Bankers Association ("CBA"). I am pleased to appear before you today. Thank you for the invitation to speak on this important topic.

The CBA is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, consumer protection legislation and regulation. CBA members include most of the nation's largest bank holding companies, as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

H.R. 2622 and FCRA National Uniformity

CBA strongly supports national uniformity in financial services laws, especially as they apply to information about consumers. We urge Congress to create national standards which replace state laws impeding national uniformity. To this end, the Fair Credit Reporting Act ("FCRA") and its national uniformity provisions must be reauthorized, to protect the national credit granting system and to encourage superior customer service. CBA will work for FCRA renewal and, in addition, will continue to seek opportunities to rationalize the privacy provisions of the Gramm-Leach-Bliley Act.

The initial focus of H.R. 2622 is on the reauthorization of the FCRA national uniformity standards. These standards are critically important for consumers, financial institutions, and the national economy as a whole. The focus of H.R. 2622 and this hearing is on FCRA, and rightfully so. The national uniformity standards apply to seven key areas of the FCRA and any erosion of the national standards would have broad economic effects.

The market for consumer credit has become a truly national competitive market. Credit at competitive prices and terms is available to consumers in cities, towns, and rural areas in every state. The national credit reporting system is the foundation that supports this market. National uniformity is essential to ensure that creditors have access to consistent information about consumers throughout the country that can be used to make consistent credit decisions. For example, the national uniformity provisions ensure that states cannot require consumer reporting agencies to limit the information in consumer reports to the rules of the state where the consumer resides, which would destroy the consistency and thus the reliability of consumer reports. For example, states could establish different rules for the reporting of late payments, defaults, or other information in a well intentional but misdirected effort to protect consumers.

Consistent information about consumer transactions is essential to ensure that institutions can continue to rely on consumer report information to make decisions. In the absence of national uniformity standards, many consumers will not receive credit that they qualify for due to incomplete credit report information. At the same time, other consumers may receive credit for which they are not qualified. The resulting lost lending opportunities, coupled with increased

losses, would increase the costs of consumer credit, leading to a reduction in borrowing and a reduction in consumer spending. From the consumer's standpoint, these effects will be felt most strongly by low and moderate income borrowers.

It also is important to recognize the importance of information sharing to the financial holding company structure and the efficient delivery of financial services to consumers. Without a national uniform rule permitting affiliate sharing, institutions will find it increasingly costly and inefficient to operate national programs because of the operational problems institutions would face through inconsistent state requirements. More restrictive affiliate sharing rules are inefficient in themselves and requirements to adhere to different rules on a state-by-state basis impose additional costs and burdens. For these simple reasons alone, a consistent rule on affiliate sharing is critical to the operations of financial services companies.

H.R. 2622 and Identity Theft

The second area of focus in H.R. 2622 is identity theft. I strongly support the Committee's efforts in this regard. CBA and its members have been actively working with Treasury, the banking agencies, and other industry groups, particularly the American Financial Services Association, Consumer Data Industry Association, and National Retail Federation on this critical subject. Identity theft usually involves two victims—consumers and financial institutions, including CBA members. The reputational impact to consumers involves lost time and frustration, while financial institutions often suffer the financial losses of identity theft. CBA believes that H.R. 2622 represents a good start on two key elements of a workable identity

theft solution—preventing identity theft and assisting consumers in responding to incidences of identity theft.

Also critical to H.R. 2622, however, is that we end up with a single set of rules with respect to identity theft prevention measures nationwide. Once Congress has fashioned a workable solution, it must be uniform throughout the country. Additional state rules pertaining to identity theft would be counter productive in that would complicate the prevention of identity theft and slow the process of responding to identity theft. Enforcement against identity thieves is also a fundamental aspect of solutions to identity theft.

Fraud alerts, as would be required in section 202 of H.R. 2622, are critical in protecting consumers and in warning financial institutions about possible identity theft activity. Nevertheless, consumers should be warned that fraud alerts are serious business and that such alerts should not be taken lightly. Fraud alerts can, among other things, preclude future credit and delay credit request. Accordingly, fraud alerts should be used only where it appears that identity theft has actually occurred or is likely to occur.

Consumer reporting agencies would be required, under section 204 of H.R. 2622, to provide consumers who have reason to believe they are victims of fraud or identity theft with a summary of the rights of consumers under the Consumer Credit Protection Act. This information is important to consumers. In addition, the calls for the development of "best practices" guidelines by the Federal Trade Commission ("FTC"), I believe that any such guidelines should be developed jointly with the Federal Reserve Board ("FRB"). After all, it is

the FRB that has been given rule writing authority over most elements of the Consumer Credit Protection Act. And since consumer education is a crucial element of any war on identity theft, both federal agencies should include similar guidance on their Web sites, available to all consumers. Both agencies have taken helpful steps on identity theft, and this would be an important addition to those important efforts.

Section 205 would require a consumer reporting agency to block the reporting of any information identified by the consumer in the consumer's file resulting from an alleged identity theft. While it is important for consumers to be able to block information quickly when identity theft occurs, Section 205 must be crafted carefully to avoid abuse by consumers and credit repair clinics in an attempt to force deletion or non-reporting of accurate, but unfavorable, information in credit files. Also, it is important that there be accountability when consumers or credit repair clinics abuse this important right.

Section 206 would require the federal banking agencies to establish procedures to identify possible instances of identity theft. The legislation would require the banking agencies to jointly implement and maintain guidelines for use by the insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. This requirement could be a helpful addition, but it is important to recognize that Section 326 of the USA PATRIOT Act and its implementing regulations were just recently released by the federal banking agencies. Therefore, any agency rules should not duplicate or conflict with the requirements of Section 326.

H.R. 2622 and Improving Resolution of Consumer Disputes

The third major area of H.R. 2622 is Title III on improving resolution of consumer disputes. For example, Section 301 would authorize the FTC to develop procedures for referral of consumer complaints under Title III and to develop model procedures to be used by individuals for contacting and informing creditors and consumer reporting agencies of allegedly fraudulent information in their files. Most of the accounts impacted by this rule writing authority will involve financial institutions, including members of CBA. Accordingly, it is essential that the federal banking agencies have the authority to develop such rules, so that the rules will be effective without unduly interfering with the underlying operations of financial institutions.

In addition, Section 303 appears to require both the FTC and FRB to each conduct studies and for each to submit a report to Congress on their findings and recommendations for the investigation of disputed accuracy and prompt correction or deletion of inaccurate or incomplete information. Only one study and one report should be required, and because most furnishers are financial institutions, like CBA members, the participation of a banking agency like the FRB is essential.

H.R. 2622 and Improving Accuracy of Consumer Records

Section 401 would add a new requirement for consumer reporting agencies to notify a requester of a consumer report when the request includes a discrepancy in the consumer's address from the current address in the agency's credit report file. This section is a good

addition and it gives a financial institution an additional factor to consider in their efforts to prevent identity theft.

H.R. 2622 and Summary of Credit Scores

Title V of H.R. 2622 would impose a new requirement that consumers receive a summary of their credit scores along with their credit reports. It is important, however, that only a summary of the credit score be provided, rather than the credit scoring methodology, because disclosing credit scoring methodology would facilitate credit and fraud risk schemes. In addition, it is important not to disclose important intellectual property rights of companies that generate the credit scores.

Additional Issues under FCRA Reauthorization

Other suggestions have been made for additional FCRA changes, including shortening the time frame for error resolution. However, the existing time is already very short—30 days "all in" for both the consumer reporting agency and the furnisher to rectify errors in consumer reports. In contrast, the Truth in Lending Act permits up to 90 days for a creditor alone to respond to an error. Shorter periods would be a boon for credit repair clinics, forcing deletion of correct, but unfortunate, information that cannot be verified in a shorter period.

In addition, the sharing of medical information among affiliates, although not addressed in H.R. 2622, has been raised. CBA members do not share medical information with affiliates,

and CBA would not oppose such a restriction. Similarly, CBA would support limits of the use of medical information for credit decisions making without consent. However, because the availability of such information may be important in limited contexts, such as small business lending, the details of the restrictions on the use of medical information for credit decisioning should be left to the FRB to avoid unintended consequences of implementing the Congressional mandate.

Again, I appreciate the opportunity to speak on this important topic, and I would be pleased to answer questions from the Committee.

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WRITTEN TESTIMONY OF
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TUSCALOOSA, ALABAMA
ON BEHALF OF THE
CREDIT UNION NATIONAL ASSOCIATION (CUNA)
BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
ON
"H.R. 2622: THE FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003"

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July 9, 2003

Good morning Chairman Oxley, Ranking Member Frank, and members of the Committee. I am honored to appear before you this morning to present testimony on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003, introduced by Representative Bachus, in whose district where my credit union is located. I am Kayce Bell, Chief Operating Officer of the Alabama Credit Union in Tuscaloosa, Alabama. Alabama Credit Union is a $165 million dollar not-for-profit financial cooperative with 24,000 members, primarily serving the faculty, staff, students, and alumni of the University of Alabama. I appear before you this morning on behalf of the Credit Union National Association (CUNA), which represents over 90 percent of the nation's approximately 10,000 credit unions and their 83 million members.

Title I – Uniform National Consumer Protection Standards

CUNA and America's credit unions wholeheartedly support permanent reauthorization of the expiring uniform national standards of the Fair Credit Reporting Act (FCRA).

The FCRA is responsible for bringing the consumer reporting industry under federal law, providing consumers with certain rights and protections and imposing duties and obligations on the industry and financial services providers that supply and use this information. The Members of this Committee should focus on striking a balance between consumer privacy protection and the interests of the industry for efficiency, accuracy and convenience, while examining H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003."

As of January 1, 2004, if the broad set of preemptions that apply to the seven key provisions of FCRA are not reauthorized, the resulting potential problems for financial institutions and consumers could consist of: slower credit approval; higher cost of credit; additional paperwork; and, less confidence in credit reports, among many other unintended and unforeseen difficulties.

According to the Financial Services Roundtable, the current credit reporting system saves consumers an average of $195 a year, due to the increase in competition as well as the seamless

transfer of data. Information sharing has lowered the cost of credit via increased competition through increased access to credit, lower interest rates and lower default rates.

If individual states adopt their own laws regulating credit reporting agencies and the management of the data, consumers will be subject to a confusing and overwhelming patchwork of requirements. Portability will be difficult. Moving to a different state, or taking a vacation could become much more complicated. Borrowers will have to establish a new credit record each time they travel to a different state. According to Michael Staten, of Georgetown University, 42 million Americans move each year and over 6 million own vacation and second homes, many in states other than their primary residence.

The voluntary system of reporting could become extremely vulnerable to inconsistent and conflicting state regulations. If it becomes too costly, this could easily trigger a decline in the reporting system altogether. Along with a decline in reporting would come a decline in confidence in the system because creditors will not know what is missing from reports and will be unable to accurately rate the riskiness of potential borrowers with the information provided. Healthy reliable borrowers will be suspect in states where creditors have no access to adverse information.

Consumers' personal information would be less accurate and secure in a balkanized, patchwork national system. A more precise uniform regulation, held to federal standards, has great potential to continue to provide credit to those who might not have opportunities under state regulations, because it will be easier to fairly price credit and rate credit worthiness. Greater access to credit is particularly important to those of low to moderate incomes, as well as to many small business owners. In fact, Michael Staten also pointed out that ready access to low-cost credit has boosted small business startups, with nearly 7 out of 10 small business owners starting their business with less than $20,000.

In general, consumers, particularly credit union members, have grown to expect instant access to credit when applying for car loans, mortgages and home equity loans. Despite major dips in the national economy, the housing industry, including first time home purchases, second home or vacation home purchases and mortgage refinancing has remained exceptionally strong. Much of this is due to the increased access to instant credit.

According to Treasure Secretary John Snow, the uniform national standards expand "opportunity for every consumer to access credit and financial services."

Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve, testified in front of this Committee in April 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 uncertainty before they make such loans or may, indeed, choose not to make those loans at all...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."

To sum up, Secretary Snow said it best in his announcement last week: the uniform national standards in the FCRA "have led to the democratization of credit."

The heart of the American economy is based on freedom and opportunity. Preserving the uniform standards of a national credit reporting system maintains and even expands these basic economic opportunities for all Americans. CUNA applauds this committee's efforts to make the uniform national standards permanent and commends you for taking swift action so this legislation can be sent to President Bush for a signature before the first session of the 108th Congress adjourns.

Title II - Identity Theft Prevention

We commend the sponsors of this legislation for addressing the very serious problem of identity theft. As we all know, identity theft is increasing and, by some estimates, is expected to victimize nearly one million people this year. It has already claimed approximately 11 million victims. It creates havoc with people's personal lives and "tears at the fabric of commerce in our information age," as Treasury Undersecretary for Financial Institutions Wayne Abernathy aptly described it in March.

To underscore the role of a credit union in combating identity theft, I'd like to tell a story. We have a member who is a consultant and travels abroad much of the time. An unsolicited credit card offer was mailed to a temporary address that he had briefly used once while completing a consultancy project for Georgia Tech. Not a user of credit, our member had no idea that $15,000 worth of unsecured debt had been issued to him, became delinquent, and was charged off. The fraud appeared when Alabama Credit Union offered the member our VISA card, pulled his credit report, and found the credit card charge-off. The card issuer declined to work with the member to resolve the issue, but Alabama Credit Union outlined a course of action, assisted him in contacting all credit bureaus, drafted a statement to be read to purchasers of his credit report, and provided him with information in following up to ensure his credit reports now contained the correct information and dispute notice. Since the member had applied for no credit while residing at the temporary address, it appears the mailing may have been generated from the purchase of a residents list, and not information obtainable from credit bureaus under FCRA. Had the card issuer used credit information as permitted, the address to which the card offer was sent would have been the borrower's permanent address, and the fraud could have been avoided.

CUNA has already taken steps to help arm our members with information and actions they can take to minimize the risk of identity theft and expedite the recovery. CUNA first reported to our membership on identity theft in the fall of 1996 and has been writing articles on the subject for our membership ever since. As of January 2000, we began providing our credit unions with statement stuffers for members entitled "Guard Your Plastic Cards" and "ID Theft: How to Prevent It and How to Get Over It". CUNA is also a member of BITS, the Technology Group for the Financial Services Roundtable, where extensive efforts have been ongoing with respect to identity theft prevention.

Section 201

We support the identity theft provisions in general and think that they will significantly reduce the occurrence of identity theft. Section 201 calls for the investigation of changes of address. We think this procedure will be a sound identity security practice. However, this change will require more hands-on employee activity for credit unions. We will need some time to change our systems to track these two events. We would recommend a year before this provision becomes effective.

Section 202

Section 202 requires the consumer reporting agencies (CRAs) to include a fraud alert in the consumer's file when requested and notify all users of the existence of a fraud alert. Credit unions are users, so will be subject to the subsection (3) prohibition regarding the issuance or extension of credit. We support this provision because it provides protection to consumers. However, we would like to draw your attention to the fact that Section 202 does not address under what circumstances and procedures the fraud alert would be removed and the users would no longer be subject to subsection (3). Our experience with our members suggests that a return to normal procedures is usually welcomed when the threat has passed. Our members, like other consumers, want financial services to be provided in the most efficient and expeditious way. We would also like to request a reasonable amount of time in order to put a system implementing subsection (3) into place.

Section 203

Section 203 calls for the truncation of credit card and debit card account numbers. We are credit card issuers and we think this is another sound security practice that will help protect our members from identity theft. There will be equipment costs associated with compliance that will in turn be passed on to our members. For this reason, we commend you for including a reasonable time period for purposes of compliance.

Section 204

We commend the cosponsors for providing for a summary of rights for identity theft victims in Section 204. Subsection (b) requires the Federal Trade Commission (FTC) to "develop guidelines for model policies and model procedures" with regard to the victims' summary of rights. We share the same goal: providing our members with the benefits of the most effective and efficient procedures for remedying the effects of identity theft. As financial institutions, we have a valuable and necessary perspective as to how victims can be helped in the most efficient and practicable way. For this reason, we want to express our interest in being part of the process of developing these guidelines and would hope that the FTC will provide us with such an opportunity. We would further suggest that the FTC act first to develop these guidelines and that the consumer reporting agencies work from these guidelines to develop the victims' summary of rights. As you are aware, a working group composed of the FTC, credit grantors and consumer advocates has developed an ID Theft Affidavit. We know of at least 20 credit unions that have endorsed the use of the Affidavit.

Section 205

Section 205 calls for the blocking of information resulting from identity theft by the consumer reporting agencies. We support the provision but do have a real concern that some consumers may file bogus police reports to remove correct derogative information on a credit report so as to obtain credit. We commend the sponsors for requiring that the consumer reporting agency promptly notify the furnisher of information about the request for the block. We are furnishers of information and we need to know when there has been a request for a block. We would recommend that the consumer reporting agency also be required to notify the furnisher of information when the agency declines or rescinds the block under the section. We should be made aware of that information as well.

Section 206

Section 206 requires the establishment of procedures for depository institutions to identify possible instances of identity theft, i.e., "red flag" guidelines. In so doing, the operative definition for federal banking agencies in section 3 of the Federal Deposit Insurance Act does not include the National Credit Union Administration (NCUA), our federal regulator. We would ask that this provision be modified to include the NCUA. The "red flag" guidelines will be a very useful tool in the arsenal being assembled in this bill against identity theft. We would request, however, that there be a good faith standard in any compliance requirement imposed on depository institutions so as to protect us from unwarranted liability.

Title III – Improving Resolution of Consumer Disputes

Section 301

Section 301 requires the FTC to prescribe rules for the coordination of consumer complaint investigations. We think this idea is an excellent one, particularly if it results in a system whereby the victim need only report the identity theft once to a single entity. This could be the equivalent of calling 911, a system that is universally used today. Further, to be successful, the dissemination of information, both in the initial reporting stage and for correction purposes (if, for example, the information is bogus), will have to be very efficient. Section 301 also requires the FTC to develop model forms and procedures to be used by victims for purposes of informing creditors and CRAs. This would help credit unions help victims by expediting the initial stage of an investigation.

Section 303

Section 303 calls for a study by the Board of Governors of the Federal Reserve System and the FTC on how CRAs and furnishers of information are handling disputed consumer information. With respect to furnishers, it appears that the study will focus on the furnishers' maintenance of full and prompt compliance with the responsibilities under Section 623 of the Fair Credit Reporting Act. Since these studies will include recommendations to Congress for legislative or administrative actions, we again would appreciate the opportunity to provide input to these studies. We have considerable experience as furnishers and would like to contribute to these studies.

Title IV – Improving Accuracy of Consumer Records

We support Title IV in general and applaud the sponsors' efforts to address this issue, given its vital importance to all consumers, as well as to the integrity of the credit reporting system itself. We concur with the National Association of Realtors in strong support of these provisions.

Section 401

In the event someone requests a consumer report and the address of the consumer is significantly different from the most recent address in the file, the CRA is required under this section to notify the requester of the discrepancy and reconcile the difference within 30 days. We think this provision is another prudent measure to combat identity theft. We read this provision in its current form as not constraining the credit grantor from conducting a quick investigation so as to avoid losing the opportunity to complete the transaction. We say this because there will be instances where the credit union can very quickly (e.g., within hours) resolve the discrepancy and should then be able to complete the transaction.

Section 402

This section provides that furnishers may not report information to CRAs that the furnisher knows "or has reason to believe" resulted from fraudulent activity, including identity theft. While we certainly understand the intent, we are concerned that the "reason to believe" language will be problematic. This language is not well defined and therefore subject to interpretation which will lead to more lawsuits and/or enforcement actions.

Section 403

Section 403 requires assignees, agents, and debt collectors as defined in Title VIII to notify creditors regarding fraudulent information that may be the result of identity theft. This section provides an additional weapon in the arsenal by creating another channel of communication back to creditors regarding fraudulent information that may be the result of identity theft. This will serve as another tool for credit unions to help our members identify the existence of identity theft.

Title V – Improvements in Use of and Consumer Access to Credit Information

We support Title V in general and commend the sponsors for providing consumers upon request with a credit report and credit scores, including a summary of how the scores were derived and how the consumer can improve the scores, at no charge and on an annual basis. We wish to associate ourselves with the position of the National Association of Realtors in strong support for these provisions.

Sections 501 and 502

We fully recognize that providing consumers upon request with the above credit information will result in indirect costs. We believe, however, that such costs will be significantly outweighed by the benefits to our members in terms of a better understanding of their credit status. Credit unions are committed to enhancing the financial education and financial literacy of our members. We view this as an ongoing effort and are always looking for ways to do a better job. These provisions will give us just that opportunity. We strongly feel that the more our member

knows, the better able he or she is to make sound financial decisions. This is an effective means of combating predatory lending and will enable credit unions to provide an alternative to these abusive lending practices. We are confident that the costs associated with these provisions will be significantly reduced over time as the use of secure electronic communications increases.

Section 503

Section 503 requires CRAs to make its notification system easier and simpler for consumers to remove their names from the list used for credit or insurance offers not initiated by the consumer. While credit unions make prescreened offers, we support this provision because it will benefit our members who do not wish to receive such offers. We also support the development of "a simple and easy to understand format" as part of any credit or insurance prescreened offer for use by the consumer in exercising his or her right to notify the notification system for purposes of removal from the list.

Title VI – Protecting Employee Misconduct Investigations

Section 601

Section 601 addresses the Vail Letter, an FTC staff opinion issued in 1999, which suggested that investigations of employee misconduct performed by an outside party can be considered a "consumer report" which triggers the requirement that the accused must be notified of the investigation and provided with the names of the accusers. This section changes this by providing that communications to an employer by outside third parties hired to investigate employee misconduct will not be considered "consumer reports." Under this section, if any adverse action is taken based on the communications, the employer must provide the employee with a summary of the communications upon which the adverse action is based. The sources of the information need not be disclosed.

We believe that the current FTC position is a problem. It allows the accused to cover his or her tracks because he or she knows of the investigation and can harass the accusers. We support this provision because we think it will rectify this situation and lead to an improved work environment. Credit unions are typically small institutions and we may well need to use a third party to conduct the investigation. The Vail Letter has been an obstacle for credit unions; one that we think has improperly impeded the investigation of employee misconduct.

Conclusion

In conclusion, CUNA strongly supports the permanent extension of the preemption provisions of the Fair Credit Reporting Act. Making these national standards permanent is a critical element in assuring that our nation's consumers have easy access to credit and that they receive fair and appropriate protections of their personal financial information. Our economy depends on it, and our citizens deserve it.

Consumer Federation of America

TESTIMONY OF

STEPHEN BROBECK
EXECUTIVE DIRECTOR
CONSUMER FEDERATION OF AMERICA

ON BEHALF OF:
ACORN
CENTER FOR COMMUNITY CHANGE
CONSUMER ACTION
CONSUMER FEDERATION OF AMERICA
CONSUMERS UNION
U.S. PUBLIC INTEREST RESEARCH GROUP, AND
THE LOW-INCOME CLIENTS OF THE NATIONAL CONSUMER LAW CENTER

BEFORE THE

US HOUSE COMMITTEE ON
FINANCIAL SERVICES

REGARDING

H.R. 2622
THE "FAIR AND ACCURATE CREDIT TRANSACTIONS
ACT OF 2003"

JULY 9, 2003

Chairman Oxley, Representative Frank, members of the committee, my name is Stephen Brobeck and I am executive director of the Consumer Federation of America. My testimony today is on behalf of ACORN, Center for Community Change, Consumer Action, Consumer Federation of America, Consumers Union, U.S. PIRG and the low-income clients of the National Consumer Law Center. Our organizations have all been active on Fair Credit Reporting Act (FCRA) matters for many years, have participated in the debate leading to the 1996 amendments and have published numerous reports and manuals on credit reporting issues. Most of these groups have also testified directly before the Subcommittee on Financial Institutions but have been asked by the full committee to present their views jointly.

At the outset, we want to commend the subcommittee for holding a comprehensive set of hearings on the Fair Credit Reporting Act (FCRA). The committee has developed a detailed record on issues ranging from identity theft and credit report accuracy to security breaches and medical privacy.

The above groups believe that a careful review of that hearing record would show that broad, comprehensive reforms are necessary to guarantee that credit reports and credit scores are accurate, that the privacy of consumers is maintained and that identity theft is stopped. We also believe that the industry witnesses seeking extension of the 1996 preemption amendments to the FCRA have failed to make their case that states' rights to regulate these areas of the FCRA should be taken away, let alone taken away permanently.

So, while we are pleased that HR 2622, the bi-partisan bill co-sponsored by a number of members of the committee, takes steps to reform the FCRA, we cannot support it.

The bill helps victims after they become victims, but it should include provisions to prevent mistakes by creditors and credit bureaus. The bill does nothing to increase their responsibilities, nor does it provide penalties for failing to meet those responsibilities of ensuring accuracy and privacy in credit reports. Despite a detailed record demonstrating the need to improve the law, the proposed bill instead defers many actions until proposed studies by various agencies are completed.

- First, while the bill commendably guarantees all consumers the right to look at their credit reports annually for free upon request, it fails to fix the numerous problems with the FCRA that virtually guarantee that those reports will be full of mistakes and it fails to give consumers enforceable rights to clean up those mistakes. Consumers will be able to look at their credit reports, and if the bill is clarified, perhaps also look at their credit scores, but won't be able to clear up the mistakes easily.
- Second, while the bill includes several modest measures to assist consumers after they have become identity theft victims, it includes inadequate measures to deter identity theft. Further, the identity theft amendments include a troubling provision wrongly regulating the growing class of reseller credit bureaus differently than the national repositories are regulated, making it harder for consumers to clear their names.

- Third, the bill fails to adequately protect consumer privacy. For example, it does not rein in unfair pre-screening practices and it does not close medical privacy loopholes documented in the hearings. Worse, the bill does nothing to guarantee that all consumers have access to credit reporting rights when adverse credit decisions are made, for example on the basis of affiliate information sharing.
- Fourth, the bill unwisely retains the 1996 amendment exempting affiliate sharing from the definition of credit report. Industry has used confusion over the relationship of this preemptive provision to the Gramm-Leach-Bliley Act's states' rights provisions to chill state and local efforts to enact stronger opt-in financial privacy laws.
- Finally, while enactment of the bill would fail to solve these well-documented problems, the bill would also prevent the states from acting to solve many of them, by permanently extending the FCRA's temporary 1996 limits on some state actions. This provision is opposed by all major consumer and privacy groups and is also opposed by the National Association of Attorneys General.

Therefore, we call on the committee to delete the provisions of HR 2622 which would extend preemption and to add provisions guaranteeing the accuracy and privacy of credit reports and preventing identity theft.

Here is a summary of our major recommendations to improve HR 2622.

First, remove preemption. Although we continue to endorse complete deletion of the preemption provisions, the committee should at least modify the provision so that the preemption sunsets one year following the completion of the studies required by the bill. If the committee is going to defer action on our major recommendations to improve accuracy, it should also defer a final decision on preemption.

Second, give consumers more information. When a consumer is denied credit on the basis of a credit report, give him or her the right to automatically obtain from that lender a copy of the subscriber report and score used to deny credit. Employment applicants already have a similar right under the FCRA. This provision, coupled with the annual free credit report on request, will be a powerful incentive to improve accuracy.

Third, give consumers better private enforcement rights, since the agencies aren't adequately enforcing the accuracy provisions of the law:

- Give consumers the right to go to a court and seek injunctive relief to stop a credit bureau from selling faulty credit reports about them.
- Give consumers the right to seek minimum statutory damages of $100-$1,000 per violation of the FCRA, as other consumer laws provide, so that they don't have to prove their actual damages to a court. This provision is especially critical for identity theft victims, who often spend hundreds of hours over a period of years trying to clear their good names. While the cost of emotional distress is significantly greater than $100-$1000, the threat of specific damages would be a powerful incentive to force creditors and credit bureaus to clean up the credit reporting system's accuracy.

The remainder of our testimony will discuss in detail the problems identified in the hearings that HR 2622 fails to adequately address. At the end of this testimony, we provide a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

1) The Bill Fails To Guarantee The Accuracy of Credit Reports

A) During the hearings the committee heard detailed testimony about the factors that cause credit report inaccuracies.

Some of the mistakes on consumer reports are the result of mis-merged file information, when the bureau simply adds one consumer's account to another's file. Other mistakes result from fraudulent accounts of identity thieves being mistakenly added to an innocent consumer's report. Still others result from coding or reporting errors where a consumer's on-time payments are falsely listed as late. Surprisingly, some of the "errors" are intentional, where a creditor seeks to deflate its own consumers' credit scores.

In particular, the committee reviewed the findings of a study of the credit files of 500,000 consumers, the most comprehensive study[1] of credit reports ever completed. That study, produced jointly by my organization, the Consumer Federation of America, along with the National Credit Reporting Association[2], found that 29% of consumers had discrepancies in their credit reports obtained from each of the three national repositories resulting in a variance of 50 points or more in their credit scores. Another key finding of this study, using a conservative analysis, was that at least 8 million Americans would likely be mis-categorized as sub-prime and pay tens of thousands of dollars in excess interest payments over the 30-year life of a mortgage.

The committee also heard testimony from the Center for Community Change[3] and the National Fair Housing Alliance[4] that credit scoring models be made more transparent and subject to independent verification both to ensure accuracy and to demonstrate that the scoring models do not result in a disparate racial impact among protected classes.

Similarly, the committee heard that a growing number of credit card companies are "risk re-pricing" their existing customers, often on a monthly basis and raising the interest rates of some consumers to as much as 25% APR, solely on the basis of either a reduced credit score or an alleged late payment to a different creditor. Errors in credit reports or defects in credit scoring models could easily affect such a harsh decision-making tool.[5]

In addition, the testimony of both CFA and the U.S. Public Interest Research Group[6] described how some of the nation's largest credit card companies are intentionally failing to report complete information on their customers in an effort to "game" the credit scoring models, thereby deflating their customers' credit scores. This anti-competitive behavior has been a subject of regulatory scrutiny, as documented in the record testimony. Further, following one of the committee's hearings, the American Banker newspaper obtained information from Capital One that it continues in these practices.[7]

Further, testimony before the subcommittee regarding recent research conducted by the Federal Reserve Board provided confirmation of the consumer groups' major findings that credit reports are inaccurate and that creditors ("furnishers of information" in the FCRA) were intentionally withholding full information about their customers.

B) The Committee Heard Testimony That The 1996 Amendments Intended to Make It Easier For Victims Of Errors and Identity Theft To Clear These Mistakes Haven't Worked

Then, the committee heard detailed testimony from both the National Association of Consumer Advocates[8] and the National Consumer Law Center[9] about the difficulties consumers face when they try to resolve these errors in their credit reports. These groups, as well as U.S. PIRG, CFA, and Consumers Union[10] all provided detailed proposals to make it easier for consumers to correct mistakes and to enforce the law when mistakes were not corrected.

None of these proposals are reflected in H.R. 2622, except for certain modest provisions providing greater assistance for identity theft victims to attempt to clear their names. The bill should provide similar assistance to victims of credit report inaccuracies. The bill relegates all issues of inaccuracy and incomplete reporting to studies rather than solutions.

At the end of this testimony, we provide a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

2) The Bill Fails To Prevent Identity Theft

The bill purports to stop identity theft. That's hardly surprising, as no one likes identity theft. It's a drag on the productive economy and it's proven to be a major hassle for hundreds of thousands of consumers annually. Identity theft has been the Number One consumer complaint to the Federal Trade Commission for three straight years, with complaint levels doubling in 2002.

Yet, the bill takes only modest steps to address identity theft. Most of these steps are designed to assist victims, not prevent the problem from happening in the first place.

Identity theft victim Maureen Mitchell[11] told the committee that numerous fraudulent accounts at six different out-of-state addresses were added to her credit reports without any reaction from the credit bureaus. Navy Commander Frank Mellott[12] told the committee how an identity thief armed only with his Social Security Number was able to open numerous accounts in his name. Both these victims testified to the enormous amounts of time and effort they spent clearing their names.

While H.R. 2622 includes modest provisions relating to verifying changes of address, the provisions are inadequate by themselves to prevent identity theft. The bill should also require creditors and credit bureaus to match at least 4 points of correspondence between a credit application and a credit report before issuing that report to a subscriber creditor. The bill should also require that when a creditor receives a Section 401 notice of an address change from a credit bureau, that the creditor face liability for failing to take reasonable steps to confirm the address change before credit is granted.

Further, even the bill's provision, Section 401, for address change verification by credit bureaus, is deficient. Under consent decrees negotiated with the three major credit bureaus by several states and/or the FTC, credit bureaus are required to use "Full Identifying Information," defined as "full last and first name; middle initial; full street address; zip code; year of birth; any generational designation; and social security number." While this provision from the early 1990s was originally intended to prevent credit report mis-merge errors, it would also serve to fight identity theft if it were adequately enforced.

Yet, Section 401 may weaken even this matching requirement provided by the consent decrees, since it allows bureaus to ignore address differences that are not "substantial variations.[13]" In apparent disregard of the consent decrees, the bureaus already use "partial match" algorithms to match similar names, addresses or Social Security Numbers. For example, if 7 of 9 digits of an SSN match the bureau software may presume a clerical error, not an identity theft or a mis-match. Similar algorithms match similar but not exact addresses and names. Enactment of Section 401 would undercut these consent decrees.

At the end of this testimony, we provide a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

3) The Bill Fails To Guarantee Privacy

The committee heard record testimony about a number of other privacy problems that are not addressed by HR 2622.

A) Affiliate Sharing

First, testimony by U.S. PIRG and other witnesses described how the 1996 FCRA exempts affiliate sharing from the definition of credit report and also preempts states from amending that provision.[14] Industry lobbying has effectively chilled most state and city attempts to enact stronger state financial privacy laws under the Gramm-Leach-Bliley Act's (GLB) Sarbanes amendment provision clearly allowing stronger state financial privacy laws. Industry has alleged that FCRA somehow negates GLB's provision.

Nevertheless, California and its cities continue to seek stronger financial privacy laws. Although a state legislative proposal, SB 1, offered by State Senator Jackie Speier, has not passed, several local ordinances have been enacted. Local financial privacy rules in

San Mateo and Daly City now face a court challenge from Bank of America and Wells Fargo, backed by the Comptroller of the Currency (OCC).

If the cities lose in court, particularly under a National Bank Act preemption argument, despite the clear legislative history in their favor, it may be appropriate for the Congress to consider a narrow clarifying amendment to GLB that makes it clear that the Sarbanes amendment is the paramount federal rule on financial privacy, **all** other laws notwithstanding.

Notably, several California organizations including Consumer Action, CALPIRG and the Consumer Federation of California seek to qualify a March 2004 ballot initiative, after the proposed expiration of FCRA preemption, requiring opt-in consent before affiliate sharing for secondary purposes.

The affiliate sharing exception allows detailed experience and transaction information to be shared and used for adverse actions without triggering the FCRA's consumer protection rights,[15] in the circumstance where the information is shared among corporate affiliates. Experience and transaction information could include details from credit card and checking account purchases, mortgage balances and payment histories, bank account and brokerage balances and other deposit account usage information and relationships with co-signers, if any.

As the FTC, in an official position paper released in 1994 before the 1996 amendments,[16] stated on affiliate sharing:

> "Because the subject of information sharing with affiliates has not been the subject of Congressional hearings, the factual basis for the provision is not necessarily available and the Commission cannot easily evaluate its pros-and-cons. The Commission believes, however, that caution is the best approach in considering whether to create what may become a significant exception to the consumer protections provided by the FCRA. It may be preferable to defer creation of any exceptions to the FCRA's protections for affiliate sharing until Congress has an opportunity to study this issue and its implications more carefully."

Unfortunately, Congress did not actually build a hearing record on affiliate sharing before it created this controversial loophole in 1996. It now appears that the FTC's concern that a "significant exception" to FCRA's protections would be created was correct. In testimony on June 26th before the Senate Banking Committee, Citigroup stated that it: "is able to use the credit information and transaction histories that we collect from affiliates to create internal credit scores and models that help determine a customer's eligibility for credit.[17]"

The growing use of affiliate sharing under GLB for profiling and credit decision-making, as confirmed by the Citigroup Senate testimony, will lessen the public benefits of the FCRA. When credit decisions are made on the basis of affiliate-shared information,

consumers do not have the same bundle of rights as they do under FCRA. As internal creditor databases increase in size and predictive value, either credit decisions or other profiling decisions (whether to even offer a consumer a certain class of product, for example) will 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.

Unfortunately, HR 2622 does nothing to address either the chilling of states rights or the diminution of consumer rights caused by the affiliate sharing exception.

B) The bill does not improve the inadequate regulation of pre-screened solicitations

Credit bureaus also sell under-regulated pre-screened lists of consumers derived from credit reports, for credit and insurance related purposes. Pre-screened opt-out notices are hard to find and harder to read; the opt-out mechanism is overly complex and, for a permanent opt-out, a consumer must make a call, receive a notice in the mail, sign it, stamp it and return it.[18] The unnecessary complexity contrasts starkly with the much simpler national do not call list recently implemented by the FTC which has receive dramatic consumer response.

C) The Bill Does Not Address Medical Privacy Problems

Testimony by CFA documented how medical information could be improperly inferred from trade lines in credit reports. Detailed testimony from the Electronic Privacy Information Center and Georgetown Medical School assistant professor, Joy L. Pritts, J.D. documented how neither the FCRA nor the GLB prevent the sharing of confidential medical information among corporate affiliates, including banks.

D) The Bill Weakens Protection For Subjects of Investigative Reports In Employment

Another major flaw with H.R. 2622 is its treatment of employment related investigative reports. The proposed amendments would simply exclude such reports from the definition of consumer reports. This amendment eviscerates the current protections under the FCRA for workers. While we agree that changes are necessary to address investigations based on employee misconduct, the proposed amendments are not balanced. Workers who are victims of false accusations must be protected as well. Whistleblowers and workers attempting union organizing drives must also be protected. Yet, investigations of employees without notice to the employees, even after the fact, have the potential to deter legal worker conduct and intimidate employees. We recommend a more comprehensive and balanced means of addressing the issue of employee misconduct and investigations into such conduct, along the lines of the FTC proposal from 2000, or the proposed changes that were negotiated between all interested

parties in 2000, when a similar attempt was made to undercut employee protections in the FCRA.[19]

At the end of our testimony, we provide a comprehensive list of provisions designed to improve the FCRA's accuracy, identity theft and privacy provisions and compare these to the provisions in HR 2622.

4) Conclusion

While HR 2622 includes several laudable provisions, it does not address all the important problems identified in the committee's detailed hearing record. Too many of the largest problems are deferred to studies, rather than solved. Yet, the committee is pushing the bill forward as a comprehensive solution, hoping that its modest positive provisions provide enough cover to achieve industry' goal of preempting state laws permanently. That is disappointing.

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. 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.

We hope to work with the committee, and with Members of the House, to eliminate HR 2622's unfair preemption of state laws and to amend it so that it more adequately prevents the problems it fails to prevent.

5) APPENDIX: Comparison of Bill To Consumer Groups' List of Minimum Consensus Reforms

The following is a comparison of the bill's modest provisions concerning accuracy, privacy and identity theft with those provisions necessary to fix the FCRA.

Provide Consumers With Greater Rights to Enforce the Law:

1. Provide consumers injunctive relief; minimum statutory (liquidated) damages and attorney's fees for successful actions. HR 2622 does not address at all changing the FCRA so that consumers can ask a court to stop a credit bureau from reporting false negative information.

2. Provide consumers with minimum statutory (liquidated) damages of $100-$1000 for each violation. Some courts have ruled that a violation of the FCRA has not occurred unless a consumer can prove actual damages. More generally, the difficulty in proving actual damages has acted as a barrier to consumers being able to retain counsel to enforce

the law. Further, it is difficult to prove certain actual damages, such as the value of the loss of your good name in identity theft situations.

3. Maintain voluntary reporting, but require furnishers that report to abide by a completeness standard to prevent gaming the credit scoring system. While Sec. 303(c)(2) of HR 2622 requires the FTC to conduct studies that address the consumer group recommendation that "furnishers of information to consumer reporting agencies maintain full and prompt compliance with the duties and responsibilities established under Section 623 of the FCRA," testimony presented before the subcommittee has already established that serious problems exist. It is our view that the bill should simply amend the FCRA to require complete reporting by furnishers.

4. Give consumers an FCRA right to contact furnisher directly to initiate reinvestigation. Add duties on "furnishers and users" to improve accuracy and conduct 1681(i) reinvestigations. While HR 2622 fails to provide these important rights to all consumers who are victims of credit reporting mistakes, it does takes steps in this direction for identity theft victims. Section 301 requires the FTC to develop a model form and model procedures to be used by victims of ID fraud for contacting and informing creditors and reporting agencies of the fraud. Section 402 also forbids furnishers from providing information to any reporting agency that the furnisher knows or has reason to believe has resulted from fraud/ID theft.

5. Shorten the act's 30-45 day reinvestigation period to 10 – 15 days. The bureaus already provide shorter reinvestigations in certain circumstances. The credit bureaus have a well-documented system that provides "concierge" services for certain classes of consumers. VIPs and consumers who are suing the bureaus generally can get complaints resolved more quickly. However, the most efficient reinvestigation systems are provided for consumers working with certain mortgage entities, where rapid re-scoring can gain a correction in 24-48 hours. Yet Section 303 of HR 2622, "Prompt Investigation of Disputed Consumer Information," only requires the Federal Reserve System and the FTC to study the extent to which reporting agencies are complying with the current procedures and time lines under the FCRA for the prompt investigation and correction of disputed accuracy.

6. Require regular, formal oversight and internal review of credit scoring algorithms and models to ensure full compliance with FCRA, ECOA and Fair Housing laws. This critical reform provision is not in any way addressed by HR 2622.

7. Require FTC and other regulators to fully enforce the existing requirement to consider all information relevant to consumer's dispute, including information provided by the consumer and to require CRAs to reject findings of so-called furnisher reinvestigation that conflict with such relevant information provided by the consumer. This critical reform provision is not in any way addressed by HR 2622.

8. Reinstate 2-year discovery rule (or 7 years after violation) statute of limitations to sue credit bureaus, but ensure that protections apply to all victims, not only ID theft victims. In 2001 in *TRW vs. Andrews* the Supreme Court held that consumers could only sue a credit bureau for 2 years following a violation, not two years following discovery of the violation. We are disappointed that although Chairman Bachus was a chief sponsor of a bill addressing this problem, HR 3368 in the 107th Congress, that he has not included this important provision in HR 2622. While a variant of the provision is included in S. 22, it is defective at the request of the credit bureaus and would only apply to identity theft victims. We believe that the proper way to reinstate the discovery rule is to apply it to all victims, to make it 2 years after discovery with a maximum of seven years (the same period bureaus can generally issue reports containing negative information). The provision should also include an estoppel provision so that when a credit bureau intentionally misrepresents any information required, an action may be brought at any time within two years following discovery of the misrepresentation.

9. Eliminate Reseller and Specialized Credit Bureau Exceptions. The bill would exempt resellers and certain specialized credit bureaus from certain of the bill's provisions. While the industry has been successful in convincing several states to adopt similar language in their identity theft reforms, this provision is opposed by consumer groups, by identity theft victim organizations, and, we understand, by the National Credit Reporting Association, which represents many resellers. We believe that the intent of the provision is to undercut the FTC's strict enforcement stance in the First American Credco[20] consent decree—which held that resellers should be treated the same as any other credit bureau. Credco should not be undercut by HR 2622.

Give Consumers More Information About Their Reports

1. Provide an annual free credit report that includes a credit score on request of any consumer, expand the opportunities for certain consumers to gain additional free reports, and cap prices of credit report monitoring and alert services. Commendably, HR 2622 would make annual free credit report rights granted for many years in six states (Colorado, Georgia, Maryland, Massachusetts, New Jersey and Vermont) the law of the land. However, in our view, the following should also be done. First, potential fraud victims, indigent consumers and unemployed consumers should retain their current rights (removed by HR 2622) to additional free reports, not only once each year or following denial. Second, because the bureaus have aggressively capitalized on the identity theft epidemic (that their practices are partly responsible for) by selling expensive credit reporting monitoring services for as much as $99-120/year, Congress should cap the price of these services at $29/year. Notably, recent press reports have accused at least one of the bureaus of using deceptive marketing of "free credit reports" to sell these services.[21]

2. Provide consumers with credit scores as part of their credit reports. While some staff have stated to us that the intent of HR 2622 is to make this laudable change, we do not think that the bill's language gets the job done. Section 502 amends Section. 609(a)(1) of the FCRA by deleting language stating that scores are not part of credit reports and replaces it with affirmative language that requires a "summary of how any individual

credit score" was derived. In our view, since the legislative and regulatory history of the FCRA before the 1996 addition of this language did not guarantee disclosure of scores, removing it won't either. The bill should be amended to specifically require the disclosure of credit scores with credit reports.

3. Give consumers the right to automatically obtain a credit report and score directly from a lender when an adverse action is taken. Consumers face two problems when they request a credit report (and score) from a credit bureau. First, any adverse actions previously taken were based on a subscriber credit report provided to the lender. The subscriber report is often provided based on a limited number of matching data points and is more likely to contain inaccurate or mis-merged information about other consumers than a report requested by a consumer, since a consumer must provide a detailed match of name, address, and Social Security Number. Second, a score derived from that consumer report will probably differ from the score the subscriber obtained from the less accurate report.

While we still support HR 2622's provision to provide a free report annually and, presumably also provide a score, if clarified, we believe more must be done to give consumers quicker and better information about the accuracy of their reports.

The FCRA already requires that employers contemplating adverse actions show consumers a copy of their report. The FCRA should be amended so that after a lender takes an adverse action, the consumer would automatically receive from that subscriber a copy of the subscriber report and score used in the adverse action.

Giving consumers access to the subscriber report, which is much more likely to contain false negative information would have a great impact on credit report accuracy. Providing a report immediately following denial would also be a powerful educational tool for consumers.

4. Notify consumers when negative information is reported. The bill, HR 2622, fails to include the consensus proposal by Rep. Ackerman to guarantee that consumers be warned by their creditors that negative information has been sent to a credit bureau. An even stronger alternative, already law in Colorado, requires that credit bureaus provide an annual notice of rights to consumers. The notice is sent to all consumers who have received one negative item or 8 inquiries generally on their reports. This could be improved by adding a third category—"or had a request for an address change on their reports" (in which case the notice should be sent to the old and new addresses).

Provisions To Fight Identity Theft

1. Give consumers the right to impose security freeze report blocking at no charge. Section 205 of HR 2622 provides to the consumer the ability to "block" trade line information resulting from ID theft. It allows reporting agencies to refuse or rescind a block if it determines the consumer requesting the block misrepresented him or herself or the consumer obtained benefits as a result of the blocked transaction or if there was an error. If the agency takes such action, it must promptly notify the consumer.
But HR 2622 should be amended to give consumers the right to block their credit report from being issued, as California and other states provide.

2. Require full name and contact information, including phone number, with all trade lines on credit report. This will make it easier for consumers to investigate complaints.

3. Require furnishers/bureaus to match 4 points of identification before issuing a subscriber report. Identity theft and mis-merged files regularly occur because the bureau fails to accurately ensure that an application provided by a subscriber matches the report that is issued.

4. Impose stricter address change verification requirements. Title II of HR 2622 adds a provision to the FCRA's Section 605 that any credit card issuer that receives an additional request for an already existing credit card within 30 days after receiving an address change notification shall notify the cardholder at both the new and old addresses. In addition, under Title IV of the bill, Section 605 is amended so that when a person requests a consumer report that includes an address for the consumer that substantially differs from the most recent address in the consumer's file, the reporting agency shall notify the request of the discrepancy and reconcile or resolve the variation.

5. Give a consumer a right to put a fraud flag on his or her credit report and impose penalties for bureaus selling/issuing any subscriber report where fraud flag is not prominent. Commendably, HR 2622 includes a provision making it a violation for a bureau to issue a report without a fraud flag.

6. Impose penalties for furnisher issuing credit on any report with a fraud flag. Title II of the bill commendably prohibits the user (requester) of the consumer's report from extending credit in the name of the consumer without first obtaining preauthorization of the consumer who placed the fraud alert.

7. Require credit card number truncation. The bill commendably codifies federally several state laws requiring truncation of credit card numbers on most receipts, to reduce the risk of fraud.

8. Get the Social Security Number out of circulation. Social security numbers are the key that opens the door to your financial identity. We believe that the recent DC Circuit, U.S. Court of Appeals decision removing SSNs from credit headers, which are unregulated information products sold by the bureaus outside the FCRA, should be codified in federal law as an amendment to the FCRA.[22] We also believe that the Ways and Committee should enact the additional provisions included in HR 2036 from the 107th Congress which would prohibit businesses from coercing consumers into providing their SSN as a condition as a condition of doing business.

9. Prohibit selling debt to a debt collector where the consumer is an ID theft victim with respect to that debt. This concern is not addressed by HR 2622.

10. Give victims access to business records of all creditors including telecommunications providers when fraudulent accounts opened. Not addressed by HR 2622. This provision is

law in California and is the subject of several bills from the 107th and 108th Congress. However, it should be enacted without a reseller exception, as S. 22 includes.

Tools To Protect Privacy

1. Eliminate two-tiered pre-screened credit card and insurance solicitations opt-out. HR 2622 does not address this important amendment which would provide that all opt-outs, not only opt-outs made in writing after returning a "signed notice of election," are permanent until rescinded.

2. Require pre-screening opt-out to use express, prominent language. HR 2622 does not address the problem that the FTC and bank regulators have ignored the failure of credit card companies to make pre-screened opt-out notices "prominent," as the law requires. The solution is for Congress to require an express, statutory warning with a specified format.

3. Close loopholes allowing inadvertent disclosure of medical information by bill collectors and other furnishers.

4. Ban sharing of medical information between affiliates without express consent and then only for limited, one-time purposes

5. Ban the use of credit scores in insurance. Consumers with excellent insurance claims records are routinely being non-renewed or having homeowners or auto insurance rates raised on the basis of credit scores, which are based on inaccurate credit reports. HR 2622 does not address this critical issue.

6. Ensure that the use of credit reports for employment investigations does not violate employee privacy or impede whistleblowers or lawful union organizing. See discussion in Section 3 above.

7. Ensure that employment users comply fully with FCRA provisions. HR 2622 does not address this issue. At a minimum, the FTC needs to conduct a study to determine whether employers using credit reports for adverse actions are complying with the act's expanded 1996 provisions.

8. Require any agency or business that possesses a citizen's or consumer's computerized data to adhere to a security breach notification law. HR 2622 – not addressed. Although the committee held an entire hearing[23] devoted to the serious problem of security breaches, as epitomized by the recent Tri-West, Tele-Data and University of Texas cases, nothing in the bill would require data collectors (government or private) to notify consumers of computer hacks or other theft of databases resulting in threats to their privacy. California has enacted legislation requiring minimal notification standards which should be adopted by Congress.

9. Prohibit risk-based re-pricing (bait and switch). HR 2622 does not address the serious problems raised by the growing practice of credit card companies raising their customers' interest rates to penalty rates of 25% APR or more, based on their credit scores. The problem is exacerbated by the fact that some of these same credit card companies may also be deflating their customers' credit scores through incomplete reporting.

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[1] "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 See direct testimony of Travis Plunkett, Legislative Director, Consumer Federation of America, before the Financial Institutions Subcommittee, 12 June 2003, at http://financialservices.house.gov/media/pdf/061203tp.pdf

[2] See also the direct testimony of Paul Wohkittel, Legislative Chairman, National Credit Reporting Association, before the Financial Institutions Subcommittee, 4 June 2003 at http://financialservices.house.gov/media/pdf/060403pw.pdf

[3] See direct testimony of Allen Fishbein, General Counsel, Center for Community Change, before the Subcommittee on Financial Institutions, 12 June 2003, at http://financialservices.house.gov/media/pdf/061203af.pdf

[4] See direct testimony of Shanna Smith, Executive Director, National Fair Housing Alliance, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403ss.pdf

[5] "Surprise Jumps in Credit Rates Bring Scrutiny," by Jennifer Bayot, The New York Times, 29 May 2003, Page 1.

[6] See direct testimony of Ed Mierzwinski, Consumer Program Director, U.S. PIRG before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403em.pdf

[7] "FCRA Hearing to Shine Spotlight on Credit Process," American Banker, 12 June 12, 2003 by Michele Heller.

[8] See direct testimony of Len Bennett, National Association of Consumer Advocates, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403lb.pdf

[9] See direct testimony of Anthony Rodriquez, Staff Attorney, National Consumer law Center, before the Subcommittee on Financial Institutions, 4 June 2003, at http://financialservices.house.gov/media/pdf/060403ar.pdf

[10] See direct testimony of Janelle Mayo Duncan, Legislative Counsel, Consumers Union, before the Financial Institutions Subcommittee, 24 June 2003, at http://financialservices.house.gov/media/pdf/062403jd.pdf

[11] Direct testimony of Maureen Mitchell, identity theft victim, before the Subcommittee on Financial Institutions, 24 June 2003, at http://financialservices.house.gov/media/pdf/062403mm.pdf

[12] Direct testimony of Commander Frank Mellott, USN, identity theft victim, before the Subcommittee on Financial Institutions, 24 June 2003, at http://financialservices.house.gov/media/pdf/062403fm.pdf

[13] The address change provisions of HR 2622 are derived from the Hooley-LaTourette identity theft legislation, HR 2035. Previous versions, such as HR 3053 in the 107th Congress, did not include the weakening "substantial variations" language.

[14] For a detailed analysis of how neither the FCRA nor GLB regulate affiliate sharing, see also the testimony of U.S. PIRG's Ed Mierzwinski, Vermont Assistant Attorney General Julie Brill and Fordham Law Professor Joel Reidenberg at a Senate Banking Committee hearing entitled "Affiliate Sharing Practices and Their Relationship to the Fair Credit Reporting Act" on 26 June 2003 available at http://banking.senate.gov/03_06hrg/062603/index.htm

[15] The 1996 amendments do provide that consumers be provided an extremely limited notice if affiliate shared information is used adversely, but provision of the notice triggers no additional rights. See FCRA

Section 615(b)(2). Compare with notice under 615(a) (adverse action based on credit report), which triggers comprehensive rights and duties under Sections 609, 610, 611.

[16] The FTC took an official position on the proposed FCRA amendments in 1994. U.S. PIRG has archived a (scanned) copy of the document, "HR 1015, Federal Trade Commission Analysis and Recommendations, 25 July 1994," at http://www.pirg.org/consumer/credit/ftcanalysishr1015.pdf

[17] Testimony of Martin Wong, General Counsel, Citigroup, before the U.S. Senate Banking Committee, 26 June 03, available at

[18] See PIRG's testimony before the House Financial Institutions Subcommittee, 4 June 2003 for a detailed analysis. http://financialservices.house.gov/media/pdf/060403em.pdf

[19] See testimony before this committee, 4 May 00, of the National Consumer Law Center and U.S. PIRG, by Margot Saunders of NCLC. The testimony includes an appendix detailing the views of the AFL-CIO. Available at http://financialservices.house.gov/banking/5400sau.htm

[20] See the FTC order in the Credco case: *First American Real Estate Solutions vs. FTC,* Docket no. C-3849 decision and order, 27 January 1999, available at http://www3.ftc.gov/os/1999/08/faresorder.htm

[21] According to the article, "More Girls Than Bargained For," 3 May 2003, The Washington Post, by David Hilzenrath, "The Experian credit reporting bureau's ConsumerInfo.com subsidiary has been the subject of 960 complaints to the" Better Business Bureau over the past three years.

[22] Section 203 of HR 2036 (Shaw) in the 107th Congress would eliminate Social Security Numbers from credit headers by only allowing credit bureaus to sell them as part of regulated credit reports. This matter is in the Financial Institutions Committee's jurisdiction. Section 202 of this bill would prohibit businesses from coercing consumers into providing their Social Security Numbers as a condition of doing business.

[23] Joint Hearing of the Oversight and Financial Institutions Subcommittees on "Fighting Fraud: Improving Information Security," 03 April 2003. See especially testimony of Evan Hendricks, Editor, Privacy Times at http://financialservices.house.gov/media/pdf/040303eh.pdf

Statement of John C. Dugan, Partner, Covington & Burling

on behalf of the

Financial Services Coordinating Council

American Bankers Association
American Council of Life Insurers
American Insurance Association
Securities Industry Association

Before the the Committee on Financial Services,
United States House of Representatives

Hearing on H.R. 2622, the
"Fair and Accurate Credit Transactions Act of 2003"

July 9, 2003

My name is John Dugan, and I am a partner with the law firm of Covington & Burling. I am testifying today on behalf of the Financial Services Coordinating Council ("FSCC"), whose members are the American Bankers Association, American Council of Life Insurers, American Insurance Association, and Securities Industry Association. These organizations represent thousands of large and small banks, insurance companies, and securities firms that, taken together, provide financial services to virtually every household in America.

The FSCC strongly supports H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003" -- the "FACT Act" -- which renews and strengthens the Fair Credit Reporting Act ("FCRA"). We believe its core provisions strike the right balance in preserving the FCRA's uniform national standards and adding strong new provisions to deter and remedy identity theft. Our member trade associations pledge to work hard for the enactment of this critical yet measured approach to FCRA reauthorization.

While the FSCC recognizes that the legislation is still a work in progress, we believe it is imperative that it retain its balanced approach throughout the legislative process. For example, we would strongly oppose addition of the types of restrictions that, however well intended, would substantially increase consumer costs without commensurate consumer benefits, or that would deter financial institutions from making the type of full and voluntary information submissions to credit bureaus that they do now. At the same time, the bill's provisions should preserve adequate flexibility for the industry to address legitimate concerns in the most efficient manner possible. In addition, our members have technical concerns with some of the bill's provisions that we hope can be addressed.

Let me provide more detail about each of these points.

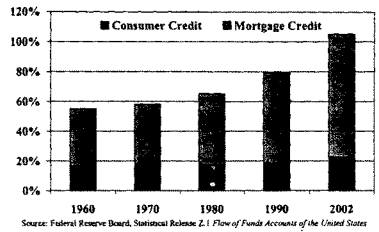
The Importance of Reauthorizing FCRA's Uniform National Standards

Title I of H.R. 2622 makes permanent the uniform national standards that underpin the FCRA. These standards make our extraordinary credit and insurance markets truly national, which in turn have brought unprecedented benefits to Americans throughout the country. By virtually any measure, the seven-year experiment with uniform national standards has been a resounding success, stirring strong industry competition that has resulted in, among other things, more and cheaper consumer credit and insurance, a wider variety of consumer products, and most fundamentally, economic growth. Accordingly, the linchpin of the FSCC's strong support of H.R. 2622 is the permanent extension of all of the FCRA's core uniform national standards.

Although the Committee has heard much testimony in the last several months on these standards, let me briefly revisit some of the key reasons why they are so important. In general, our national credit and insurance markets depend fundamentally on the FCRA's national standards, which translates into products that are far more ***accessible***. This means that consumers can walk into an auto dealership and drive off with a new car on the same day, or move to another state and open a bank account without hassle. Picking up the phone or going online, homeowners can compare mortgage rates across the country and refinance quickly to take advantage of falling interest rates. Consumers can easily take advantage of varied credit card offers from all over the country to obtain the best credit card deal for them. And consumers may choose from a wide array of insurance products that are tailored to their needs.

Such increased accessibility is confirmed by the study that the FSCC commissioned by professors Michael E. Staten and Fred H. Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation,*[1] which has previously been made available to this committee and its staff. As shown in Figure 1, the authors demonstrate that the role of household credit in the U.S. economy, especially mortgage credit, has grown dramatically since the passage of FCRA.

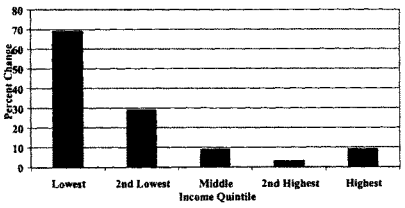
Figure 1
U.S. Consumer and Mortgage Credit as a Percentage of Disposable Income (1960-2002)



Source: Federal Reserve Board, Statistical Release Z.1 *Flow of Funds Accounts of the United States*

Perhaps even more strikingly, the authors also document the enormous impact of the national credit reporting system on traditionally underserved Americans. As shown in Figure 2, it is the lowest income-earning Americans that have benefited most in terms of the proportion of households that have come to use non-mortgage credit since 1970. This finding is not at all surprising: detailed and reliable information on past payment behavior gives lenders confidence in assessing the creditworthiness of new borrowers and allows them to design products to meet the needs of previously underserved populations. And because the

Figure 2
Change in the Proportion of U.S. Households Using Non-Mortgage Credit (1970 vs. 2001)



Source: Federal Reserve Board, Surveys of Consumer Finances.

[1] Michael E. Staten is the Distinguished Professor and Director of the Credit Research Center at the McDonough School of Business, Georgetown University and Fred H. Cate is the Distinguished Professor and Ira C. Batman Faculty Fellow at the Indiana University School of Law-Bloomington.

credit-reporting infrastructure supports broader access to credit and insurance, it can enhance asset and wealth accumulation – an effect particularly pronounced for younger households.

An earlier study co-authored by Prof. Staten illustrates the credit accessibility point even more starkly: it estimates that ***11,000 fewer Americans out of every 100,000 applicants would receive credit if U.S. creditors only had the use of the limited credit bureau data available in many other nations.*** Without uniform national standards, the rules for the collection and use of credit information could differ across jurisdictions, raising questions about the accuracy and completeness of the database. As a result, potentially less credit would be granted, credit decisions would be delayed, and other financial products might not be provided.

In addition to greatly enhanced accessibility, FCRA's uniform national standards provide many other specific benefits, including the following:

- ***Less Expensive Credit.*** When shopping for the best mortgage, car loan, or credit card, we take for granted just how many choices we have. A uniform credit reporting system provides all lenders with consistent and complete information so they can compete against each other for our business, and that translates into better prices for consumers. For example, by one measure, according to Cate and Staten, mortgage rates in the U.S. are as much as two percentage points lower than in Europe at least in part as a result of our comprehensive credit reporting system.

- ***More Convenient Credit.*** Our national system of credit reporting allows phenomenally quick credit decisions – in 2001, for example, 84 percent of automobile loan applicants in the United States received a decision within an hour, and 23 percent of applicants received a decision in less than 10 minutes. Such speed is unheard of in other countries, where restrictive laws often prevent credit bureaus from routinely collecting accurate, up-to-date credit information necessary to support rapid decision-making.

- ***More Portable Credit.*** Over 40 million Americans move every year, and when they do, our national credit system lets their credit information follow them to ease the way for critical decisions by new employers, insurers, mortgagees, and landlords, among others. The ease with which someone can relocate anywhere in the country is important to an increasingly mobile society and a rapidly changing job market.

- ***More Competitive Credit Markets.*** A national credit system means that consumers are not dependent on one or two financial institutions to satisfy their credit needs. Insurers and lenders based in California or New York or Iowa or South Dakota can and do offer financial

products to consumers anywhere in the country, while a local community bank, armed with access to the identical national credit reporting system, can also compete for our business. In contrast, consider the implications of differing state law restrictions on credit reporting, as determined by the Cate and Staten study: "Laws that inhibit the assembly of comprehensive credit reports act as a barrier to competition by giving the dominant incumbent lender a monopoly over the information it possesses about its customers, and makes it easier to hold customers and capital captive. It thus denies new market entrants the information needed to provide and market competitive services."

- ***Increased Consumer Choice.*** Uniform national standards have fostered lender competition and innovation to provide new types of products with new consumer benefits, such as credit cards with "frequent flier" benefits, preapproved mortgage offers, and readily available home equity lines of credit.

- ***Strong residential housing markets.*** The ease with which consumers can purchase homes, refinance at a more attractive interest rate, or obtain a home equity loan, has been a source of strength within our economy. Over the last several years, particularly, the ability of consumers to use portions of their home equity for other purposes has given them a level of financial flexibility that has helped consumer spending remain strong as other portions of the economy faltered. Once again, the FCRA's uniform standards support the underlying information flow that occurs in each of these transactions so that a mortgage lender and a homeowner can efficiently take care of business.

- ***Better risk management.*** Risk management is a crucial factor in every decision that a financial institution makes, including determining what types of products and services to offer. Undercutting this decision-making process has important implications. For example, if a lender cannot depend on credit files that are truly complete, loans may not be extended or may become more expensive in order to account for the higher level of risk. Moreover, Cate and Staten find that robust, national credit reporting has made it possible for more people to have access to more credit without significant increases in defaults.

- ***Widely available and affordable insurance products.*** The FCRA facilitates the process of risk classification which has made it possible for insurers to make their products widely available at affordable prices to American consumers. The FCRA provides the framework by which insurers can obtain information needed to make to accurate underwriting decisions. Risk classification provides the fundamental framework for the current private insurance system in the United States. It is essential to preserving insurers' ability to continue to provide insurance at rates that reflect the risk posed by policyholders and are adequate to pay customers' future claims.

- ***Tailored insurance products.*** The FCRA establishes a framework under which insurers may obtain and share consumer information with affiliates. This framework facilitates insurers' ability to provide their customers an increasingly wide array of insurance products tailored to their particular needs. Such information sharing allows affiliates to assess the needs of policyholders and to determine and develop the types of products and services that may be of interest. This sharing of information benefits consumers because it permits insurers to

provide a wider rage of financial products and services and to provide more efficient delivery of these products and services at lower cost. In addition, it often is more convenient for customers who might otherwise have to spend additional time and resources to obtain similar products and services from other providers.

In short, consumers benefit from the U.S. being a single, integrated, fiercely competitive market, rather than a collection of smaller markets. And it is our national system of credit reporting underpinned by FCRA that has largely created that nationwide market. Choice, convenience, speed, and broad credit availability are part of our system today. By improving the performance of the entire market, FCRA's uniform national standards have lowered the costs of credit and increased the number of Americans who qualify for credit. Thus, the FSCC believes that the permanent reauthorization of these standards in Title I of H.R. 2622 is critically important.

Identity Theft Provisions and Other Measures in the Bill

Stopping identity theft before it occurs and resolving those unfortunate cases that do occur is of utmost importance to the financial services industry. As technology and the Internet have made more information readily available, financial institutions have redoubled their efforts to help educate consumers about how to prevent and resolve cases of identity theft. Our firms and our customers are partners in protecting information.

That said, the financial services industry has no illusions about the enormity of this problem. The FTC telephone hotline added almost 219,000 consumer reports to its Identity Theft Data Clearinghouse, up from more than 117,000 the year before – an 87 percent increase. And this may well understate the extent of the problem. Attorney General Ashcroft has stated that an "estimated 500,000 to 700,000 Americans have their identity stolen" each year. Regardless of the precise number of cases, one thing is clear: identity theft is a major concern to

consumers and financial institutions alike, and all of us can do more to address this potentially devastating crime.

In that context the FSCC fully appreciates why the Committee is now considering the identity theft provisions in H.R. 2622, which are woven through the fabric of most of the titles of the bill. In addition, several of the bill's provisions provide consumers with greater access to credit report information and address related consumer protection provisions. Set forth below are the FSCC's initial comments on several of these provisions, *i.e.*, the ones that affect our individual financial institution members most directly.

Before turning to these individual comments, however, let me note that many of the bill's other provisions impose new responsibilities on consumer reporting agencies. While the indirect effect of these credit bureau provisions could result in significant new costs for our members, we believe the credit bureaus themselves, who are also testifying today, are in the best position to address any practical issues or concerns that are raised by such provisions. In this regard, however, we do implore the Committee to recognize that none of these provisions, however beneficial to particular consumers, comes without cost, and these new costs must ultimately be borne by consumers. The FSCC believes that, before taking action on any of these credit bureau provisions, the Committee should weigh carefully the expected "all in" cost to consumers as well as expected benefits, because in some cases the ultimate consumer cost may in fact be quite substantial.

Section 201. Investigating changes of address. This section requires a credit card issuer that receives a request for an additional credit card within 30 days after receiving a notice of a change in address to notify the cardholder of the request either (1) at both the new address and the old address; or (2) by such other means as the issuer and the cardholder have previously

agreed to -- all in accordance with reasonable policies and procedures established by the card issuer pursuant to new regulations to be issued by the Federal Reserve Board. The FSCC supports the thrust and intent of this provision, and we note that many of our members already provide such notice to their customers. Our only concern is whether too much of the specific detail of this antifraud measure will be encrusted in statutory language that may become outdated in the not-too-distant future. One possible improvement might be to delegate more authority to the Federal Reserve to craft regulations to address the problem, with the thought that such regulations can be adapted to changing circumstances over time much more easily than could standards codified in statute.

Section 202. Fraud alerts. The FSCC supports the use of fraud alerts and believes they are a critical tool for containing the magnitude of losses caused by identity theft. In general, the bill mandates that our members could not extend credit in the name of a consumer whose credit report is subject to a fraud alert without obtaining authorization from the consumer in a manner prescribed in the fraud alert. Unlike some state laws, however, the bill requires the establishment of a fraud alert whenever a consumer merely "asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime." A concern of some of our members is that this very broad standard could lead to a number of "false positive" reactions, and that in turn could lead to much inconvenience since authorizations could be required each and every time a consumer added a charge to his or her credit card.

Section 203. Truncation of credit card and debit card account numbers. This provision generally prohibits entities that accept credit cards from printing the last 4 digits of the card account number or the expiration date. The FSCC generally supports this provision as a

reasonable, useful, and appropriate means to help curb identity theft, though some of our members have questioned the need for including expiration date information.

Section 206. "Red Flag" guidelines to identify possible identity theft. The FSCC supports this provision, which requires the federal banking agencies to prescribe guidelines for use by banks "in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft." Indeed, such agency-issued guidelines provide a flexible mechanism for adapting to inevitable changes in tactics by identity thieves, and thus may have significant advantages over specific standards prescribed in statutory language.

Section 301. Coordination of consumer complaint mechanisms It makes very good sense for the FTC and the credit bureaus to develop a model form and model procedures to be used by identity fraud victims for contacting and informing creditors of the fraud.

Section 303. Study of investigations of disputed consumer information. The FSCC recognizes that the committee has received sometimes conflicting testimony in the past several months about the adequacy of investigations of disputed consumer information by credit bureaus and entities that furnish information to credit bureaus. Much of this testimony has been based on individual anecdotes, with no clear indication of whether problems are episodic or systemic. In this context, the FSCC understands the felt need for the studies of such issues required by section 303. Our one suggestion is that the financial services industry be provided the opportunity to comment and provide input to both the Federal Reserve and the FTC before the studies are finalized.

Section 402. Prevention of repollution of consumer reports. This provision would prevent furnishers from providing information to a credit bureau where the furnisher knows or has "reason to believe" that the information resulted from fraudulent activity, including identity

theft. Some of FSCC's members are concerned that the "reason to believe" standard, while seemingly sensible, would in fact be triggered too easily in circumstances where a financial institution was truly acting in good faith. We believe that is not the Committee's intent, and we hope to work with you and your staff in the coming week to see if there is an appropriate way to address this concern. Indeed, since our credit reporting system depends on voluntary submissions of information to credit bureaus, it would be counterproductive to impose restrictions on furnishers that would make them more reluctant to provide information in the first instance.

Section 403. Notice by assignees and agents. This provision sensibly requires agents and assignees of consumer report users to notify such users whenever the agents or assignees learn that information in a consumer report is fraudulent and may be the result of identity theft. The FSCC believes this a prudent measure to increase awareness of identity fraud with appropriate attendant consequences.

* * *

As described at the outset, our hope is to provide additional comments on provisions in the bill as it proceeds to its first mark-up next week. Again, the thrust of our comments will be to preserve adequate flexibility for provisions to adapt over time to changing circumstances; to weigh carefully potential costs as well as potential benefits; and to preserve the incentives for information furnishers to ***voluntarily*** provide full information to credit bureaus.

A Final Word on Medical Information

Finally, let me say a word about a topic that is not covered by the provisions in this bill, which is the improper use of medical information for credit granting purposes. The FSCC recognizes the concerns that have been expressed about this issue in recent hearings. In that

context, we want to respectfully remind the committee that financial institutions have a long history of dealing with highly sensitive information, including consumers' medical information, in a professional and appropriate manner. They recognize that consumers have heightened confidentiality concerns with respect to their personal medical information and are keenly aware of the importance of maintaining the confidentiality of that information.

Moreover, insurers' ability to collect and share medical information is currently regulated under federal and state privacy laws and regulations. The FCRA provides that medical information can be disclosed by a consumer reporting agency to an insurer only in connection with an insurance transaction and only with the consumer's consent. The GLBA treats medical information as nonpublic personal information and therefore medical information comes within the GLBA's protections. Health insurers and long term care insurers are subject to the regulations adopted by the Secretary of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). These regulations require an opt-in prior to disclosure of medical information unless the disclosure is for treatment, payment, or health care operations. The ability of other insurers to obtain medical information is also subject to the HIPAA regulations. In addition, state privacy laws and regulations require an opt-in for the sharing of medical information. The NAIC Privacy of Consumer Financial and Health Information Model Regulation, the NAIC Insurance Information and Privacy Protection Model Act, and a multitude of other disease specific state laws and regulations require insurers to obtain consumers' consent before disclosing medical information unless the disclosure is in connection with an insurance business function.

In short, both banks and insurance companies both operate under and support strict protections for the confidentiality of medical records. Within the constraints of these limitations,

however, insurers must be permitted to collect and share medical information essential to the performance of fundamental insurance business functions, such as medical underwriting and claims evaluations. Similarly, banks must be permitted to obtain medical information, with the consent of the consumer, in those limited instances, such as in connection with key man insurance, where medical information is relevant to the granting of credit. Transfers of information needed for purposes of the payments system should also not be impeded.

Conclusion

The FSCC commends members of this Committee for the balanced approach of H.R. 2622. Extension of the FCRA's uniform national standards is critical to financial institutions' ability to continue to make financial products widely available in the United States, and the bill's significant new identity theft provisions will make a difference in the fight against that crime. Such an amended FCRA, together with the privacy provisions of the Gramm-Leach-Bliley Act, constitute an appropriate national standard for affordable and accessible financial products; prevention of identity theft; and the protection of consumers' financial privacy.

Testimony of Mallory B. Duncan
Senior Vice President, General Counsel

National Retail Federation

Before the
Committee on Financial Services
U.S. House of Representatives

July 9, 2003

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Mr. Chairman, Members of the Committee, my name is Mallory Duncan. I am testifying today on behalf of the National Retail Federation (NRF), where I serve as Senior Vice President and General Counsel. By way of background, the NRF is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 23 million people—about 1 in 5 American workers—and registered 2002 sales of $3.6 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. We greatly appreciate this opportunity to present our views on H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003," which is essential to the continued vitality of the retail industry.

Before I address the policy areas covered in the bill, I would like to preface my discussion with a brief illustration of the credit underwriting process. The concept of credit underwriting, or the analysis of economic risk on which a decision to lend money is based, has received repeated mention by everyone on all sides of the debate, but at no point have we really stopped to talk about what that means. This is essential, for it is the seven preemptions currently contained in the Fair Credit Reporting Act (FCRA) that are the underpinnings of the modern credit granting system. If we have a clear understanding of the underwriting process, it is much easier to analyze the vital role of the policies contained in the FCRA.

The example attached to my testimony consists of two simple revolving loan portfolios, each containing 100 loans of $1000 apiece, and each paid off within a year. One portfolio has an interest rate of five percent, the other a rate of 18 percent.

If one loan in the five percent portfolio were to immediately default (whether because of identity theft, consumer bankruptcy, or poor judgment on the part of the lender), it would take the interest payments from approximately 41 performing loans to compensate for that default. The credit grantor can, if it has enough capital, make 41 new loans and hope that they all perform, or the credit grantor can live with a much lower rate of return. If as few as three borrowers default, the credit grantor is completely underwater – and will lose money - even before facing the expense of managing 97 other loans.

If one loan in the 18 percent portfolio defaults, it takes the interest from 12.11 performing loans to compensate for that one default. Even if the credit grantor gets it exactly right 92% of the time, no matter how well those 92 consumers pay their bills, the credit grantor is in serious trouble. That is why retailers and other lenders expend so much effort to get it right.

There is not much more to underwriting than that. The complicated part occurs, in my example, when trying to fit the maximum number of borrowers into the continuum of rates between five and 18 percent while keeping defaults to a minimum. Whoever does the best job of fitting borrowers to a particular interest rate attracts the most customers because they can offer the lowest rate and manage their defaults so that they still make money. Anything that enhances this process has obvious consumer benefits. Since 1996, the seven preemptions of the FCRA have enabled retailers and other lenders, at a national level, to take advantage of technological advances to serve their customers while greatly refining their ability to fit the right borrower into the right rate.

In effect, the FCRA and the 1996 amendments have created an interstate credit superhighway that has done an outstanding job of delivering an unprecedented volume of credit more cheaply and quickly to more people at all income levels. Is the system perfect? No, there are bumps, potholes and accidents along the highway, but very few overall, and especially so given the

magnitude of the system and the speed at which it operates. It seems to us that the policy question today is how much do we want to impede credit traffic flow and increase costs for highway users in hopes of further reducing the number of accidents and bumps. We have reviewed the provisions of H.R. 2622 with this in mind, along with the criteria suggested by Assistant Treasury Secretary Abernathy that any amendments to the FCRA enhance both personal data security and access to and availability of credit. Below, please find our comments on the provisions of the legislation.

H.R. 2622

The National Retail Federation applauds the inclusion in H.R. 2622 of the critically important amendment that makes permanent the national uniform standards under the Fair Credit Reporting Act. The bill also includes a number of provisions to address specific scenarios that could involve identity theft. For example, the bill imposes new obligations in connection with certain address change requests, fraud alerts, and address discrepancies. The NRF supports efforts to address these issues and looks forward to working with the Committee to functionally strengthen these provisions.

A common theme of our recommendations for these provisions centers on maintaining flexibility to address these potential identity theft scenarios so that methods can change rapidly to address changes in identity theft schemes. In particular, we are concerned that if the methods for addressing identity theft are rigidly specified in the bill, retailers and other financial institutions will be forced to devote resources to complying with these methods even if they become ineffective or if more efficient alternatives become available. To address these issues, we recommend that the bill retain its approach of specifying a particular method for addressing each of the potential identity theft scenarios, but also include new provisions that would enable credit grantors to develop reasonable alternatives with guidance from the federal banking agencies. In general, where appropriate, we would recommend the type of approach taken in Section 326 of

the USA PATRIOT Act, which is designed to combat terrorism, certainly no less a crime than identity theft.

Some examples where the bill would benefit from this approach include provisions for the investigation of change of address and those governing contacting the consumer pursuant to a fraud alert. Retailers are particularly concerned that the bill's provisions not inadvertently frustrate consumers' ability to use their existing accounts, or open up the opportunity for unscrupulous "credit clinics" to manipulate the system to the detriment of the millions of honest consumers. We have submitted suggestions to the Committee staff and look forward to working with the Committee on this very important issue.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions.

$1000 loans made to 100 borrowers (principal = $100,000) to be paid in one year (no compounding, regular monthly payments)

	Scenario 1	Scenario 2
Interest rate	5%	18%
Value of each loan (paid in one year; paid regularly over the year)	≈ $1,025.00	≈ $1,090.00
Effective rate of return	≈ 2.5%	≈ 9.0%
Value of the portfolio	$102,500.00	$109,000.00
The non-performance of one of the 100 loans = the interest payments of	41 borrowers	12.11 borrowers
To earn expected profit (in $) at given interest rate on the assumption that one borrowers will default at the outset, loans must be made to	141 borrowers (=starting principal of $141,000.00)	112.11 borrowers (=starting principal of $112,111.11)
Effective rate of return (with one expected default and new borrowers/added principal to compensate)	1.77%	8.03%

At lower interest rates, the rate of return on each loan requires more borrowers to make up for each non-performer than do loans with higher interest rates. In Scenario 1, 40 borrowers are needed to safeguard the principal extended to one borrower. In Scenario 2, only 11 borrowers are needed to do so.

Scenario 1

- $1000 loans made to 100 borrowers, or a principal of $100,000
- 5% interest rate, repaid on a declining balance over the course of a year
- Each loan's approx. value over the course of repayment year = $1,025.00
- The value of the portfolio = $102,500.00
- The non-performance of one loan equals
  - The interest payments of <u>41 borrowers</u>
  - To earn $2,500 on the assumption that one borrower will non-perform from the outset, the lender would have to make 141 loans of $1000.
  - And the rate of return would fall to 1.77%
- Or the credit grantor would have to raise the rate to 5.1% for the 99 performers.

Scenario 2

- $1000 loans made to 100 borrowers, or a principal of $100,000
- 18% interest rate, repaid on a declining balance over the course of a year
- Each loan's value = $1,090.00
- The value of the portfolio = $109,000.00
- The non-performance of one loan equals
  - The interest payments of 12.11 borrowers
  - To earn $ 9,000 on the assumption that one borrower will non-perform from the outset, the lender would have to make 112.11 loans of $1000.
  - And the rate of return would fall to 8.03%
- Or the credit grantor would have to raise the rate to 18.18% for the 99 performers.

Mallory Duncan
Senior Vice President, General Counsel
National Retail Federation

Mallory B. Duncan has served as Senior Vice President, General Counsel for the National Retail Federation for the past nine years. He is responsible for coordinating strategic legislative and regulatory initiatives involving customer data privacy, bankruptcy, fair credit reporting and truth-in-lending, as well as serving as coordinator of NRF's Credit Executives Committee.

Prior to joining NRF, Duncan served as corporate counsel in the Washington office of the JC Penney Company Inc., where he advised stores and headquarters on federal and state legislative and regulatory issues, and gained experience with retail credit granting procedures. Mr. Duncan was an attorney advisor in the Office of Policy Planning at the Federal Trade Commission, working on the policies underlying U.S. credit laws, and was previously associated with the law firm of Sutherland, Asbill & Brennan.

Duncan is a graduate of Pomona College and Yale Law School.

He has served on the boards of several non-profit organizations throughout his legal career, including the National Hospice Foundation. His publications include the Federal Trade Commission's Policy Guidance on Civil Penalties and co-authorship with Anne P. Fortney of "Fair Credit Reporting Act Creates New Duties for Employers," Credit World, May/June 1998.

WRITTEN STATEMENT OF

L. RICHARD FISCHER

ON BEHALF OF

VISA U.S.A. INC.

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

Chairman Oxley, Ranking Member Frank, and Members of the House Committee on Financial Services, my name is Rick Fischer. I am a partner in the law firm of Morrison & Foerster LLP, and practice in the firm's Washington, D.C. office. I have over 30 years of experience in advising banks and other financial services companies on retail banking issues, including those relating to privacy. My treatise, *The Law of Financial Privacy*, was first published in 1983 and is one of the leading authorities on this subject. I am pleased to appear before you today on behalf of Visa U.S.A.

The Visa payment system, of which Visa U.S.A. is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. There are more than one billion Visa-branded cards, and they are accepted at millions of locations in more than 150 countries. And Visa card transaction volume now exceeds one trillion dollars annually. Visa plays a pivotal role in advancing new payment products and technologies to benefit its 21,000 member financial institutions and their hundreds of millions of cardholders worldwide.

Visa appreciates the opportunity to address the important legislation currently being considered by the Committee, H.R. 2622, the "Fair and Accurate Credit Transactions Act of 2003," which would reauthorize the expiring national uniformity provisions of the Fair Credit Reporting Act ("FCRA") and help protect consumers from identity theft.

Proposal to Reauthorize the FCRA National Uniformity Standards is an Essential Element of H.R. 2622

The Importance of the FCRA National Uniformity Standards

An essential cornerstone of H.R. 2622 is Title I, which would make permanent the key provisions of the FCRA that establish national uniformity in our nation's credit reporting system. An effective national credit reporting system and a competitive national credit granting process are vital to efficiency and productivity in the U.S. economy and, therefore, reauthorization of the FCRA's national uniformity standards is critical. Because of these national uniformity standards, an effective national marketplace for retail credit has evolved. This national market has enabled consumers in all parts of the country to enjoy prompt and convenient access to credit, as well as competitive pricing and innovative credit terms. Treasury Secretary John W. Snow recently expressed the Administration's support for the reauthorization of the FCRA's national uniformity standards because these standards "have become a pillar of our economy." Secretary Snow specifically noted that "[m]illions of Americans have access to credit today because of these standards and millions more get credit on better terms because of them. They have [led] to the democratization of credit and the miracle of modern credit markets, which do so much for average citizens. The widespread availability of credit on reasonable terms helps to keep this economy strong."

The GLB Act Also Needs National Uniformity, Even If It Cannot Be Accomplished Immediately

Another issue that is critical to these national markets is the privacy notices required under Title V of the Gramm-Leach-Bliley Act ("GLB Act"). In this regard, Visa agrees with the views expressed by many Members of this Committee in their June 25, 2003 letter to the federal banking regulators about the need to simplify notices. The Members urged the banking regulators to act expeditiously under their authority in the GLB Act to adopt "a standardized and simplified short-form notice that financial institutions could use to notify consumers of the institution's information-sharing practices, give clear guidance regarding the consumer's right to opt-out of such sharing and provide an easy mechanism for doing so." In addition, the Members noted that providing such simplified notices will "greatly improve the public's understanding of the important privacy protections currently available in federal law." Visa fully expects that the banking agencies can and will respond to this important request and will make important progress toward simplified notices. Nevertheless, any solution to the notice problem must include national uniformity. Without national uniformity, problems will continue to arise where states adopt unique notice requirements that complicate the GLB Act notices. Nevertheless, Visa recognizes that the sunset date in the FCRA requires reauthorization of the FCRA's national uniformity provisions before year end, even if that means that consideration of national uniformity under the GLB Act must follow.

Reauthorization of the FCRA Is Key to the Ability of Consumers to Apply for and Receive Credit

For example, if states establish additional state-specific furnisher obligations or special rules regarding the information about consumers that consumer reporting agencies can retain, the resulting incomplete and inconsistent information in credit reports would likely impair the reliability of the credit scoring models that are used today to make prompt and objective decisions. Reducing the reliability of credit scoring models would result in delays in making credit decisions, impose increased costs on consumers for credit transactions, and reduce the overall availability of consumer credit, particularly for consumers at the margin.

Prescreening—Helping Consumers Shop for Credit

The FCRA also makes it easier for consumers to shop for credit by helping them understand the terms of credit for which they actually qualify. The FCRA permits credit card issuers to prescreen potential customers in order to provide them with firm offers of credit that they are actually qualified to receive. As a result, prescreening provides consumers with more choices among credit card offers, thereby increasing competition, reducing prices, and fostering innovation. Prescreening also reduces costs for issuers, and reduces the volume of mail to consumers. A consumer who does not want to receive prescreened offers can opt out by calling one single, federally-mandated, toll-free telephone number. In addition, H.R. 2622 would result in further simplification of the notice and opt-out procedures associated with prescreening, for the benefit of consumers.

Because consumers know that there is a high likelihood that they will qualify for the prescreened credit offers they receive, consumers can compare the prices and other features and terms of those offers and then select the offer that they believe best fits their needs. Without prescreening, consumers would be far less certain about whether or not they would qualify for various credit products available in the marketplace. Without prescreening, less qualified consumers are likely to apply for credit at attractive rates or terms, but for which they do not qualify. Actually obtaining credit, let alone credit on the best terms, will necessarily be a process of trial and error. Further, the rejection of credit applications due to this trial and error process may further hurt consumer prospects for credit. For these reasons, from the standpoint of the consumer, prescreening enhances the consumer's ability to shop for credit and can help protect the consumer's credit record. And prescreening has been a welcome success for consumers; approximately 50% of all credit card accounts currently in place were originally opened by consumers through prescreening programs.

Prescreening Does Not Lead to Fraudulent Accounts

Contrary to some assertions, prescreening does not increase the potential for identity theft. Prescreened offers contain only names and addresses, less than the information that is contained in a telephone book. Consumers must complete a response form, supplying additional personal data for use in the identification process. In prescreening, there actually are two opportunities to check the consumer's identity—at the time of prescreening and at the time of response. Accordingly, the incidence of identity theft is actually lower for accounts established through prescreening than for accounts established in other ways.

The Importance of Identity Theft Prevention in Title II of H.R. 2622

Title II of H.R. 2622 could establish a number of important identity theft prevention measures. Financial institutions recognize that identity theft is a growing problem. In fact, identity theft is a problem for financial institutions, as well as for consumers. Financial institutions, particularly with respect to credit card and debit card transactions, ultimately bear much of the financial loss from identity theft. As a result, Visa has long been active in protecting consumers from identity theft and Visa applauds this Committee on its efforts in this area.

Truncation of Credit Card and Debit Card Account Numbers

Although Visa generally believes that the details of preventing identity theft should be left to financial institutions that are best situated to address ever evolving fraud techniques, Title II could provide important benefits to consumers and financial institutions alike by establishing workable identity theft provisions and ensuring that these provisions benefit from national uniformity. For example, Section 203 of Title II would prohibit any merchant or other entity that accepts credit cards and debit cards from printing more than the last four digits of the card account number or the expiration date upon receipts provided to cardholders at the point of sale. In March 2003, Visa announced a similar rule that applies to transactions with Visa cards. Under the Visa rule, a reasonable time is afforded to implement the truncation requirement, after which the rule would have appropriate application, with limited exceptions. These same elements—compliance time and appropriate application, with limited exceptions—are built into Section

203, just as they are incorporated into Visa's corresponding rule. Therefore, Visa supports the Committee's effort to establish a broader national uniform rule on this topic.

Additional Visa Efforts to Counter Identity Theft

Fraud prevention has long been a top priority for Visa. Visa continues to work diligently in developing technology, products, and services that protect consumers from identity theft and other forms of fraud. Many security measures are now in place to help prevent identity theft from occurring. For example, Visa's fraud control programs include Verified by Visa, which is a service that allows cardholders to authenticate their identities while shopping online. Verified by Visa allows cardholders to add a personal password of their choosing to their existing Visa cards. When they get to the "checkout line" of a participating online store, they enter their personal password in a special Verified by Visa window. The password links legitimate cardholders to their account information. This verification process protects consumers' cards from unauthorized use and gives them greater control over when and where they are used.

Visa's fraud control programs also include the Cardholder Information Security Program, which is a set of data security requirements for merchants, gateways, and Internet Service Providers, and any other entity that holds cardholder data. Additionally, Visa now offers Personal Identity Theft Coverage as a new optional benefit for Visa cardholders, which provides eligible cardholders with coverage ranging from $1,000 to $15,000 in reimbursement for lost wages, legal fees, and other costs associated with recovering from identity theft. Visa also continues efforts in educating consumers to better understand and prevent identity theft by

providing useful information on its Web site, including links to other Web sites designed for consumers if they are victimized by identity theft.

Importantly, under Visa rules, there is zero liability for the unauthorized use of Visa credit cards and debit cards, whether the unauthorized use results from identity theft or other fraud. In this respect, Visa rules go beyond existing protections under the Truth in Lending Act or Electronic Fund Transfer Act. As a result of these Visa rules, the Visa member financial institutions, rather than their customers, bear much of the financial losses of identity theft. Nevertheless, because consumers still suffer the frustrations and reputational risks of identity theft, steps to help prevent and respond to identity theft are very important, and Visa supports the Committee's efforts to do so.

Fraud Alert Notices

For example, H.R. 2622 would establish, in Section 202, procedures for placing fraud alerts in credit files to warn prospective creditors when identity theft is likely. Such fraud alerts could play an important role in preventing identity theft, but the procedures must be carefully crafted. For example, under Section 202, an institution cannot issue or extend credit where an alert has been placed in a consumer's credit file without obtaining the verbal or other authorization of the consumer. It is critical the legislation make it clear that any such limitation applies only to the making of a new loan or the opening of a new account, and not to individual transactions on existing credit accounts. In this regard, for example, as many as four thousand Visa transactions can occur in a single second and while Visa successfully employs sophisticated

neural networks to detect fraud 24 hours a day. it simply is not possible to check for credit bureau fraud alerts and obtain verbal or other authorization from cardholders in connection with individual transactions.

Federal Banking Agency Guidance

In addition, Section 206 would require the federal banking agencies to establish procedures to identify possible instances of identity theft. More specifically, Section 206 would require the banking agencies to jointly implement and maintain "Red Flag" guidelines for use by insured depository institutions in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. It is not clear, however, from the language of Section 206 whether these procedures would focus on account openings, or whether they would focus on activity in accounts after they are opened. Since recently enacted Section 326 of the USA PATRIOT Act already establishes procedures for verifying the identity of new customers, any new procedures should more appropriately focus on activity in existing accounts. Account opening procedures required by Section 326 of the USA PATRIOT Act are intended to ensure that customers are properly identified for purposes of national security, and so presumably, Section 326 should provide an appropriate standard for addressing identity theft as well.

The Resulting Federal Rules Must be Uniform Nationally

As indicated earlier, Title II of H.R. 2622 could establish important identity theft prevention measures for consumers and financial institutions alike. In order for even the most carefully crafted measures to be effective in preventing identity theft, however, the rules established by Congress in Title II must be the uniform standard throughout the country. There cannot be multiple sets of rules regarding fraud alerts, consumer rights notices, or procedures for identifying customers and blocking potential fraud accounts under H.R. 2622, any more than for identifying customers under Section 326 of the USA PATRIOT Act. In other words, national uniformity is essential to the effectiveness of any identity theft rules adopted by Congress.

Improving Resolution of Consumer Disputes in Title III

H.R. 2622 also would establish new requirements designed to improve the resolution of consumer disputes. In particular, Section 301 calls for the Federal Trade Commission ("FTC") to write rules to carry out this purpose. However, since most of the affected accounts will involve financial institutions, it is critically important that any such rules be developed jointly with the federal banking agencies.

Additionally, Section 303 would require the prompt investigation of disputed consumer information. Specifically, Section 303 would require the Federal Reserve Board ("FRB") and the FTC to study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information are complying with the provisions of the FCRA for the

prompt investigation of disputed accuracy and the prompt correction or deletion of inaccurate or incomplete information. The FRB and FTC would be required to submit a report to Congress on their findings and recommendations. While Section 303 says that each agency will conduct such a study and submit such a report, Congress should make it clear that a single cooperative study is contemplated and that a joint report will be submitted.

Improving Accuracy of Consumer Records in Title IV

Section 401 would require consumer reporting agencies to notify a requester of a consumer report when the request includes a discrepancy in the consumer's address from the current address in the agency's credit report file. Section 401 also would require the consumer reporting agency to reconcile or resolve, within 30 days, such address discrepancies. We believe that Section 401 could help financial institutions in their fight against identity theft, as well as in complying with Section 326 of the USA PATRIOT Act. However, like the provisions of Title II of H.R. 2622, to which this proposed section relates, any resulting federal requirement should be subject to a uniform national standard, since multiple rules regarding such notices and the reconciliation of address discrepancies would be counterproductive.

Improvements in Use of and Consumer Access to Credit Information in Title V

Credit scores are important to the control of credit risks and to broaden credit availability. As Federal Reserve Chairman Alan Greenspan has noted, "[c]redit-scoring technologies have served as the foundation for the development of our national markets for consumer and mortgage

credit, allowing lenders to build highly diversified loan portfolios that substantially mitigate credit risk. [Credit scoring has] played a major role in promoting the efficiency and expanding the scope of our credit-delivery systems and allowing lenders to broaden the populations they are willing and able to serve profitably."

Title V would add new a requirement under which a consumer report requested by the consumer must include the consumer's credit score, if one has been generated by the consumer reporting agency for the consumer; specifically, a summary of how the score was derived, and how such a score can be improved. It is important that any such disclosure requirement should only be a summary of how the credit score is computed, and not the specific scoring methodology, in order to avoid fraud. And, the summary should focus on the most recent credit score in the consumer's credit file generated by the credit bureau. To do otherwise could cause great consumer confusion, and make it virtually impossible for consumers to identify and understand changes in their credit score. Because there are many different types of credit and fraud scores, the focus should be on the credit bureau generated score actually contained in the consumer's credit file.

Additional Considerations

I understand that consideration is being given to the possibility of revising H.R. 2622 by incorporating various additional requirements. Any such revisions should be considered carefully to avoid adverse consequences. For example, a requirement that consumers be notified each time negative information is posted to their credit report would be problematic. Such a

notification requirement would result in tens of millions of notices which, in fact, serve no real purpose. The expense will only discourage furnishers from reporting information, or at least from reporting negative information. As a result, such a requirement would have an adverse impact on credit files and dramatically reduce the reliability of credit report information. Instead, periodic review of the consumer's credit file provides a far clearer picture of the status of the consumer's credit accounts, while also providing an opportunity to spot instances of identity theft.

It also has been suggested that a special rule should be established for the reporting of credit information on accounts of service personnel while they are in active, foreign combat situations. Visa concurs that active military personnel "in harms way" in foreign combat situations deserve our support at home. However, the focus on any such changes should be the Soldiers' and Sailors' Civil Relief Act, not the FCRA, so that the tested administrative provisions of that statute would apply equally to any new protections adopted by Congress.

Again, I appreciate the opportunity to appear before the Committee today on behalf of Visa, and I would be pleased to answer any questions.

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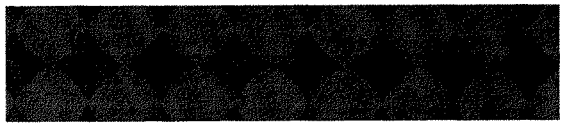
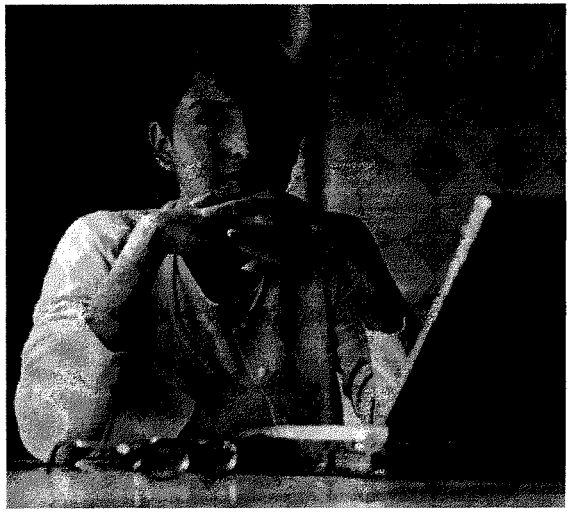


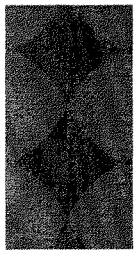
Protecting Consumers from Identity Theft

VISA



Visa's Comprehensive Security Program

Visa's [illegible] security program [illegible] that consumers [illegible] new protections [illegible] [illegible] [illegible]



"Identity thieves thrive on discarded receipts and documents containing consumers' information such as payment account numbers, addresses, Social Security numbers, and more. Visa's new policy will protect consumers by limiting the information these thieves can access."

Visa CEO Carl Pascarella
March 6, 2003

Personal Identity Theft Coverage
Visa offers Personal Identity Theft Coverage as a new optional benefit for Visa cardholders through participating member financial institutions. The policy will provide eligible cardholders with coverage ranging from $1,000 to $15,000 in reimbursement for lost wages, legal fees and other costs associated with recovering from identity theft.

Identity Theft Victim Hotline
Through a unique partnership with the consumer network Call For Action, identity theft victims can receive free, confidential counseling by calling at telephone hotline (1-866-ID-HOTLINE) or by requesting help online at www.callforaction.org.

Application Verification
The Application Verification system verifies an applicant's address, telephone and Social Security number, and whether the address, telephone and/or Social Security number provided on submitted applications have previously appeared on fraudulent applications or in prior credit card fraud transactions.

Card Activation Method
The Card Activation Method is used by most Visa card issuers to confirm that the cardholder has received a card before activating the account. Under this method, cards are blocked from use at the time of mailing. For the card to be activated, the cardholder typically must call the issuer, often from the same phone number previously provided to the issuer by the cardholder, and must confirm receipt and provide proof of identity.

Address Verification Service
The Address Verification Service (AVS) is an automated fraud prevention system that allows card-not-present merchants to confirm a cardholder's billing address while authorizing a transaction. The ability to confirm the billing address is a key indicator of whether or not a transaction is valid. This service helps merchants minimize the risk that they will accept fraudulent orders from persons using stolen cardholder information.

Neural Networks
Visa's sophisticated neural networks detect fraud at its earliest stages by analyzing cardholder accounts for unusual spending patterns, and confirmed risk characteristics to find behavior indicative of fraud. To help card issuers detect fraud at its earliest stages, Visa's network delivers alerts to issuers 24 hours a day.

Consumers can enjoy the peace of mind that comes with knowing that they are protected by Visa's zero liability policy.

It works like this: when the system notices unusual spending behavior, Visa's neural networks immediately contact the cardholder's issuing financial institution. The financial institution will then notify the cardholder that abnormal activity has taken place on the account and ask the cardholder to confirm that the transactions are theirs.

Exception File
Visa's Exception File (Warning Bulletin) is a worldwide database of account numbers of lost/stolen cards or other cards that issuers have designated for confiscation, referral to issuers or other special handling. All transactions routed to Visa's processing system have their account numbers checked against this Exception File.

Recovered Account Analysis
Visa assists law enforcement by notifying issuers of recovered, compromised account numbers and requesting that the issuers contact the investigating agency. Visa works closely with local investigators, the FBI, Secret Service, Treasury officials, and other law enforcement personnel on a wide range of fraud issues.

Cardholder Verification Value
The Cardholder Verification Value (CVV) is a unique three-digit code included on the magnetic stripe located on the back of all valid Visa cards. The CVV is electronically checked during the authorization process for card-present sales to ensure that a valid card is present. We have extended the cryptographic capabilities of CVV by embedding the value on the chip in smart cards as well.

Card Verification Value 2
The Card Verification Value (CVV2) is a unique three-digit code printed on the signature strip on the back of all Visa bankcards. These codes help merchants confirm that cardholders are in possession of the actual card. Online merchants and other merchants in situations where the card is not present at the merchant's premises during the transaction can verify that their customers have the actual card in their possession by requesting the customer to provide the CVV2 number from the signature strip.

New Visa Protections Against Identity Theft and Fraud

Verified by Visa
According to Visa research, 76 percent of consumers thought online stores should incorporate password protection in their checkout process. In response to this feedback, Verified by Visa is the newest of Visa's online security protections. Verified by Visa allows cardholders to add a personal password of their choosing to their existing Visa cards. When they get to the "checkout line" of a participating online store, they enter their personal password in a special Verified by Visa window. The password links legitimate cardholders to their account information. The verification process protects consumers' cards from unauthorized use and gives them greater control over when and where they are used.

Cardholder Information Security Program
Visa developed and implemented the Cardholder Information Security Program (CISP), a set of data security requirements for any entity that touches a Visa transaction, including merchants, gateways and Internet Service Providers that hold cardholder data. This program, which sets forth requirements for how to store, protect and grant access to cardholder information, was the first set of standards within the payments industry for online data security and served as a best practices model by the G-8 conference on cyber-crime in Tokyo. Not only does compliance with CISP requirements protect cardholders from fraud and identity theft, it helps companies protect their e-commerce business base and maintain consumer trust in their brand reputation.

Truncation of Cardholder Receipts
Visa's new receipt truncation policy will limit cardholder information on receipts to the last four digits of their account numbers. The card expiration date will be eliminated from receipts altogether. Visa was the first payments brand to announce such a move to protect cardholders' identities by restricting access to their account information on receipts. Receipt truncation is good news for consumers, and bad news for identity thieves. Identity thieves thrive on discarded receipts and documents containing consumers' information such as payment account numbers, addresses, Social Security numbers, and more.

Personal Identity Theft Coverage
Visa now offers Personal Identity Theft Coverage as a new optional benefit for Visa cardholders. Participating member financial institutions purchase this coverage and offer it as a no-fee benefit to their cardholders. The insurance coverage goes beyond Visa's zero liability policy by providing eligible cardholders with coverage ranging from $1,000 to $15,000 in reimbursement for lost wages, legal fees and other costs associated with recovering from identity theft. Visa is one of the first companies to offer this type of insurance coverage as a payment card enhancement.

Identity Theft Victim Hotline
Through a unique partnership with the consumer network Call For Action, victims of identity theft can receive free, confidential counseling by calling 1-866-IO-HOTLINE. Call For Action's consumer hotline offers the assistance of trained professionals to walk consumers step-by-step through the process of getting their identities back, including providing important phone numbers for law enforcement and credit bureaus that need to be notified. Consumers can also request the assistance of Call For Action's trained counselors through its Web site, www.callforaction.org.

Identity Theft Education and Victim Assistance Information
Visa has an Identity Theft section on www.visa.com that is designed to help consumers better understand and prevent Identity Theft. A downloadable Visa Identity Theft brochure is also available on the Visa website. The Identity Theft section has links to the FTC and Call for Action websites that provide further steps for the consumer to take if they are victimized.

Best Practices
Visa has sponsored an Identity Theft Working Group comprised of 14 Visa member financial institutions. A primary focus of the group is to share and publish best practices for Identity Theft prevention and detection.

Fraud and identity theft are issues of concern to many consumers, which is why Visa continues to work diligently developing technology, products and services that protect consumers against these crimes.

ELECTRONIC PRIVACY INFORMATION CENTER

Testimony and Statement for the Record of
Chris Hoofnagle
Deputy Counsel
Electronic Privacy Information Center

Legislative Hearing on H.R. 2622,
The Fair and Accurate Credit Transactions Act of 2003

Before the
Committee on Financial Services,
United States House of Representatives

July 9, 2003
2128 Rayburn House Office Building

Chairman Oxley, Ranking Member Frank, and Members of the Committee, thank you for extending the opportunity to testify today on H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.

My name is Chris Hoofnagle and I am deputy counsel with the Electronic Privacy Information Center (EPIC), a not-for-profit research organization based in Washington, D.C. Founded in 1994, EPIC seeks to promote personal privacy rights and expand access to government information. The Fair Credit Reporting Act (FCRA) is a primary concern of EPIC, as it sets a legislative framework of Fair Information Practices to address rights and responsibilities in the handling of personal information. We maintain a web page on FCRA online at http://www.epic.org/privacy/fcra/.

The Privacy Rights Clearinghouse, Junkbusters Corp., Computer Professionals for Social Responsibility, and Privacy Times have joined this written statement. The Privacy Rights Clearinghouse is a nonprofit consumer information and advocacy program. It offers consumers a unique opportunity to learn how to protect their personal privacy. Junkbusters Corp. is a privacy advocacy firm that helps people get rid of junk messages of all kinds: spam, telemarketing calls, unwanted junk mail, junk faxes, and more. CPSR is a public-interest alliance of computer scientists and others concerned about the impact of computer technology on society. Privacy Times Privacy is a leading subscription-only newsletter covering privacy. Evan Hendricks, a FCRA expert, has edited it since 1981.

Today, we urge the Committee to strengthen protections in the FCRA. The record developed by the series of hearings held by the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs makes it clear that Americans need greater protections to address problems with identity theft, privacy, and inaccuracy. The hearing record also reflects the need to address affiliate information sharing, the link between information sharing and identity theft, the challenges that identity theft victims face, consumer awareness of information practices, medical information appearing on reports, the ease of access to Social Security Numbers, the problem of fly-by-night background investigation companies, credit scoring, and incomplete reporting practices that drive down credit scores.

We believe that the FCRA can be amended to address these problems. Accordingly, we make the following recommendations:

- Congress should not handcuff state legislators by preempting state law.
- Substantive privacy protections should be added to the FCRA to protect individuals against identity theft.
- Individuals need substantive improvements in the system to minimize inaccuracies, and to improve the correction process.
- Congress should ensure that medical information is not disclosed on credit reports.
- Congress should preserve the application of the FCRA to the background screening process.

While we commend Representatives Bachus, Hooley, Biggert, and Moore for introducing H.R. 2622, we believe that the bill does not fully address these needs. Our testimony below

recommends substantive changes to the bill to address the risks to individuals as a result of shortcomings in the FCRA.

Brief History of the FCRA

The FCRA, Public Law No. 91-508, was enacted in 1970 to promote accuracy, fairness, and the privacy of personal information assembled by Credit Reporting Agencies (CRAs).[1] CRAs assemble reports on individuals for businesses, including credit card companies, banks, employers, landlords, and others. The FCRA provides important protections for credit reports, consumer investigatory reports, and employment background checks.

The FCRA establishes rights and responsibilities for "consumers," "furnishers," and "users" of credit reports. Consumers are individuals. Furnishers are entities that send information to CRAs regarding creditworthiness in the normal course of business. Users of credit reports are entities that request a report to evaluate a consumer for some purpose.

The FCRA is a complex statute that has been significantly altered since 1970 by Congress and the courts. The Act's primary protection requires that CRAs follow "reasonable procedures" to protect the confidentiality, accuracy, and relevance of credit information. To do so, the FCRA establishes a framework of Fair Information Practices for personal information that include rights of data quality (right to access and correct), data security, use limitations, requirements for data destruction, notice, user participation (consent), and accountability.

The FCRA was passed to address a growing credit reporting industry in the United States that compiled "consumer credit reports" and "investigative consumer reports" on individuals. The FCRA was the first federal law to regulate the use of personal information by private businesses.

The first major credit reporting agency, Retail Credit Co, was started in 1899. Over the years, Retail Credit purchased smaller CRAs and expanded its business into selling reports to insurers and employers. [2] By the 1960s, significant controversy surrounded the CRAs because their reports were sometimes used to deny services and opportunities, and individuals had no right to see what was in their file.[3]

By the late 1960s, there was abuse in the industry, including requirements that investigators fill quotas of negative information on data subjects. To do this, some investigators fabricated negative information, others included incomplete information. Additionally, the investigators were collecting "lifestyle" information on data subjects, including their sexual orientation, marital situation, drinking habits, and cleanliness. The CRAs were maintaining outdated information, and in some cases, providing the file to law enforcement and to unauthorized

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[1] 15 U.S.C. § 1681, available at http://www.ftc.gov/os/statutes/fcra.htm.

[2] Alan F. Westin, PRIVACY AND FREEDOM (Athenum 1967). "...the largest American private investigative agency, the Retail Credit Company, which rates persons for a wide variety of purposes including industrial security, has 7,000 investigators, maintains dossiers on forty-two million people, and grosses more than $100 million annually from its activities."

[3] Robert Ellis Smith, BEN FRANKLIN'S WEB SITE, PRIVACY AND CURIOSITY FROM PLYMOUTH ROCK TO THE INTERNET (Privacy Journal, 2000).

persons. Public exposure of the industry resulted in Congressional inquiry and federal regulation of CRAs.[4]

Years of legislative leadership by Representative Leonor Sullivan and Senator William Proxmire resulted in the passage of the FCRA in 1970. After its passage, Senator Proxmire attempted to broaden the FCRA's protections over the next ten years. Shortly the FCRA took effect on April 25, 1971, CRAs were pursued for violations of numerous provisions of the Act. Most recently, in January 2000, the three CRAs paid $2.5 million in a case settlement brought by the FTC.

The most comprehensive amendments to the FCRA were contained in the Consumer Credit Reporting Reform Act of 1996 (P.L. 104-208). The Amendments contained a number of improvements to the FCRA, but it also included provisions that allow affiliate sharing of credit reports, "prescreening" of credit reports (unsolicited offers of credit made to certain consumers), and limited preemption of stronger state laws on credit.

The FCRA, like many other privacy statutes, provides a federal baseline of protections for individuals. The FCRA is only partially preemptive, meaning that except in a few narrow circumstances, state legislatures may pass laws to supplement the protections made by the FCRA. For instance, some states have passed laws requiring the CRAs to provide reduced cost, or free credit reports.

In a number of important areas state legislation is preempted until January 1, 2004.[5] After that date, states may enact stronger laws on prescreening (what constitutes a "firm offer" of credit, rules for opting out of receiving prescreened offers of credit), compliance duties (time in which a CRA must respond to reports of inaccuracies), user duties (notice and other requirements when a credit report is used for an adverse action), content of reports (length of time negative information can appear on the report), the duties of furnishers (accuracy of information provided, correction duties, notice of closed or disputed accounts), affiliate sharing, and the disclosures that CRAs must make to consumers.

In 1996, when the most recent amendments to the FCRA passed, certain state laws were grand fathered in, and not preempted by the federal law. Stricter laws exist on affiliate sharing (Vermont) and on duties of furnishers (California and Massachusetts).

Congress Should Not Handcuff State Legislators by Preempting State Law

Section 101 of H.R. 2622 would extend preemption in the FCRA permanently. We believe that Congress should not extend the limited preemption in the FCRA beyond January 1, 2004. Consumers will lose important opportunities if preemption is extended—a continued federal ceiling will prevent states from creating additional needed protections. In our system of government, preemption should only be used in limited situations, and generally, preemption is not appropriate for consumer protection legislation. Accordingly, we recommend that the Committee remove Section 101 in its entirety.

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[4] *Id.*
[5] 15 U.S.C. § 1681t.

Historically Most Privacy Law Allows States to Provide Greater Protections

In privacy and consumer protection law, federal ceiling preemption is an aberration. Historically, federal privacy laws have not preempted stronger state protections or enforcement efforts. Federal consumer protection and privacy laws, as a general matter, operate as regulatory baselines and do not prevent states from enacting and enforcing stronger state statutes. The Electronic Communications Privacy Act, the Right to Financial Privacy Act, the Cable Communications Privacy Act, the Video Privacy Protection Act, the Employee Polygraph Protection Act, the Telephone Consumer Protection Act, the Driver's Privacy Protection Act, and the Gramm-Leach-Bliley Act all allow states to craft protections that exceed federal law.[6]

Although the federal government has enacted privacy laws, most privacy legislation in the United States is enacted at the state level. Many states have privacy legislation on employment privacy (drug testing, background checks, employment records), Social Security Numbers, video rental data, credit reporting, cable television records, arrest and conviction records, student records, tax records, wiretapping, video surveillance, identity theft, library records, financial records, insurance records, privileges (relationships between individuals that entitle communications to privacy), and medical records.

The National Association of Attorneys General Privacy Subcommittee has also argued that the states have a traditional role in regulating privacy:

> Congress should not preempt the states from enacting laws to safeguard and protect consumer privacy. The states' longstanding ability to enforce consumers' rights and prevent abuse, through enactment of substantive standards and by enforcement of existing state laws prohibiting unfair or deceptive acts, must be preserved. Consumer protection has traditionally been an area where the states' power to ensure fair competition and informed consumer choice has been preserved, not eliminated. This structure has worked well for many years and no need to alter it in the area of privacy has been demonstrated. Preemption of state law will only undermine consumer confidence in their dealings with the financial institutions, e-tailers and other on and offline businesses. This conclusion is especially powerful with respect to financial information, where Congress has already recognized the utility of privacy protections enacted at the state level.[7]

There is a presumption in American law that state and local governments are primarily responsible for matters of health and safety. *Hillsborough County v. Automated Medical Laboratories*, 471 U.S. 707 (1985) (there is a "presumption that state or local regulation of matters related to health and safety is not invalidated under the Supremacy Clause"). Privacy is included in the category of health and safety issues as an area of regulation historically left to the states. For instance, in *Hill v. Colorado*, the Supreme Court upheld a law protecting the privacy and autonomy of individuals seeking medical care, as the law was intended to serve the

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[6] Respectively at 18 U.S.C. § 2510 et. seq., 12 U.S.C § 3401, 47 USC § 551(g), 18 USC § 2710(f), 29 USC § 2009, 47 USC § 227(e), 18 U.S.C. § 2721, and Pub. L. No. 106-102, §§ 507, 524 (1999).

[7] NAAG Privacy Subcommittee Report: Privacy Principles and Background, National Association of Attorneys General, at http://www.naag.org/naag/resolutions/subreport.php.

"traditional exercise of the States' 'police power to protect the health and safety of their citizens.'" 530 U.S. 703 (2000).

Preemption Stops States From Performing In Their Traditional Role as "Laboratories of Democracy"

> "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."
> --*New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

States enjoy a unique perspective that allows them to craft innovative programs to protect consumers. State legislatures are closer to their constituents and the entities they regulate. They are the first to see trends and problems, and are well-suited to address new challenges and opportunities that arise from evolving technologies and business practices.

An entire appendix to the 1977 Report of the Privacy Protection Study Commission was devoted to "Privacy Law in the States." This portion of the report speaks strongly to the value of state privacy protection:

> Through constitutional, statutory, and common law protections, and through independent studies, the 50 States have taken steps to protect the privacy interests of individuals in many different types of records that others maintain about them. More often than not, actions taken by State legislatures, and by State courts, have been more innovative and far reaching than similar actions at the Federal level...the States have also shown an acute appreciation of the need to balance privacy interests against other social values.[8]

The report concludes:

> This volume [the appendix to the 1977 report] underscores the central role the States can play as protectors of personal privacy and, more broadly, individual liberty...The States have demonstrated that they can, and do, provide conditions for experiments that preserve and enhance the interests of the individual in our technological, information-dependent society.[9]

State lawmakers have expressed similar observations about the role of diverse decision making authority. As North Carolina State Representative Dan Blue has argued:

> Federal preemption of state and local law presents a very serious challenge to our constitutional system of federalism...One of the advantages of federalism is that allows for greater responsiveness and innovation through local self-government.

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[8] Privacy Law in the States, Appendix 1 to The Report of The Privacy Protection Study Commission Report, Personal Privacy in an Information Society, Jul. 1977.
[9] *Id.*

> State and local legislatures are accessible to every citizen. They work quickly to address problems identified by constituents. The large number of state and local legislatures encourages innovation. A new policy is tested in one jurisdiction. If it works, other jurisdictions try it. If a mistake is made, it can quickly be corrected. But, if the policy jurisdiction of a state or locality has been preempted, then it cannot respond and it cannot innovate.[10]

State Legislators Can Address New, Emerging Problems in the Credit System More Quickly Than Congress

There is a particular danger that preemption of state enforcement authority will leave individuals with no remedies to privacy violations. In the states, attorneys general are elected, and thus have direct pressure from constituents to enforce consumer protection laws. Since the federal attorney general and agency officials are appointed, there is a risk that they will be less accountable to the public as political appointees.

EPIC Executive Director Marc Rotenberg has testified before Congress that one risk of federal ceiling preemption is that federal regulators may not be as responsive to individuals' problems:

> As a general matter preemption is inconsistent with the structure of privacy law in the United States, and similar proposals have often killed important efforts to enact privacy legislation. But it is a particularly bad idea in this context where the FTC [Federal Trade Commission] would have so much control over the establishment of regulation as well as the provision of safe harbor status. Inadequate regulations or inattention to industry practices by the FTC could not be remedied by state or local authorities. States must retain the right to develop new safeguards to protect the interests of their citizens.[11]

North Carolina State Representative Dan Blue argues a similar position:

> Federal regulatory agencies are not always successful in their mission of protecting the public. Moreover, over the past twenty years there has been something of an abdication by the federal government in such fields as consumer, environmental, and public health and safety protection. And, federal regulation, is often sluggish, bogged down in the elaborate federal administrative process and able to respond only slowly to the demands of the public. Federal agencies, in other words, frequently are surpassed in performance by state officials who often can act quickly and effectively to protect their citizens.

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[10] Statement of State Representative Dan Blue, Jr., President of the National Conference of State Legislatures, Before the Committee on Governmental Affairs Of the United States Senate, Regarding Federalism and Preemption of State Law, May 5, 1999, at http://www.ncsl.org/statefed/bluefed.htm.

[11] Testimony of Marc Rotenberg (PDF), *Hearing on S. 809, The Online Privacy Protection Act of 1999*, before the Subcommittee on Communications Committee on Commerce, Science and Transportation U.S. Senate, July 27, 1999, at http://www.epic.org/privacy/internet/EPIC_testimony_799.pdf

> States can act more quickly and aggressively because the structure of state administrative law is simpler and allows for swift decision-making. Also, state regulators are often more responsive to public opinion. For example, in most states, a popularly elected Attorney General is responsible for enforcement of antitrust, environmental, and consumer protection laws. State agencies, especially when they work cooperatively, also may have more law enforcement resources than comparable federal agencies. I would point in particular to the effectiveness of cooperative efforts of state attorneys general in addressing public health, consumer protection, and antitrust issues.[12]

Appeals to Efficiency In Nationally-Uniform Laws Are Specious

The current credit reporting system has thrived under a federal baseline of protections that is supplemented by dozens of stronger state credit reporting laws. This country does not operate under a single, uniform standard for credit reporting. States have passed stronger laws in the areas of:[13]

- Arrest, Conviction, and Bankruptcy Records.
  - California: CRAs may not report bankruptcies after ten years. Cal. Civil Code 1785.13.
  - Massachusetts: CRAs 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, bankruptcies must be purged after 14. N.M. Stat. Ann. § 56-3-6; Kan. Stat. Ann. §§ 50-704; Mont. Code Ann. §§ 31-3-112.
- Cost of Reports.
  - Georgia: Individuals are entitled to two free credit reports from each national credit reporting agency. Ga. Code Ann. § 10-1-393.
  - Colorado, Maryland, Massachusetts, New Jersey, and Vermont: Individuals are entitled to a free credit report once a year. Col. Rev. Stat. 12-14.3-105; Md. Comm. Law Code Ann. § 14-1209; Mass. Gen. Laws Ann. Ch. 93 § 59; N.J. Stat. Ann. 56:11-37; 9 Vt. Stat. Ann § 2480c.
  - 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: CRAs must furnish credit scores to individuals for a reasonable fee. Cal. Civil Code 1785.15.1.
  - Colorado: CRAs must provide a credit score to the consumer if one is used when extending credit secured by a dwelling. Colo. Rev. Stat. § 12-14.3-104.3.

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[12] Statement of State Representative Dan Blue, Jr., President of the National Conference of State Legislatures, Before the Committee on Governmental Affairs Of the United States Senate, Regarding Federalism and Preemption of State Law, May 5, 1999, at http://www.ncsl.org/statefed/bluefed.htm.

[13] The citations and summaries of state laws verified were as of May 2003 and were drawn from Robert Ellis Smith, *Compilation of State and Federal Privacy Laws*, Privacy Journal 2002.

  - 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 on Furnishers of Reports.
  - Massachusetts: Furnishers must follow reasonable procedures to ensure that the information reported to a CRA is accurate and complete, and furnishers may not provide information to a CRA if there is knowledge of or reasonable cause to believe such information is not accurate or complete. Mass. Gen. Laws Ann. Ch. 93 § 54A(a).
  - California: A person shall not furnish information on a specific transaction or experience to any consumer credit reporting agency if the person knows or should know the information is incomplete or inaccurate. Cal. Civil Code 1785.25(a).
- 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. Ariz. 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: CRAs must notify individuals where there have been eight inquiries on the report within one year or where adverse information is added to the report. Col. 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.
  - 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. § 2480e.
- Use of Medical Information.
  - Florida: An individual must be informed when genetic information was used to deny an opportunity. Fla. Stat. Ann. § 760.40(b).

Especially in the financial services and credit reporting areas, there has been an argument that a national ceiling of laws is needed in order to prevent "balkanization" or a "patchwork" of state

laws. In fact, as the list above illustrates, many states currently have credit reporting laws that increase protections for consumers, and reduce the costs for access to consumer credit reports.

As the National Association of Attorneys General Privacy Subcommittee has argued:

> Many businesses...argue the importance of a single, federal standard by citing the need for uniformity. They assert that a "patchwork" of state laws will make compliance costly and may stifle the development of markets both on and offline. In fact, businesses have long accommodated themselves to a range of state consumer protection statutes while maintaining a profitable enterprise. Courts have, for years, engaged in a process of reconciling potentially or actually conflicting laws through application of established legal principles to various factual situations. Such a tailored response is especially appropriate with respect to evolving technologies and new applications of those technologies. This flexible approach accommodates the needs of both businesses and consumers, while preserving state sovereignty in an area where states have traditionally had a significant role.[14]

The Same New Technologies That Have Enabled Profiling Could Enable Compliance With Different State Laws

Information, more than any other product, can be tailored with technology in order to comply with state requirements. In fact, the same companies lobbying for a uniform state standard for credit reporting already classify consumers into dozens of categories from "blue blood estates" to "hard scrabble" farmers. Technology has given these companies to discriminate among individuals who live on the same block; it can also enable these companies to comply with different state requirements on credit. There has never been a better time to experiment with this approach.

Substantive privacy protections should be added to the FCRA to protect individuals against identity theft.

Good privacy protections can help immunize individuals against identity theft. We recommend that the Committee analyze how individuals can be put in greater control of their personal information in order to prevent identity theft.

We think that the provisions in Title II of H.R. 2622 need to be strengthened in order to prevent identity theft. Specifically, Section 201 requires credit card issuers to engage in some due diligence when an application is made for an extra card at a different address. This provision is limited to existing card holders, that is, it does not apply to new applications for credit. Unfortunately this provision will provide little protection to consumers unless it applies to all applications for credit. The Committee should amend section 201 to require notice to the old and new addresses whenever an application for credit is made that does not match the address that is on file at the CRA.

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[14] NAAG Privacy Subcommittee Report: Privacy Principles and Background, National Association of Attorneys General, at http://www.naag.org/naag/resolutions/subreport.php.

Section 202 creates an important protection for victims of identity theft—the ability to place a fraud alert on a credit report and prevent credit issuers from starting new accounts. However, this fraud alert does not apply to check services and deposit account information service companies. The protections of Section 202 should apply to these entities, as recovering from forged or stolen check fraud is far more difficult than credit card fraud.

Section 205 provides for blocking of information resulting from identity theft. This section too has loopholes that largely invalidate the protections. First of all, the CRA does not have to block the information until 30 days after receiving the police report of the victim. Resellers of credit reports and check services are exempt as well. This exemption actually weakens existing law.[15]

Access to copies of the credit report is critical for victims of identity theft, but Section 501 of H.R. 2622 weakens such access. Section 501 provides that consumers can receive a free report once a year. However, the language eliminates free reports for victims of identity theft, the poor, and the unemployed. If this bill becomes law, identity theft victims, in particular, will lose because they will have to pay for numerous reports as they recover from the crime. This section would be improved significantly if free access for victims, the poor, and the unemployed were preserved. We further recommend that victims of identity theft be provided free credit monitoring service.

Beth Givens of the Privacy Rights Clearinghouse recommends two simple steps to eliminate the majority of identity theft: First, credit grantors must spend more time evaluating applicants before issuing credit. If just a short time—perhaps even just two more minutes—was spent evaluating information on the credit application, a significant amount of identity theft could be prevented. Credit grantors regularly issue credit to identity thieves who leave obvious errors on the application. Identity thieves often apply for credit under a different address than the victim, use incorrect dates of birth, use fabricated mothers' maiden names, or a different phone number than the victim.

For example, in one instance, an identity thief applied for a credit card at Dillard's Department Store using her own name and address, and the victim's social security number.[16] The thief's first initial and last name were the same as the victim's. Trans Union provided Dillard's with the victim's credit report because the first initial, last name, and social security number on the application matched their credit report file.[17] Dillard's approved the credit card, and the thief was issued a credit card under the victims' identity. If Dillard's were required to actually match information on the application fully with information from the CRA, this incident would have been prevented.

California has adopted a sensible approach to manage this problem. California Civil Code 1785.14 requires CRAs to match three categories of identifying information from the file with the individual's application. The Committee has the opportunity to strengthen this protection by

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[15] *See FTC v. Credco*, File No. 95-23267 (1995).
[16] Erin Shoudt, *Comment. Identity theft: victims "cry out" for reform*, 52 Am. U. L. Rev. 339, 346-7 (2002)(citing *Andrews v. Trans Union Corp.*, 7 F. Supp. 2d 1056 (C. D. Cal. 1998)).
[17] *Id.* at 347.

requiring that four information items from the application match the report. This simple, common-sense approach is likely to deter a significant amount of identity theft.

Ms. Givens' second recommendation is to require the CRAs to notify individuals when suspicious activity appears on the report. Such activity includes multiple inquiries in a short period of time (for instance, six new applications for credit within one month), or when negative information is furnished to the CRA. Either of these instances should result in notice to the individual. That notice would place the consumer on alert, and allow proactive steps to address the potential fraud. Colorado has enacted § 12-14.3-104 to address this situation. That section of the code requires a notice to the consumer where eight credit inquiries are made within a year or when negative information is furnished to the CRA. The Committee should adopt similar language that is stronger than the Colorado statute.

The Committee Should Incorporate Measures to Protect the SSN

Enacting stronger controls on the Social Security Number (SSN) is essential to curbing identity theft, but H.R. 2622 contains no such provisions. We recommend that the Committee visit the Social Security Number Privacy and Identity Theft Protection Act of 2001, 107 H.R. 2036, as a guide to limiting the use of the SSN. The measure was sponsored by Representative Clay Shaw (R-FL). In the 107th Congress, the bill enjoyed bi-partisan sponsorship of over 70 Members. The measure contained a comprehensive set of rights to protect individuals from identity theft.

Title I of the bill would have established important protections against public-sector sale or display of SSNs. These provisions would prohibit the display of the SSN on checks and government-issued employment cards. The bill would have prohibited disclosure of the SSN to inmates, and appearance of the SSN in public records. Increasingly, public records are a source for the collection of personal identifiers that then can be reused for any purpose.

The bill would have also prohibited "coercive disclosure" of the SSN—the practice of denying a product or service when an individual refuses to give a SSN. Additionally, Section 203 of that bill would have placed the SSN "below the line" on credit reports. This is an important and much needed protection that would stem trafficking in SSNs.

Individuals need substantive improvements in the system to minimize inaccuracies, and to improve the correction process

H.R. 2622 does not provide substantial improvements for consumers that will minimize inaccuracies or improve the correction process. Title III's only improvement is language that would allow notice of a dispute to be delivered to a reseller.

Section 401 of H.R. 2622 requires a CRA to notify the requestor when there is a discrepancy in addresses between the application and the report. However, this section hinges on the determination that the address be "substantially different," and notice to the consumer is not required. It seems that when there is an application for credit on an individual's file with an inaccurate address, the consumer should receive notice too.

We believe that Section 402 is a good step forward. That section prohibits the furnishing of information that occurred because of fraudulent activity.

Section 403 would require notice to users of fraud where their assignees or agents learn of fraudulent activity on a report. Clearly this section should provide for notice to the CRA and to the consumer when evidence of fraud is discovered.

In summary, Titles III and IV of H.R. 2622 do not substantially improve the process. These titles do not recognize the importance of credit reports in consumers' lives, or the subtleties of the problems inherent in the system. We explain these problems below and make recommendations for improvements to the FCRA.

CRAs receive many complaints

Our credit reporting system has serious flaws. On average, Experian's consumer center has received twenty five to thirty thousand consumer disputes or pieces of mail per day. Sometimes the figures are much higher, and the majority of the pieces of mail are actual disputes.[18] Likewise, CRA call centers receive large volumes of calls from consumers complaining about their credit reports on a daily basis. For example, CSC Credit Services receives 1500 to 2500 disputes per day.[19]

Because CRAs are the agencies that generate and manage credit reports, consumers have to trust CRAs to diligently follow-up on their complaints and resolve their disputes. The ability for consumers to review the accuracy of their credit reports is inhibited by two problems. The first is that consumers must pay to access their own credit reports. Only a few states require CRAs to provide consumers with their own reports without paying fees. Second, when consumers do get access to their credit reports, they do not receive the full credit reports, which are reserved for subscribers only. Subscribers get more detailed information about delinquencies, bankruptcies, etc. They get a risk score or a Fair Isaac score. As well as a banner where it says how much is delinquent, how many days total accounts are past due, how many derogatory items there are on the credit report, etc.[20]

Perverse incentives pervade the system because dispute resolution is a cost center; subscriber business is a profit center.

Ultimately, CRAs make money from their subscribers, not consumers. One former employee of Experian explained, "It is made clear that they [subscribers] pay your paycheck and don't forget it."[21] To a CRA, individuals are not the customers, they are data subjects: subscribers are the customers. As such, CRAs are motivated to cater to their subscribers. Individuals, however, are not a sufficient source of income to CRAs. As such, the consumer dispute resolution process is a cost center, and CRAs have little incentive to invest in resolving customer complaints. This

[18] Deposition of Vicky Thompson 39:12-16, 40:3 (on file with EPIC).
[19] *Mendoza v. Experian*, No. 02-2465 (S.D. Tx. 2003)(Deposition of Janice Fogleman 0094:3-7).
[20] Deposition of Vicky Thompson 32:19-33:25 (on file with EPIC).
[21] *Id* at 56:23-57:1.

problem translates into inadequate customer support. The less a CRA spends on complaint management, the lower their bottom line.

As noted above, CRAs receive vast amounts of complaints in a day. Yet, they do not provide adequate resources to handle these complaints. As a result, CRAs impose increasingly larger call handling quotas on their customer service representatives. One representative at Experian explained that when she began working at Experian, they were required to handle 62 calls per day, but within a couple of years, the quotas had increased to 100 complaint calls per day, leaving them only an average of 3-4 minutes per call.[22] The quotas are strictly enforced, and representatives can lose their jobs for failing to handle an adequate number of daily calls.[23] It is obvious that, in this environment, CRAs are not able to adequately address complaints. For example, representatives are specifically told not to prolong calls by asking questions of the callers, which discourages customer service representatives from taking initiative when try to resolve customer disputes.[24] For example, the following conversation from deposition of a CRA customer service representative is telling:

> Q. So the quicker they can get the consumer off the phone, the better, regardless if they help them or not?
>
> A. Exactly. I've seen reps transfer [consumers] to the main number. I've seen reps tell them, you know, call back or send in your proof to us and we'll dispute it that way. I mean, the reps weren't all—not everyone was willing to help.[25]

Because subscribers provide income to CRAs but consumers only burden the CRAs, there is a bias in favor of subscribers. This bias fosters an anti-consumer culture within CRAs, which is indoctrinated into new customer service representatives early on. In particular, during training, customer service representatives are specifically taught to mistrust consumers.[26] Moreover, one customer service representative explained that Experian's call center would block an individuals' number who called too many times.[27]

The pressures to reduce costs, and thus reduce service to consumers, is tremendous. For example, at one time, it was common for customer service representatives to resolve disputes by having conference calls between the consumers and subscriber. However, CRAs later began telling their representatives to do separate calls. Then finally, the CRAs began telling them not to call subscribers at all, as this was both time consuming and endangered upsetting the subscribers.[28]

CRAs don't monitor furnishers and subscribers

To some degree, CRAs act as conduits between subscribers, furnishers, and consumers. Because of this, they are in a particularly good position to monitor each of the parties. For example, CRAs

[22] *Id.* at 20:5-11
[23] *Id.* at 25:16-26:2.
[24] *Id.* at 24, 16-8.
[25] *Id.* at 71
[26] *Id.* at 26:3-19.
[27] *Id.* at 46:24-47:11.
[28] *Id.* at 21:21-22:09.

could monitor subscribers so that they can see if there are a large number of fraud cases associated with a particular subscriber. Moreover, a CRA could monitor furnishers to see who might routinely report inaccurate information. However, not all CRAs keep these kinds of metrics. CSC Credit Services, for example, does not keep these metrics.[29]

Factors that lead to bad data quality: CRAs are concerned more with quantity than quality

CRAs are more concerned with amassing a large quantity of information about an individual because this is what the subscribers demand. This practice compromises data quality. For example, when retrieving information about an individual, CRA algorithms are designed to discard minor differences that occur in identifiers, such as incorrect digits in a social security number. The presumption here is that it is better to gather more information and have it be wrong then to risk excluding information. The potential resulting problem is a mixed file, where CRAs combine information from different individuals into one file. Victims of mixed files find it extremely difficult to correct this problem.

Public records problem

Sometimes, errors occur when CRAs incorrectly copy information from public records. CRAs generally rely on sub-vendors to supply them with information from public records. These public records usually do not have uniquely identifiable information, and as a result, CRAs may attribute incorrect information to individuals.

Consumers Need Changes to the System to Ensure Accuracy

Accuracy would be improved in the act if CRAs and furnishers were held to higher reinvestigation standards. The FCRA should be amended to require CRAs and furnishers to "conduct a reasonable reinvestigation to determine whether the disputed information is incomplete, inaccurate or unverifiable."

We recommend that the Committee maintain voluntary reporting, but require that furnishers that report aide by a "completeness" standard to prevent gaming the credit scoring system.

Further, the Committee should require that users provide to consumers any reports they rely on in making an adverse determination.

Finally, we recommend that consumers have a right of action against any furnisher who continues to provide inaccurate information to the CRA after notice is given that the information is inaccurate.

Congress should ensure that medical information is not disclosed on credit reports

[29] *Mendoza v. Experian*, No. 02-2465 (S.D. Tx. 2003)(Deposition of Janice Fogleman 0097:16-21, 0098:17-20).

Congress established a strong standard for the inclusion of medical information in credit reports. Under the Act, medical information should only appear in the report when it is provided directly from a health provider and the patient has consented to the transfer.[30]

A December 2002 study by the Consumer Federation of America and the National Credit Reporting Association, and a 2003 report of the Federal Reserve highlighted an emerging problem for consumers: despite the protections in the FCRA, some types of medical conditions or treatment can be inferred from items on credit reports.[31] Both studies found that the names of medical creditors could indicate what categories of treatment a consumer received. The current protections of the Act do not cover this loophole, and therefore Congress should correct this problem.

Furthermore, certain factors have exacerbated the problem caused by this loophole. The first is that medical collections commonly appear in credit reports, which exposes personal medical information to any person or business which requests a credit report. The Federal Reserve report found that 52 percent of collection actions are associated with medical bills.[32] Most of these collection items, however, are for small amounts. Sixty-six percent of medical collections are for amounts under $250.[33] Second, medical organizations are beginning to use more aggressive collections techniques.[34] Mounting evidence suggests that health care providers are more vigorously pursuing consumers because insurance companies frequently reject or dispute claims.[35] Even if the insurer ultimately pays the claim, a collections item will remain on the consumer's report for seven years. To remove the collections item, the consumer must prove that it was a factual error.

The consequences of this confluence of problems are serious. Individuals' privacy is not adequately protected under the law. Additionally, the Access Project found that providers treat patients with medical collections differently—these consumers are sometimes required to pay upfront for medical care, or sometimes are refused access to care.[36]

To address this problem, we urge the Committee to amend the FCRA to obscure the names of creditors or collections agencies that may indicate the consumer's medical condition. We further recommend that the Committee shorten the obsolescence periods for negative information when

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[30] 15 U.S.C. § 1681a(i).
[31] *Credit Score Accuracy and Implications for Consumers*, National Credit Reporting Association (NCRA) and the Consumer Federation of America (CFA), Dec. 2002, at http://www.ncrainc.org/documents/CFA%20NCRA%20Credit%20Score%20Report.pdf; Robert B. Avery, Paul S. Calem, & Glenn B. Canner, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, Feb. 2003, at http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf.
[32] *Id.*
[33] *Id.*
[34] *The Consequences of Medical Debt: Evidence From Three Communities*, Access Project, Feb. 2003, at http://www.accessproject.org/downloads/med_consequences.pdf.
[35] Jay MacDonald, *Medical Bills Can Make Your Credit Sick*, Bankrate.com, Aug. 28, 2002; Eve Tahmincioglu, *Is Your Health Insurance Hurting Your Credit*, New York Times, May 12, 2002.
[36] *Id; see also* Hugh F. Daly III, Leslie M. Oblak, Robert W. Seifert, & Kimberly Shellenberger, *Symposium: Barriers to Access to Health Care*, Case Western Reserve Univ. Health Matrix: J. of L.-Med. (Winter 2002).

the collection and debt is insubstantial. Medical collections under $250 should not stay on a report for seven years; a shorter time is more appropriate.

Congress should preserve the application of the FCRA to the background screening process

A simple conviction or arrest for a minor crime can result in someone not being able to obtain a job—even one that requires minimal responsibility or does not involve security sensitivity. For example, Eli Lily, in response to the September 11, 2001 attacks, hired ChoicePoint to perform investigations on thousands of contract workers.[37] Lily's concern was reasonable enough—the company is the dominant producer of insulin in the world. But the result of the background checks was not reasonable. A pipe insulator at the company was fired for accidentally bouncing a $60 check. One person was dismissed because the records check revealed a fourteen-year-old misdemeanor marijuana possession charge. Another was dismissed for a crime that he did not commit.

The FCRA addresses background checks by requiring employee consent, and by limiting the scope of the file for certain employees. A limited file (one that does not contain bankruptcies more than ten years old, other negative information more than seven years old, an other adverse information more than seven years old) is delivered to employers where the position pays less than $75,000/year. This figure is too low in today's dollars.

Congress should limit the contexts in which a report can be obtained for employment purposes. These should be limited to jobs where employees handle large sums of money, or are genuinely security-sensitive. It is clear now that the current standard—consent—is too low, as even menial jobs require background checks.

The Committee should also close the loophole that allows employers to conduct their own employment screenings. Because of the availability of "no-questions-asked" background check companies on the Internet, there is heightened risk that employees could be unfairly harmed by the background check process. Employers must be required to obtain consent and disclose the results of background checks that they perform themselves and provide the source of the information to the individuals who are investigated.

Title VI of H.R. 2622 should be stricken and replaced with language that will improve accountability and accuracy in the background check process. Congress should not further limit or exempt background investigations from the FCRA. In large part, the FCRA was passed to address abuses of the investigative industry. If Congress chooses to remove the FCRA's important accountability provisions, it will lead to employees being fired or never receiving deserved opportunities because of errors or unfair practices.

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[37] Ann Davis, *Firms Dig Deep Into Workers' Pasts Amid Post-Sept. 11 Security Anxiety*, Wall Street Journal, Mar. 12, 2002.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Chris Hoofnagle, Deputy Counsel
Epic.Org
1718 Connecticut Ave. N.W.
Suite 200
Washington DC 20009

JUN 23 2003

Re: FOIA Request No. 2003-470
Credit Bureau Complaints

Dear Mr. Hoofnagle:

This responds to your May 30, 2003, letter requesting access under the Freedom of Information ("FOIA") to the number of consumer complaints received by the Federal Trade Commission since January 1, 1997, pertaining to the credit bureaus Experian, Trans Union, and Equifax. Pursuant to the FOIA and agency policy, we have searched our records as of June 3, 2003, the date we received your request in our FOIA office.

A search of the Commission's records located two responsive pages and copies are enclosed. If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact Kathy Kelliher-Sloan (202) 326-3253.

Sincerely,

Joan E. Fina
Attorney

Enclosure

Table 2. Complaints Against Equifax, Experian, or TransUnion by Calendar Year

Calendar Year 1997			
Equifax	332	---	332
Experian	305	---	305
TransUnion	238	---	238
Calendar Year 1998			
Equifax	1,923	---	1,923
Experian	1,964	---	1,964
TransUnion	1,799	---	1,799
Calendar Year 1999			
Equifax	2,285	23	2,308
Experian	2,860	26	2,886
TransUnion	2,374	12	2,386
Calendar Year 2000			
Equifax	2,744	282	3,026
Experian	2,629	275	2,904
TransUnion	2,263	146	2,409
Calendar Year 2001			
Equifax	3,932	495	4,427
Experian	2,957	365	3,322
TransUnion	2,726	143	2,869
Calendar Year 2002			
Equifax	5,291	2,681	7,972
Experian	4,221	1,800	6,021
TransUnion	3,494	504	3,998
Calendar Year 2003			
Equifax	2,094	896	2,990
Experian	1,882	672	2,554
TransUnion	1,756	236	1,992

[1]The FTC began accepting consumer inquiries and complaints about identity theft in October 1999.

[2]Calendar Year 2003 includes January 1 - June 3, 2003.

FOIA 2003-470 Credit Bureau Complaints

Table 1. Complaints Against Equifax, Experian, or TransUnion by Calendar Year

1997	875	---	875
1998	5,633	---	5,633
1999	6,746	42	6,788
2000	6,253	478	6,731
2001	7,590	741	8,331
2002	11,158	3,399	14,557
2003[2]	5,211	1,188	6,399

[1]The FTC began accepting consumer inquiries and complaints about identity theft in October 1999.

[2]Calendar Year 2003 includes January 1 - June 3, 2003.

Statement of the U.S. Chamber of Commerce

ON: **H.R. 2622, THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003**

TO: **HOUSE COMMITTEE ON FINANCIAL SERVICES**

DATE: **JULY 9, 2003**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 92 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

STATEMENT OF MICHAEL F. McENENEY

PARTNER, SIDLEY AUSTIN BROWN & WOOD LLP

FOR THE
UNITED STATES CHAMBER OF COMMERCE

BEFORE THE
HOUSE COMMITTEE ON FINANCIAL SERVICES

HEARING ON H.R. 2622, THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

JULY 9, 2003

Good morning Mr. Chairman, Congressman Frank, and members of the Committee. My name is Michael F. McEneney and I am a partner at the law firm of Sidley Austin Brown & Wood LLP. I am pleased to have the opportunity to appear before you today on behalf of the United States Chamber of Commerce. The U.S. Chamber serves as the principal voice of the American business community here in the U.S. and around the world. Specifically, the Chamber is the world's largest business federation, representing more than three million businesses of every size, sector and region of the country.

I would like to commend you, Mr. Chairman, on the leadership you and the members of this Committee have shown with respect to protecting the security of consumers' personal information and ensuring continued access to credit at low costs. In particular, I would like to commend Chairman Bachus, Ms. Hooley, Ms. Biggert, and Mr. Moore for their leadership in crafting H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"). I believe this legislation represents much hard work and effort, and lays an important foundation for addressing identity theft and Fair Credit Reporting Act ("FCRA") issues.

The FCRA has provided a robust framework for the most advanced consumer credit and insurance markets in the world. A key component of this success is the fact that the FCRA establishes a single national system in which our credit and insurance markets can operate smoothly. This has resulted in significant consumer benefits, in the form of increased credit and insurance availability at lower costs, and has provided a source of strength for our economy. The national uniformity of key provisions in the FCRA is currently scheduled to expire on January 1, 2004. Making these provisions permanent has been a high priority for the Chamber and its

member companies. We applaud the sponsors of the FACT Act for including provisions in the bill that would make the national uniform provisions established by the FCRA permanent. These provisions are critical if consumers are to continue to enjoy the benefits of the credit and insurance markets. Additionally, we believe the continuity of the national uniform standards will assist in the fight against identity theft.

The Economic Importance of National Uniformity

At the beginning of the Committee's deliberations on these issues, there were a number of questions raised about the significance of the national uniformity established by the FCRA. A recent study that goes a long way to answering those questions is, "The Fair Credit Reporting Act: Access, Efficiency & Opportunity." The study was prepared by the Information Policy Institute ("IPI") with the support of the National Chamber Foundation of the U.S. Chamber of Commerce. The aim of the study was to examine specifically whether a loss of the existing framework of preemption would threaten the benefits of our current credit markets currently enjoyed by consumers. This study relied on hard data to determine the impact on consumers and industry if the national uniform standards were lost. I would like to share some of the study's findings with the Committee.

In General

In all areas of inquiry, the IPI found that the national uniform standards established by the FCRA have contributed significantly to the consumer benefits of the current credit marketplace. Further, the IPI found few quantifiable direct or indirect costs to consumers associated with the national uniform standards. The study concluded that the loss of the existing framework of

preemptions would threaten the current consumer benefits, and that Congressional action is necessary to ensure the continuity of our national standards.

Mortgages

The study recognizes that many of the efficiencies developed by the mortgage underwriting market, such as automated underwriting, are made possible, at least in part, by the national uniformity established by the FCRA. According to the study, automated underwriting consistently does a better job of identifying loans that ultimately "perform"—loans that do not experience a serious delinquency or default. Moreover, automated underwriting allows mortgage underwriters to accommodate high volumes of activity. For example, in 2002, the Federal Reserve estimates that homeowners were able to gain access to approximately $700 billion of equity in their homes—an astounding figure that may not have been possible under a less efficient system. The introduction of mortgage underwriting efficiencies, which have resulted in part from the national uniformity established by the FCRA, also appear to have significantly reduced the costs of closing a loan, saving consumers at least $18.75 billion in 2002.

Credit Availability

The study also examined four different scenarios under which the FCRA's national uniformity was allowed to expire and the FCRA's operative provisions were modified in ways suggested by existing legislative proposals in various states. The study examined the impact of these changes on six different commercial credit scoring models in order to approximate the impact on consumers and the cost of credit. In all four scenarios, the study found that loan approval rates would decrease or delinquencies would increase, resulting in increased costs to

consumers. Furthermore, the predictive power of credit report information would decline, damaging creditors' ability to evaluate credit risk. If creditors cannot properly evaluate credit risk, one of two things generally occurs in order to hedge against that increased risk—creditors make less credit available, or they increase the cost of credit. Either way, consumers lose if the FCRA's national uniform standards expire.

Prescreening

The study evaluated the current practice of "prescreening" customers for preapproved offers of credit. According to the study, increased competition which has been driven in part by prescreening has caused interest rates to be lower overall than they were in 1990. The study also found that prescreening was the most important method of acquiring new credit card customers, and that restrictions on prescreening would increase costs to consumers, and decrease consumers' access to unsecured credit.

The Importance of National Uniformity to the Security of Consumers' Personal Information

As I mentioned above, the Chamber shares the Committee's goals in providing for continued access to credit as well as to protecting the security of consumers' personal information. The national standards established by the FCRA are an important component of protecting the security of consumers' personal information. For example, the national uniform provisions under the FCRA ensure that financial institutions can have access to reliable credit report information for a variety of purposes, including identity theft prevention. Indeed, the important role credit reports can play in the efforts of financial institutions to verify the identity

of their customers has been recognized as part of the regulatory efforts to implement the customer identification provisions of the USA PATRIOT Act.

The national uniform standards also allow companies to prevent identity theft in more subtle ways. Under the FCRA, companies have a single federal standard governing their ability to share information among affiliated entities. A key purpose for the sharing of information among affiliates is to prevent fraud, including identity theft. The FCRA also establishes a uniform standard for prescreening consumers for credit. It is noteworthy that the fraud rates, including identity theft, are significantly lower on accounts acquired through prescreening than accounts acquired through other means. Providing states the opportunity to enact their own prescreening rules would make this more secure method of customer acquisition less attractive if not impossible.

The national standards established by the FCRA also ensure that consumers have the tools necessary to protect themselves against identity theft. For example, consumers are provided a standardized notice if they are the subject of adverse action based on a consumer report. This notice, which is standard across the country, informs the consumer of the adverse action and notifies the consumer that the action was based, at least in part, on information from a credit report. This is a "red flag" to the consumer to check the credit report to ensure its accuracy. Furthermore, the FCRA establishes a single timeframe under which credit bureaus have to reinvestigate any consumer disputes. I think we can all agree that it is challenging enough for credit bureaus and consumers to resolve identity theft issues under a single set of rules—imagine the difficulty if credit bureaus had to comply with different rules depending on where the consumer resides.

Additional Measures in the FACT Act

Fighting Identity Theft

Although renewal of the FCRA's national uniform standards is a critical component of the Committee's and the Chamber's desire to fight identity theft, we agree with the Committee that more can be done. The Chamber commends Chairman Bachus and the cosponsors of H.R. 2622 for taking steps to protect consumers against identity theft. The FACT Act includes provisions to address a number of potential scenarios involving identity theft. For example, the FACT Act establishes specific obligations relating to certain address change requests and to fraud alerts. The Chamber strongly supports efforts to address these important issues and appreciates the opportunity to provide its comments on the legislation.

In general, we believe that there is a common theme that should guide the Committee in its consideration of provisions to combat identity theft. More specifically, the Chamber believes that the methods used to address potential identity theft scenarios should be flexible, allowing companies to utilize the means most efficient to them to thwart identity thieves. We believe that this goal is embodied in several provisions of the FACT Act. For example, the legislation includes a provision requiring the federal banking agencies to develop "red flags" for financial institutions to use in detecting identity theft. This provision relies inherently on the recognition that a "one size fits all" approach may not work—the "red flags" presented by identity thieves will invariably change over time and the tools used to combat the thieves should change as well.

The Chamber is concerned that if the methods for preventing identity theft are "written in stone," companies will be forced to devote resources to complying with these methods, regardless of whether they become outdated or if more efficient alternatives become available.

Furthermore, if companies must adhere to specific statutory requirements with respect to identity theft, it may become difficult for companies to alter their procedures in light of the constantly evolving nature of identity theft. The FACT Act takes important steps in the direction of providing this flexibility, and we hope this is a theme that can be further explored.

Access to Credit Reports

The FACT Act also addresses the important issue of a consumer's ability to access his or her credit report. It is important for a consumer to have access to his or her credit report in order to ensure the report's accuracy, as well as to address any instance of identity theft as soon as possible. The FCRA currently ensures that access to credit reports is relatively inexpensive—the cost is capped by law at $9. In addition, the Chamber strongly supports the provisions in current law that provide consumers with access to their credit report at no charge in certain situations. For example, a consumer can obtain his or her credit report for free if the consumer: (i) has been the subject of "adverse action" (*e.g.* denial of credit) due in part to information in a credit report; (ii) is unemployed and intends to apply for employment; (iii) is a recipient of public welfare assistance; or (iv) has reason to believe that the file on the consumer at the credit bureau contains inaccurate information due to fraud, including identity theft.

The FACT Act would allow consumers to access their credit reports at each credit bureau at no charge once a year. The Chamber welcomes the consideration of how to make credit reports more available to consumers. We believe, however, that this issue merits careful study before next steps are taken. In particular, there should be a careful examination of the costs associated with a "free" credit report in order to ensure that there are no unintended consequences. For example, the costs of providing free reports and the related customer service

will have to be absorbed by the consumer. Moreover, resources that are currently dedicated to investigating potential errors in consumer reports, or assisting consumers with resolving identity theft claims, will need to be redirected to meet the demand for "free" credit reports. It should also be noted that a single, well placed national news article or widely circulated e-mail could create significant spikes in demand for credit reports that simply could not be met without severe disruption to the other important customer service functions performed by credit bureaus.

Fighting Workplace Violence and Sexual/Racial Harassment

The Chamber is pleased that the FACT Act includes a provision that would make it clear that companies can conduct investigations of wrongdoing in the workplace without the inappropriate application of the FCRA. Currently, the broad definitions of "consumer report" and "consumer reporting agency," as interpreted by the Federal Trade Commission ("FTC"), appear to apply if an employer uses outside experts to investigate employee misconduct. This results in the outside firm, such as an accounting firm or law firm, potentially becoming a consumer reporting agency for purposes of the FCRA. Because of the difficulties in conducting an investigation while complying with the FCRA's requirements, and because employers and investigators face significant potential liability, including punitive damages, for failure to comply with the FCRA's requirements, the FTC's interpretation deters employers from using experienced and objective outside organizations to investigate workplace misconduct. While the FTC's interpretation affects all businesses, it is particularly damaging to small and medium businesses that do not have in-house resources to conduct their own investigations.

The FACT Act remedies this problem. The FACT Act would exclude employment investigations that are not for the purpose of investigating the employees' creditworthiness from

the FCRA requirements. I want to stress that this provision is a narrow correction of an obvious problem created by current interpretation of the law. In addition, the legislation does not leave those suspected of misconduct without protection—it still requires that employers who take adverse action against an employee based on information from an investigation provide the employee with a summary of the nature and substance of the report. We applaud the work of Congressman Pete Sessions on these provisions, and support their inclusion in the FACT Act.

Conclusion

Once again, I would like to thank the Committee for its diligent efforts in examining ways to maintain the consumer benefits of our current financial marketplace while also protecting the security of consumers' personal information. The Chamber believes that the FACT Act represents a foundation for achieving these two critical goals. The legislation includes important provisions pertaining to the national uniformity established by the FCRA. H.R. 2622 also includes many important initiatives in the fight against identity theft. The Chamber also believes that the bill appropriately addresses the workplace investigation problems under the current law. The Chamber looks forward to working with you, Mr. Chairman, and with other members of the Committee as the legislation moves forward.

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

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

THE FAIR CREDIT REPORTING ACT

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES

Washington, D.C.

July 9, 2003

Mister Chairman and members of the Committee, my name is Timothy J. Muris, and I am Chairman of the Federal Trade Commission ("Commission" or "FTC"). I am pleased to present the Commission's views on amending the Fair Credit Reporting Act ("FCRA").[1] The Commission endorses the FCRA amendments and other statutory changes proposed by the Treasury Department on June 30, 2003, including permanent renewal of the uniform national standards in Section 624 of the FCRA.

The national consumer reporting framework the FCRA established has played a central role in the expansion of consumer credit, which in turn has contributed so much to the nation's economy. Making the uniform national standards permanent would help ensure the continued effectiveness of our national consumer reporting system.[2]

At the same time, it is critical that our credit system protect the rights of consumers in the privacy, security, and accuracy of their financial information. More types of businesses are using consumer reports than ever before. The Commission supports the legislative amendments proposed by the Treasury Department, which provide important protections for consumers. The proposals include:

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[1] The written statement represents the views of the Federal Trade Commission. My oral presentation and responses are my own and do not necessarily reflect the views of the Commission or of any other Commissioner.

[2] 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. *See* FCRA § 602(b) ("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 . . . ."). The focus here will be on credit reporting, but the same basic regulatory structure applies to all consumer reports. Throughout this testimony, we will refer to "consumer reports" rather than "credit reports," although the terms are used interchangeably and either usage is correct.

- provisions aimed at helping consumers prevent, detect, and mitigate the harms that result from identity theft;[3]
- free annual access to consumer reports and better information about credit scores for consumers; and
- enhanced rights to adverse action notices that better comport with modern credit practices.

The Commission recommends two additional FCRA amendments: (1) a modest strengthening of the duties of information furnishers and (2) changes to the obligations of employers when investigating employees.

I. Economic Growth, Consumer Reporting, and the FCRA[4]

The enactment of the FCRA in 1970, and its amendment in 1996, has fostered the development of our modern credit system. Consumer spending accounts for over two-thirds of U.S. gross domestic product, and the wide availability of affordable credit drives this spending.[5] In 2001, 75 percent of U.S. households participated in the consumer and mortgage credit markets.[6] Well-functioning credit markets are an essential component of economic prosperity.

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[3] Identity theft occurs when someone commits fraud or other unlawful activity 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, or utility services (including cell phones), or similar illegal conduct using the identity of the consumer whose information was misappropriated.

[4] For a more extended discussion and detailed history on these related topics, please see the Commission's testimony last month before the Subcommittee on Financial Institutions and Consumer Credit at http://www.ftc.gov/os/2003/06/030604fcratestimony.pdf.

[5] In 1946, 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, 8.

[6] *Id.* at 2.

The modernization of consumer reporting has played a key role in providing U.S. consumers with rapid access to consumer credit. Federal Reserve Chairman Alan Greenspan noted the benefits of this system to both consumers and lenders in his April testimony to this Committee.[7] The development of a national consumer reporting system, with its sophisticated risk models and automated underwriting, has contributed greatly to making credit more widely, inexpensively, and rapidly available.[8] The national system also has narrowed the gap in credit availability between high and low income consumers.[9]

The information in the consumer reporting system is derived from creditors, insurers, and others (also called "furnishers") that voluntarily report account histories to consumer reporting

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[7] "So it is clearly in the interests of consumers to have information continuously flowing into [credit] 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." 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 _____.

[8] "By most accounts, the consumer credit marketplace in the United States is the envy of the world. In 30 short years, balkanized local credit card markets, characterized by high and largely undifferentiated prices on credit, very subjective application processes, and limited access, have evolved into a national consumer credit marketplace distinguished by dynamic competition among lenders and broad participation by most American consumers." Information Policy Institute, "The Fair Credit Reporting Act: Access, Efficiency & Opportunity - The Economic Importance of Fair Credit Reauthorization" (June 2003; hereafter, "IPI Report") at page 5. *See also* Testimony of Michael A. Turner, Ph.D, President and Senior Scholar, The Information Policy Institute, before the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, May 8, 2003 (hereafter, "Turner testimony").

[9] Preliminary research indicates that advances in risk modeling sophistication and use have led to increased economic activity (such as homeownership rates and use of credit) and especially significant benefits for disadvantaged groups. For example, from 1970, when the FCRA was passed, to 2001, the percentage of families in the lowest income quintile with a credit card increased from 2 percent to 38 percent. IPI Report, at 5; Turner testimony, at 4. *See also*, Cate, "Privacy, Consumer Credit, and the Regulation of Personal Information," in *The Impact of Public Policy on Consumer Credit*, Thomas A. Durkin and Michael E. Staten, eds. (Boston: Kluwer Academic Publishers, 2002), at 235-36.

agencies ("CRAs").[10] The flow of information between furnishers, CRAs, and consumer report users, as governed by the FCRA, facilitates more expeditious and accurate credit decisions.[11]

II. Proposed Legislative Action

The Commission supports the Treasury Department proposals for amending the FCRA. We believe these proposals would (1) ensure the continuing viability of the FCRA's uniform national framework that has been a cornerstone of our consumer credit-driven economy, and (2) improve the FCRA to the benefit of consumers, especially in preventing and mitigating the ravages of identity theft and other fraud. We also support the related initiatives to combat identity theft, and recommend two further legislative refinements to the FCRA.

A. Making the FCRA's uniform national standards permanent

The FCRA currently provides uniform standards and preempts state laws with respect to (1) the prescreening of consumer reports, (2) the time within which CRAs must investigate consumer disputes, (3) the adverse action duties of users of consumer reports, (4) the duties of furnishers, (5) the age of information allowed in consumer reports, (6) the exchange of information among affiliated companies, and (7) certain consumer disclosures. The impact of removing the uniform national standards might not be the same for each standard, and of course would depend on what actions individual states decided to take. Nonetheless, the entire package

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[10] CRAs are also referred to "credit bureaus."

Each of the three national CRAs (often referred to as the "Big 3") 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] CRAs issue between 2 and 3 million consumer reports each day. *See* http://www.cdiaonline.org/about.cfm.

of national standards mandated by Congress in 1996 has proven effective. Accordingly, the Commission recommends that all of the standards be made permanent.

Because information reporting is voluntary, the entire system depends on cooperation. The 1996 amendments established a balance – imposing important responsibilities on furnishers with respect to the information they provide, but not making those duties so onerous that furnishers report more selectively or stop entirely. Allowing the uniform national standards to expire would risk upsetting this balance.

The Commission believes that the national character of our credit markets is a powerful argument for retaining the uniform standards. The current system functions well, and we believe there is no compelling justification for fundamental changes. The FCRA forms the baseline of consumer protections that the marketplace has now incorporated into its thinking and behavior.

This is not to say that the FCRA is perfect; in the Commission's view, the amendments discussed in this testimony would improve the Act. The Commission believes, however, that both businesses and consumers would best benefit from improvements made at the national level. Indeed, the Commission has a number of recommendations to strengthen the expiring national standards. We propose, among other things, improving the prescreening process to enhance opt-out rights, streamlining the investigation duties of CRAs that resell consumer reports, expanding consumers' rights to adverse action notices, requiring furnishers to reinvestigate disputes received directly from consumers, and improving consumer disclosures with respect to credit scoring.

To the extent that states are allowed to promulgate different standards than those in the FCRA, the resulting inconsistency could undermine the value of predictive models without a

countervailing consumer benefit. For example, one result might be a reduction in the information available to the consumer reporting system. A robust credit information database is critical to creditors offering credit as broadly as possible at the lowest cost.[12] In general, the credit markets are best positioned to determine the type and quantity of information needed to make credit decisions.

Moreover, if states could pass differing laws that imposed additional duties on furnishers, who now provide information voluntarily, fewer furnishers might report or they might report less information, thereby degrading the quality of the data upon which decisions are made. Similarly, if states were free to shorten reinvestigation time limits, furnishers might determine that their reinvestigation duties were too onerous and simply exit the system. By the same token, state enactment of shorter data obsolescence periods, governing how long negative information can continue to be reported, would necessarily reduce the amount of data in consumer reports. The result would be to restrict creditors' ability to consider information that may be predictive of risk.[13]

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[12] IPI Report, at pages 40-53. *See also* Turner testimony, at 4: "Full-file credit reporting, made possible by the preemptive provisions of the FCRA, enables lenders to distinguish different degrees of risk far better than older, less sophisticated techniques."

[13] If the states had different obsolescence standards, CRAs would have to implement different retention and deletion procedures for consumers in each such state, and when a consumer moved from one state to another, the file would have to be adjusted. Given the high degree of transience and consumers with more than one address (*e.g.*, students or retirees), the effect of one state's enactment of a more restrictive obsolescence standard would inevitably affect consumers beyond that state's borders. While CRAs could adopt the most restrictive obsolescence standard and apply it nationally for ease of compliance, that would result in a costly loss of data to lenders nationwide. Those lenders who operate only in the state with a restrictive obsolescence standard would lose data necessary to assess risk accurately – they would not be able to spot the poor risks as easily, which would increase their credit losses, requiring them to raise prices for everyone, including the good risks. Multistate lenders might be able to charge lower prices, but only by spreading their increased losses to their customer base in other states, with the net effect that consumers elsewhere would subsidize the consumers in the state with the

Preliminary research indicates that allowing the national standards to expire could have deleterious effects for consumers. One study measures the impact of different scenarios of possible state regulation on credit score modeling and, ultimately, on the cost and availability of credit. The results suggest that the hypothesized changes in FCRA standards would alter most consumers' credit scores and lower the predictive power of scoring models, leading to increased delinquency rates or (to maintain current delinquency rates) restricted availability of credit.[14]

B. Improving the FCRA – the Treasury Department's proposals

In conjunction with making permanent the uniform national standards, the Commission supports the following proposals to amend the FCRA, which would provide important protections for consumers.

1. Access to free consumer reports and credit score information

Currently, under the FCRA consumers are entitled a free consumer report only under limited circumstances.[15] The Commission supports amending the FCRA so that consumers have the right to request a free consumer report annually. In addition, the Commission supports a requirement that the report be accompanied by information on how credit scores are derived and

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most restrictive obsolescence standard.

[14] IPI Report, at 45-51. The state law changes hypothesized included changes to the FCRA standards for prescreened offers, furnisher obligations, and the content of consumer reports.

[15] Currently, free reports are available pursuant to the FCRA when the consumer suffers adverse action, believes that fraudulent information may be in his or her credit file, is unemployed, or is on welfare. *See* FCRA § 612. In addition, a small number of states require the CRAs to provide free annual reports to consumers at their request. Absent one of these exceptions, consumers must pay a statutory "reasonable charge" for a file disclosure; this fee is set each year by the Commission and is currently $9. *See* FCRA § 612(a).

what consumers can do to improve them.[16] These proposals would (a) enhance consumers' ability to discover and correct errors, thereby improving the accuracy of the system; (b) educate consumers about the importance of consumer reports and scores and how to improve them; and (c) in some cases provide an early alert to identity theft victims about crimes committed in their names. In an environment with consumer reports and scores used more and more frequently in eligibility and pricing decisions for a myriad of products and services, consumers' knowledge of their credit records is crucial.

2. National fraud alert system

The Commission supports standardizing the means by which consumers who reasonably suspect they have been or may be victimized by identity theft, or who are military personnel on active duty away from home, can place an alert on their credit files. The alert would put potential creditors on notice that they should proceed with caution when granting credit in the consumer's name. The proposal would also codify and standardize the "joint fraud alert" policy whereby an identity theft victim only needs to call one national CRA to place a fraud alert and obtain a free consumer report from all three. The three major CRAs voluntarily follow these procedures now (except for the military alert). The Commission supports the codification of this system in the FCRA.

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[16] Scores are widely used by creditors and insurers to evaluate consumers, and 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.

3. Identity theft account blocking

The Treasury Department's proposal would require CRAs immediately to cease reporting ("block") allegedly fraudulent account information on consumer reports when the consumer submits a police report or similar document, unless there is reason to believe the report is false. Blocking would mitigate the harm to consumers' credit record that can result from identity theft. We understand that the three major CRAs do this voluntarily now, and recommend that it be codified in the FCRA.

4. Reinvestigation duties with respect to resellers

Persons who purchase consumer reports for resale (also known as "resellers") are covered by the FCRA as consumer reporting agencies and have all the obligations of other CRAs, including the duty to reinvestigate information disputed by consumers. Typically, resellers combine information from the three major CRAs (also sometimes referred to as "repositories" in this context) to produce reports for mortgage lenders. Resellers are an important source of consumer reports, but the current FCRA dispute obligations of CRAs and furnishers do not work well when applied to resellers. The Commission supports amending the FCRA to better address reinvestigation duties when a reseller is involved. If a consumer disputes information in the report, the reseller may meet resistance in getting the creditor who originally furnished the information to investigate the dispute, because the creditor has no relationship with the reseller. Yet, if the reseller sends the dispute to the relevant repository, that repository currently has no legal obligation to reinvestigate, because the dispute did not come directly from the consumer.[17]

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[17] If the consumer is told by the reseller that he must dispute the information to the source repository, this delays the dispute process. Time is often of the essence in the case of a mortgage application.

The Commission supports an amendment that would require resellers to submit disputes to the originating repository and the source furnisher to investigate these disputes. Such an amendment would ensure that the dispute process functions more efficiently.

5. FTC rulemaking on adverse action notices

The FCRA requires that when adverse action is taken against a consumer based even in part on a consumer report,[18] the user must notify the consumer of (1) the identity of the CRA 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. Adverse action notices are a critical first step in the "self help" system for correcting inaccuracies in the consumer reporting system. Consumers are in the best position to know whether the information in their consumer report is accurate. The adverse action notice informs them that the reason for denial was based, at least in part, on the report. With the notice, consumers have specific incentives to correct inaccurate data.

Currently, the definition of "adverse action" for credit transactions is imported into the FCRA from the Equal Credit Opportunity Act ("ECOA").[19] Under the ECOA definition, there is no adverse action in many situations when the consumer is offered less favorable terms, such as a higher interest rate, because of information in her consumer report. For example, there is no

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[18] "Adverse action" generally means any action that is adverse to the interests of the consumer, and can include a denial of credit, denial of an apartment rental, or denial of a retail purchase by check. In the insurance context, "adverse action" means "a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance." In the employment context, the term includes "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee." *See* FCRA § 603(k).

[19] The ECOA adverse action definition is **not** imported into the FCRA with respect to insurance or other noncredit transactions.

adverse action when the consumer accepts a "counteroffer" that includes those less favorable terms. The ECOA definition does not adequately address modern credit markets, in which consumers do not necessarily apply for specific credit terms, but rather for the best terms for which they can qualify. In turn, creditors offer terms tailored to the consumer's risk profile, which may often mean a higher price than would otherwise have been the case but for the consumer's consumer report. Yet, under current law, consumers who accept this higher price would not receive an adverse action notice, and thus would never know about a problem in the consumer report that caused the higher price. We support the proposal to grant specific rulemaking authority to the FTC to address the definition of adverse action in credit transactions to better reflect the modern credit market.[20]

6. Improving opt-out notices for pre-screened offers

Prescreened offers provide many benefits for consumers, and can enhance competition, leading to greater credit availability, better terms, and lower costs for consumers.[21] At the same time, the 1996 amendments appropriately gave consumers the right to opt-out of receiving such offers, and required that creditors and insurers clearly and conspicuously disclose this right in the offer itself. The Commission has observed that these notices in many cases have been buried in locations difficult to find, and that the language of the notice is often difficult to understand. The Commission supports the proposed amendment to the FCRA directing the Commission and bank regulators to clarify and strengthen the opt-out notice requirements. A regulatory proceeding would allow the agencies to provide more specific direction on this requirement, based on

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[20] Currently, the Commission has no rulemaking authority with respect to the FCRA.

[21] IPI Report, at 54-59.

empirical evidence of the costs and benefits of various disclosure options and their effectiveness in communicating to consumers.

C. Other Treasury Department legislative proposals

The Commission also supports the non-FCRA proposals to prevent identity theft, limit the damage from that crime, and help victims restore their reputations.

1. Truncation of credit and debit card receipts

In many instances, identity theft results from thieves obtaining access to card numbers on receipts. This source of fraud could be reduced by requiring merchants to truncate (*i.e.*, print less than the full card number on the receipt). The use of truncation technology is becoming widespread, and some card issuers already require merchants to truncate. The Commission supports requiring truncation, but recommends that the law be phased in over a period of time to allow for the replacement of existing equipment.

2. Enhanced criminal penalties for identity theft

One way to deter identity theft is to make it easier to prosecute. Legislation proposed last year would have created a new crime of "aggravated identity theft," with stiff penalties and streamlined proof provisions. The Commission continues to support that proposal.[22]

3. "Red flag" indicators of identity theft

The Treasury Department's proposal would direct banking regulators to identify and maintain a list of "red flag" indicators of identity theft and provide the list to financial institutions they regulate. Banking regulators also would be required to examine the institutions for use of

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[22] Testimony of Howard Beales Before the Technology, Terrorism, and Government Information Subcommittee of the Senate Judiciary Committee, July 9, 2002, at http://www.ftc.gov/os/2002/07/bealesidtheftestimony.htm.

red flag indicators, with authority to assess fines when an institution's failure to use the indicators causes losses to customers. The goal of this proposal is to give financial institutions up-to-date information on identity theft patterns and practices and to encourage them to take action to prevent this crime. The proposal seeks to achieve this goal through the bank examination process, in which the regulators and the regulated entities can share information.[23] The Commission supports this proposal.

4. Information sharing by debt collectors and creditors with identity theft victims

Some identity theft victims have complained that debt collectors and creditors refuse to tell them about accounts opened in their names. The Treasury Department proposal would authorize debt collectors and creditors to share with a victim the information they have on allegedly fraudulent accounts in the victim's name. This information may help victims clear their names.[24]

5. Keeping fraudulent debt from being transferred or reported

The Treasury Department proposes legislation requiring a debt collector to notify the creditor when it learns that an account it is collecting is fraudulent. In turn, a creditor, once it learns that an identity theft caused a debt, would be prohibited from selling or transferring the debt for collection, and from reintroducing the fraudulent information into a consumer report. Some

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[23] Attention to identity theft "red flags" would seem readily amenable to the bank examination process. Any exam requirements should remain flexible to respond to unforeseen circumstances and changes in the pattern of identity theft.

[24] Identity theft victims tell us that it is often helpful to obtain application information on fraudulent accounts as a part of their own investigation into the circumstances of the theft. For example, they might recognize the handwriting on the application or be able to prove that it is not their own.

identity theft victims complain that bad data reappear on their consumer reports long after they have had them removed, and it appears that creditors may be partly responsible – they may sell debts or place them for collection, even after they should know they are fraudulent.

D. Improving the FCRA – the Commission's additional proposals

1. Duty of furnishers to respond to disputes directed to them

Under Section 623(b) of the FCRA, furnishers have a duty to investigate only disputes that are sent to them from a CRA.[25] Unfortunately, many consumers who learn about errors in their report may contact the furnisher directly, and may not know that they must notify the CRA to trigger the furnisher's obligation to investigate. The result may be confusion and delay in resolving disputes. The Commission recommends that the FCRA be amended to provide that disputes raised with furnishers receive the same treatment as disputes filed with a CRA.

2. Clarification of the application of the FCRA to investigations of employee misconduct

The Commission continues to recommend that Congress amend the FCRA to clarify the duties of employers with respect to third party investigations of employees.[26] Since its inception,

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[25] In practice, furnishers sometimes investigate disputes received directly from consumers because they are required in some circumstances not to report, and to correct, inaccurate information. *See* FCRA §§ 623 (a)(1) and (2). But furnishers have no affirmative obligation to investigate these disputes. Thus, if a consumer contacts the creditor only by telephone to dispute, and the creditor previously supplied to the consumer an address to submit disputes, it is not liable under FCRA Section 623(a)(1) for continuing to report this information, even if it is inaccurate.

[26] The Commission testified to this effect before this Committee in 2000. *See* Testimony of Debra Valentine Before the Subcommittee on Financial Institutions of the House Banking and Financial Services Committee, May 4, 2000, at http://www.ftc.gov/os /2000/05/fcratestimony.htm. The interaction of the FCRA and third-party investigations of workplace misconduct is complex. To understand fully the context and implications of proposed changes to the FCRA, we urge careful consideration of the issues and legal analysis, which were summarized in the Commission's earlier testimony. The Commission would appreciate the opportunity to work with this Committee and others in Congress to craft an appropriate resolution of this issue.

the FCRA has applied to the collection and use of certain information for employment purposes, including for workplace misconduct investigations. The 1996 amendments specified that an employer cannot (1) obtain an employee's consumer report for employment purposes without written authorization from the employee; or (2) take adverse action based on the report without giving a copy of the report to the consumer with a description of the employee's FCRA rights, *e.g.*, to dispute errors.

These requirements have been criticized by employers and those who perform investigations on employers' behalf as chilling their ability to investigate wrongdoing. The Commission shares the concern that the FCRA not unduly hinder workplace investigations, and endorses prudent amendments to remove those procedural requirements that unnecessarily hamper such investigations.[27] The Commission believes, however, that Congress should retain the other important privacy and procedural rights the FCRA provides when third parties conduct workplace investigations of individuals who have been accused of misconduct.[28]

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[27] In its 2000 testimony, the Commission recommended that Congress amend the FCRA to remove the requirements that employers (1) obtain the consent of an employee under investigation before requesting the employee's consumer report, (2) give the employee a copy of the consumer report before taking adverse action based on the report, and (3) notify the employee that an investigative consumer report is being prepared. The Commission also recommended that the FCRA be amended to provide that a CRA that prepares an investigative consumer report on an employee suspected of misconduct need only provide the employee with a summary of the "nature and substance" of the report, rather than a full disclosure of *all* information in the employee's file.

[28] These provisions include the obsolescence provisions of Section 605; the reasonable procedures requirements of Sections 606 and 607; the Section 613 requirement regarding accuracy of public record information; and the adverse action notice requirements of Section 615.

III. 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."[29] 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 1996 amendments improved the FCRA's carefully balanced framework, making possible the benefits that result from the free, fair, and accurate flow of consumer data. 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 Federal Trade Commission supports making permanent the uniform standards of Section 624 to ensure the continuation of these critical national standards. At the same time, we urge the Congress to improve the FCRA and provide other consumer protections as outlined above. The Commission looks forward to working with the Committee on these proposals.

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[29] Section 602(a)(3) of the FCRA.

STATEMENT OF

STUART K. PRATT

CONSUMER DATA INDUSTRY ASSOCIATION
WASHINGTON, D.C.

BEFORE THE

House Financial Services Committee

ON

H.R. 2622
"Fair and Accurate Credit Transactions Act of 2003"

July 9, 2003

In Title I, Section 101, H.R. 2622 reauthorizes and makes permanent the national, uniform standards, which are essential to the continued success of our nation's economy. Reauthorizing and making permanent the national standards under FCRA ensures that consumers can continue to enjoy $30 billion in additional disposable income per year due to increased competition.[1] With reauthorization, consumers can be assured of continued access to an extraordinarily competitive mortgage lending marketplace, which, by some estimates, reduces the average consumer's interest rate by two full percentage points.[2] In his remarks on Monday, June 30, 2003 wherein he laid out the Administration's support for reauthorization, Secretary of the Treasury John Snow observed that "It is not an overstatement to suggest that preserving the integrity and availability of consumer credit in this economy is preserving prosperity itself."

The CDIA and its members join with leading economists, financial services organizations, the Chamber of Commerce and many other organizations in endorsing reauthorization of and making permanent those provisions of the FCRA that ensure uniformity at the national level. This is a necessary step to ensure that consumer expectations for access to credit and other services at the lowest prices or rates possible are met continually in the future, and to ensure the continuation of the world's most robust national economy; one that is built on the predicate of a nationwide system of credit and credit reporting.

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[1] Turner, Michael, et al., *The Fair Credit Reporting Act: Access, Efficiency & Opportunity, The Economic Importance of Fair Credit Reauthorization*; Information Policy Institute, July 2003, page 5.
[2] Kitchenman, Walter, *U.S. Credit Reporting: Perceived Benefits Outweigh Privacy Concerns*, The Tower Group, 1998, pages 7-8.

Section-by-Section Review:

You have asked that we provide comments on H.R. 2622 and you have our clear and unequivocal support for Title I, Sec. 101, which reauthorizes and makes permanent the uniform national standards found in Section 624 of the Act. We believe that for the bill to be ultimately successful, the approach proposed in this bill wherein it reauthorizes and makes permanent all of the uniform national standards is essential.

Following are our initial comments on various sections where there is in some manner an effect on our members that we want to bring to your attention. Our comments focus on those areas of the bill where our preliminary review has resulted in the identification of an issue that is perhaps more than merely a technical suggestion. We appreciate this chance to share these comments with you and we look forward to continuing to work with you and all of the current sponsors of H.R. 2622 to ensure that the FCRA retains the careful balance of interests that has made it such a success story for consumers.

Title II – Section 202 – Fraud alerts.

This provision would require that consumer reporting agencies place a fraud alert on a consumer's file when requested by the consumer and when the consumer "has a good faith suspicion" that he or she is or may become a victim of identity theft or a similar crime. CDIA's members, which operate as nationwide consumer reporting agencie,s have added fraud alerts to consumer's files since the mid-nineties. Since March of 2000, our members went further in their

commitment to ensure the effectiveness of such alerts.[3] We do believe that if a duty to include fraud alert's in the files of consumers is to be codified into law, that there should be a timeframe associated with the alert. Generally our members maintain alerts for no less than 90 days from the date on which the alert was first placed in the consumer's file. The placement of the alert is based on the consumer's assertion that he or she has a "...good faith suspicion..." that he or she has been or is about to become a victim of fraud. The consumer reporting agency should be allowed, when it deems it necessary, to seek to verify the consumer's suspicion by requesting some documentary evidence of the consumer's assertion which gives rise to the request for placement of a fraud alert. CDIA members believe that the duties imposed on those who receive fraud alerts may be too restrictive in light of the fact that the alert is placed not just where there is absolute confirmation of a consumer's status as a victim but even where the consumer "....asserts in good faith a suspicion that the consumer...is about to become a victim of fraud." On the whole our members believe that fraud alerts can be a tool for helping to prevent identity theft and we look forward to working with the Committee to iron out the details of this proposal.

Title II – Sec. 204 – Summary of rights of identity theft victims.

This provision suggests that consumer reporting agencies deliver a summary of consumer rights related to identity theft found in various consumer credit protection laws. Our members do deliver a notice of consumer rights today under FCRA. This notice goes to every consumer who requests a copy of his or her file. The Federal Trade Commission has developed a model notice for general use by all types of consumer reporting agencies and if the FCRA changes due to the enactment of H.R. 2622, our members would adjust the consumer rights notice to include new

[3] See CDIA's March 14, 2000 news release on their website at www.cdiaonline.org under the "media" button on the homepage.

provisions of the FCRA that relate a consumer's rights relative to identity fraud. The CDIA's members are willing to deliver a notice that explains a consumer's rights as a victim of identity theft under FCRA and with respect to a CRA's practices. Our members are very concerned about the sheer length and complexity of the notice suggested by the bill's current language. CDIA's call center personnel will not be able to answer questions about laws that do not relate to the duties of consumer reporting agencies. If such a lengthy notice is to be delivered, then it should be delivered by the Federal Trade Commission's ID Theft Clearinghouse, where a consumer can then ask FTC assistance personnel questions about a range of consumer protection laws that govern the practices of card issuers, depository institutions, etc.

Title II – Sec. 205 – Blocking of information resulting from identity theft.

This provision would require a consumer reporting agency to block items of information identified by the consumer. Since October 9, 2001 the CDIA's nationwide consumer reporting agency members have been on record that such a practice is appropriate when they notified the Federal Trade Commission of their new nationwide initiative to allow any consumer who is a victim of identity theft to request the removal of fraudulent data where he/she has a police report which validates the claim. Following are the comments of J. Howard Beales, III, Director of the FTC's Bureau of Consumer Protection, regarding our members' program.

> "Another collaborative effort with tremendous promise is your new police report initiative. Through this program, the three agencies have agreed to block any credit line when they receive from the consumer a copy of the police report documenting the identity theft. And, last year the IACP passed a resolution encouraging local law enforcement to issue police reports to ID theft victims.[4] We're doing our part too, developing a training

[4] International Association of Chiefs of Police, *Curbing Identity Theft*, (Nov. 15, 2000) available at http://www.theiacp.org/leg_policy/Resolutions/resolutions2000.htm#idtheft

> video with IACP to encourage the police to issue the reports. I appreciate that certain consumer-based initiatives require you to balance accuracy issues – knowing that the consumer's report contains all relevant credit information, including derogatory reports – against customer service. From my perspective, your police report initiative strikes just the right balance. You have an assurance of the consumer's good faith, evidenced through the official police report, and the consumer will be untouched by the false negative information."

CDIA's members have technical issues that need to be addressed with this language and we look forward to working with the you, your staff and the sponsors on this provision.

Title III – Sec. 301 – Coordination of consumer complaint investigations.

This provision requires the FTC to promulgate rules to ensure the exchange of information between consumer reporting agencies and the FTC, regarding victims of identity fraud. The intent of this provision is not unlike a new voluntary initiative of our members. As of April of this year, consumers can make a call to any of the CDIA's nationwide consumer reporting agency members and in doing so, their information will be transferred to all nationwide agencies.[5] Thus, while CDIA's members appear well positioned to work with the intent of this proposal, we strongly question the need for the FTC to be given rulemaking authority in this area. Note that in 1996 no regulatory powers were needed when the law was changed to require any consumer reporting agency that compiles and maintains files on a nationwide basis to jointly implement an automated systems for reinvestigations with other similar consumer reporting agencies.[6] Further, we urge the Committee to consider the implications of what appears to be a requirement that consumer reporting agencies report information about citizens to the FTC. There likely are consumers who are legitimate victims but who still do not wish to have personal

[5] See CDIA's April 16, 2003 news release on their website at www.cdiaonline.org under the "media" button on the homepage.

information reported to the government. As with other provisions previously discussed, we look forward to continuing to work with the Committee on our concerns.

Title IV – Sec. 401 – Reconciling Addresses

This provision would require consumer reporting agencies to notify a user (e.g., lender) of a consumer report where the address on the file of the consumer reporting agency is substantially different from that which is part of the identifying information submitted by the user which is ordering the file. The requirement also imposes a duty on consumer reporting agencies to "reconcile or resolve" address variances between the incoming inquiry address and that which is on the file.

Today lenders can identify that addresses in the consumer reporting agencies files can vary with the address submitted by the lender, sometimes substantially so. Under the USA Patriot Act Section 326 Account Opening Rules[7] issued by the Treasury, it appears that there is ample regulatory oversight for how various "red flags" may be included in the process of ensuring that a financial institution has a reasonable belief that it knows the true identity of each customer. We strongly believe that this risk-based approach which ensures the accuracy of data reported to consumer reporting agencies by lenders accomplishes the core goal of ensuring that address changes are considered in the context of account opening and the subsequent reporting of address changes to the consumer reporting agency by the data furnisher (e.g., lender). Further, H.R. 2622 does more to ensure that procedures are clear when it comes to identifying possible instances of fraud with the inclusion of Section 206, wherein the Federal banking agencies will

[6] 15 U.S.C. Sec. 1681i(a)(5)(D).

establish and maintain guidelines for identifying activities that may indicate the possible existence of identity theft.

Note that address changes, on their own, are not easily identified as being associated with identity fraud or other crimes. Over 40 million consumers move each year in this country and thus the vast majority of address changes are absolutely legitimate.[8] Further, the proposal appears to assume that addresses which are part of a request for a consumer report become part of that consumer's file. The means by which addresses are loaded into a consumer's file by the consumer reporting agency is via the information reported by lenders when they report payment history information and not via information that comes in with a request for a report made by a user with a permissible purpose. CDIA is concerned also because this provision applies this duty to a broad range of consumer reporting agencies which build their data bases on the basis of other data. This is the case, for example with check acceptance systems, where the primary identifier is the checking account number or routing number, not the address. We believe the intent of this provision, which is to ensure that address changes are considered, in the context of verifying the identity of a customer in a range of financial transactions is well-covered under current law and regulation and through the inclusion of Section 206 in this bill.

Title V – Sec. 501 – Free Reports Annually

This provision would require all consumer reporting agencies to provide one free file disclosure annually and upon request of the consumer. Our members oppose the inclusion of this provision

[7] 31 CFR Part 103, RIN 1506-AA31, *Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks.*

[8] The U.S. Postal Service confirms that it receives approximately 40 million change-of-address requests in a 12-month period. U.S. Census data confirms a similar number of consumers moving each year.

because we believe that this issue of consumer access to their files was addressed successfully in the 1996 reform of the Fair Credit Reporting Act. Today a consumer has an absolute right of access to his or her file and to all information in that file. Any debate about cost operating as an impediment to consumers was removed when the law was amended in 1996 to ensure that the following populations of consumers with special needs were allowed access to a free file disclosure:

- Consumers who are unemployed and seeking employment
- Consumers who are on some form of public assistance.
- Consumers who have reason to suspect that they are victims of fraud.
- Consumers who are seeking employment and where the potential employer is considering adverse action.

The law was further clarified in 1996 to ensure that every consumer would receive a notice regarding the use of his or her consumer report where adverse action was contemplated or required by including for the first time a definition of the term "adverse action" in the Act.[9] When consumers receive a notice of adverse action they are entitle to a free disclosure of their file. Today, CDIA's members which operate as consumer reporting agencies that compile and maintain files on consumers on a nationwide basis issue in total approximately 16 million file disclosures per year. Nearly ninety five percent of those file disclosures were issued free of charge. Our members believe this is a strong indication that consumers are accessing their files and thus can exercise their rights.

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[9] 15 U.S.C. Sec. 1681a(k).

Our members also have specific concerns with the creation of a nationwide free file disclosure provision and following are those concerns:

Managing Nationwide Call Centers and Managing Compliance with FCRA - the requirements to issue disclosures, to provide toll free numbers and provide access to live personnel are all duties placed on consumer reporting agencies. The FTC's recent roll-out of their Do-Not-Call list is a good example of how difficult it is to manage call volumes. The FTC couldn't allow the entire country to have access to the toll free numbers for requesting registration of a telephone number, and initially considered breaking down the nation into as many as eight different segments. It was reported that by mid-morning on the first day, the FTC's website was so overloaded that it could not handle the volume of visitors. We believe the FTC experience is illustrative of the difficulty of managing call volumes and the FTC has no liability for failure to operate the system successfully, but by contract, consumer reporting agencies do under FCRA. A false e-mail, or nationwide media coverage could result in a flood of calls that would be so far out of the norm that our members' systems could not anticipate the volume or ramp up resources quickly enough to meet even the initial contact volumes, let alone consumers who might call back with a question about their files.

The Risk of Paying for Security Breaches by Others – CDIA testified earlier this year that a single security breach caused our nationwide consumer reporting agency members to incur costs estimated at approximately $1.5 million per company. Congress and state legislatures are already contemplating requiring business of all types to issue notices to consumers where security breaches occur. Such a law just became effective in California. This means potentially

tens of millions[10] of notices going out to consumers who will often be directed to call the nationwide consumer reporting agencies to request disclosures of files. CDIA members will end up handling much of the downstream costs of these breaches and nothing in law protects our members from this exposure.

Increased Fraudulent Attempts to Access File Disclosures or Mail Fraud – CDIA's members constantly strive to ensure that every file disclosure request is properly vetted before the file is delivered. However, we believe that most law enforcement agencies will agree that removing even the minor cost of $9, now allows criminals with the intent to access file disclosures to do so without having to pay and thus the incidence of fraudulent attempts to access consumer files may rise. Organized crime rings may not be willing to pay a fee, but they may well be willing to attempt access if it is free.

Increased Costs Pose Tremendous Burdens for CDIA Members – Our members are in the process of considering a range of factors that must be included in the estimates of costs, and as we have final information, we'll ensure that this is reported to the Committee. Some simple math helps illustrate the risks. If a nationwide consumer reporting agency maintains approximately 200 million files and ten percent of these files are accessed free of charge by consumers per year the agency must handle 20 million disclosures. Today, if you evenly divide the 16 million file disclosures issued by the three nationwide systems this works out to 5.3

[10] CDIA identified the following breaches of personal information within approximately a 12 months. They add up to more than 10 million individuals:

University of TX - 50,000 names

TriWest - 500,000 families (over 750,000 individuals)

DPI - 8-10 million credit card account numbers hacked.

California Employment Database - 200,000 names stolen

million disclosures per year. 20 million disclosures is nearly a four-fold increase in disclosures and the costs associated with these disclosures.

For the reasons stated above, our members remain opposed to this provision of the bill and we look forward to continuing a dialogue on this issue.

Title V – Sec. 502 – Summary of credit scores.

The proposal requires that where a credit score is in the file, that the consumer reporting agency that issues a file disclosure, must do so with a summary of how any individual credit score of the consumer was derived and how such score might be improved. Our members provide the following comments on this provision:

The market has responded for consumers – There seems to be a perception that consumers cannot see scores if they so choose today. In fact, many consumers today review their scores through a variety of websites which provide scores, descriptions of how the scores operate and which factors were most influential (both positively and negatively) on the consumer's particular score. Prices vary for such services, but our members believe that the market place has done what most hope will happen whenever a consumer need exists; it has met the need and competition keeps these services innovating to ensure that consumers receive the best advice that can be delivered. Our members believe that the transparency called for with regard to scores is being met by the many services available for consumers. We would urge Congress, on this basis alone, to reconsider a provision of law addressing scores, when the marketplace appears to have positioned itself to meet the need.

The "single score" myth - One of the hopes that seems to be driving the effort to seek legislation surrounding scores appears to be based on the premise that there is a single score in the market place that is used by everyone. In fact there are likely thousands of scores used by various types of lenders and insurers and a consumer reporting agency is not the single source for all scores nor can it ever be in a position of knowing which score a consumer would like to see. Further, while consumer reporting agencies do compete to develop tools that help lenders make decisions, they don't necessarily own the score that may be used in a particular transaction and cannot purchase that score from another for disclosure to a consumer, if this were required, or disclose the proprietary intellectual property of a particular lender or insurer.

Our members don't disagree that educating consumers about the general principals that underlie score-based decisions is helpful and important, but as the use of score-based decision tools expands, consumers will be better served by making their own choices about how to be educated via the marketplace, and in particular by ensuring that they have a good, sound understanding of how to manage their financial lives.

Conclusion:

In summary, Mr. Chairman, we applaud the reauthorization of the uniform, national standards and making these standards permanent. For all the reasons previously stated, this is essential. We have provided what we hope are constructive comments on various provisions of the bill and why we are compelled to oppose certain provisions as they are currently drafted. We have done this with the intention of committing ourselves to continued dialogue with this Committee, the

sponsors and the Congress. On behalf of our members, we again thank you for holding this hearing and extending to us an invitation to testify. I would be happy to answer any questions.

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STATEMENT OF MR. HILARY SHELTON
DIRECTOR
NAACP WASHINGTON BUREAU
on the
FAIR CREDIT REPORTING ACT AND HOW IT AFFECTS ETHNIC MINORITY AMERICANS
before the
HOUSE FINANCIAL AFFAIRS COMMITTEE
July 9, 2003

Thank you for inviting me to be here today Chairman Oxley, Ranking Member Frank, and ladies and gentlemen of the committee. My name is Hilary Shelton and I am the Director of the Washington Bureau of the National Association for the Advancement of Colored People (NAACP).

The NAACP is the oldest, largest and most widely-recognized civil rights organization in the United States, with more than 2,200 membership units across our country, I am pleased and proud to report that we have members in all 50 states, as well as representation in Europe and Asia. The Washington Bureau is the federal policy arm of the NAACP, and I have served as its Director for six years.

Credit, and the ability to obtain credit, is crucial in our nation today. Thus, I was especially pleased to be invited by the Committee to address you regarding the unique problems faced by ethnic minority Americans in obtaining and maintaining a solid credit rating.

Despite years of civil rights progress, laws, and education, racial bias and discrimination are still crucial problems in the United States today. People in our country continue to be limited by who they are and what they look like, rather than what they do or their genuine potential. It is in our nation's financial arena that this is especially true: race, national origin and gender continue to control the type and terms of credit available to an individual.

It is hard to imagine any individual living in this country who does not want financial security. For some, this may mean a vacation home or several late-

model cars in the garage. For others, financial security simply means a home in a safe neighborhood with food on the table and a means to raise our families.

As we all know, there are three basic means of establishing financial security today: homeownership, business ownership and consistent, persistent savings and investment. Yet in order to purchase a home, or to become a successful entrepreneur or in some cases to buy a car to get to work or to put food on the table or a coat on your child's back in the winter you need to either inherit money or to have a solid credit history.

Since very few ethnic minority Americans are inheriting much wealth, they must have a solid credit record in order to survive, economically let alone prosper, in America today. I am not saying this cannot be done: indeed, hundreds of thousands of racial and ethnic minority Americans are buying homes, starting business, and making ends meet. Yet there seems to be a quiet acknowledgement and acceptance on the part of the credit report providers, the credit scorers, the lenders and the regulators that racial and ethnic minorities, on average, have significantly worse credit reports and lower credit scores than their Caucasian counterparts. This in turn means that lenders today disproportionately reject racial and ethnic minority applicants or, on the whole, racial and ethnic minority Americans end up paying more for credit[1].

In fact, while it is impossible to know for sure, it seems to be a commonly accepted assumption that the credit score of one-third of all African Americans in this country today falls below the 620 necessary to be accepted for a mortgage by most traditional lending institutions.

In the Spring 2000 edition of the Federal Reserve of Boston's newsletter, Peter McCorkell, the Executive Vice President and General Counsel of Fair, Isaac and Company was asked if credit scoring resulted in higher reject rates for certain racial and ethnic minorities than for whites.

His response was "yes". He then went on to justify this response by stating that "Unfortunately, income, property, education and employment are not equally distributed by race or national origin in the United States. Since all of these factors influence a borrower's ability to meet financial obligations, it is unreasonable to expect an objective assessment or credit risk to result in equal acceptance and rejection rates across socioeconomic or race/national origin lines."[2]

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[1] For specific examples, see "Insurance Credit Scoring in Alaska," February 2003, Alaska Department of Community and Economic Development Division of Insurance and
The Final Report of the Florida Task Force on The Use of Credit Reports in Underwriting Automobile and Homeowners' Insurance, January 2002

[2] Statement of Peter L. McCorkell, Executive Vice President & General Counsel, Fair, Isaac and Company, Inc., "*Communities and Banking*", Spring, 2000, pp.15-17, published by the Federal Reserve Bank of Boston

This assumption, that low-income and racial and ethnic minority Americans are less likely to meet their financial obligations because they do not have the income, property, education and employment history of their white counterparts flies in the face of several studies that have been conducted as well as anecdotal evidence supplied by the NAACP Financial Empowerment Initiative, which provides business, homeownership and wealth-building counseling to low-income and racial and ethnic minority individuals.

Mr. McCorkell's acceptance of this racial bias, furthermore, also fails to recognize the fact that many middle and upper income African Americans are subject to predatory lending at a rate higher than low-income white Americans regardless of the fact that they may well have the "income, property, education and employment" that Fair, Isaac is looking for. These African Americans are targeted by predatory lenders simply because of their race, and the resulting loan is a blemish on their record.

When minority Americans are blocked out of receiving loans or are charged more in interest they have less to invest and their wealth-building capacities are diminished. Thus, not only is the current system blatantly unfair to ethnic minorities, but it is self-perpetuating as well.

Mr. McCorkell's ready acceptance of the fact that credit scoring is unfair towards racial and ethnic minority Americans, and the fact that Fair, Isaac and Company, the nation's leading credit scorer, has no intention of addressing this problem, is extremely troubling to say the least. Perhaps more troubling, however, is that the people who are meant to be watching over the financial markets, the regulators and Congress, also appear ready to turn a blind eye to the fact that today, in the twenty-first century, it is still harder to have a solid credit rating or an acceptable credit score in this country if you are a racial or ethnic minority or if you come from a low-income community.

Perhaps we should look for a moment at just two of the reasons behind this phenomenon.

First, studies as well as legal actions[3] 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, secure mortgage loans or homeowners insurance. In fact, as I mentioned earlier, several studies[4] have shown that middle- and upper-income African Americans are more likely to be subjected to predatory lending than their low-income Caucasian counterparts.

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[3] See USA v. Long Beach Bank; NFHA et. al. v. Prudential Insurance Company

[4] Center For Community Change, "Risk or Race: Racial Disparities and the Subprime Refinance Market", May 2000

Similarly, many racial and ethnic minority and low-income Americans may go to financing companies for car loans, home improvement loans or first mortgages. While traditional financial institutions may charge less and have more reasonable terms, they are oftentimes conspicuously absent from the low-income areas or from areas with high concentrations of racial or ethnic minorities. It only makes sense that individuals are going to use finance companies for their loans when they appear to be the only game in town, or at least in the area of town where you live and work.

Yet people are penalized on their credit report for using finance companies and for paying higher interest rates. This means that many racial and ethnic minority Americans may be penalized on their credit reports and by the credit scorers simply because they paid more for a previous loan than they should have. It is important to note that in many cases, these individuals are penalized even if they have paid off the loan in full, making every payment on time.

This is especially important when you consider that credit reports and credit scoring are being used increasingly for more than just mortgages: they are also being used now to determine if homeowners' or automobile insurance will be underwritten, and if so at what rate; for car loans; house or apartment rentals; utilities and in some cases even hiring decisions.

A second contributing factor to the existing bias against racial and ethnic minorities is that credit reports and credit scoring may use variables that are, on the surface, neutral, and these variables may be applied evenly to all applicants. However, closer inspection of the variable may show that its use disproportionately adversely affects African Americans or other ethnic minority Americans. One example may be education. Some reports or scoring systems could conceivably take into account an individual's education level. While higher education in America is, in theory, equally accessible to all, in practice it is still disproportionately available for white Americans.

Lastly, while I was invited here today to primarily discuss the impact of credit reporting and credit scoring on ethnic minority Americans as well as some of the reasons behind the unfairness, the NAACP would also like to make a recommendation for improving the process.

It has long been the contention of the NAACP, in several arenas, that openness, transparency and sunlight help us understand what we are up against; it also tends to inspire companies to be more sensitive to the needs of racial and ethnic minority communities.

Thus, the NAACP would love to see the process behind credit scoring more open, better regulated and better understood by the American public – the people being scored. Specifically, the NAACP joins other groups such as the Center for Community Change in recommending that Congress establish an

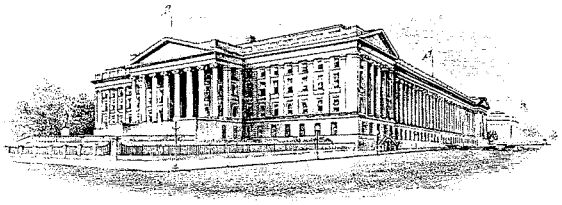
effective federal oversight process of all statistical scoring systems. Such oversight should be conducted on a regular basis and should focus on the fairness and the validity of all systems.

As we near the celebration of the fiftieth anniversary of the landmark Supreme Court decision in Brown v. Topeka Board of Education, many of us are pausing to look at the strides that our nation has taken since that time and at how much we still have to do. One of the on-going problems that plagues us as a nation is the persistent segregation of our communities. Too many African Americans and other racial and ethnic minority-Americans are disproportionately finding it hard, if not impossible, to escape from low-income communities, especially those in our urban areas. These communities, in turn, remain underserved in terms of education, employment, police protection, access to capitol and in some cases basic civil services.

If we as a nation are going to meet our full potential we need to move beyond this, and we need to begin to more fully integrate our society. This will require ensuring that opportunities are made available to all Americans, regardless of their race, national origin, gender or age. Ensuring that they have access to credit would be a big start.

I would like to again thank the Committee for the opportunity to be here today and to discuss the impact that credit reports and credit scoring has on ethnic minority Americans. I join with the leadership, the staff, and the general membership of the NAACP in offering my assistance to develop national policy that will help all Americans, regardless of their age, gender, race or ethnic background, obtain a solid credit rating.

I also welcome your questions at this time.



DEPARTMENT OF THE TREASURY
OFFICE OF PUBLIC AFFAIRS

Embargoed Until 10:00 am EDT
July 9, 2003

Contact: **Rob Nichols**
202-622-2910

Treasury Secretary John W. Snow
Testimony Advocating the Renewal of the Fair Credit Reporting Act
Before the
Committee on Financial Services
United States House of Representatives
Washington, DC

Thank you, Chairman Oxley, Chairman Bachus, and Ranking Member Frank for this opportunity to testify today. Also, thank you for your very constructive hearings on the Fair Credit Reporting Act (FCRA) and consumer protections. Since April, Chairman Bachus alone has held 6 hearings and called 75 witnesses before his subcommittee. In addition, I have been impressed by the hard work reflected in the Bachus-Hooley bill, about which I will have more to say later in my testimony. We appreciate your efforts on this very important issue.

All consumers have two important interests, the promotion of which is the central purpose of the FCRA. All consumers have an interest in improved access to credit and other financial services. And all consumers have an interest in the accuracy and security of their financial information. The Administration proposes to remove the sunsets on the uniform standards and focus these standards and the FCRA even more on meeting these two key consumer interests.

A hallmark of our country is readily available credit. In fact, it is not too much to say that ready access to credit on competitive terms is an integral part of the economic security and well-being of American families. All over the country, Americans depend on competitive credit markets to realize the dream of home ownership, to finance their cars, and to pay for college. For example, more than two-thirds of Americans now own their own home, and 9 out of 10 homes are purchased with a mortgage. As another example, consumer credit helps finance the vast majority of the 15-17 million cars and trucks that consumers purchase annually.

The FCRA, with its uniform national standards for information sharing, operates to expand the opportunity for consumers to access credit and financial services – they make your reputation as

a borrower portable, so that you don't have to establish your good name from scratch in every city you visit, or every store where you shop. The Council of Economic Advisers estimates that, if states passed laws that significantly deviated from the national uniform standards of the Fair Credit Reporting Act, 280,000 home mortgage applications that are now approved each year would be denied – that's $22 billion in new mortgages annually. Access to accurate and reliable financial information is particularly important for approving loans to first-time home buyers, for example.

This democratization of credit has especially benefited minority and lower income families. For example, from 1995 to 2001, the percentage of minorities holding mortgages increased significantly – one-sixth of minorities who qualified for mortgages in 2001 would not have qualified in 1995, a higher rate of improvement in home ownership than for families overall. In addition, the percentage of minority families with credit cards has risen substantially. From 1995 to 2001, the percentage of African American families holding credit cards rose from 39.4% to 55.8%. More generally, since, 1970, credit access by U.S. households in the bottom half of income distribution has experienced the most rapid growth. National uniform standards help all Americans participate more fully in the miracle of modern credit markets. We need to accelerate that process and do nothing to slow it down.

Perhaps the most serious threat to financial consumers today is identity theft. Identity thieves are clever, adaptable, and heartless. Indeed, many identity thieves specifically target the most vulnerable members of society – families of the recently deceased, seniors, hospital patients, and men and women serving our nation overseas. These schemes come in many forms. Let me share with you three illustrative cases.

- In May of 2002, a New Jersey woman received a notice from a North Carolina police department. The notice said that her husband had just committed a traffic violation in North Carolina. The problem? The woman's husband died 8 months earlier in the World Trade Center on September 11, 2001. Renewing her hope that her husband was alive, this woman contacted the police department that issued the notice, only to discover that a thief had stolen her husband's identity.

- A common scam involves identity thieves posing as officials of banks or government agencies. The thieves call the victims and demand personal information for official purposes such as IRS audits. Indeed, an identity thief has impersonated one of my staff. We learned about the impersonation only because an alert citizen called the Treasury Department to verify that the request for information was legitimate.

- Another scam is as audacious as it is heartless. Identity thieves impersonate hospital employees, walk into hospital rooms with a clipboard, and request personal information from patients. Unsuspecting patients can emerge from the hospital only to find that they have been victims of identity theft.

Many Americans have worked hard for years to build and keep good credit histories. In today's information-driven economy, one of your most important personal assets is your reputation, your credit history. One recent study estimates that nearly 12 million Americans have already become victims of identity theft. We shouldn't tolerate the theft of 12 million reputations any more than

we would the burglary of 12 million homes. According to some estimates, identity theft will claim as many as one million new victims this year.

Further, one of the most distressing aspects of identity theft is how quickly an identity thief can damage your credit history and how long it can take to undo the damage. A recent General Accounting Office study found that victims spent on average 175 hours trying to recover from the crime. In many cases, recovery can take even longer, and involve thousands of dollars in legal and other expenses. The costs are so significant that a market in identity theft insurance is now developing.

Although our national information sharing system can and should be improved to do more in the fight against identity theft, it is important to understand that national standards for sharing such information are already an important tool in the fight against identity theft. When a thief tries to steal your identity and open an account in your name, he is posing as you, hiding behind a mask that he has constructed out of bits of information about your identity. Bankers or merchants can stop the would-be thief right in the act, before the crime is committed, if they have timely access to the right information. With the right information about your true identity, financial institutions can ask validating questions and peer behind the thief's mask. In other words, your banker can stop the identity thief if your banker is more familiar with you than the thief is. National uniform standards make timely access to full and accurate information possible, giving financial institutions the tools to stop many identity theft assaults before they can succeed.

The Administration has proposed several ways to make the Fair Credit Reporting Act an even more effective instrument to protect consumer financial data from fraud and abuse, enhancing the quality and integrity of that information, while at the same time expanding consumer access to credit and other financial services.

First of all, in achieving these important goals of the Fair Credit Reporting Act we would be wise to engage the consumers themselves. A basic tool to place in the hands of consumers is expanded access to free annual credit reports upon request. Consumers should be offered the opportunity to review their credit reports for accuracy and completeness. Consumers also should be provided more information about their credit scores, and how they can improve their credit profiles. We believe that this proposal will not only help stop identity theft, but that it will lead to improvement in the overall quality of the information in the credit reporting system. After all, no one has a stronger interest in ensuring the accuracy of their credit reports than consumers themselves. As the overall quality of the information improves, everyone will benefit – consumers, merchants, financial institutions, and the economy as a whole.

In addition, we recommend that the uniform standards include a national security alert system. Under such a system, consumers who have been victimized or are in danger of being victimized can put banks and merchants on their guard against any further efforts to impersonate the consumer, thus making it much harder to steal one's identity.

We also propose that the Fair Credit Reporting Act promote best practices for the sharing of credit information – including the blocking of fraudulent account information immediately upon notice, before bad information becomes too widely disseminated and exasperatingly difficult to remove.

Similarly, we propose to codify a policy for credit bureaus to share information immediately when an identity theft is discovered, the one-call-for-all standard.

In addition, we propose that the bank regulators be put on the watch for patterns followed by identity thieves, red flags that indicate the likelihood of fraudulent activity. The regulators would provide notice of these red flags to the institutions that they supervise and put them on the watch for these telltale signs. Further, the regulators would verify in their bank examinations that these warning signs are being heeded, fining those institutions that ignore them, resulting in customer losses. I regard this proposal to be a very important part of the package. One of the challenges in fighting identity theft is that identity thieves are adaptable. They are always looking for ways to exploit systems and procedures that we set up to thwart them. It is important, therefore, that regulators and financial institutions be equally adept in catching them. This proposal gives regulators the flexibility to adapt to new identity theft schemes and to establish procedures to thwart them and foil the efforts of the would-be thieves, and it gives financial institutions increased incentives to be on guard as well.

We also propose that the Fair Credit Reporting Act be amended to direct the Federal Trade Commission and bank regulators to make it easier for consumers to say no to unsolicited credit offers. Too often, consumers' options are hidden from view or are too difficult to understand or execute, and that should be fixed. Consumers obtain important economic benefits from pre-screened offers of credit, but their rights should be made more apparent.

These are a few highlights of the package of proposals we have offered, that would build upon and amplify the use of the FCRA to promote consumer access to credit within a context of improved accuracy and security of personal financial information. Enactment of this package will make our national information sharing system even more a servant of consumer interests.

Given the important role that the national standards of the Fair Credit Reporting Act play in expanding access to credit and maintaining the accuracy and security of consumers' information, it should come as no surprise that national information sharing standards benefit our economy as a whole. It seems so basic that we take it for granted, but an integral part of our economy's success is our confidence in financial services such as bank services, insurance, and investment products. Our credit markets helped the American economy weather the serious shocks we've experienced over the last three years – a recession, 9-11, homeland security, corporate accounting fraud and so on. And there should be no doubt that the national uniform standards of the Fair Credit Reporting Act help make our credit market more robust. According to the Council of Economic Advisors, if the national standards were to expire, and states adopted new laws currently under consideration, a minimum of 3.5% of loans currently approved would be denied to maintain the same level of credit risk. That is, at least $270 billion of the current total of just under $8 trillion in consumer credit outstanding could ultimately be in jeopardy.

I congratulate the sponsors of the Bachus-Hooley bill, for I believe that in terms of goals and approach, as well as in many details, it is akin to what the Administration has proposed. We look forward to working with this Committee and the sponsors of the Bachus-Hooley bill to move a strong package of reforms forward, to ensure that the Fair Credit Reporting Act becomes an even more effective tool for meeting the financial interests of American consumers. Accomplishing this task is vital to the future of our economy. With improved national standards,

we can make great strides to protect our citizens against identity theft, while holding open the doors of credit to many more American families of every income and background.

Thank you.

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NATIONAL URBAN LEAGUE

Hearing on H.R. 2622, the Fair and Accurate Credit Transaction Act of 2003
Before the
Committee on Financial Services
United States House of Representatives

TESTIMONY
Concerns about the Transparency of Credit Scores

July 9, 2003

By

William E. Spriggs
Executive Director, National Urban League Institute for Opportunity and Equality

The Urban League is the nation's oldest and largest community-based movement devoted to empowering African Americans to enter the economic and social mainstream.

The Urban League movement was founded in 1910. The National Urban League, headquartered in New York City, spearheads our nonprofit, nonpartisan, community-based movement. The heart of the Urban League movement is our professionally staffed Urban League affiliates in over 100 cities in 34 states and the District of Columbia.

The mission of the Urban League movement is to enable African Americans to secure economic self-reliance, parity and power and civil rights. On behalf of the League, I thank Chairmen Oxley and ranking member Congressman Frank for this opportunity to share the thoughts of the League on this important topic.

The League is encouraged that the proposed H.R. 2622, the Fair Credit Reporting Act of 2003 includes recognition of the need to provide more information to consumers about their credit score. Title V of the proposed Act, amends Section 609(a)(1) of the Fair Credit Reporting Act so individuals can get a summary of their credit score and information on how it was derived so that the score can be improved. We applaud the Committee for that step.

While home ownership is at record levels in the United States, big gaps remain between the homeownership rates of whites, Hispanics and African Americans. The latest data from the Census Bureau ("Census Bureau Reports on Residential Vacancies and

Homeownership," April 24, 2003)[1] shows that as of the first quarter of 2003, 75.0 percent of white non-Hispanic households were homeowners, but that for African Americans the rate was 47.7 percent and for Hispanics it was 46.7 percent. (Homeownership rates also vary by region, with the Northeast and West generally lagging states in the South and Midwest.)

Some of that gap is related to the disparity in home loan rejections faced by African Americans and Hispanics relative to whites. Looking at Home Mortgage Disclosure Act (HMDA) data, researchers Stephen Ross and John Yinger (Syracuse University, "Looking the Other Way: A Critique of the Fair-Lending Enforcement System and a Plan to Fix It")[2] find that the African American to white loan-denial ratio stayed relatively constant between 1995 and 2000 at around 2.0, and the Hispanic to white loan-denial ratio stayed near 1.5.

Beginning in the 1990s credit scores have become more important in deciding which consumers will have access to the primary mortgage market. The pace increased greatly in the latter part of the 1990s, according to work done by Freddie Mac economist John Straka ("A Shift in the Mortgage Landscape: the 1990s Move to Automated Credit Evaluations," *Journal of Housing Research* Vol. *11* (No. 2, 2000)[3] Generally, this development has been greeted as an attempt to reduce discrimination in mortgage lending by making the lending decision objective. But, the Ross and Yinger data suggest that the growing reliance of credit scores and automated underwriting has not changed the loan-denial ratio.

The persistence of the gap in mortgage lending experiences for whites, African Americans and Hispanics, suggest that disparate treatment—that is treating African American and Hispanics differently than whites—may not be important. But, the potential remains for disparate impact—differences in outcomes for African Americans and Hispanics compared to whites because of loan criteria that evaluate equally creditworthy African American and Hispanics less favorably.

How can we avoid the issue of disparate impact of credit scores? If the legislation being considered here goes further, and requires transparency in the score that we also get in the HMDA data. This is not simply an issue of racial fairness that is raised because of the National Urban League's mission. Of course, the issue goes to the heart of the Fair Credit Reporting Act, and that is making credit markets work by making the data as accurate as possible—this benefits both borrowers and lenders, reducing risks to lenders but increasing the share of truly creditworthy individuals who can leverage their assets.

There is a lot of research that the use of credit scoring has created. I will briefly summarize some issues that come under the purview of this Act. They are raised because they highlight the need for transparency in the models, so that researchers may be free to

[1] http://www.census.gov/hhes/www/housing/hvs/q103prss.pdf
[2] http://faculty.maxwell.syr.edu/jyinger/ppa730/looking%20the%20other%20way-%20Final%202.pdf
[3] http://www.fanniemaefoundation.org/programs/jhr/pdf/jhr_1102_straka.pdf

debate the virtues of the models, and policy makers can understand how to balance the needs of accuracy and fairness in the models.

Credit scores are statistical models that use information from credit bureaus to rank the risk of an individual's creditworthiness. As statistical models, they are faced with all the issues of any statistical model, including a desire to be parsimonious yet complete, accurate yet cost-effective. To accomplish these goals, statistical modelers must make judgment calls on which variables to place in the model—since adding variables increase costs.

Keeping the model small means the possibility of "omitted variable" bias. When a researcher leaves out a variable important to the model that is correlated with what the model predicts they will overestimate the importance of the variables in the model. For instance, many credit-scoring models leave out rent paying histories, because these are not reported to credit bureaus. This however, could lead to disparate impacts for groups that are more likely to be renters, like first-time home buyers and those living in regions of high rents like the Northeast, as well as African Americans and Hispanics.

Other omitted variable problems could include employment or health, which may be related to the credit history of an individual, but not be a reliable predictor of future potential. And, as Federal Reserve Board economists Robert Avery, Ralph Bostic and Paul Calem ("Credit Scoring: Statistical Issues and Evidence from Credit-Bureau Files," *Real Estate Economics* Vol. *28* (No. 3, 1996))[4] point out, the models ignore "local economic conditions (such as a regional recession) that may have affected the history of loan repayment in a local area but may be unrelated to future patterns of repayment." They warn that the result could be "different (and unanticipated) levels of credit risk in different parts of the country."

For instance, if local economic conditions are not included in the model, then someone who is unemployed in a depressed county will be treated the same in the model as someone who is employed in a different county who is experiencing the same credit problems. Yet, clearly, if the worker in the depressed county gets a job, or moves to a less depressed area, they may be the better credit risk.

When models are transparent, researchers may evaluate the model, and test the size of the omitted variable bias, and the extent to which the bias creates disparate impacts, either across regions, or racial or income groups. Without that transparency, policy makers, borrowers and lenders are in a fog as to this problem.

Oddly, to remove unintended racial disparate impact from the model, it may be necessary to include the race of the individual in the statistical model. Ross and Yinger point out this is because, if race is excluded from the model, but credit characteristics are different across racial groups enough to be correlated with race, then race can become an omitted variable. For instance, given the huge gap in home ownership rates, mortgage payments themselves are correlated with race. So, some of the measure of the effect of the history

[4] http://www.areuea.org/publications/ree/articles/V28/REE.V28.3.7.PDF

on making mortgage payments the model will be picking up is from the importance of mortgage payments, and another portion will be factors associated with race. The result is that it is necessary to include race in the initial model, and then ignore the race variable in weighting the various factors in the credit-score.

Another problem is how to handle "errors in measurement." Statistical modelers assume they are handling accurate data. Yet, the Consumer Federation of America ("Credit Score Accuracy and Implications for Consumers," December 17, 2002)[5] provides a summary of research done on credit bureau data accuracy, finding a wide range of measures of inaccuracy in the data. Straka discusses the issue of data accuracy, so credit-score modelers are well aware of the issue. But, it is necessary for independent researchers to see how this issue is handled.

A related issue is how the credit-scoring models handle missing data. The various reports cited in the Consumer Federation of America's report show that many errors in reports result from credit card or mortgage lenders who do not file reports. The Treasury Department's Office of the Comptroller of the Currency's Federal Financial Institutions Examination Council felt obliged to issue an advisory letter in January, 2000 because of the drop-off in reports on credit cards and sub-prime loans.[6] How a model handles missing data is crucial, as there are various methods for imputing the missing information, and some can have disparate impacts. For instance, if the model simply drops the missing data, assuming that individuals without mortgage loans reported do not have mortgage loans, and a disproportionate share of sub-prime loans that go unreported are held by African Americans then this will have a racially disparate impact.

Disparate impact can also result because models create their weights using data where some groups are underrepresented. The underrepresented group may have a different set of characteristics that better predicts creditworthiness, or though the model may appear to predict well for both the baseline group used to create the model and the underrepresented group, within each group the predictions can have greater variance. As the Consumer Federation of America report argues, from a lender's perspective, the greater variation may not present a problem. On average, the model will perform equally well for both groups. But, from the consumer's perspective, getting an inaccurate score that can either raise their costs of borrowing, or result in outright denial, there is no counterbalancing weight that average performance gives the lender. So, it is important that researchers be able to determine whether models are similar, not just in average performance, but also that the variance in the models is similar. For instance, on July 8, the Fair Isaacs web page reported that a difference in just 21 points on a credit score, from 699 to 720 could cost a consumer 0.662 percentage points on a mortgage (A quote on a 30-year fixed rate mortgage of 5.332 compared to 5.994 percent).[7]

What can this legislation do? Require the Federal Trade Commission to oversee credit scores, including sunshine provisions to make the inner workings of the models

[5] http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf
[6] http://www.occ.ustreas.gov/ftp/bulletin/2000-3a.txt
[7] http://www.myfico.com/

transparent. The FTC should provide report cards showing: differences in the mean prediction error for subgroups of the population to ensure compliance with all relevant provisions of the Fair Housing Act and the Equal Credit Opportunity Act; detailed notes on how missing values are handled; detailed notes on steps taken to handle errors in measurement in the data; detailed notes on the relative performance of models considered, but rejected, as to their mean prediction error for subgroups of the population with reference to enforcement of the Fair Housing Act and the Equal Credit Opportunity Act, low-to-moderate income, first time homebuyers and rural households, and other relevant characteristics of the models performance. Congress should commission a study of the score models, and further determine, the maximum amount of information about the models that can be made public, with an eye toward further amendments to the Fair Credit Reporting Act to ensure transparency for consumers and regulators.

Credit scoring can add a vital and important link to credit access. But, it must be done carefully, always with an eye toward being as accurate as possible, just as we require from credit bureaus. In the end, America will win by taking full advantage of the new information technology explosion that has transformed the home mortgage industry.

Testimony of

America's Community Bankers

on

H.R. 2622
"Fair and Accurate Credit Transactions Act of 2003"

before the

Committee on Financial Services

of the

U.S. House of Representatives

on

July 9, 2003

D. Russell Taylor
President and CEO
Rahway Savings Institution
Rahway, New Jersey

and

Chairman
America's Community Bankers
Washington, DC

Chairman Oxley, Ranking Member Frank, and members of the committee, my name is D. Russell Taylor. I am President and CEO of The Rahway Savings Institution, a $375 million, state-chartered, mutual savings bank in Rahway, New Jersey. I am testifying today as chairman of America's Community Bankers (ACB), which represents the nation's community banks of all charter types and sizes.

Thank you for the opportunity to testify today on H.R. 2622, the "Fair and Accurate Credit Transactions (FACT) Act of 2003." ACB fully supports the efforts of the committee and President Bush to focus on two critical elements of FCRA reauthorization: (1) security and accuracy of personal financial information, and (2) access to credit and other financial services. We wholeheartedly endorse H.R. 2622 and urge the House of Representatives to pass this legislation expeditiously.

On June 12, ACB had the opportunity to testify before the House Financial Institutions and Consumer Credit Subcommittee on reauthorizing the Fair Credit Reporting Act (FCRA) and combating identity theft. We are very pleased that the FACT Act reflects many of the policy recommendations in our testimony.

Uniform National Consumer Protection Standards

First and foremost, ACB endorses the permanent reauthorization of the FCRA's uniform national consumer protection standards as provided for in Title I of the FACT Act.

In 1996, Congress set out on a limited, carefully crafted experiment to discover whether uniform national standards would improve our credit granting and reporting system. During its intensive series of FCRA hearings, the House Financial Institutions Subcommittee heard from a broad array of witnesses, including ACB, about the tremendous success of this seven-year experiment.

As these hearings illustrated, the preservation of the uniform national standards embodied in the FCRA are imperative to maintain the efficiency of the U.S. consumer credit markets and the competitiveness of the U.S. economy as a whole. These national standards govern the content and usage of credit reports; define the obligations of institutions that provide information included in these reports; insure consumers have the right to "opt-out" of prescreened credit or insurance offers; and provide for the efficient sharing of information within corporations to serve customers.

These standards ensure that credit information is reported and processed in a consistent manner regardless of where the consumer resides or conducts business. Moreover, in today's highly competitive financial marketplace, the ability of corporations, both large and small, to share information with affiliates is critical to serve customers. The sharing of information among affiliates enables valuable customer service features such as consolidated statements and single-source customer call centers across product lines. Of equal importance, the sharing of information among affiliates can help identify financial transactions that might indicate a customer has become the victim of identity theft.

Often, when people consider the FCRA and affiliate sharing relationships, it is evaluated in the context of large, complex financial institutions. This does not paint the whole picture. For example, the Rahway Savings family of companies includes Rahway Savings as well as the Rahway Savings Insurance Agency. As detailed in our corporate privacy policy, we share limited customer information among these entities to offer our customers the array financial products and services they need to accomplish their financial goals. By sharing limited information among our corporate family, we are able to better understand the total customer relationship and provide our customers with tailored products and customer support.

We are by no means a large financial institution, but the uniform national standards in the FCRA helps small and medium sized companies like mine better serve our customers.

By removing the sunset provisions from these uniform national standards, Title I of the FACT Act will allow community banks, like Rahway Savings, and others to continue making prudent credit decisions quickly and inexpensively wherever a customer may reside or have conducted business. ACB urges Congress to pass Title I of the FACT Act without changes or amendments.

Identity Theft Prevention

While the U.S. system of credit is clearly the most effective and efficient in the world, it is not without its glitches. The rising number of identity theft cases is creating enormous hardships both to consumer victims and community banks. Community bankers are on the front lines of the war against identity theft, and we appreciate the tools provided in Title II of the FACT Act for banks and consumers to use in combating identity theft.

As both a bank executive and a victim of identity theft, I bring a unique perspective to this issue. While the Internet age may have facilitated new scams to pilfer personal data from potential victims, identity theft is not in any way a new crime. I became a victim of identity theft over twenty years ago. Like many victims of identity theft, I first became aware of the crime after receiving a call from a collection agency. In my case, a fraudster had somehow managed to gain enough information on me to obtain credit cards in my name at an address I never lived at. Over the course of several weeks, this individual amassed several thousand dollars of debt in my name purchasing expensive dinners, jewelry, airplane tickets, and other high dollar items.

At the time this crime occurred, I was dealing with a serious family medical crisis and had little time or emotional energy to investigate what had happened and the steps needed to resolve the situation. While I was fortunate enough to have an attorney friend who generously made available their services to help resolve credit problems I did not create, it nevertheless took that attorney many hours of letters and phone calls over the course of several weeks on my behalf to reconcile my credit information.

Title II of the FACT Act establishes an effective framework to institutionalize measures that will help minimize the risk of identity theft and assist identity theft victims. For

example, Section 201 requires that credit card issuers confirm address changes that may indicate potential fraud. These new change-of-address verification procedures appropriately target one of the most prevalent fraud scams in use today whereby an identity thief obtains enough information about a victim to request a change-of-address and subsequently requests a replacement card that is used to perpetrate fraud. In testimony before the House Financial Institutions Subcommittee, the United States Postal Service reported that a similar address verification technique has "virtually eliminated the use of placing a false change-of-address as an avenue for committing identity theft."

Title II of the FACT Act also establishes a legal framework for processing fraud alerts, ensures information resulting from identity theft does not appear on credit reports, and requires the truncation of credit/debit card numbers on printed items that reflects industry practices. ACB supports these provisions that provide clarity as to the expectations and requirements of all entities involved in the credit reporting process.

ACB is concerned about potentially burdensome new legal liabilities placed on the users of credit reports. Section 202(i)(3) of the FACT Act subjects the users of credit reports to new penalties should credit be granted in the name of a consumer who has an active fraud alert and the credit grantor has not attempted to obtain the authorization of that consumer in the manner contained in the alert.

The credit reporting agencies (CRAs) have for some time included an alert facility in credit reports, allowing consumers to indicate they have been victims of identify theft and to caution lenders that applications for credit could be fraudulent. When a lender receives an application for credit from a consumer who has such an alert on their credit report, the alert serves as a "stop sign" that the lender should take appropriate measures to ensure that the application is legitimate. However, as a user of fraud alerts, I can attest that they have a variable degree of accuracy or completeness, and the verification information provided in a fraud alert will vary significantly. In some situations the lender will be asked to contact the consumer at a verified phone number, while in other cases the information will provide no specific instructions, or the phone number may no longer be active. Lenders should not be bound by specific instructions found in the fraud alert.

Instead, ACB recommends that lenders be permitted to use whatever reasonable and practical measures are appropriate to verify the identity of the person, rather than blindly adhere to the specific instructions found in the fraud alert, which may or may not be complete. Section 202(i)(3) should also be clarified such that the new penalties apply only to credit fraud, and not to legitimate credit applications.

Finally, in our June 12 testimony before the House Financial Institutions Subcommittee, ACB also expressed our support for legislation strengthening sentencing standards for identity theft crimes and aiding prosecutors in proving identity theft. While we continue to support such legislative efforts, we understand that these issues go beyond the jurisdiction of this committee.

Accuracy of Consumer Records

The accuracy of credit report information is the foundation on which our national credit reporting system is built. It is in the best interest of consumers, CRAs, and users of credit reports that information be as accurate as possible, errors be corrected quickly, and consumer identity theft claims be handled in an efficient and timely manner.

In New Jersey, every consumer is already entitled to a free annual credit report, and at Rahway Savings, we make certain that every consumer who applies for a mortgage loan understands what is in his or her credit report. Any potential anomalies are discussed with the applicant to ensure that the customer understands what is contained in his or her credit report in order that he or she receive proper consideration for the loan.

Title IV of the FACT Act imposes new legal requirements on both the furnishers of credit report data and users of credit reports to ensure the accuracy of consumer records. Section 402 requires that furnishers of credit report data ensure that information resulting from fraudulent activity is not knowingly provided to CRAs. In addition, Section 403 requires that users of credit reports who discover fraudulent information in a consumer report would be legally bound to notify the consumer of such fraudulent information. These provisions generally codify existing business practices.

Consumer Dispute Resolution

While the FACT Act places new responsibilities on credit reporting agencies and furnishers of credit report information to ensure the accuracy of credit report data, errors will undoubtedly occur periodically. It is therefore equally important that consumers have the ability to report potential identity fraud situations that may result in inaccurate credit report filings and that all errors are corrected as efficiently as possible. Title III, Section 301 of the FACT Act requires that the Federal Trade Commission (FTC) establish specific procedures for the referral of identity theft and fraud alerts among the consumer reporting agencies and the FTC. Moreover, Section 302 acknowledges the increasingly important role credit report resellers play in the national credit reporting system and empowers resellers to assist in resolving disputed information on credit reports. ACB believes these provisions would result in a significantly less burdensome process for reporting identity theft crimes and allow the reporting and consumer education infrastructure developed by the FTC to better serve victims.

In addition, Section 303 of the FACT Act requires the FTC and the Federal Reserve to conduct a comprehensive study on the effectiveness of the FCRA dispute resolution process. Anecdotal evidence appears to suggest that the speed and consistency with which credit reporting errors are corrected could be improved.

ACB believes the approach taken in this legislation is preferable to enacting overly prescriptive remedies that may have unintended consequences, and we will work with the Federal Reserve and the FTC as they conduct this study.

Consumer Access to Credit Reports

The continued integrity of the national credit reporting system demands that credit reports be as accurate as possible, and ACB is committed to working with Congress, federal regulators, consumer reporting agencies, and others toward this goal. In our June 12th testimony, ACB supported empowering consumers to proactively manage their credit information by providing them access to a free annual credit report. Such access is already available to citizens of my home state of New Jersey, as well as Colorado, Georgia, Maryland, Massachusetts and Vermont. We fully support Section 501 of the FACT Act allowing all Americans access to this important empowerment tool. ACB also supports Section 502 that provides consumers with information on how a credit score is derived, and how their credit score may be improved.

We recognize that these consumer empowerment tools come with a cost that will eventually be distributed among all parties in the credit granting process. Nonetheless, ACB believes these costs will be outweighed by a more accurate national credit reporting system and increased consumer trust in the integrity of the system.

Effective Date

While it is critically important that the uniform national consumer protection standards in Title I be effective immediately, ACB urges the committee to provide adequate time for CRAs and the financial services industry to adopt procedures to comply with the FACT Act. For those sections of the FACT Act that do not have a defined effective date, ACB suggests that compliance be required one year following the issuance of any applicable final regulation. In those sections where no regulation is required, the effective date should be one year from date of enactment.

Other Potential Issues

While ACB urges passage of the FACT Act on an expedited basis, we are aware that other issues may arise during consideration of this critical legislation. Given that the FCRA's uniform national standards for consumer protections are scheduled to expire by the end of this year, we sincerely hope that consideration of other issues will not slow down or threaten the passage of this legislation. We applaud the committee for creating a narrowly focused bill that targets solely the FCRA and issues germane to the House Financial Services Committee's jurisdiction in order to avoid possible multi-committee referral that could potentially delay passage of this critical legislation.

One issue the committee will likely consider is an amendment previously offered by Representative Gary Ackermann requiring financial institutions to notify a customer every time it furnishes negative information to a consumer reporting agency.

Like most community banks, Rahway Savings provides information to each of the three major credit-reporting companies monthly via a data tape produced by our technology service provider. This monthly submission of credit account information contains

thousands of activity and status records on all of our customers regardless of their account status. Information found in these credit account records includes key account dates, account balance, payment status, loan type and other basic credit information. This information is submitted without any analysis or conclusion.

As previously discussed in our June 12 testimony, we have significant concerns about the impact of this amendment would have on paperwork burden, operational costs, and the continuing commitment of creditors to furnish accurate information essential to an effective credit system. ACB and other representatives from the financial services industry continue to work with Representative Ackermann and others on the Committee to find reasonable compromises to resolve concerns on both sides.

We believe that the FACT provisions that empower consumers to better manage their credit by providing free annual credit reports and the threat of stronger penalties on both users of credit reports and furnishers of credit reporting data represent an effective means to address the concerns raised by Representative Ackerman. Moreover, ongoing financial literacy efforts being conducted by the banking regulators, the FTC, and others will serve to educate consumers of how their credit rating is established.

Conclusion

Community banks are wholly dependent on the trust of our customers, and this trust represents our most valuable asset. As such, we take extraordinary care to ensure that consumer financial information is safeguarded. At the same time, community banks depend on our ability to use the information we receive from our customers to deliver the financial services they need.

ACB believes that the twin goals of preserving customer trust and responsibly using customer information are mutually attainable and must be pursued together. We believe that federal law must continue to strike the appropriate balance of protecting consumers and properly regulating the flow of financial information from a financial institution to affiliates and other third parties.

ACB believes that H.R. 2622, the FACT Act, meets this critical standard. We commend Subcommittee Chairman Bachus and the bipartisan coalition of cosponsors of this legislation for crafting a fair, balanced, and effective bill to improve the FCRA and our nation's credit system. We strongly endorse this legislation and urge the Committee and the 108th Congress to pass this measure expeditiously.

Again, thank you for this opportunity to testify on behalf of America's Community bankers. I look forward to any questions you may have.

AMERICAN FINANCIAL SERVICES ASSOCIATION
STATEMENT OF

H. R. LIVELY, JR.
PRESIDENT & CEO

FOR THE HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES

REGARDING

H. R. 2622
THE "FAIR AND ACCURATE CREDIT TRANSACTIONS ACT
OF 2003"

July 10, 2003

The American Financial Services Association ("AFSA") is pleased to file this statement on behalf of more than 500 consumer credit member companies. AFSA, established in 1916, is the national trade association for market-funded providers of financial services to consumers and small businesses. These providers offer and provide an array of financial services throughout the United States, including unsecured personal loans, automobile loans, home equity loans and credit cards through specialized bank institutions.

The House Financial Services Subcommittee on Financial Institutions, Chairman Bachus, Representatives Hooley, Biggert and Moore are to be applauded for the introduction of H. R. 2622 which affirms the national standards in the Fair Credit Reporting Act established in 1996, and makes them permanent.

AFSA members rely on credit reports in the underwriting process that establishes lending relationships with consumers. These national underwriting systems are heavily dependent on credit reports to determine the probability of consumer repayment of debt obligations.

The American system is unparalleled in the global economy and is a principal factor in the strong consumer influence in our national economic system. No matter where the consumer lives, travels or experiences need for products and services the American system provides a quick service response. Consumers from all walks of life enjoy the benefits of our national system. Information, which forms the basis for assessing credit worthiness, cannot be subject to artificial impediments including geographical boundaries.

For the record, imagine there was no national standard for railway track gauge, or for the Interstate highway system, or air traffic control. It is not a question of States rights preemption, but of providing better services for all Americans. This is a discussion of national functionality for a critical, uniquely American national resource. Maintaining the national uniformity will allow us to continue to provide rapid service and credit to the consumer.

AFSA supports the directional context of H. R. 2622 and looks forward to working with the committee in fine-tuning some of the provisions.

Issues that deal with identity theft deserve very careful consideration and should allow maximum flexibility for industry segments to develop, respond and cure these ever evolving situations. For instance, our member companies along with the credit reporting agencies immediately flag accounts with fraud alerts when notified by the consumer or the creditor finds suspicious activity in the customer account. Establishing rigid statutory rules may, over time, create problems of form over substance in dealing with very fluid environmental implications. As you know, other initiatives (the US Patriot Act) currently being implemented by the Treasury Department should be considered in context with identity theft provisions in this bill. We also believe there should be a criminal penalty for those who file false identity theft reports.

AFSA and its member companies are committed to collaborative work on a continuing basis with industry groups and federal regulatory bodies to develop rapid response cures for consumers who are victims and to develop safeguards that will reduce instances of victimization. In this ongoing process, credit providers are also victims of the consumer identity thief and have an incentive to reduce the instances of this kind of activity.

With respect to section 502, AFSA urges care in legislating "credit score" rules in credit reporting and in credit granting or for that matter in credit operations. Scores are developed through the use of complex mathematical algorithms that have proven to be statistically reliable in predicting credit use behavior. The predicted behaviors are derived from the sample population reviewed and therefore are variable from institution to institution based on a range of credit policy determinations. Credit granting institutions utilize many determinants in their credit decisions. The credit score for some of these institutions is very important while others may not place as much of an emphasis on the score. Therefore, any requirement to disclose credit score is potentially misleading to consumers due to the wide variance of the use by financial institutions of such data. There is no single score for a consumer in the market place which would definitively indicate to the consumer his or her probability of being approved for credit from any given financial services provider. It should also be noted that a customer interested in obtaining information about their credit may request a report from the credit reporting agencies.

In conclusion we look forward to working with you on these important issues. Thank you for allowing us to submit this statement for the record and for the opportunity to express our support for this very important legislation.

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