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# CREDIT REPORTS: CONSUMERS' ABILITY TO DISPUTE AND CHANGE INACCURATE INFORMATION

## HEARING

BEFORE THE

## COMMITTEE ON FINANCIAL SERVICES
## U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 19, 2007

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# CREDIT REPORTS: CONSUMERS' ABILITY TO DISPUTE AND CHANGE INACCURATE INFORMATION

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**Tuesday, June 19, 2007**

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

The committee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the committee] presiding.

Present: Representatives Frank, Maloney, Watt, Ackerman, Moore of Kansas, Clay, McCarthy, Baca, Green, Cleaver, Davis of Tennessee, Sires, Perlmutter; Bachus, Castle, Gillmor, Manzullo, Jones, Biggert, Shays, Feeney, Hensarling, Brown-Waite, Barrett, Price, Campbell, Bachmann, Roskam, and Marchant.

The CHAIRMAN. The hearing will come to order. This is a hearing on the question of the extent to which consumers can successfully challenge inaccurate information in their credit reports. One of the great bipartisan accomplishments of this committee, under the chairmanship of Mr. Oxley, was the FACT Act, as it was called, which dealt with the ability of companies to deal with credit extensions. And one of the things we did in that was to expand the ability of consumers to get information about their credit reports. That was something of which we were very proud of, and it was an overwhelmingly bipartisan operation.

Subsequently, and I want to give credit where credit is due, the Boston Globe in Massachusetts ran some articles in December which documented problems people were having in challenging what they believed to be inaccurate reports. I am going to ask unanimous consent to put those in the record. Currently, getting a free report is much less important than we had hoped it would be if it is inaccurate and you have problems in dealing with it.

We did learn when we did that hearing that one of the problems was that people who challenged what they believed were inaccurate reports stemming from a dispute with a particular merchant or creditor were at a disadvantage. We were told that the practice of many of the merchants or creditors was simply to check their own paperwork, and if their paperwork showed that a charge was incurred, they insisted on it, with no opportunity, no forum in which someone could say, "That wasn't me." Our purpose here is to look into this and to make sure that consumers who can document an error have a chance to do so.

So that is the purpose of this hearing. We appreciate the representatives of the appropriate Federal agencies being here. It is the very strong view, I believe, of many of us on this committee, certainly myself, that consumer protection not only is not antithetical to the appropriate functioning of our financial system, but in fact needs to be an integral part of it. We want people, when they buy things, to have a sense of confidence. And if people do not feel confident in the fairness of the system, then that is an obstacle to their full participation. We want people to be able to shop online or use credit cards, do whatever they wish without any sense that they could be disadvantaged. That is an important part of protecting data privacy, which this committee will be dealing with later in the year, and it is an important part of today's subject.

So again I want to stress this is not, as some would pose it, a case of consumers versus the businesses. This is a seamless system in which we want consumers to be confident enough to fully participate in the economic system, and one of the ways to do this is to deal with that. So that is the purpose of this hearing.

I would hope this is something that could be resolved without any legislative action. If people tell us that is necessary, we will do that; we will be dealing with legislation later in the year where this could be appended. But I am hoping we will be able to come out of this today with some agreement about how to resolve this. It doesn't mean any consumer can automatically say, "I am not paying," or "That was wrong," without any documentation, but there needs to be some way that consumers in a reasonable way can document the error.

I now recognize the gentleman from Alabama.

Mr. BACHUS. I thank the chairman. As the chairman said, there have been recent articles in his hometown paper and in other papers highlighting the inability of consumers to dispute or correct their credit reports when there is erroneous information in those credit reports. And in many cases, they reported instances where they were denied credit or denied a good credit score or good credit rate. I was a sponsor of the Fair and Accurate Credit—the FACT Act or Fair and Accurate Transactions Act. And if the witnesses will recall, it passed with over 400 votes out of the House and only two negative votes in the Senate. The two negative votes in the Senate were Senators who said that it was not consumer friendly enough. But most of us agreed that the Act would empower consumers to have accurate credit reports and to be able to change their reports.

I am very disappointed in the agencies. And let me say this to the witnesses. I am going to ask for your attention as I give my opening statement, because I want to tell you that I am very disappointed in the agencies and their inaction on fashioning regulations. The Act passed in 2000, yet the rules and regulations have yet to be finalized. They hadn't even been put out for comment, and I can't imagine why that is so. And I would ask the witnesses to maybe explain to us why that has happened.

So today is a good opportunity for us to get some explanation for where we stand on implementing the Act. It governs the relationship between credit reporting agencies, credit information furnishers, and consumers. Currently, the Fair Credit Reporting Act

requires consumer reporting agencies to investigate consumer disputes within 30 days of receiving a complaint from the consumer. The consumer reporting agencies must then inform the entity that furnished the disputed information, and the furnisher is in turn required to conduct its own concurrent investigation. If either the consumer reporting agency or the furnisher determines that the disputed information is inaccurate or cannot be verified, they must remove the information from the consumer's credit file.

The FACT Act enhanced the ability of consumers to correct their credit reports in a number of ways. First, it required the Federal banking agencies and the FTC to write regulations establishing better procedures governing companies that furnish information on their customers to the credit bureaus to ensure that their reports are accurate; that hasn't been done. Also, the FACT Act directed the FTC and the Federal banking agencies to identify, through regulation, circumstances in which a consumer should be able to dispute the accuracy of information directly with the furnisher. That hasn't been done, either.

Prior to the FACT Act, consumers could only initiate such disputes through the credit bureaus. While the Federal banking agencies, the FTC, issued an announced notice of proposed rulemaking in March of 2006, they have yet to take any further action. It is my belief that implementation of these provisions would go a long way toward making it easier for customers to protect their credit reports. And as I said at the start of my statement, I want to continue to urge your agencies to move quickly and to finalize these long overdue regulations.

I also want to throw in one other thing which is tremendously frustrating to me. I have a son, and I have said this in other hearings, who is a member of the U.S. Marines. And because he is, he has friends, and I know some members of this body have gotten situations where they were transferred from one location to another under the Soldiers and Sailors Act. That Act is pretty clear that when they receive orders to report to Iraq, Afghanistan, or even to Texas or California from a location, say on the East Coast, they are supposed to be able to get out of their lease. I have two case files in my office where soldiers informed their landlords that they had been transferred to Iraq, the reserve officer then wrote a letter to the landlords saying that they were leaving after the landlord sent a collection letter or a letter threatening a lawsuit. In each case, the landlord did not pursue the case because legally they could not recover. One case we handed to a U.S. Attorney, who aggressively pursued it. But in both cases the landlords, large real estate holding companies, reported derogatory information to the credit bureaus. And I don't know if the FDIC is hearing these complaints, but to me it continues to disappoint me when we have soldiers who are in Iraq, we have an Act that says they will be excused from their leases, and people continue to put up obstacles in their faces. And I would like you all to sort of look and see if there is any rule that you all will develop that will treat that situation. I don't know what the credit reporting agencies are doing about it, but thank you.

The CHAIRMAN. The gentlewoman from New York, the chairwoman of the Subcommittee on Financial Institutions, who would

have jurisdiction over this if any legislative action proves necessary, is recognized for 5 minutes.

Mrs. MALONEY. I thank the chairman and ranking member, and I would like to welcome the witnesses, and thank you for holding this very important hearing on the important subject of credit reports. Just 4 years ago, with the enactment of the FACT Act, Congress updated credit reporting laws to address, among other things, the accuracy of credit reports and the rising epidemic of identity theft. While that law put in place good standards, the press reports suggest that they are not being followed or enforced adequately, so I look forward to hearing what you are doing about this.

One study found that over three-quarters of credit reports contained errors, and that a quarter of them impaired the consumers' ability to get credit. This is totally unacceptable. Victims of credit report errors suffer consequences similar to victims of identity theft. It is very difficult to clear your credit. And you may be unable to buy a car or a house or get a credit card for years. Being denied credit based on incorrect information impairs a consumer's future chances of getting credit, and it makes it very difficult to overcome the error. So mistakes mushroom into very serious problems.

Many States have responded to this threat by enacting laws that allow individuals to protect themselves by controlling access to their credit reports and the personal data it contains through a simple and low cost process. This concept, called file freeze, has been adopted by 27 States, including my home State of New York. And almost all of these State laws, including New York's, give the right to freeze access to their credit reports to everyone, so that people can protect themselves from wrong data or identity theft, suffering the bad consequences of many times incorrect information in credit reports.

In the last Congress, I introduced a bill that would make file freeze a Federal right without preempting State laws, and I am introducing that bill again this week. File freeze should be available to everyone, because it is the only tool available to prevent wrong information from continuing to ruin your credit, just as it is the best way to fight identity theft.

A credit report freeze works because it actually stops the granting of new credit without the consumer's express permission, and thus prevents continuing errors and identity theft. If a consumer freezes his or her report while working out errors, it provides credit rating agencies an incentive to get the problem solved. The file freeze bill does not affect the use of credit cards or existing credit lines. It only prevents the issuing of new credit unless the individual requests it. The credit reports will be sent to a particular lender. This gives individuals control over their credit report, and allows them to protect themselves from the effects of errors in their report and from criminals who may want to use this information.

It is not a complete solution, because of course, the consumer then has to get the error corrected, but it does stop the problem from getting worse in the meantime. And that can be quite a long period, as the press has noted in recent reports.

I look forward to the witnesses' comments on this and other solutions to correct the problems of errors and misuse of credit card in-

formation, and credit information in general. I thank the witnesses for being here, and my time has expired.

Thank you.

The CHAIRMAN. On the list the ranking member gave me, next the gentleman from Texas, Mr. Hensarling, is recognized for 3 minutes.

Mr. HENSARLING. Thank you, Mr. Chairman, and thank you for holding this hearing. I want to thank the ranking member as well. As we enter this hearing, I hope my colleagues will once again very much keep in the forefront of their minds that any perceived or any proposed cure should not be worse than the perceived illness that we study today. From the evidence I have seen, with all of its shortcomings, with all of its limitations, I still believe we have the world's premiere credit reporting system, and a system that has played a vital role in ensuring over the last couple of decades that underserved populations, millions and millions of people, now have access to credit to make a down payment on their first home, to launch a small business, to buy a used car to go to and from work. Twenty years ago that might have not been the case. And this system, even with its limitations, has played a vital role in that change in America.

I am sure in the keeping and processing of hundreds of millions of records, no doubt mistakes are made, although some of the studies that have come across my desk are somewhat suspect on the methodology. I am looking forward to hearing more testimony to know exactly how many mistakes might be made. Certainly, we want to ensure that consumers have a right to know, and that they have a right to challenge inaccurate information in their records. That is one of the reasons I thought we passed the FACT Act in 2003, and I would like to associate myself with the comments of the ranking member.

I am a little curious, given that Act was passed in 2003, why vital rulemaking is still left undone. One phenomenon, though, that I do believe we should all recognize, is that along with many consumers who want to correct inaccurate information, there are also, unfortunately, many consumers who are attempting to correct accurate information. We often talk about the whole phenomenon of predatory lending in this committee, but we must also recognize the phenomenon of predatory borrowing, and examine how people may abuse the process with phony requests to correct unflattering but accurate data, which could leave the bulk of people who pay their debts in good faith ultimately to have to foot the bill.

So I look forward to hearing from the witnesses, and I think this is a very worthy use of the committee's time. And with that, I yield back the balance of my time.

The CHAIRMAN. The gentleman from Texas, Mr. Green, is recognized for 4 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and I thank the ranking member also. This is indeed an important hearing that we are having today, and I thank the witnesses for appearing. It is important because with 79 percent of those surveyed finding that their reports contained mistakes, and then 25 percent of these mistakes impairing the ability of persons to acquire auto insurance, possible medical coverage, bank accounts, apartment rentals, and being de-

nied credit, and even sometimes the opportunity to have a job, this is an important hearing.

Many persons are being impacted by their credit scores. Many of them are not aware that they are being impacted by their credit scores. Given that we live in a cashless society, or we are moving toward a cashless society, or maybe appropriately I should say I have moved toward a cashless society—not always by design, I might add; sometimes it is just not available to me. And because the credit card and the credit report has become so important, it is important that this information be accurate. It really is. And I have had accounts of persons coming to tears because they were having difficulties trying to get their credit report corrected.

So this is an important hearing, and I am really concerned about the credit score itself, how is it calculated? I actually had a case in my office where a person had a negative removed and the score went down. The score went down after the negative was removed from the report. So I am interested in knowing how it is calculated, and I am also interested in knowing what is it that we can do to encourage greater expediency in the process of correction, the correction process itself. Because it seems that it can take a little longer than it should, based on the cases that I personally have been involved with, to make these corrections.

So I am honored that the chairperson and the ranking member have assembled us for this hearing, and I look forward to hearing from the witnesses. I yield back the balance of my time.

The CHAIRMAN. The gentleman from Georgia, Mr. Price, on the list given to me, is now recognized for 3 minutes.

Mr. PRICE. Thank you, Mr. Chairman. I wish to thank you and the ranking member, Congressman Bachus, for holding what I believe to be a remarkably timely hearing on the accuracy of credit reports and the consumer dispute process. Under the Fair Credit Reporting Act, I think it is clear to all of us that in an economy that is increasingly reliant on credit, the accuracy of these reports is of the utmost importance. False or inaccurate information can certainly cause a consumer to pay a higher rate of credit. It can affect everything from home loans to home mortgages, credit cards, etc., not just now but for many years to come, as my colleagues have said.

The Fair Credit Reporting Act was amended in 2003 by the FACT Act. The Fair and Accurate Credit Transactions Act comprehensively regulates both accuracy and reinvestigation of consumer reports, including credit reports by consumer reporting agencies, including the three national credit reporting bureaus. As a result, I think consumers have an increasing number of ways in which to ensure the accuracy of their credit reports. They are entitled to receive a free report annually, plus a free report any time that the report is used to make an adverse decision about the consumer. And consumers can pay a nominal charge to obtain their report at any other time. Consumers' ability to inspect their reports has never been higher from my perspective, a fact that I think further promotes the accuracy in these reports.

There is also a dispute resolution system, which consumers may use to challenge information in their report at any time free of charge, and consumer reporting agencies must investigate and re-

spond within 30 days. If an item in a consumer report is inaccurate, or even if the item, regardless of its accuracy, cannot be verified by the furnisher within 30 days, then the item must be deleted.

It appears that we have dramatically increased consumer protections and ensured the accuracy of consumer credit. So I would be interested in both panel members' opinion as to why they believe that has indeed occurred.

I share Congressman Bachus's concerns about the lack of rule promulgation, although I understand that some of that is because of certain time limits put in the original bill by Congress that may have made it so that the priority of the agency was placed in different areas for a period of time.

As Congress and the regulators continue to add tools to the consumers' toolbox increasing their ability to monitor their credit reports and dispute erroneous charges, there is an aspect of personal responsibility that has been seemingly lacking from the discussion. Consumers must perform their own due diligence. We have heard stories before this committee that lament debt taken on without any mention of personal responsibility, and we must never forget the importance of that. I am struck or bemused by some here who have been angered by the debt taken on by certain folks, while at the same time crying out about the difficulty of obtaining credit.

That being said, financial literacy is increasingly important, and consumers must take responsibility for not only knowing the terms and conditions of their credit accounts, but also knowing the information that goes on the credit report that determines the costs that they end up paying for their credit.

Let me just close by thanking the members of both panels for coming today and testifying before us this morning. I look forward to hearing your statements and asking a few questions, and I share the chairman's desire, and I am hopeful that we will all conclude that no additional legislation is needed at this time. I yield back.

The CHAIRMAN. The witnesses will now be able to talk, and we look forward to what they have to say. This is a follow-up in many ways to the FACT Act, of which I said this committee was I think justifiably proud in taking on a difficult subject and putting together a bill that had in the end strong support from the financial service industry, from others in the economic field, as well as from consumers. And we will begin with Lydia Parnes, who is the Director of the Bureau of Consumer Protection at the Federal Trade Commission. Ms. Parnes, please go ahead. And without objection, all of the statements and any supporting material from these witnesses and those on the second panel will be printed in the record.

Please.

## STATEMENT OF LYDIA PARNES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Ms. PARNES. Thank you, Chairman Frank, Ranking Member Bachus, and members of the committee. I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission. I appreciate the opportunity to testify today about the important issues of credit report accuracy and the process by which consumers can dispute inaccurate information. The 2003 FACT Act

included several new accuracy-related provisions. Congress assigned the Commission, either alone or with other Federal agencies, the task of issuing about 30 rules, forms, notices, studies, and reports.

To date, the Commission and its sister agencies have completed seven rulemakings, seven studies, five model forms and notices, and one national identity theft education campaign. We have also issued six notices of proposed rulemaking, and have made substantial progress on a complaint sharing program. We are close to completing two additional studies.

I note that the Commission has completed 17 of the 20 tasks assigned to it alone. We have made FACTA implementation a high priority, but we can do more and we will. This week I am personally reaching out to my counterparts at the FACTA-implementing agencies to establish a timetable for completion of all FACTA requirements. We are committed to acting quickly. I know this is true for the FTC, and I am certain that it is true for my colleagues at the other agencies as well.

Our work to implement FACTA has been robust. One example is the Commission's 2004 rule effectuating consumers' rights to free annual credit reports. As of December 2006, the nationwide consumer reporting agencies have provided over 52 million free reports to consumers. That is the good news. The not so good news is that some companies selling various services try to exploit this new right. We sued ConsumerInfo.com, doing business as Experian Consumer Direct, for deceptively marketing free credit reports. In the settlement of those charges, ConsumerInfo.com agreed to pay redress to deceived consumers, refrain from deceptive and misleading claims about free offers, disclose terms and conditions of any purportedly free offers, and give up $950,000 in ill-gotten gains.

In short, we have sought to protect consumers' right to receive a free credit report so that they can have a greater and more meaningful opportunity to spot and correct errors in their credit reports.

Two highly significant FACTA tasks are still in progress. These require joint interagency agreement, which we are seeking to achieve. The tasks include two rulemakings relating to data furnishers: the accuracy rule, which will set guidelines for furnishers to follow to improve the accuracy and integrity of the information they transmit to consumer reporting agencies; and the dispute rule, which will establish the circumstances under which consumers can dispute inaccurate credit report information directly with the furnisher. These rules must be made either jointly or in coordination with five other Federal agencies. The agencies issued an advanced notice of proposed rulemaking for both rules in March of 2006. The comments we received raised a number of difficult issues. Our major challenge is to devise standards that are appropriate for the vast array of entities that will be covered by the rules, ranging from large multinational financial institutions to local landlords. The agencies are analyzing these issues and discussing them in depth.

Law enforcement also plays a critical role here. The Commission has brought numerous cases against the key participants in the credit reporting system, the CRAs, the furnishers, and the users of consumer reports. These cases have addressed, among other things,

the failures of the CRAs to comply with their accuracy and dispute obligations, the provision by furnishers of inaccurate information to CRAs, and users' violation of adverse action notice requirements. The Commission will continue to vigorously enforce the FCRA. In tandem with its enforcement efforts, the Commission's consumer and business education programs are designed to foster greater compliance with the law, and to help consumers help themselves.

The Agency maintains and disseminates an extensive library on FCRA rights and responsibilities, including comprehensive guidance to ID theft victims whose credit files often are corrupted by thieves. Too many consumer reports contain inaccuracies, and too many consumers encounter unnecessary obstacles in getting these errors corrected. Such system failures can take a heavy toll on consumers not only monetarily, but in time and frustration.

We are committed to doing everything possible to minimize these problems. We look forward to continuing our work with this committee on these issues, and I would be happy to answer any questions you might have about these activities.

[The prepared statement of Ms. Parnes can be found on page 154 of the appendix.]

The CHAIRMAN. Thank you, Ms. Parnes. Next, Ms. Sandra Braunstein, who is the Director of the Division of Consumer and Community Affairs at the Board of Governors of the Federal Reserve System.

**STATEMENT OF SANDRA F. BRAUNSTEIN, DIRECTOR, DIVISION OF CONSUMER AND COMMUNITY AFFAIRS, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

Ms. BRAUNSTEIN. Thank you. Chairman Frank, Ranking Member Bachus, and members of the committee, I appreciate the opportunity to testify before you on the accuracy of credit reports and the furnisher rules required under the FACT Act. The accuracy of credit reports is vital because inaccuracies in credit reports can result in a consumer being denied credit or paying higher rates for credit. Inaccurate information can be introduced into credit reports in a variety of ways, such as the reporting of fraudulent accounts opened as the result of identity theft, the mixing or commingling of the files of consumers who have similar names or Social Security numbers, mistakes in public record data used by consumer reporting agencies, and data processing errors made by furnishers in connection with the information they provide.

Furnishers and consumer reporting agencies share responsibility for ensuring the accuracy of credit reports. The Fair Credit Reporting Act, or FCRA, currently imposes duties on both consumer reporting agencies and furnishers with regard to the accuracy of information in credit reports. Similarly, the FCRA's existing dispute process allows consumers to dispute the accuracy of credit report information with the consumer reporting agency, although furnishers must assist in the investigation of the dispute, and must correct any errors in the information they furnished.

Despite these existing consumer protections, Congress concluded that more needed to be done to enhance the accuracy of consumer reports and improve the dispute process. The FACT Act amended the FCRA to give consumers the right to request a free annual copy

of their credit reports from each of the credit bureaus. This change allows consumers to play a more active role in monitoring the accuracy of their credit reports. Other FACT Act provisions supplement the duties of furnishers to ensure the accuracy of the information they furnish to consumer reporting agencies.

Under the FACT Act, the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission must establish guidelines for use by furnishers to ensure the accuracy and integrity of the consumer information they furnish to a consumer reporting agency, as well as regulations requiring furnishers to adopt reasonable procedures to implement the guidelines.

The statute also requires the agencies to identify the circumstances under which a furnisher must investigate a consumer's dispute about the accuracy of credit report information based on a direct complaint from a consumer. The FACT Act required the Board and the FTC to study the current dispute process and jointly submit a report to Congress, which was completed in August 2006.

The two interagency rulemakings regarding the duties of furnishers have not yet been completed. An advanced notice of proposed rulemaking for these interagency rules was published in March 2006. The agencies are currently working to develop a proposal. There are two reasons why it has taken so long to complete the furnisher rules. One reason has to do with setting priorities. Given the complexity of many sections of this statute and the large number of rulemakings that Congress has assigned to the agencies, it was necessary for the agencies to set priorities in terms of which rules to address first. The agencies gave priority to rulemakings for which Congress set a statutory deadline for completion, and the agencies also gave priority to rulemakings where they saw the biggest gaps in existing consumer protection law.

A second reason has to do with the interagency process itself. Interagency rulemakings ensure that different perspectives are taken into account in developing a rule and that all agencies have a say in the outcome. On the other hand, the interagency rulemaking process is not the most efficient way to develop new regulations. It can be challenging to achieve a consensus among the different agencies.

In summary, the Board is committed to enforcing the FCRA furnisher rules against State member banks, investigating consumer complaints against State member banks relating to their furnishing activities, and working with the other agencies to complete the interagency furnisher rulemakings as expeditiously as possible.

Thank you.

[The prepared statement of Ms. Braunstein can be found on page 94 of the appendix.]

The CHAIRMAN. Thank you. I appreciate this recognition about the need to move on section 312 rules, which are really the heart of this. And I do want to acknowledge, and this became clear to us at the time, that the credit bureaus are not the source of all of the difficulty. And I was disappointed as we had the hearings, and as I had discussions with people as we dealt with the FACT Act, by the attitude of some of the creditors, which was that errors are going to happen, there is not much you can do about it, and you

had better learn to live with them. The accuracy of the data that is presented to the credit bureaus is really a big part of the problem, and that is one we need to focus on.

I just want to understand—and I realize we gave you a job that is perhaps compounded by the fact that all of the banking agencies, the Credit Union Administration and the FTC have to jointly do the rulemaking. But this is a very high priority. And you have said, and I appreciate it, that you try to affect the priorities. The fact that we singled this one out for hearing, I hope, will be an indication that there is a great sense of a priority here.

Do we have any timetable for when this could be done, Ms. Braunstein?

Ms. BRAUNSTEIN. We don't have an exact timetable. As I said, we did put out an ANPR. We are going through that information. We hope to have a proposal as soon as we can, but I can't really make a time commitment. It is hard to do that when there are so many other agencies involved over which I have no control.

The CHAIRMAN. I appreciate that, and that is one of the things I want to get to. Maybe we have to designate a lead agency. That may have been our problem.

I understand trying get all the agencies to work together can be difficult, and one of the things I think we will think about is designating a lead agency to deal with this. Because what do we have? Is it seven agencies or six? It is the Fed, the FDIC, the OCC, the OTS, the NCUA, and the FTC, so we have six agencies.

Well, I think that is one of the things that I will consult with my colleagues about, because there is a need to do this.

Let me ask what is then going to be the tough, substantive question, and I think for one thing—well, there are two aspects. One of the things that was frustrating to me when I read the Boston Globe articles and then looked into this some more was—and the gentleman from Georgia, who is not here now, said, well, people need to take responsibility for their own debt. But part of the problem here, as documented in those articles, was people being hit with debt that they never incurred, identity theft debt.

Now one representation was, well, they would correct it as of "X" date of complaints. But as inaccurate data kept coming in, it was automatically registered.

Now I assume that is one of the things that you are going to deal with, the credit report. The credit bureau said, "Oh, well, yes, we straightened that out." But if the identity theft was ongoing, as the new information came in, it was automatically registered.

I will be asking the credit bureaus about that. But I hope that when the rule comes in, it is going to have some substantive procedures by which we can adjudicate these disputes.

And I do want to be clear with you, I guess there are several things: there is identity theft; there is just plain error; and then, there are also the disputes in which people say they bought something, it didn't work, etc. What do you have in mind for mechanisms by which we can do that? Because I guess the hardest thing for all of us is the, "he said, she said" kind of disputes. Will you be reaching out, Ms. Parnes, in the rules?

Ms. PARNES. Chairman Frank, a couple of things.

First of all, as you know, there are special rights that are set in FACTA for victims of identity theft. And you mentioned victims of identity theft can, for example, block that kind of information that keeps on appearing again and again, as you mentioned.

The CHAIRMAN. Is that effective? Do we know? Part of the reports were that it had not been effective in some cases.

Ms. PARNES. Well, you know, I have looked at the Boston Globe article myself. I am not sure that the two individuals whose problems were discussed in those articles believed that they were victims of identity theft or filed identity theft victims reports, got police reports. I just wasn't sure from reading the articles.

One of the things that we found is that FACTA sets up a pretty comprehensive set of rights and remedies for identity theft victims, but the victims themselves have difficulty pursuing them. And as part of the President's Identity Theft Task Force, which the chairman of the Commission, the FTC co-chaired, we have come up with some proposals for providing specific assistance to identity theft victims.

We have reached out, for example, to the American Bar Association to set up a special ID theft victims pro bono program so that victims of identity theft have attorneys that they can go to and get this kind of assistance on a pro bono basis. We also plan to do outreach to other organizations.

The CHAIRMAN. You don't need any action by us. Those are things you can implement.

Ms. PARNES. Exactly. We can implement those.

The CHAIRMAN. I appreciate it.

I notice my time has expired, but I think we have to be careful. We can set up the rights, but then figuring out how they are in fact accessible to the people in practice is important. We can't put too many obstacles in the way, and that is one of the things we will continue to look at.

The gentleman from Alabama.

Mr. BACHUS. I will ask both Director—is it Parnes?

Ms. PARNES. Yes.

Mr. BACHUS. —and Braunstein?

Ms. BRAUNSTEIN. Braunstein.

Mr. BACHUS. —Braunstein, since the Act has passed, consumers are requesting—they are getting more credit reports. Has this—what is your sense? As they are getting these credit reports, are their credit reports becoming more accurate as they report inaccuracies?

Ms. PARNES. That is one of the things that we are trying to determine. Certainly the free credit report is an important right for consumers to have to access this credit report, to see if there are inaccuracies and to make changes to their report. But, as you know, Congress also gave us the responsibility to conduct an accuracy study. That is a long-term project that the FTC is engaged in. Under the statute, we have 11 years to complete the study, and so that is an issue that we are working on.

Mr. BACHUS. Do you think that you will have rules out before that, though? You are not waiting on that study to have—

Ms. BRAUNSTEIN. I would certainly hope so.

Ms. PARNES. I can say that I am certain we will have rules out before then.

Mr. BACHUS. My sense is that the one thing that the Act has done is it has allowed people to raise their credit scores, and I think that is a primary result of them paying off debts, some of which they really had forgotten they had, or didn't know it.

But there was a debate in this committee, although we reached a consensus and everybody yielding some of their opinions, I was concerned about retailers having to continually do reinvestigations and that that might be a burden for them. They certainly expressed that concern. What is your opinion on whether retailers are overburdened?

Of course, if they report accurate information to start with, it lessens maybe the need for reinvestigations. But there are always going to be people who are going to claim things are inaccurate when they are not. What is your sense there?

Ms. PARNES. I think that is exactly the issue that we are addressing, to ensure that the rules that we set for investigations can apply to both the large financial institutions as well as small retailers, and can apply fairly to both.

Ms. BRAUNSTEIN. Can I just comment on that?

Mr. BACHUS. Yes.

Ms. BRAUNSTEIN. I think that is correct, that is one of the issues that we are facing. And the danger in that is if a system is set up that is too prescriptive or too burdensome, then some of the smaller retailers will stop being furnishers, since we have a voluntary system. And a lot of times, in particular for low- and moderate-income people, the majority of their credit information may be held in these nontraditional furnishers. That could adversely affect their ability to get credit, so that is something that we are very cognizant of in writing these rules.

Mr. BACHUS. In fact, I think Chairman Oxley at that time and the ranking member, when I raised my concerns about retailers maybe having their burdens of doing reinvestigations, they did point out that they didn't have to supply that information.

And, also, I think it will encourage retailers to keep records. Once they report a record, particularly something derogatory, they do need to establish a way to go back and easily find that. And the big retailers can. I have noticed that they can very quickly do that.

The chairman mentioned maybe establishing a lead agency. Would that be helpful?

And, number two, are there certain provisions in the law that you think are problematic or should be amended?

Ms. PARNES. At least from my perspective, I think that the agencies—we are meeting on a very regular basis, and I think we have divided up the work so that each agency is taking lead responsibility for different tasks assigned in FACTA.

Ms. BRAUNSTEIN. Yes, I think it would depend how it was structured with a lead agency. You still would not—the problem is—and this is both a benefit and a problem, it is both sides—is that the agencies do have different perspectives a lot of times based on who it is that they supervise and regulate. Because different organizations obviously operate differently. And I don't think those differences would go away, even with a lead agency, unless that lead

agency had the ability to actually overrule everybody else and make a decision on moving forward on the rulemaking.

Mr. BACHUS. Let me just close by making a statement.

Mr. Chairman, I think one of the greatest benefits I have seen—and I want to commend the credit reporting agencies. Prior to us passing the FACT Act, one of the frustrations people had is that they would correct their report with one agency, and they had to do that with all three agencies. And sometimes, all of a sudden, that information showed back up years later. I have not heard that has happened; I think there is greater coordination between the credit reporting agencies.

You have a comment on that, or if you do—

Ms. PARNES. I think we would agree that is a benefit for consumers.

Mr. BACHUS. Okay. Thank you.

The CHAIRMAN. Before I turn—I would ask unanimous consent to insert into the record a letter from the National Association of Realtors signed by Pat Combs, the 2007 president.

Briefly quoting: "NAR took an active role in helping to enact the Fair and Accurate Credit Transactions Act. We are particularly concerned that the system created to investigate and correct inaccurate information in a timely fashion is not working."

I ask unanimous consent that this letter be inserted into the record. There being no objection, it will be.

The gentlewoman from New York is recognized for 5 minutes.

Mrs. MALONEY. I thank the chairman for yielding.

This committee and my subcommittee have held a number of hearings at which one of the problems identified seems to be that the Fed has not used its mandate to protect consumers, or if they do use it, they do it very late. And whether the issue is subprime lending or credit card practices, bank fees or, today, credit reports, the problem of Fed inaction seems to be a consistent theme, and I would say that you have done some very important things. The Fed's leadership on subprime, coming forward with the guidance that you don't give loans unless people can pay it for the full term of the loan, was very important. And Reg Z was very important, although we need to go further in that area. I think you have done a great job there.

But I am very concerned that the mandate is very important. It is outlined in congressional law in a number of areas, and it is embodied in many, many places, and it is clearly part of the Fed's mission. And today I would like to ask the Fed's representative, Ms. Braunstein, can you identify concrete steps that the Fed is taking in this area, credit card reports, to carry out that mandate through regulation, guidance, or other action?

And I would like to follow up on the chairman and ranking member's comments that one of the reasons that you are lacking the progress in this area is that we haven't set a deadline. So should we do so? Should we set a deadline? Three years is just too much. And since you can't give us a timeline, which was one of the chairman's questions, should we set a deadline so we can actually get this to take place?

Also, I would like to ask the Fed for your response on assigning a lead agency, as the chairman suggested, in order that we could

get this done. I mean, I think we all agree that so many years to accomplish a congressional task is really ridiculous and unacceptable.

Ms. Braunstein.

Ms. BRAUNSTEIN. Yes. First, I would like to assure you that this is very important to us. This is a priority for us, and we have been working on these rulemakings. There are a lot of rulemakings that were assigned through the FACT Act. This is one of them. We have been working with the other agencies, and we will continue to do so.

In addition, we supervise State member banks who are furnishers, and in that supervision process, we do look at their furnishing responsibilities. In fact, we have cited violations when we find them in State member banks. So we are actively engaged in making sure the information that is furnished is accurate.

Mrs. MALONEY. But, again, when can this be completed? How long have you been working on it? Three years now?

Ms. BRAUNSTEIN. Well, we issued the ANPR in 2006.

Mrs. MALONEY. So when do you think this could be completed? A year, 2 years, 10 years? When do you think this should be completed?

Ms. BRAUNSTEIN. I could not give you a timeframe, as I say, because we are not the only agency involved.

Mrs. MALONEY. Do you think Congress should give you a timeframe? Could this be completed in a year?

Ms. BRAUNSTEIN. I think that is a matter left up to Congress to decide.

Mrs. MALONEY. And again the question of a lead agency. If there was one agency in charge, would that coordinate and make things happen in a quicker way?

Ms. BRAUNSTEIN. Well, as I said, I think we are working on this, and I think that might take care of some of the issues but not all of them. It is not going to take away the differences of opinions between the agencies even to have a lead agency, unless that lead agency was invested with the authority to overrule everybody else and move forward regardless if there was agreement or not. So that is—

The CHAIRMAN. Will the gentlelady yield?

Mrs. MALONEY. Absolutely.

The CHAIRMAN. That could happen.

Mrs. MALONEY. And I would like to ask Ms. Parnes, you mentioned that victims of identity theft have protections and that these protections are already in place. But why not allow everyone to have the protections so that you can protect them before identity theft takes place, such as the file freeze concept that I mentioned earlier? Your comments on that.

Ms. PARNES. Well, actually, a file freeze is something that the Federal Trade Commission and the other identity theft task force agencies are looking at to assess whether—how all of the State file freeze laws are working and to come up with some thoughts about whether—what would work best in a Federal law. So you know, I think it may be very reasonable to apply this to all consumers.

We just don't have the sense yet—the State laws, as you mentioned, are different. Some apply only to ID theft victims, others

apply to all consumers; some impose fees for unfreezing the credit reports, and others don't. And we would just like to have a better sense of what we think should apply more broadly.

Mrs. MALONEY. My time has expired. Thank you very much.

The CHAIRMAN. The gentleman from Texas is recognized for 5 minutes.

Mr. HENSARLING. Thank you, Mr. Chairman.

I had to step out during some of the testimony, so forgive me if part of this is redundant.

But the first question I have really goes to what is the scope of the problem? We heard in some of the opening comments some members reference some studies that would tend to indicate that there are upwards of 70 percent of errors contained in credit records from the credit reporting agencies. To the extent I have seen some of these studies, the methodology has been questioned. But I am interested in what the FTC and what the Fed has determined of what is the scope of the problem, and to the extent there are errors in records, to what extent are they material and having an adverse impact on the availability and cost of credit? Ms. Parnes?

Ms. PARNES. I think, from the perspective of the FTC, we are not yet in the position to really respond to that question with numbers.

One of the tasks we were given was to conduct this accuracy study. We have already conducted a pilot project. We have submitted two reports to Congress on the study. The idea here is for the Commission to conduct a national study to assess the accuracy of credit reports, and at least on the basis of our pilot study, there really is no nationally projectable information that we can supply.

Mr. HENSARLING. Ms. Braunstein?

Ms. BRAUNSTEIN. I don't have data either, but I can say that we did do some research, Federal Reserve economists did, into accuracy of credit reports. And I think what is important here—I mean, the numbers you hear are all over the place, and some of them are very high. But it is important to recognize that there are different types of errors in credit reports, and some of them may affect someone's ability to get credit, but some of them do not. So, you know, some of them are just errors that are made in the report that really don't affect the evaluation of credit. So I think somehow that needs to be sorted out further.

Mr. HENSARLING. Ms. Braunstein, I think I heard in an answer to an earlier question by a colleague I think you said something along the lines that, in our voluntary reporting system, that if we were to increase costs unduly upon the smaller furnishers of credit they may just choose to no longer participate in the system. Could you elaborate on that phenomenon, please?

Ms. BRAUNSTEIN. Yes. Well, there are a number of furnishers. You know, there are certainly the large banks and credit card operators. And they, you know, have systems, good systems set up. But there are also a number of furnishers who are small retailers and even utility companies and landlords and people like that where they don't have necessarily sophisticated systems set up. And if the system becomes too burdensome, since it is voluntary, they may choose not to furnish information.

In particular, this could be harmful going forward to low- and moderate-income people, who have been shown to have thinner credit files. They may not have only sources of credit that are in the more traditional, mainstream sources but may be using some of these smaller operations to support their credit records. If they stop furnishing, that could be harmful in particular to them. So we just want to be cognizant of that in terms of moving forward on these rules.

Mr. HENSARLING. I have peeked ahead. There is some of testimony of the second panel, and I think that there will be at least one, perhaps two panelists who seem to assert that the credit reporting agencies either, one, do not have an incentive to keep their records accurate, or I believe one witness may actually posit that the credit reporting agencies have incentive to make them inaccurate so they can generate fee revenue off dispute resolutions. To the extent you all have observed the market, do the credit reporting agencies have incentives to keep accurate records in your opinion? Ms. Parnes?

Do I take that as, I don't know?

Ms. PARNES. I would certainly hope we have a system that creates incentives for accuracy. And I—I think that at least the system does create those incentives CRAs can compete on accuracy, if there are systems that are fundamentally flawed the FTC has, and will bring enforcement actions.

Mr. HENSARLING. Ms. Braunstein?

Ms. BRAUNSTEIN. We don't supervise agencies—we can't really speak to that other than in a general way. I think it is in their best interest to function well and to maintain their credibility, so I would think, just in terms of that, they would have an incentive to make sure their systems are as accurate and complete as possible.

Mrs. MALONEY. [presiding] Thank you.

The Chair recognizes the gentleman from New York, Mr. Ackerman, for 5 minutes.

Mr. ACKERMAN. Thank you, Madam Chairwoman. Are all file supplier furnishers—

Ms. PARNES. No. Suppliers furnishers provide information. But files can be accessed by lenders, for example, if a consumer is applying for a loan, that lender can access the consumer's file.

Mr. ACKERMAN. Can those lenders share the files with others.

Ms. PARNES. They may in certain circumstances. If there are—

Mr. ACKERMAN. Somebody who is a lender who doesn't participate in the system can get a copy of everybody who has borrowed $10,000 on a home equity and do solicitations?

Ms. PARNES. I think not.

Mr. ACKERMAN. How would you know they are not doing that? Is there a prohibition against them doing that?

Ms. PARNES. I believe that a lender who obtains that information can only use it for certain specified purposes.

Mr. ACKERMAN. How many requests are there on an annual basis on the part of Federal agencies for access to files? How many files would that be, FBI, CIA, Homeland Security, any other Federal agencies?

Ms. PARNES. I don't know.

Mr. ACKERMAN. Do you know why there would be a correlation between somebody's score and whether or not they are a terrorist risk or should be looked at a little bit more carefully by airlines, and whether or not they should be allowed to fly?

Ms. PARNES. I don't.

Mr. ACKERMAN. Insurance companies—should there be some Federal guidelines as to that?

Ms. BRAUNSTEIN. As to terrorists?

Mr. ACKERMAN. The different agencies have different requirements, evidently with different guidelines or no guidelines as to compliance with requests on the part of Federal agencies for access to people's files.

Should there be some guidance to them as to how loosely they comply or standards of compliance such as warrants or just complying with any request from any agency?

Ms. PARNES. Congressman, as far as I know, there is no permissible purpose under FCRA for law enforcement.

Mr. ACKERMAN. There is under the PATRIOT Act. Under the PATRIOT Act they can access your—

Ms. PARNES. Credit report.

Mr. ACKERMAN. —credit report and your scores. Presumably this is a connection they make between your scores and whether you are a risk of some kind. Perhaps we should be looking at that and perhaps there should be some guidelines.

The same with libraries. There are some libraries that will give any agency that asks, and there are some libraries that have adopted policies. At the end of the year, they burn everybody's borrowing records so that they don't have to comply. But that's different, a different level of concern about people's privacy rights than the financial community seems to have.

What is the correlation between somebody's credit score and whether or not they are an insurance risk? Insurance companies obviously use people's credit score to determine whether or not they are going to put in an insurance claim, people who have low scores are presumed to be presumptively more apt to put in an insurance claim.

Ms. PARNES. Right, that's the subject of a study that the Commission is finalizing right now.

Mr. ACKERMAN. Are poor people poorer drivers, more careless homeowners?

Ms. PARNES. One of the things the study is looking at is whether there is any connection.

Mr. ACKERMAN. When is that study due and who is doing it?

Ms. PARNES. The Federal Trade Commission, Bureau of Economics, is conducting that study. We hope to have the report completed this summer.

Mr. ACKERMAN. These things are very serious and affect people's lives in very, very important ways. It seems that any supplier of information can get the information into somebody's credit report, any crappy piece of information, erroneous or otherwise, and it automatically gets recorded as part of a person's financial life.

If that person is adversely affected, she or he has a tremendously difficult time in getting that information removed as wrong and inaccurate as it is. And some of us believe that a person has, or

should have, control at least over the facts of their life, not necessarily interpretation, but the facts, and it is so difficult.

And I don't know if either of you have had the experience of having erroneous information removed. I tell some of my friends, when I try to call them, who own small businesses, call yourself, you will get caught in voice mail hell, or whatever, and your system is all screwed up. Some of them are shocked to find out.

Have you ever tried to get something removed from your credit report?

Ms. BRAUNSTEIN. No, I have not.

Mr. ACKERMAN. It is exceptionally frustrating and difficult, even if you are a Member of Congress.

The CHAIRMAN. Did you get a response?

Mr. ACKERMAN. If there is a response.

Ms. BRAUNSTEIN. I said, no, I have not.

Mr. ACKERMAN. I would strongly suggest you do that and find out what the frustrations are, of the public. It is next to impossible to clear something up.

Has my time expired?

The CHAIRMAN. Yes.

Mr. ACKERMAN. Thank you very much.

The CHAIRMAN. Next, has the gentleman from Georgia been recognized yet?

The gentleman from Georgia is recognized for 5 minutes.

Mr. PRICE. Thank you, Mr. Chairman. I want to thank the members of the panel for coming today.

I think, Ms. Parnes, you said that there were 52 million credit reports requested. That is since the FACT Act; is that correct?

Ms. PARNES. That is correct, 52 million free credit reports have been distributed.

Mr. PRICE. And that is a significant increase over before, I assume?

Ms. PARNES. Right, the free credit reports were very limited before this amendment.

Mr. PRICE. Have you noticed or has it been noticed that there are greater reports or concerns about inaccuracies, unfairness on behalf of the reporting agencies?

Ms. PARNES. We don't have a basis for comparing those issues before this amendment, and the accuracy study, as I mentioned, is something that we will be looking at over the next several years.

Mr. PRICE. I would be interested in the thoughts of each of you about the definition of an error in a credit report and the difference between an error and a dispute over a credit report and how you reach a conclusion as to whether something is an error or a disputed report. Would you care to respond?

Ms. BRAUNSTEIN. Well, I think in the sense of what is disputable or what a furnisher could be held accountable for, what would be a violation of the rule, a violation in terms of—well, first of all, let me back up.

Furnishers do make errors from time to time, but not all of them are violations. In order for an error to be a violation, the furnisher would have to have known, or you could reasonably assume that they knew, the information was inaccurate when they furnished it.

Sometimes mistakes happen, and they are corrected, and they were not intentional, and there was—they did not know that it was bad information when they furnished it. In that case, there is no violation of the law at this point.

Mr. PRICE. Ms. Parnes, do you have any comment?

Ms. PARNES. Nothing further to add.

Mr. PRICE. So if there is a dispute and it is corrected, then that is not considered an error; is that correct?

Ms. BRAUNSTEIN. Well, no, if it is found that the furnisher knew that the information was wrong when they furnished it, then it would be a violation. I know in terms of our supervision we would cite that.

And also we investigate consumer complaints against furnishers. And again, in investigating those complaints, if we find there are violations where they knowingly furnished bad information, we cite violations, and we have done so.

Mr. PRICE. There has been a lot of talk about the rules not being promulgated to this point. I wonder if either of you has anything you would like to add or say to us about whether—if we change our rules to you in the middle of the game, how does that affect what you are able to do in response to the current requests that are already on the table.

Ms. BRAUNSTEIN. Well, I think that we are making progress, and like I said, we did put out an ANPR along the lines of what the statute currently says. We are going through that information and trying to fashion a proposal. So I don't know—I wouldn't have any recommendations for you at this point in terms of changing anything in the statute.

Ms. PARNES. I would agree that we have made significant progress in terms of all of the FACT Act tasks that the agencies have.

The one thing that I would add is, I think that we meet—the agencies meet on a regular basis. As I mentioned in my statement, I plan—I talk to my colleagues at the Fed and we will talk to our colleagues at the other agencies, and I think that we can come up with a timetable for completing the remaining tasks.

Mr. PRICE. So the light is at the end of the tunnel?

Ms. PARNES. I hope so.

Mr. PRICE. Allowing file freeze by the consumer, do you have any thoughts about the consequences or are there any consequences of that on commerce and the general individual consumer activity that might be adversely affected by that.

Ms. PARNES. It is something that we are looking at right now. We understand that in some States file freezes have to be unfrozen within a very short period of time; in other States there is no time limit, and it may take longer. So, for example, if a consumer wants to purchase a car and they have a file freeze, they may have to take steps to unfreeze their file several days before they purchase the car or else they wouldn't get credit immediately.

But I think all of those—and those can have implications; it can burden consumers. We think that consumers just need to understand what they are getting into if they opt for a file freeze.

Mr. PRICE. Thank you, Mr. Chairman. My time has expired.

The CHAIRMAN. Thank you.

The gentleman from Kansas.

Mr. MOORE. Thank you, Mr. Chairman. Ms. Braunstein, if a consumer disputes the information that has been furnished and the other side has tried to correct it, but not made very much effort to correct it, what happens in that situation?

Ms. BRAUNSTEIN. Well, first of all, I should say we supervise the furnishers, some of the furnishers, the ones that are State member banks; we don't supervise the credit reporting agency, so it depends on who is correcting it. Certainly if there was a dispute of information that was given or furnished by one of our supervised entities, we would take steps with that entity to make sure that that was corrected. We don't have any authority over the reporting agencies.

Mr. MOORE. Who has responsibility over the credit reporting agency?

Ms. PARNES. We have responsibility over the credit reporting agencies and over many of the furnishers as well. So, for example, the FTC has taken actions against furnishers for failing to provide accurate information to the CRAs.

Mr. MOORE. Failing to provide accurate information.

What if the credit reporting agency believes the information is accurate, but in fact it is not, and they keep furnishing the same information?

Ms. BRAUNSTEIN. Well, if that information is disputed, that, even if the furnisher still thinks it is accurate, they must note it on the files.

Mr. MOORE. That is provided to the requestor?

Ms. PARNES. Yes, the consumer has a right to include on their credit report their statement of what they think is accurate.

Mr. MOORE. And no further responsibility than by the provider of the information, except to note that the consumer has disputed this?

Ms. BRAUNSTEIN. No. There are investigations that are undertaken, depending where the consumer goes. If the consumer goes directly to the furnisher, then what we have heard is that many of the furnishers—right now there is no obligation for the furnishers to undertake investigations from direct complaints, but most of them do. If the con—

Mr. MOORE. Should there be an obligation for those who don't?

Ms. BRAUNSTEIN. That is part of what the rules will do. If the consumer complains to the credit reporting agency, the credit reporting agency does go back to the furnisher. The furnisher is obligated to investigate that dispute; they have 30 days to do so and to either provide information as to why that information is correct, or if it is inaccurate, then they have to remove that and they are prohibited from furnishing that to anyone else.

Mr. MOORE. But there are investigations and there are investigations. Some are good and some kind of just go through the motions.

How do we deal with the furnishers who just kind of go through the motions and really don't have any incentive, or appear to have no incentive, to correct the situation if in fact the consumer has been wronged? How do we deal with that situation?

Ms. BRAUNSTEIN. Well, I can again only speak to State member banks. If—we usually find out about these things through consumer complaints; we would certainly investigate that matter with

the furnisher and make sure that a Federal investigation was done of that. And if it seems that there was some—that it was knowingly furnished, and they knew it was inaccurate, we would cite a violation.

The CHAIRMAN. The gentleman has done a very good job at getting to the heart of the matter. I sort of fumbled around with it. If he would just allow me—

As you do the regulations under section 312—it seems to me, the gentleman hit the key—and to some extent the credit bureaus have taken a hit for the furnishers and for others. The key has to be a procedure whereby a consumer who learns of something he or she believes is inaccurate can contest that with the furnisher. And I hope that that will be a central part of the rule.

The gentleman has, I think, correctly talked about it. It can't just be all procedure; there has to be a dispute resolution method for the consumer, who finds an inaccuracy, to talk to the furnisher.

I thank you.

Mr. MOORE. I thank the chairman and the witnesses. I am finished.

Thank you, Mr. Chairman.

The CHAIRMAN. The next gentleman from Connecticut.

Mr. SHAYS. I wrestle with this issue. First, there is the issue of being unfairly reported. There is also an issue of being fairly reported but not having the knowledge to know how the credit rating impacts you.

I have a staff member who was literally on welfare and ended up being able to buy a home with her sister, and she missed a payment, she missed three payments, because her sister left and they were spread thin. But from that point on, for 3 years, she never missed a payment. But she was 3 months behind with each payment, so each payment was viewed as delinquent and she never realized it. She thought for now 3 years, she had gotten her situation in order.

I have constituents—I will say this, during the campaign a few years ago, I had 3 months where I just didn't pay bills, and then I paid them all back with interest, and I had a terrible credit rating. I have two graduate degrees. I just didn't get it.

People can smile and say, that is pretty dumb, and it was dumb, but the fact is, I have a pretty good education. Even I didn't know. I think one of our obligations is to inform people how to get good credit.

The other thing I wrestle with is, there is also a perverseness to this, if you have bad credit, but you are not bad at paying back the debt, you still pay a really high interest rate.

Just quickly going back to that individual who, on my staff—I could continue to refinance my credit getting low interest rates, and she had huge interest; she could never take advantage of all the times when it dropped.

What are the obligations that you have to inform people about credit, to inform people of the impact that it has?

Ms. PARNES. Consumer education is one of the highest priorities at the Federal Trade Commission. We are a member of the Financial Literacy Commission that was set up by Congress and was chaired by the Treasury Department. Staff members at the FTC,

in addition to all of the general financial literacy information that we push out as much as we can through our Web site, through our staff going out and giving speeches and participating in town hall meetings that Members of Congress have, our staff members also go, for example, to high schools and speak to high school students about financial literacy.

We want to reach consumers at the most teachable point, because we share your concern that this is a very important issue.

Mr. SHAYS. When there is a dispute, there is not anyone in this room who hasn't had a dispute over a bill and the challenge is that they basically say, fine, sir, you don't want to pay your bill, you are going to get a bad credit rating. They have us over a barrel. In spite of what I've been hearing, it seems to me it is stacked against the consumer.

And give me your best idea, both of you, as to how a consumer can fight back.

Ms. PARNES. I think one way, one avenue for consumers, has already been set up by Congress in the FACT Act, and that is, if you are in this cycle that has been described, where you filed a dispute, the information is either it isn't coming off your credit report—

Mr. SHAYS. Can you file a dispute before it went on? I mean, once it is on, you are screwed.

If someone says—let's take cell phones. You are getting terrible service, you go to the store. They basically say, you know what, we solved it online, it is not our problem; we are just a store.

And you say, well, where can I speak to a real live person. And you speak to somebody who knows where. And then you say, you know, I am fed up, I am going to leave, I'm getting another cell phone.

And they say, fine, sir, but you will owe us for 4 months, you are going to owe us. Fine. You will owe us for 4 months, and that is it; take it or leave it.

It seems to me you should have a way to say, no, you are not, lady or man, you are not going to do that; or simply, I am going to file a report and you are going to have to dispute it out with me.

It seems to me it should happen before rather than after.

Ms. PARNES. I think that the issue that you raise specifically with cell phones is one that consumers have a lot of complaints about. Unfortunately, it is an area that—one of the few areas that falls outside of the jurisdiction of the Federal Trade Commission.

Mr. SHAYS. Why is that?

Ms. PARNES. We don't have jurisdiction over common carriers.

Mr. SHAYS. You do once they file a statement saying that I am delinquent on my bill.

Ms. PARNES. Well, we do in the context of the FCRA; we don't in the context of simply the bill that the carrier gives to the consumer.

Mr. SHAYS. I have the red light. Thank you.

The CHAIRMAN. I was going to say, gentlemen, again, focus on the key issue.

In fairness to some of the credit bureaus and others, it is at the furnisher level, at the transaction level, I think we have to do a better job. I do think we will resist the temptation to add the FCC

to the already dysfunctional mix of agencies that is keeping us from getting anywhere. That is apparently part of the problem.

The gentleman from Missouri.

Mr. CLAY. Thank you.

Ms. Parnes, let me ask you, the Fair Credit Reporting Act does not establish an absolute standard of accuracy and does not require CRAs to guarantee that reports are error free. This is from your statement and it is also fact.

Does this not put consumers who live day to day on credit and who do pay their bills on time in quite a difficult position?

How do you suggest we go about tightening up the standard, or do you think we are doing as much as can be done?

Ms. PARNES. The system, as it has been established, is really a procedure-based system, it requires reasonable procedures and not 100 percent accuracy.

I am simply not confident that, given the millions of transactions that go on, that the system could function with an absolute every transaction that is reported must be accurate. It is something that—I mean, this was obviously a determination that Congress made in setting up the reasonable procedure standard, and it is something that we would have to consider.

Mr. CLAY. Isn't it pretty plain that either you have bad credit or you don't, or you have paid this bill or you haven't? Isn't that pretty obvious?

Ms. PARNES. Absolutely, from the perspective of the consumer. The problem, I think, that has been identified is going through the dispute process.

Mr. CLAY. The FTC consistently receives more complaints about the credit bureaus, either directly or in connection with identity theft, than any other industry. What steps have been implemented to alleviate these types of complaints?

Ms. PARNES. Well, the identity theft, the complaints that we have received, are not all driven by accuracy issues. Certainly, on the identity theft front, the Commission has taken a large number of steps to work with victims of identity theft. We were part of the task force that issued a strategic plan on identity theft; we have 60 recommendations that we are working on to implement right now.

Mr. CLAY. Sixty? Thank you for your response.

Ms. Braunstein, what future role do you see mortgage credit reporting agencies serving in the resolution of credit disputes?

Ms. BRAUNSTEIN. When you say mortgage credit reporting agencies—

Mr. CLAY. Yes, mortgage companies.

Ms. BRAUNSTEIN. The companies that people get their mortgages from?

Mr. CLAY. Sure.

Ms. BRAUNSTEIN. I don't know. That is hard to answer. Certainly we—unless they were State member banks, we would not supervise them as furnishers, so I don't know what their volume of complaints is at this time, and I don't know how that might be affected in the future.

Mr. CLAY. Tell me this. Why is it that after consumer complaints are submitted to the credit reporting agencies that the credit bu-

reaus rarely follow the consumer's documentation of errors to the furnishers? Why is that?

Ms. BRAUNSTEIN. The way the process is currently set up, that is not always a necessary part of the process. They are supposed to send the furnishers information about what the dispute is on, as complete as possible, but that does not always have to include the backup information, and there are a couple of reasons. One of them is the burden associated with that. It is a voluntary system, and we don't want to discourage people on being furnishers.

The second part of that is, sometimes there are privacy considerations. Sometimes a consumer complaint may not be just against one furnisher, and the documentation involved may include information, proprietary information, that exists about other furnishers, too. So you want to be careful with the consumer's information in terms of privacy considerations.

Mr. CLAY. I see my time is up. Thank you very much for both of your responses.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Delaware.

Mr. CASTLE. Thank you, Mr. Chairman.

This has been a very active committee this year, as you know, and we have had a number of hearings on the subjects dealing with credit of individuals. And it is very confusing to me because I think it was a hearing last week at which we heard about the number of credit cards out there.

Are there too many? I think there were 650 million, if my recollection is correct.

Now we are told by some here that credit histories are full of mistakes and people can't get credit.

We have had other hearings dealing with foreclosure and other nonpayment or failure-to-pay type problems. It becomes confusing what is happening out there in the commercial market.

My question is a little beyond what you have been talking about, or perhaps what you do, but do you evaluate credit score ratings that are used by financial institutions, merchants, credit card issuers, also financial institutions? Do you look at how they do that? And, if so, is a willingness to accept too low a credit rating part of the mortgage foreclosure and credit card failure issues that we are dealing with now, or is that beyond the scope of what you all do?

Ms. PARNES. That is beyond the scope of what we do at the Federal Trade Commission.

Ms. BRAUNSTEIN. That could come into play in terms of looking at financial institutions that we supervise in terms of underwriting criteria for different kinds of credit, what credit scores, what levels of credit cards they are accepting, and what they are offering in turn. Sometimes that could come into play in terms of safety and soundness considerations.

Mr. CASTLE. Does it, or has it, to your knowledge?

Ms. BRAUNSTEIN. I can't speak definitively on that. I could get back to you on that.

Mr. CASTLE. You always hear about college kids who are getting innumerable requests, solicitations for credit cards. How does that

happen? Do they all have good credit because they don't have bad credit or because they haven't had credit? How does that happen?

The young person who probably has not established much credit at all is getting multiple solicitations per month for credit cards, apparently.

Ms. PARNES. Well, I think the credit card companies are looking for new customers. It is that simple.

I would add that the FTC works with universities to get educational material out to college students, so they understand what is means to have a credit card, and the responsibilities that they are assuming.

Mr. CASTLE. So in that situation, the credit rating itself is of no value or importance, or it is overlooked by the credit card companies because they are in college, and therefore they feel that that is enough of a boost that they will be okay in terms of credit?

Ms. BRAUNSTEIN. I can't say definitively, but I know we have had some discussions with credit card companies from time to time on this. And I think sometimes it is a marketing effort to get more customers. It is an effort to cultivate people who will be—once they get degrees, will be customers in the future.

But I think you would have to ask the credit card companies about how they make these determinations.

Mr. CASTLE. Mr. Hensarling, I think, mentioned when he was asking questions about trying to understand the scope of the problem. I have trouble with that as well. We hear about these errors, maybe you testified to this, or maybe you don't know it, but is there any way of determining the percentage of errors in terms of the total number of credit ratings that the credit agencies have on hand?

Ms. PARNES. That is actually one of the responsibilities that was given to the Federal Trade Commission, to conduct an accuracy study and determine exactly what the extent of the problem is.

It is a long-term study. I think our last report is due in 2014. We have already issued two reports to Congress on the pilot project.

Mr. CASTLE. Roughly, what did we learn in the two reports?

Ms. PARNES. In the pilot project that we have conducted, we have learned that this is going to be a difficult study to do. We worked with 30 consumers and went through—we had experts who sat with them and looked at their credit reports and identified what might be inaccuracies, and we were only able to get seven consumers who had problems to pursue those inaccuracies with the CRAs; other consumers didn't. So we are trying to revise our pilot and get a better method for pursuing this.

Mr. CASTLE. It will be interesting to see the final results.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The gentlewoman from New York, who is one of the main authors of section 312 that we have been discussing.

Mrs. MCCARTHY. Thank you, Mr. Chairman, I appreciate it.

It has been an interesting year. As Mr. Shays said, and certainly, my colleague, Mr. Moore, we all have constituents, and we as Members have probably been hit one way or the other which we would consider being unfair.

But going back in section 312, I notice in March of 2006 you put out an ANPR. I apologize; I wasn't here earlier when you spoke, but there hasn't been further action since then, so I was wondering, when do you plan on going further?

Ms. PARNES. Well, the agencies have been meeting very regularly since the comments were received, after that ANPR was issued.

We do not have a timetable for proceeding, but it is something that I think we can reach out to our colleagues in the other agencies and set a timetable for this.

Mrs. MCCARTHY. I guess this goes back to Carolyn Maloney on the timetables. So you can't say whether it would be a year? How long does it usually take to set up a timetable?

Ms. PARNES. Setting a timetable shouldn't take a very long time.

I think that, as my colleague indicated, when we engage in rulemaking on our own, we act quickly. You can complete a very complex rulemaking in a year. The FTC has done it in under a year. Working on a joint rulemaking really is a much more difficult process because the agencies are coming at some of these pretty complex issues from very different perspectives, and we need to reach agreement.

Mrs. MCCARTHY. Because it was done in 2003, we are in 2007, it was done in 2003 mainly because of all the complaints that we, as Members of Congress, were hearing from our constituents. 2007 is here and we are still not getting anywhere there, so hopefully the next time we have you in front of us, we will actually have some results on that.

This case just opened up in my office last week, a young woman, single mother now, she was divorced, been divorced for quite a long time, always paid her debts on time, she went to get a student loan for her son, her son was going off to college. They had been divorced for a long time, and she found out she was denied because there was apparently—while they were married, there was a debt. She got divorced, but the debt stayed on because the credit cards didn't change. When they come to us, it is a last resort, to be honest with you.

Yet she has not been able to clear it up, even though she has a whole record from the time of divorce that she has paid her bills on time. How do you solve a problem like this?

Ms. PARNES. From a process perspective, one of the things that Congress did set up in the FACT Act was this complaint referral between the FTC and the CRAs. If the consumers were in this loop where they are trying to correct something and they are unable to do so, we would encourage them to file complaints with the FTC. We refer those complaints back to the CRAs and that—consumers may get their complaints resolved that way. It also will help us understand exactly what is going on when consumers are saying one thing and the CRAs and furnishers are saying another.

Mrs. MCCARTHY. When you talked earlier about the literacy—everyone keeps coming to our office saying that they are working on literacy and how to teach people to go into schools and everything. I guess, mainly because I am on this committee, I am always looking to see what is coming in on Long Island, what is on TV to show consumers.

In the beginning, to be honest with you, I don't see much. That is why we keep saying, where is the educational part? I do pay attention to anything that comes through, especially on the government level, to educate consumers on a whole host of subjects, and I don't see that much.

Is it—I mean, being that so many people don't know about it, obviously we are not reaching the people we need to reach.

Ms. PARNES. Credit financial issues, it is an area where the FTC has really been very active in terms of pushing out financial educational material. And we would be happy to share that information with you.

Mrs. MCCARTHY. Thank you.

My time is up. Thank you, Mr. Chairman.

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

Mr. MARCHANT. Thank you very much.

I would like to move into a little bit of a different subject matter. How many new people a year generally enter the credit system, and are their names put on the first time on the rolls?

Ms. BRAUNSTEIN. I have no idea.

Ms. PARNES. We don't have information on that either.

Mr. MARCHANT. Have you planned or thought about—legislation is pending in the Senate now and very possibly will head to the House, and be voted on by the House, that would add potentially millions of people to credit rolls and how would your agency deal with that.

Ms. BRAUNSTEIN. I am not sure which legislation you are referring to.

Mr. MARCHANT. That would be the immigration bill.

Ms. BRAUNSTEIN. We don't have a position on that.

Mr. MARCHANT. I am not asking you to take a position on it. I am asking you, have you had discussions about how you might handle the number of new people in the system and the people that you govern and the way that these people will be added to the rolls? Are there any on the rolls?

Ms. BRAUNSTEIN. We supervise financial institutions, so that wouldn't be in our purview.

Ms. PARNES. In terms of immigrants entering into the credit system, that is not specifically something that the FTC would be dealing with. And yet I think this is a community that we have reach out to, at any rate in terms of—much of our consumer information that we put out in the financial area, we put out in different languages, particularly in Spanish, and we attempt to reach underserved communities.

Mr. MARCHANT. What I am mainly talking about is the credit reporting agencies that you supervise and the amount of additional credit information and additional requests that are somewhat inhibited by noncitizens that might become citizens and immediately enter in the country legally, that are somewhat inhibited in their credit situation simply because of their immigration status. Whether they are legally or not, they are.

How are your credit agencies are going to process that? And in your case, you are saying you don't know how they are going to process it. It could become a real problem.

Ms. PARNES. We don't supervise the CRAs in the same way that the financial supervisors supervise the banks. I think, from our perspective, that would probably be a question that is better answered by the CRAs themselves.

Mr. MARCHANT. Okay, thank you.

I yield back.

Mr. GREEN. [presiding] I recognize myself for 5 minutes.

What is the penalty for knowingly giving false information. Ms. Parnes, are you aware?

Ms. PARNES. For a furnisher?

Mr. GREEN. Yes.

Ms. PARNES. Well, it would certainly violate the FCRA, and we do—the Federal Trade Commission can obtain civil penalties for violations.

Mr. GREEN. What specifically would the penalties be? I am interested in knowing, what is the price one pays for providing false information knowingly?

Ms. PARNES. We have sued individual companies. We can—

Mr. GREEN. When was a company last sued?

Ms. PARNES. I believe that the last announced action was in 2006.

Mr. GREEN. How many have been sued in the last decade?

Ms. PARNES. Under the FCRA, we have brought over 20 cases.

Mr. GREEN. Twenty in the last decade?

Ms. PARNES. Yes, and we have obtained almost $20,000,000 in civil penalties.

Mr. GREEN. How many complaints have you had in this area in the last decade?

Ms. PARNES. I don't know.

Mr. GREEN. Would you conclude thousands?

Ms. PARNES. We certainly—

Mr. GREEN. Tens of thousands?

Ms. PARNES. We have certainly had tens of thousands of complaints. I do not know how many contained accuracy specifically.

Mr. GREEN. Who is required to provide notice before reporting negative information?

What furnisher is required to provide notice before submitting negative information?

Ms. BRAUNSTEIN. All furnishers.

Ms. PARNES. Is that—

Mr. GREEN. All, notice to the consumer before providing negative information—

Ms. PARNES. Right. I believe there is no requirement that furnishers provide notice to consumers before negative information is provided. They can provide the notice either before or after. They must provide, at a minimum, adverse action.

Mr. GREEN. Would providing notice before filing, before presenting your negative information, help to avoid—I'll wait until you get your—believe me, I understand.

Ms. PARNES. We are going to consult on this.

Ms. BRAUNSTEIN. I have been told that most furnishers do provide notice before furnishing, but they are not required to.

Mr. GREEN. While I appreciate what people may do, the question really goes to what is required. Is there a response because my time is slipping away?

Ms. PARNES. Yes, I am told there is a rule that requires it.

Mr. GREEN. Is that rule enforced?

Ms. BRAUNSTEIN. We enforce it with the institutions that we supervise.

Mr. GREEN. How is it enforced?

Ms. BRAUNSTEIN. It is enforced through both through our examinations of State member banks and it is enforced through our investigation of consumer—

Mr. GREEN. Is the consumer in a position to ascertain whether or not the negative information that has been reported is a consumer in a position to complain and say that I did not get notice, and is there some repercussion for not giving that notice?

Ms. BRAUNSTEIN. Yes. If they have not given notice, they will be cited for a violation.

Mr. GREEN. What is the penalty for this violation?

Ms. BRAUNSTEIN. Well, the violations we have cited we have not enacted civil penalties, not our agency.

Mr. GREEN. So much to know, so little time. Let me go to another area.

Some people do not bank at First National, many people in fact are now banking at "first mattress." Many people don't have bad credit or good credit; they just don't have credit. They do pay light, gas, and water bills; they pay the bills they have, but they are in a nontraditional credit world, if you will.

What are we doing to help these persons acquire a credit score such that they too can benefit from credit in the traditional credit market?

Ms. BRAUNSTEIN. That goes to the point I was making earlier about one of the things we are looking at in the furnisher rules is that we, to encourage some of these nontraditional entities to be furnishers, it is important that we keep that in mind when we are rating these rules and not make them so prescriptive as to discourage organizations from becoming furnishers.

Mr. GREEN. Well, my time is up, and if the chairman were here, he would tell me this, so I will not abuse the privilege.

We now recognize Ms. Brown-Waite for 5 minutes.

Ms. BROWN-WAITE. When someone is disputing something on their credit report, and they write a letter of dispute, and they then, let's say, go to buy a car or something, and their credit report is pulled, does the letter of dispute also go with the FICO score?

Ms. PARNES. I believe there is a notation on the report that there is a dispute, but the underlying information is not forwarded.

Ms. BROWN-WAITE. So there is a note that there is a dispute?

Ms. PARNES. Yes.

Ms. BROWN-WAITE. It could be a valid dispute or a dispute that totally is not valid and the person who would be extending the credit would never know.

How would the person seeking the credit get that information to the lender if it truly was a valid dispute?

Ms. PARNES. I think what the lender knows is that it is a pending dispute and so, because the overwhelming majority of disputes

are processed within 30 days, I think in that notation the lender would understand that this is a current dispute that is being considered by the CRAs and the furnishers.

Ms. BROWN-WAITE. Okay. We are in the process of going to hold in the district some sort of public forum for people so that they understand this, and also identity theft, which is very prevalent, but one of the most frequent complaints that my district offices get from constituents is, there are no real-live people at the credit reporting agency. All they get is caught in the "Press 1 if you want to be connected with another machine," "Press 2 if you want to totally be ignored," and they are very, very frustrated.

Is there not a mandate that there be a real person there who can answer a question?

Ms. PARNES. Yes, there is, and that the phones need to be answered in a timely fashion, and that is an issue that we pursued with the CRAs in 2000. We brought an action against all three CRAs for the failure to have those phone systems set up.

Ms. BROWN-WAITE. What was the penalty?

Ms. PARNES. We imposed a collective penalty. I believe it was $2.5 million. But if you have complaints from consumers that they are—from your constituents that they are getting caught up in some phone tree loop, it is something we would look to follow up with you.

Ms. BROWN-WAITE. They are very frustrated. My office will ask the credit company to call the constituent, we don't want to get in the middle, we certainly don't want to know of the consumer's problem, they need to solve that with the credit agency. That is an ongoing complaint that we hear from constituents.

Let me ask you another question. If someone listed, whenever you apply for credit you have to list your nearest relative not living with you. If in the meantime that nearest relative not living with you racks up a lot of credit card debt and becomes a deadbeat, does that impact your credit rating? Would the sins of the father fall to the son?

Ms. PARNES. I don't think it should affect your credit rating unless they are actually on the account.

Ms. BROWN-WAITE. Okay. So if they are the nearest relative that someone puts down, and the, quote, nearest relative becomes a deadbeat, that does not affect the person?

Ms. PARNES. I think that it would only affect that consumer's rating if that relative was actually on the account.

Ms. BROWN-WAITE. On the account.

Ms. PARNES. Not if they are just listed as nearest kin.

Ms. BROWN-WAITE. Okay. One last question.

Someone asked me to get involved in an issue involving a mortgage company, and I said to them that, you know, they need to solve their problem with the mortgage company. But I pulled up that particular mortgage company online this morning, and I found a rash of lawsuits, of class action suits, against that company.

Do you also—I mean, is it up to the consumer to let you know—right—to let you all know that there is a problem? I mean, when I saw comments on the Web site like this mortgage agency totally ruined my credit, and it was from like all over the United States,

do you all also look at those kinds of things, or do you have to wait for an actual consumer complaint?

Ms. PARNES. We do look at those things. We certainly get consumer complaints. We encourage them to contact the FTC when they are experiencing a consumer problem. But we absolutely go out and do our own look online with, you know, consumer organizations. We try and find out what is going on out there ourselves.

Ms. BROWN-WAITE. Okay. I appreciate the information.

And thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. The gentleman from Missouri.

Mr. CLEAVER. Thank you, Mr. Chairman. It appears as if we no longer have a debtors prison. We do have a debtors hell, and it unfortunately appears, by the evidence, to most negatively impact the poor.

There was a study done in my State of Missouri by the Missouri Department of Insurance, which revealed that poor Missourians were very likely to have credit scores 12.8 percent lower than their wealthier counterparts.

Do you have any reason to believe that people who are either poor or minority would have worse test scores because the test—the report also suggests or states that these lower test scores occurred even in minority areas where the residents had higher incomes than some of the predominantly white areas. So it is either you are poor and get a low test score or you are minority with high income and still get a low test score.

Do you have any reason to believe that based on a person's race or based on their income level that they are automatically headed toward low test scores?

Ms. PARNES. No. And one of the things in the credit scoring area that we are looking at is whether there is any relationship between credit scores and, you know, kind of minority status. And that is the report I mentioned earlier that we should be issuing this summer.

Mr. CLEAVER. You know, one of the strange things about this—my colleague from St. Louis is gone, Mr. Clay. He and I represent the two largest urban centers, but the poorest areas of Missouri are not the two urban centers. They are represented by our colleague and friend, Jo Ann Emerson. And because of some lynchings in the 1920's, most of the African Americans left southern Missouri.

But southern Missouri is the poorest area of the State, predominantly white, and they receive a 12.8 percent lower credit rating. And so it seems to me that—you know, that if you are poor, you are in trouble in terms of your credit scores, and if you are African American, it doesn't matter whether you are poor or not.

And it is troublesome, because if you pile that on with other problems that occur—let me also find out about how these credit scores are handed down, because right now, particularly in the urban areas, there are debt buyers. And these debt buyers go out and they buy the debt from a larger company that was unable to collect the debt, and then in many instances they sell it to a smaller company and a smaller company, and pretty soon somebody gets a good deal.

And these—but by then it is a stale debt, what is called a "stale debt," and this may be 3 years after someone got into trouble or

3 years after they filed bankruptcy and their debts were cleared. In some instances, we have found that these debt buyers put in place all kinds of means to collect debts, and the most effective has been to take people's cars and hold those cars until the debt is paid. In some instances, poor people, who don't know what to do, just turn over the keys because they don't know any better, even though they filed bankruptcy.

Don't you think that there is a need now for some kind of massive reorganization, not tweaking what is going on, but massive reorganization in terms of the way debt is reported, and something needs to be done about the debt buyers? Do you agree?

Ms. PARNES. Well, one of the things, the Commission has responsibility for enforcing the Debt Collection Practices Act. And some of the practices that you are describing may violate the FDCPA. The Debt Collection Practices Act was enacted 30 years ago, and the industry has changed dramatically in that period of time. The Commission is holding a workshop on this issue later in the year to look at all of the changes that have taken place.

Mr. CLEAVER. Do you need any help from this committee?

Ms. PARNES. Well, you know, it is certainly something that we will think about, and we will reach out to you, because you obviously have information on this with your constituents.

Mr. CLEAVER. I was talking more in terms of legislation.

Ms. PARNES. We will—it is one of the things that we will be looking at during the course of our workshop. Do we need to—

Mr. CLEAVER. When is it?

Ms. PARNES. I believe it is in October. But one of the issues that we will be looking at is whether we think there should be legislative changes, and if we do, we will certainly report back.

Mr. CLEAVER. Thank you, Mr. Chairman.

The CHAIRMAN. I will say to the gentleman from Missouri that I know when he is interested in a subject, that it is of serious interest. And I will be asking him if he will kind of be our liaison to the FTC and pursue this. And we will have a better fix on it later on in the year.

I thank the witnesses for a very reasonable morning. You have been very direct in answering the questions. We will have more to say, but you have advanced the process, and we appreciate it.

And I will now call forward the second panel: Mr. Evan Hendricks, Mr. Stuart Pratt, Ms. Chi Chi Wu, Ms. Anne Fortney, and Mr. Leonard Bennett. And if people can move quickly, we would appreciate it. We will move promptly.

I thank the panel for your sitting through it, but I do think it is helpful for you to have heard what we have heard and to hear our concerns. And we will begin with Evan Hendricks, who is the editor and the publisher of Privacy Times, and someone who is very familiar with the issue and the committee's work. Mr. Hendricks.

## STATEMENT OF EVAN HENDRICKS, EDITOR/PUBLISHER, PRIVACY TIMES

Mr. HENDRICKS. Thank you, Chairman Frank.

And I have to start by agreeing that the FACT Act was a legislative success, both for the long and hard work, and the bipartisan-

ship. If I thanked every member who worked on it here, my 5 minutes would be gone, so I will save that for later.

I think the credit reporting system is indeed the best in the world, or the worst except for all the rest. But you have me here to describe the chronic problems that we continue to have with it. And I think I will break them down into three categories for the committee's purposes.

First, too often there is systematic disregard for the goals and spirit of the Fair Credit Reporting Act, especially when it comes to disputes and correcting inaccuracies. Too often CRAs, credit reporting agencies, furnishers, don't carefully consider consumers' disputes and they don't investigate them.

Second, I think it became clear from the earlier panel, there is not systematic enforcement of the Fair Credit Reporting Act. Not only is there stalled rulemaking, but there has not been the kind of enforcement—vigorous enforcement from the early 1990's that we had, which went to the heart of the inaccuracy problems and the nonresponsiveness issues. And I share Ranking Member Bachus' disappointment, who as chairman of the subcommittee back then, spent all the time going through the hearings that led to passage of the FACT Act.

I think, most importantly, you must recognize that—it is readily apparent to me—that industry has made a calculation that it is better to continue the current process of inadequate reinvestigations and nonresponsiveness, the system that is bringing increasing numbers of complaints to your offices, rather than make the changes that would be necessary to avoid these same old problems that we have had going back easily to the early 1990's.

Industry's goal is to reduce the costs of compliance, and they pretty much are succeeding at that, sometimes at the expense of those unlucky consumers who become victims of chronic inaccuracy. One leading problem that we have is a very old problem. That is the mixed file; it is a central cause of inaccuracy. The modern version of it is identity theft. In both cases, inaccurate data on one consumer is dumped onto the credit report of another.

Mixed files goes to the problem of partial matching. That means that credit reporting agencies don't require an exact match of Social Security numbers to conclude that two people are the same, and that is why they mix two people together.

Part of this stems from their goal. And though the Act has the goal of maximum possible accuracy, the credit reporting agencies have the goal of maximum possible information that they can sell to their creditors to make sure they don't miss out on anything.

Now, these problems were not new. They were identified in consent agreements going back to 1990 to 1992 with all three of the major credit reporting agencies. One of the things emphasized in that was the importance of using full identifying information, something the credit reporting agencies agreed to, yet they have continued partial matching, not only in general, but also after consumers notify them that the partial matching is what is causing their inaccuracy.

And, quickly, the other corollary of partial matching is that if you have an exact match of a Social Security number, the credit reporting agencies will disregard a different name, a different ad-

dress, a different city and State. And this has been a tremendous benefit to identity thieves, who know if they can just steal a Social Security number and apply for credit in your name, they can unlock the disclosure of your credit report.

The other central problem, which my colleague Len Bennett will go into in more detail, is of inadequate reinvestigations. Industry wants to reduce costs through automation. They have set up a system that was required of them by Congress called e-OSCAR, what I call the ACDV Exchange, because it is an exchange of messages. But what this boils down to is, instead of truly investigating consumers' disputes, electronic messages are swapped between the credit reporting agency and the furnisher, and they compare identifiers, they compare what they reported before, and then conclude that what they reported before is what is still being disputed, so they call that "verified as reported." This has led to many a maddening moment for consumers that know that false information is being verified.

Again, this issue was identified back in the consent agreements of the early 1990's and figured into the 1996 amendments of the FCRA, directing the credit reporting agencies to refer special cases to experienced investigators. But, to date, instead of doing that, credit reporting agencies are outsourcing their dispute investigations to low-wage countries, and pretty much don't try to have triage systems that identify complex disputes.

I think in terms of—just one word, in closing, one word on enforcement and the problems with enforcement is, this new issue of the triggers is showing—credit reporting agencies are selling leads to people who have applied for mortgages. So you apply for a mortgage, and all of a sudden your name is sold to lots of other mortgage lenders.

The FTC has concluded that this is okay. And I don't understand, how this can be a firm offer of credit in that context. And there are also a lot of anecdotes trickling in already that this is leading to bait-and-switch offers. Thank you.

[The prepared statement of Mr. Hendricks can be found on page 139 of the appendix.]

The CHAIRMAN. The trigger issue that I mentioned has come to the committee's attention from a number of sources, and we are going to address it as a separate issue. So I don't want to cut you off, but we will be back on that issue.

And we are talking about some kind of legislation. A number of people have expressed concern.

Next we have Stuart Pratt, who is the president and CEO of the Consumer Data Industry Association. Please, Mr. Pratt.

**STATEMENT OF STUART K. PRATT, PRESIDENT AND CEO, CONSUMER DATA INDUSTRY ASSOCIATION**

Mr. PRATT. Mr. Chairman, and members of the committee, thank you for this opportunity to testify before you today. Let me just make some key points, and then we look forward to the Q&A process following, as he disappears below the dais.

First, there is a careful balance which has to be maintained in a voluntary system of data-furnishing, and this point has been made very well by the first panel. There are 18,000 institutions

that furnish data to the consumer reporting system. They are updating 200 million credit reporting files. There are 3 billion updates a month, so there is a tremendous exchange of information that is going on. Regulatory overreach could have an effect on decisions by many of the smaller institutions when it comes to whether or not they choose to continue reporting.

We do have a new and different context today for thinking about the credit reporting system in this country, and that is the free annual credit report. And as the first panel testified, 52 million file disclosures over a 2-year period were made. That is, bar none, the largest number of file disclosures ever in the history of the credit reporting industry that have been viewed by consumers.

We will add to that, however, that 89 percent, or 46.3 million, of those file disclosures did not result in a dispute, did not result in a question, did not result in a communication. That is really an extraordinary success rate. Whereas we used to have 25 or 30 percent dispute rates in the late 1980's, we now have dispute rates as low as 11 percent, and perhaps lower than that. There is some good news.

Congress did believe that there needed to be more information about accuracy. They have asked the FTC to study it. I think this is really due to the fact that the GAO did conclude that many of the consumer group studies were not statistically representative, or had flaws in their methodologies, and we really had to get to the root question.

I think, in part, these 52 million disclosures, the fact we have consumers looking at their reports is probably the best way for us to get to the root question of how consumers feel about and interact with their reports.

Our members haven't waited for the law or the FACT Act to become effective in order to proactively manage the quality of information. Standardizing how data is reported to our members is a key to how we improve data quality. Use of the Metro 2 data standard is climbing steadily following the enactment of the FACT Act.

In 2005, 50 percent of data reported to us was reported in the Metro 2 standard; today, we see 81.3 percent of data reported in the Metro 2 standard. This is great progress. This is good news, and it is a result, in part, of the FACT Act's enactment.

There are a number of rules that have already been testified that are not complete. We think they must be completed in order to fully evaluate the net effects of the FACT Act. One of those involves direct disputes. The GAO found that 64 percent of consumers did want to dispute directly with lenders, at least in certain cases.

We have voluntarily set up a system to allow any lender to process a consumer's direct dispute in order to update the file at the credit reporting system. I can tell you that right now we are processing 35 million updates a year coming from this voluntary system of allowing furnishers to update outside of the regular cycle of reporting, outside of the dispute process. So we think this is a good, proactive step in the right direction.

Ultimately, we can't assess the FACT Act with regard to accuracy without the rules and regulations. I think there is more that will be done on that.

The reinvestigation process: In addition to accuracy, the FACT Act directly addressed reinvestigations. In fact, there was a study conducted with regard to reinvestigations. The FTC and the FRB concluded that the FACT Act should be given time to work, that no new legislative proposals were required at this time, and we agree with this conclusion.

We have been proactive, however. In the absence of legislative recommendations, we know that consumers want responses that are both correct and timely when they submit a dispute. Our members' automated dispute system, called e-OSCAR, accomplishes this goal. In 72 percent of cases where disputes were submitted using this system, the response is received in 1 to 14 days; that is less than half of the 30 days that the Fair Credit Reporting Act gives us.

Consumer groups often state that the consumer reporting agencies are supplied with other information along with the dispute, including account applications, billing statements, and letters. We have looked into this further, and while our data is preliminary, we find that nearly 55 percent of all disputes are submitted telephonically or by the Web, so we are seeing a shift towards telephonic and Web-based communications.

Of the 44 percent of consumers who submit, we found only 2 to 3 percent of the samples we looked at submitted anything other than a simple form, a standardized form, or submitted a simple letter. So, in fact, there are not often cases where lots of other information has been submitted where that information is not being conveyed.

Let me just close with this key point. We would love to get rid of credit repair; 30 percent of our resources are dealing with credit repair. One of the problems we have with credit repair is that it affects our processing of paper, which includes consumer-submitted information. So if we have to—I have even seen a sample of a letter from Bank of America ostensibly clearing a consumer's credit, except for the problem that the Bank of America letterhead was misspelled. So the key here is, if we could dial down on credit repair, we know that we could do an even more effective job of processing every consumer's dispute.

I thank you, and I see my time has expired.

[The prepared statement of Mr. Pratt can be found on page 177 of the appendix.]

The CHAIRMAN. Thank you.

And next is Chi Chi Wu, a staff attorney with the National Consumer Law Center.

**STATEMENT OF CHI CHI WU, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER**

Ms. WU. Mr. Chairman, and members of the committee, thank you for inviting me here today. I am testifying on behalf of the low income clients of the National Consumer Law Center. And thank you for holding this hearing on the state of the American credit reporting system.

Unfortunately, we are sorry to say, this is a system that is rife with errors, and that the dispute process, the safety net designed to correct those errors, is full of gaping holes. You have heard from Evan Hendricks about some of the types of seriously harmful errors in credit reporting, and how the credit bureaus could, but choose not to, fix them.

There are other errors caused by, for example, debt buyers, that Representative Cleaver raised, such as reaging, freshening up the date on trade lines so that they don't drop off the credit report within the statutory 7 years.

Now there appears to be some debate or discussion about the magnitude of the problems, about how many credit reports are inaccurate. At one point the industry had claimed that about 3 percent of credit reports contained errors. Studies by consumer groups have shown as much as 25 percent contained serious errors. The FTC is studying the matter.

We know that 10 million consumers are the victims of identity theft every year. And we have heard—we have had previous statistics that 22 percent of consumers who get their own credit reports file a dispute. Mr. Pratt had said today it is 11 percent.

But whether it is 3 percent, 11 percent, 22 percent, or 25 percent, the scale of the number of errors in credit record reporting is enormous anyway. When you have 200 million consumers with their personal information on file with the credit bureaus, even a 3 percent error means 6 million consumers, 6 million consumers whose lives are sabotaged by inaccurate credit reporting.

And it could be 10 million from identity theft. Or if it is 25 percent, you are talking 50 million consumers. Any way you slice it, we are talking about millions of consumers victimized by errors from faceless computer-generated reports.

Now, we don't expect perfection. What the FCRA requires are reasonable procedures to assure maximum possible accuracy. And as Mr. Hendricks has shown, a lot of these errors are the result of unreasonable procedures.

There is a second level of protection for accuracy, as well, the FCRA dispute process, which is the safety net. Unfortunately, as Mr. Len Bennett will speak to, the system—that system is fundamentally flawed with its perfunctory investigations and its formalistic reduction of serious controversies into two or three digit codes.

Now, Mr. Bennett is going to talk about what the flaws are in the reinvestigation process, and I am going to give you the "why." The first "why" is semantics, a disagreement over the meaning of the word "accuracy." The bureaus and the furnishers apparently believe that accuracy means conformity to data records, not conformity to truth or conformity to reality.

For example, the Mortgage Bankers Association has urged regulators to define accuracy as accurate reporting of the status of the account as reflected in the furnisher's records. In other words, it is accurate if it is in our records. If that becomes the standard under the section 312 guidance, whatever the furnishers's records show, that standard is not going to improve anything for consumers.

Now, the second reason for these flaws is the age-old adage that money talks. It is critical to understand that the clients of the cred-

it bureaus are not consumers; it is the creditors. So there is little economic incentive to conduct accurate reinvestigations, good, thorough reinvestigations, because that would cost the industry real money, money spent primarily to benefit consumers, people who aren't their real customers.

The only thing that will force the bureaus to fix their system is vigorous enforcement of the FCRA. And what consumers need is very simple, something taken for granted in many other areas of the law, the right to ask a judge to issue an order saying, "Fix that credit report."

Fix that credit report, with one minor exception, the FCRA does not provide consumers the right to ask for that. The FCRA is an anomaly in that respect. In most other areas of law, there is a Supreme Court decision that provides the basis for injunctive relief.

Providing the courts with explicit authority to provide injunctive relief will not only improve accuracy, it will improve judicial efficiency. Consumers won't be compelled to file lawsuit after lawsuit when the bureaus repeatedly include inaccuracies or fail to comply with the FCRA. The alternative to seeking injunctive relief is to ask for more monetary relief.

The last issue I wanted to talk about is a scrivener's error. FACTA inadvertently created some ambiguity about whether consumers can enforce the FCRA's adverse action notice requirements, the notice given when credit or insurance is denied on the basis of an unfavorable credit report.

FACTA was intended to limit the remedies for another notice, the risk-based pricing notice. However, due to some ambiguous drafting, several courts have interpreted this limitation to apply to the prior adverse action notice. This was a scrivener's error.

There had been no discussion among any of the stakeholders of reducing any private rights by FACTA, and based on notions of fair play, it should be fixed.

We look forward to working with you, Chairman Frank and other members of the committee, on further examination of the credit reporting industry. Thank you for this opportunity.

[The prepared statement of Ms. Wu can be found on page 208 of the appendix.]

The CHAIRMAN. Thank you.

Next, Anne Fortney, a partner at the law firm of Hudson Cook.

**STATEMENT OF ANNE P. FORTNEY, PARTNER, HUDSON COOK, LLP**

Ms. FORTNEY. Chairman Frank, and members of the committee, thank you for this opportunity to appear before you. I am Anne Fortney, a partner in the Washington, D.C., office of the Hudson Cook law firm.

Our firm specializes in consumer financial services. We represent a broad spectrum of creditors and other furnishers. My practice focuses primarily on issues arising under the Fair Credit Reporting Act and similar consumer protection statutes. Some of my clients are consumer reporting agencies; most are creditors and similar data furnishers.

I bring to this practice more than 30 years' experience in the consumer financial services field, including service as the Associate Di-

rector for Credit Practices at the Federal Trade Commission. In that capacity, I was responsible for enforcing the Fair Credit Reporting Act. I have also worked as in-house counsel at a consumer credit card issuer.

Currently, in addition to counseling clients, from time to time I serve as a consultant and expert witness in Fair Credit Reporting Act litigation.

I commend you for holding this hearing on the important issues of accuracy of credit report data and the effectiveness of the consumer dispute process. My testimony today discusses the obligations of creditors and other furnishers of credit report information, how furnishers are responding to concerns about the accuracy of information furnished, and the resolution of consumer disputes.

I believe my experience provides a unique perspective on FCRA compliance challenges facing furnishers. From this experience, I observe that although questions about credit report accuracy and the dispute process continue to generate legitimate concerns, furnishers take their FCRA compliance obligations very seriously, and they devote substantial resources to the fulfillment of their responsibilities. Their reasons for doing so include the following:

First, in my experience, most creditors want to comply with the law. They also want to satisfy their customers and preserve their reputation. Accurate account information also benefits creditors in evaluating credit risks, monitoring default, and pursuing collections.

In addition, creditors want to detect and prevent identity theft and other fraud, and take expedient measures to minimize their losses.

Finally, if furnishers fail to provide accurate information or investigate disputes in compliance with the law, they will incur additional costs that are involved in handling escalated disputes. Their failure can also lead to enforcement actions and litigation.

The furnishers with whom I work have implemented policies and procedures for dealing with consumer disputes, whether they receive disputes from a consumer reporting agency or directly from a consumer. It is my experience that furnishers do train employees about policies and practices so they can investigate disputes in a timely manner and accurately respond to them.

The appropriate level of investigation depends on the nature of the dispute. Most disputes can be resolved by reference to the furnisher's own records, and these are disputes that are resolved to the customer's satisfaction. That is how most disputes can be handled.

Escalated disputes, including those involving identity theft claims, merit the attention of specialized fraud investigation departments, and the creditors with whom I have worked have established such departments.

The reasonableness of a furnisher's investigation should be measured by the nature of the dispute and the procedures that were followed in light of the information reasonably available to the furnisher at the time of the dispute. The fact that a dispute ends in litigation does not mean that the furnisher's investigation was unreasonable.

In my experience, very few cases result in escalated or unresolved disputes, or ultimately in litigation. When disputes do end in litigation, some courts have agreed with consumers. Other courts have found a furnisher's investigation to have been reasonable as a matter of law. In other instances, and I think in most instances, the courts have held that the reasonableness of a furnisher's investigation is a factual question for the jury. It will depend on the circumstances.

As a result, I do not believe the cases revealed any systemic problems that would warrant congressional action. I note in this regard the written statements of two witnesses at this hearing; Mr. Bennett and Mr. Hendricks have mischaracterized my expert witness testimony as a basis for personal attacks on my qualifications. I will not waste the committee's time in responding, other than to observe that such attacks are entirely inappropriate and are irrelevant to the important concerns of this committee.

In conclusion, I observe that through the leadership of this committee, the FACT Act amendments were enacted to improve, in pertinent part, the accuracy and integrity of consumer report information and the resolution of consumer disputes regarding this data. I believe that when the FACT Act provisions are fully implemented, they will enhance credit report accuracy and dispute resolution. I believe that additional requirements should not be created until the overall effectiveness of these provisions can be determined.

I am happy to answer any questions the committee may have. Thank you.

[The prepared statement of Ms. Fortney can be found on page 115 of the appendix.]

The CHAIRMAN. Thank you, Ms. Fortney.

And next Mr. Leonard Bennett, with Consumer Litigation Associates, who is testifying on behalf of the National Association of Consumer Advocates.

**STATEMENT OF LEONARD A BENNETT, CONSUMER LITIGATION ASSOCIATES, P.C., ON BEHALF OF THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES**

Mr. BENNETT. Good afternoon, Mr. Chairman. I am not a customary witness. This is my second time in Congress. I am a lawyer.

Let me thank, first, the committee in general—both under its current chairmanship as well as that of Ranking Member Bachus when he chaired the subcommittee to which I spoke in 2000—has been responsible and responsive to consumer interests. That is the position that my organization holds. That, I believe, is a fair statement of the position of the numerous other individuals with whom I regularly associate in Fair Credit Reporting Act work. This committee historically, as well as currently, has provided the appropriate level of attention, both sides of the aisle, and we certainly—we at the Advocates and we, the consumers we represent—appreciate that.

I would suggest a couple points of agreement with the testimony. Since you have our written testimony already, I would state that NACA, and generally the consumers that we represent, agree with a few things. We do agree that there is currently sufficient legisla-

tion to prohibit certain types of conduct that are regular and that are common and that frequently are litigated.

For example, Equifax in a recent case turned over—had to turn over under court order its history of lawsuits. And we note that it has been sued under the Fair Credit Reporting Act for failed investigations over 2,000 times since 2002. That number is fairly consistent with the other bureaus.

There are remedies that are available. However, I spoke in 2003, as with my conservative roots, and I made a statement in my testimony that we do not need an army of regulators, that we need to be able to have a private remedy to go out and to do something about this ourselves.

We were concerned that you not take away States' rights at that point, and I now change my testimony. I think you need an army of regulators. The Fair Credit Reporting Act provides mandates to the Federal Trade Commission to do and to act and to enforce provisions this Congress has enacted. These include requirements already on the books that furnishers conduct reinvestigations.

Ms. Fortney, I would publicly apologize to Ms. Fortney, to the extent she is offended by our testimony. But, for example, the case that is described, Ms. Fortney, was offered, by MBNA, a company that we litigated against and she represented.

The CHAIRMAN. Ms. Fortney is not the subject of this hearing, so why don't we please confine ourselves to things we can legislate on.

Mr. BENNETT. Absolutely. On the question of what type of reinvestigation duty there is for a furnisher, the case at issue was *Johnson* v. *MBNA,* that held that the reinvestigation has to be reasonable. And to that extent, having read Ms. Fortney's testimony, we agree that testimony, that the position of our organization is that the reinvestigation obligation exists. It just has not been enforced.

The other issue that we address in our testimony is the failure of the CRA, the bureaus' e-OSCAR reinvestigation system. There is no doubt, there cannot be doubt if you read the procedures, if you read the deposition testimony we have offered from the credit bureaus, that there is no discretion exercised.

Equifax outsources all of its reinvestigations to a company in the Philippines that is paid 57 cents per dispute, regardless of how substantive. TransUnion does the same to India. All that is done by the CRAs is to code the disputes into one of three to four codes.

I included the codes that the CDIA was discussing off the record. And the comments of the CDIA and the general counsel of TransUnion, behind the scenes, in deciding what to tell the Federal Trade Commission in the recent reinvestigation report are telling. It says, regardless, the fact that large numbers of disputes are coded using three to four top codes will be evident and may contribute to the ongoing perception that dispute codes are very generic and less effective.

Our concern is that without a requirement that all relevant information be provided, a system already set up by the credit bureaus exists since 2005 to forward those scanned documents, that whatever is done to strengthen the furnisher reinvestigation provisions, there will not be a means to convey the disputes from the bureaus to the furnishers.

The National Consumer Law Center has highlighted two other concerns we have addressed in our testimony as well. We are concerned that a provision 615, section 615 of the FCRA, may have inadvertently repealed the private cause of action for a provision to require an adverse action notice in the event of a credit denial. Currently, Mr. Chairman, Virginia is the only State in which a judge has ruled that a creditor has to provide a notice of adverse action now. Everyone else has held it has been repealed.

I appreciate the honor of this testimony, and I am ready to answer any questions.

[The prepared statement of Mr. Bennett can be found on page 55 of the appendix.]

The CHAIRMAN. Thank you. Virginia being the one exception, whether or not that survives the Fourth Circuit would be an interesting question.

I thank the panelists for calling our attention to that statutory issue, and the staff will be looking into it and will be back. There are obviously two questions, one substantively, whether or not it is a good idea, but also whether or not it was intended. And we will bring that before us.

Also, we will repeat to Mr. Hendricks, the question of triggers, frankly a number of privacy groups have complained, Realtors have complained, mortgage bankers. There is a serious set of complaints, and we do intend to address that.

Let me ask, Mr. Pratt, one semantic, minor, but you were talking about information supplied by the lender and then you meant furnisher. I assume you meant them somewhat the same?

Talking to Mr. Pratt, you talked about information furnished. You said several times about the lender, then you said furnisher. You are talking about the merchant, the point of sale?

Mr. PRATT. In fact, there is a much larger community of data furnishers than just a lender, but the preponderance of the evidence of data is lenders. And so, yes, sometimes we do use the terms interchangeably.

The CHAIRMAN. At the point of sale. The people where the transaction actually took place or the credit card company?

Mr. PRATT. Any time referring to data furnisher in our testimony or today we are talking about a lender or other data source that is supplying data to one of the national consumer reporting services.

The CHAIRMAN. Not the merchant where the sale took place?

Mr. PRATT. Well, ultimately if the merchant opens up a line of credit, then that retailer becomes a data furnisher.

The CHAIRMAN. Right. But if they have gone through, it is the credit card company?

Mr. PRATT. Certainly. Yes, sir.

The CHAIRMAN. I have one question for everybody.

It seems to me that despite the differences, there is a lot of agreement that it would be a good idea if we had section 312 spelled out and we had the procedures, and you would all have some input as to what they would be, so I have this question for each of you. If you don't have an answer right now, get back to me.

It may well be—and I don't think all the blame here is on the regulators—we have asked six very busy regulators to come to-

gether. You know, it is almost like we independently recreated the United States Senate in terms of inability to come to a conclusion. And if we were to decide, after further conversations and lack of action, to give one agency the lead responsibility, not simply as convener, but as ultimate decider, certainly to get input from the others—I think that is the thing we are going to have to consider to take with section 312, the six agencies, and put one of them and say, you formulate this rule, you check with everybody else.

Which one, if we were to do that, who would you recommend it would be? Let me start with Mr. Hendricks.

Mr. HENDRICKS. Thank you, Mr. Chairman.

Clearly, it has to be the Federal Trade Commission. They have the most history on this. Obviously, there are reservations about each one, but the FTC has the most history, going back to the 1970's.

The CHAIRMAN. Mr. Pratt?

Mr. PRATT. It is a tough decision for us to either pick our regulator or not.

The CHAIRMAN. You can say, "none of the above," if you want.

Mr. PRATT. I think the easy answer is—the FTC has great experience with the FTC, but the Federal Reserve and other bank agencies have great experience with what it takes to be a data furnisher. So I think that when the FACT Act was woven together, I think they were right to make those agencies work together, because you have to bring forward all that—

The CHAIRMAN. Is there any way we could do it? In fairness to them, when you take six very busy agencies, and we have given them a lot to do, you really multiply the differences—it is not additive—to get all six of them together.

Ms. Wu?

Ms. WU. It would absolutely have to be the FTC. The FTC is the only agency that has taken public enforcement action and levied penalties under the Fair Credit Reporting Act. We are unaware of any public enforcement actions by the banking regulators against any furnishers.

Chairman Frank, of course you have heard the consumers groups' complaints about the banking regulators and their failure to be sufficiently oriented toward consumer protection when their own budgets are paid by the very banks that they regulate.

The CHAIRMAN. All right. Let me just say here that I think there is a problem. I don't think it is the case because of how the budget is paid for; I think it is an institutional role that they have. And I do not think that people aspire to be a member of the Federal Reserve Board of Governors so they can arbitrate disputes about bank checks. I think they are thinking about making world economic policy.

I wouldn't attribute it to budget, but I do agree with the problem.

Ms. Fortney.

Ms. FORTNEY. The Federal Trade Commission, of course, has the greatest experience dealing with the Fair Credit Reporting Act. However, the FTC's jurisdiction is limited with respect to financial institutions, and so if I could suggest another alternative, I think if you had just the Federal Trade Commission and the Federal Reserve Board, because the Federal Reserve Board does have a lot

more experience with banks. And as you know, section 312 of the rules that need to be promulgated would have a direct impact on furnishers.

Therefore, I think both agencies should be involved.

The CHAIRMAN. That is a good point, although—and I realize you argue here or advocate as lawyers, given the law. If we were to change this, it would have to be changed statutorily; and that the same statute could, of course, give the FTC, for those limited purposes, whatever powers over the banks they need. Or if we have this problem, I should say, because the FTC and the Fed have a joint jurisdiction over that part of the Federal Trade Act about unfair and deceptive practices, and the Federal Reserve needs to issue rules.

As far as rulemaking, in fact the OCC and the FDIC as recently as our last hearing objected to the fact that the Fed hasn't issued the rules. But I appreciate that.

Mr. Bennett?

Mr. BENNETT. Certainly, Mr. Chairman, it would have to be the Federal Trade Commission. And a number of the documents that we have turned over and will continue to turn over, the behind-the-scenes interactions between the Federal Trade Commission and the CDIA evidence that the substantive knowledge was coming from the Federal Trade Commission, not the FRB.

The CHAIRMAN. I am inclined to agree, partly because I do think the nature of the problem here is more an unfairness consumer dispute. It is kind of hard to get the bank regulators to be concerned with more than safety and soundness, and I do think this kind of consumer protection is more in the nature of the FTC.

But we will be considering it. And I do take Ms. Fortney's point that if we were to do that, we would have to give them commensurate authority.

The gentleman from Georgia.

Mr. PRICE. Thank you, Mr. Chairman. I appreciate the panel's testimony. And I think it is important to point out a couple points before I ask a question of the entire group.

I think there has been a blurring of the line between identity theft and credit reporting errors, and I think it is important that we keep that in mind. Every time that a credit report is in error, there is an inaccuracy there. It doesn't necessarily mean that trips to an identity theft, and I think that we inadvertently alarm folks when we seem to blur that line. So I would caution all of us about that.

I am interested in this issue of accuracy. And I think it was Ms. Wu, you stated that the accuracy, the definition of accuracy by the CRAs is conformity to data records. And so I would ask each of you to give your opinion about what you believe the responsibility of the CRAs is, if any, in verifying the information that they receive from the furnishers.

Ms. WU. Should I start?

Mr. PRICE. Please.

Ms. WU. The CRAs should have—they have a responsibility to independently review the results of the investigation and to evaluate them. They should not merely parrot what the furnishers say, but actually look over the results and look—and what the furnisher

should be required is not only to just say "verified," but to respond with—if the question is whether the consumer really was a joint cardholder on a credit card account or merely an authorized user, they should be required to come up with the account application with the consumer's signature on it, showing that they actually applied for the card, as merely opposed to being added on as an authorized user. And that documentation should go to the CRAs, and the CRAs should independently evaluate that.

Mr. PRICE. Mr. Pratt?

Mr. PRATT. I don't think we agree with that. We do agree that the consumer reporting industry should fully and completely take a consumer's dispute and that we should convey it to the furnisher who supplied the data. And that is, of course, what the law does. And the law contemplates a role for us and it contemplates a role for the data furnisher.

I think data furnishers want accurate data. I think consumer reporting agencies want accurate data. I say that for the record because I am a little concerned that there has been, in this blurring of lines, this sense that somehow we are claiming victory because we don't really care whether the data is particularly good or not.

Our members are evaluated every day by the lending community, and the data has to be good in order to make good lending decisions. But we do. And, in fact, we don't convey just a code on its own when we believe more information should be carried forward.

You know, we are all, by the way, pulling lawsuits out of a hat in order to try to show that something is right or something is wrong. And so, you know, for example here is a case from the Southern District of Texas where the e-OSCAR system was complimented by the judge as being a very effective system for conveying the dispute. And the reason we are not going to get into a tit-for-tat is, I think, it is pretty counterproductive.

Mr. PRICE. Sure.

Mr. PRATT. Our goal is to try to make sure that the e-OSCAR system works well, that it effectively conveys a dispute. In about 30 percent of the disputes, we include additional information along with the code to ensure that the data furnisher has all that it needs to investigate.

But to put the CRAs in a position of being a small claims court, to try to adjudicate and be the oracle of truth is the wrong place for it to be. The lender will know the decision.

I will say one other thing, and that is direct disputes in certain cases will allow consumers to interact directly with the data furnisher, which may help ameliorate communication issues where there is a particularly complex dispute. It may be an identity theft-related dispute. That is one of the reasons why we have a system in place that facilitates a lender being able to update a file as a result of a direct communication between a consumer.

Mr. PRICE. I appreciate that. Maybe I can elevate the question, or go to the 30,000-foot level, because my time is going to run out quickly.

The CHAIRMAN. The gentleman can take another minute or two.

Mr. PRICE. The consumers' desire to increase their purchasing power. Businesses desire to sell products. Businesses want to make certain that they provide appropriate credit, and that the credit

that they provide isn't—creditors want to provide appropriate credit, and they don't want to take significantly greater risk than they ought. And CRAs assist creditors in determining risk.

So in all of that cycle it is unclear to me what the motive would be, or the incentive would be, for the CRAs or the furnishers to provide inaccurate information. Because the whole cycle, in order for it to work and have the consumer get the product that they desire, is contingent upon everybody providing appropriate information. Is that not accurate?

Ms. FORTNEY. I think that is a very accurate statement, and I think one to keep in mind is that generally when furnishers respond to a dispute, they also—if the dispute is—indicates that information in the file that has been reported is inaccurate or needs to be updated, then the furnisher will not only give that information back to the consumer reporting agency, they will also update their internal files. And that is very important for furnishers, because they rely on their internal records for things like account review and, you know, collection activities, and basically they need accurate information in order to handle this aspect of their customers' business.

Ms. WU. May I respond?

Mr. PRICE. Sure. I hope.

Ms. WU. Furnishers do—some furnishers do have motives for inaccurate information. For example, Representative Cleaver talked about debt buyers.

As I have mentioned, there is a lot of inaccuracy when it comes to debt collectors and debt buyers. They deliberately change the date on the debt to keep it alive, to keep it fresh. The FCRA says, come off after 7 years, so there is motive.

The other thing is, the system doesn't have to be perfectly accurate for the credit system to work. It can be 75 percent accurate or 89 percent accurate, but woe be unto you if you are part of the 25 percent or 11 percent or even 3 percent for which it is inaccurate.

Mr. PRATT. Actually, I don't think that is right. I am sorry.

Mr. PRICE. Mr. Pratt, go ahead.

Mr. PRATT. Three things, real quickly.

We agree that we focused on debt collectors and debt buyers, because we do think that we need to make sure the system is working well in that case. And, in fact, in our letter to the ANPR, to the Federal Reserve, we included communications that we sent out to every data furnisher who is a debt collector in the system, saying you must supply the original date of delinquency—which, by the way, goes all the way back to 1996 amendments to the FCRA—so that we always calculate the 7-year period from the original date of delinquency.

So this renewal process is a concern for us as well, and we want that original date of delinquency. So that is point number one. So there is some symmetry there, I think, between concerns at the table.

We don't think there is a woe be to you, though, when a dispute is processed. For example, the FTC interviewed all of our members who—and one of our members indicated that they have a 5 percent

redispute rate. In other words, 95 percent of the time, a dispute was successfully processed the first time through.

Now, again, statistics are statistics. I am sure we will all start arm-wrestling over those just a little bit. But I just want you all to know that it is not a woe unto all of you that once you get into a dispute process, you inevitably fail. That is just not correct. Many disputes are simple, clean, and easy.

And I will stop there.

The CHAIRMAN. Mr. Hendricks, and then we will finish.

Mr. HENDRICKS. Thank you, and let me try and tie some of this together.

The system breaks down and accuracy breaks down for instance when, like, the furnisher wants to collect a debt, a very effective way to do that is park the unpaid debt on the credit report. Now that is entirely appropriate if the consumer owes the debt. But it is always divorce situations, when there is a clear notification that only one spouse—we see a lot of cases where the spouse, who is not responsible but still has good credit, they end up going after that.

And then the issue of accuracy, the problem is that the credit reporting agencies see their role as faithfully putting on the credit report what the furnishers provide to them. And so I have seen testimony from the outsource credit report personnel that says when they see the consumer's dispute and they see the credit granter's response, the instructions are to put on what the credit granter says because they are faithfully carrying out that role. And that is when accuracy breaks down.

The law says that the credit reporting agencies are not supposed to be small claims courts, but they are supposed to carry out their grave responsibilities with a sense of impartiality and a respect for fairness and privacy. And that is when it breaks down.

Mr. PRICE. Thank you. I appreciate the indulgence of the Chair.

The CHAIRMAN. Thank you. And I thank the witnesses. This has been useful; even the contention is useful for us.

The gentleman from Missouri.

Mr. CLEAVER. Thank you, Mr. Chairman. Would any of you agree that small claims courts have become almost an extension of collection agencies? If you look at the statistics, the person brought to a small claims court rarely ever wins.

Mr. BENNETT. In fact, so. A jurisdiction in our State, Virginia Beach, my part of Virginia, the process is to turn over all of the warrants to the collection attorneys and the debt collectors an hour before court and let them fill out the papers. So that is very common.

Congressman, we have also talked in our testimony about how the new method of small claims court collection, as well, is to slam your credit, to put a medical bill in the credit, or put a cell phone or a disputed item as the alternative. So both of those tools are still readily used, particularly against, we will say, everyday consumers.

Mr. CLEAVER. That probably can only be handled by State legislators or legislatures, but it is a problem. In fact, I don't even know of anybody who was taken to small claims court who won. I am sure there is somebody, you know, somewhere out here.

I have two other quick questions. These debt buyers that I spoke of earlier generally buy uncollected debts, and they buy them in

bulk. And I have been calling them "stale debts," because something could have happened 2 or 3 years earlier that would remove that particular debt from a person who is being pursued, the most notable of which would, of course, be bankruptcy.

Who regulates debt buyers? Who investigates debt buyers?

Ms. Fortney?

Ms. FORTNEY. They are under the jurisdiction of the Federal Trade Commission.

Mr. CLEAVER. That is exactly what I thought.

Mr. HENDRICKS. And one of the tricks that the debt buyers use is that if something is 7 years old and about to fall off your credit report, it hardly hurts your credit score, but if it is reaged and made to like it is just this year, it slams your credit score.

Mr. CLEAVER. Yes.

Ms. WU. Another source of problems is that debt buyers often buy the debts that are the result of identity theft. And in my testimony, there is a cite to a case from Georgia, where a man's ex-girlfriend signed him up for a credit card, and it was sold to Asset Acceptance. Asset Acceptance, by the way, is a furnisher, and the bureaus have accepted them. At one point, they may have booted them out of the system, but they are back.

Mr. CLEAVER. You answered my third question. I know that there are people who always fight regulations. I mean, any time you talk about regulations, it is wrong, and their belief is that, you know, everything will work itself out. You know, people who commit murder will eventually stop, and people, you know, no matter what they are doing, it will work out.

The problems that we have discussed today, do you think they will just work out? If I can go just quickly through all of you, then I am finished.

Mr. HENDRICKS. No. I think there is a real tension building that is going to be played out in private enforcement.

Mr. PRATT. Our view is, some of these issues, such as the debt buyers issues, are likely to be addressed somewhere within the regulatory process that is not complete, but I think we are looking for a timeline to get to, to bring to completion.

Ms. WU. No, I don't they are going to work out, not without vigorous enforcement and not without greater rights of consumers to defend their rights in court.

Ms. FORTNEY. I think that problems to a certain extent will always continue. I think that the regulations that are being promulgated should address a lot of those problems. And I think the issue that we will continue to deal with is the extent to which the problems are isolated instances, as opposed to systemic problems.

Mr. BENNETT. With all due respect, I don't think they will go away. The Federal Trade Commission 312 rules, for example, won't have a private cause of action. There are numerous provisions—almost all the provisions currently governing furnishers do not have a private cause of action. So unless the Federal Trade Commission not only accomplishes the rulemaking, but actively enforces it, you are left with—the only enforcement entities out there are private lawyers, and there are not enough of us. There are maybe 20 in the country that can survive a summary judgment battle against

the credit bureau lawyers, who represent their clients coast to coast.

Mr. CLEAVER. Thank you.

The CHAIRMAN. Let me just ask a couple follow-up questions based on that.

Mr. Hendricks—I suppose I should know; I don't—how does one reage a debt when it is about to expire?

Mr. HENDRICKS. Mr. Pratt referred to the date of first delinquency. That is when you measure the beginning, when 7 years after that it is supposed to fall off. And so it is either date of first delinquency, or sometimes the field is called date of last activity. It is when you buy the debt, you are buying a 4-year-old debt, and then you manipulate that debt, so instead of showing it as 4 years old—

The CHAIRMAN. Let me ask a question now, when you say, "manipulate it," I hope it isn't the case that the simple fact of my buying a debt that is of a certain age starts the clock over again. That isn't the case, is it?

Mr. HENDRICKS. No, but it is the way they report it to the credit agencies.

The CHAIRMAN. That would be an inaccurate report then.

Mr. HENDRICKS. That would be unfair, too.

The CHAIRMAN. Yes.

Mr. PRATT. Our view would be, the seller should make sure it conveys the date of delinquency to the buyer.

That is really the solution.

The CHAIRMAN. That is an enforcement thing.

Mr. PRATT. And that the law requires today that be reported—

The CHAIRMAN. We will look into that.

Let me just ask, the other question is to Ms. Fortney and Mr. Pratt, because both Ms. Wu and Mr. Bennett talked about the interpretation that we had sub silentio repeal of the private right of action.

Do you agree that was something that was not done intentionally? And what would your view be to our restoring it? Mr. Pratt?

Mr. PRATT. We didn't work on that section of the FACT Act. It relates to the date of furnishers and the date of—

The CHAIRMAN. Okay. Ms. Fortney?

Ms. FORTNEY. I think the statute is clear, and that is why the vast majority—

The CHAIRMAN. That wasn't the question.

Ms. FORTNEY. Okay. I know.

The CHAIRMAN. Then why don't you answer it?

Ms. FORTNEY. The answer is, I don't know that whoever drafted that—

The CHAIRMAN. Fair point. But would you like to leave it the way it is?

Ms. FORTNEY. I am sorry?

The CHAIRMAN. Would you object if we restored the right of action that is in the bill?

Ms. FORTNEY. I don't have an opinion on that, sir.

The CHAIRMAN. Oh, okay. Then it is two to nothing, two abstentions.

I thank all of the witnesses. This has been useful. Several things you have mentioned have brought some things to our attention that we are going to act on, and I appreciate your testimony.

Before the hearing is—do you want to ask anything? If you don't mind, the gentleman from Texas has been very diligent. Before we get to him, I want to ask unanimous consent to put into the record a statement regarding credit reports from Terry Clemans, who is the Executive Director of the National Credit Reporting Association, Inc.

Without objection.

And Mr. Green will be recognized.

Mr. GREEN. I will be brief, Mr. Wu. You have given comments with reference to the right to sue, the right to require injunctive relief; is that correct?

Ms. Wu, excuse me, someone in my office just got demoted, they had "Mr."

Mr. HENDRICKS. You just got promoted.

Mr. GREEN. I will solemnly gavel after this next question.

Ms. Wu, you spoke of mandatory injunctive relief and you indicate that this is not available currently. Can you please just comment on this?

Ms. WU. Certainly. I would be happy to.

The majority of the case law from the district courts has found that there is no right to seek injunctive relief, in other words, the right to ask a court to issue an order saying fix that credit report, fix that error. A couple of courts, I think, in California have held the other way, but the case law is not looking good on it.

Most other areas, there is a Supreme Court decision that says the Federal courts have an inherent right to issue injunctive orders, but for some reason the courts interpreted the FCRA to say that there is no injunctive relief for consumers. The FTC can get injunctive relief, but not private consumers.

Mr. GREEN. Well, quickly, do you have a recommendation?

Ms. WU. A recommendation would be to add an explicit right to seek injunctive relief in the FCRA.

Mr. GREEN. Does anyone want to share in that opinion?

Ms. FORTNEY. I think it would be ill-advised for Congress to give consumers the right to seek injunctions in these situations. Most of the lawsuits, as the testimony has indicated, involve individual disputes involving various special circumstances, and I think it would be inappropriate to have injunctive relief available that could have much farther reaching consequences. I think it is important to leave the injunctive relief in the hands of the Federal Trade Commission.

Mr. BENNETT. I am in court all the time. This is all I do. I have the largest volume of FCRA cases and Federal cases in Virginia, and we are regularly getting questions from our Federal district judges, can I enjoy in that because we see the same behavior again and again. It is, I expect in Virginia, where they prosecute criminal violations, inundating the docket. Somebody has to go to Federal Court and litigate a full monetary damage claim in order to obtain relief, instead of simply an initial injunction to obtain the correction of the problem or, alternately, to allow a U.S. District court

judge, confined by the law, to order changes to violations that are recurring.

Mr. GREEN. Let me quickly poll the panel. My assumption, Mr. Bennett, your response is "yes," you would want to accord injunctive relief; is that right?

Mr. BENNETT. Yes, sir.

Mr. GREEN. Ma'am?

Ms. FORTNEY. No.

Mr. GREEN. Ms. Wu?

Ms. WU. Yes.

Mr. GREEN. Mr. Pratt?

Mr. PRATT. I would have to consult with our counsel.

Mr. GREEN. Mr. Hendricks?

Mr. HENDRICKS. Yes, because when people have errors on their credit report they are not thinking about money, but their reputation, and what they really want is to get it fixed. And as Ms. Wu pointed out, this is the solution, so I strongly support that.

Mr. GREEN. Are there any words of art I am to utilize before?

No. The meeting is now adjourned.

[Whereupon, at 1:05 p.m., the hearing was adjourned.]

# A P P E N D I X

June 19, 2007

**Opening Statement**

**Congressman Paul E. Gillmor (R-OH)**

**June 19, 2007**

***Hearing Entitled "Credit Reports: Consumers' Ability to Dispute and Change 'Inaccurate Information"***

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I'd like to thank the Chairman for calling this hearing today to examine the ability of consumers to dispute inaccurate information on their credit reports.

Only a few years ago, this Committee spent considerable time and energy on a reauthorization of the Fair Credit Reporting Act. Consumers were given access to their credit information as never before. On an annual basis now, my constituents have the ability to view their credit report from each of the three bureaus. It is perhaps too soon to tell, but it is my hope that this tool will be used to correct inaccurate information and stem the damage caused by identity theft. Already some 52 million free credit reports have been distributed by the website created by Congress.

Considering the widespread use of credit reports and the very adverse effect inaccurate reports can have on consumers, it is essential that consumers have an effective way to correct or reverse erroneous information.

The federal agencies are still working on putting out the final rules associated with the FACT Act but I would hope the Federal Reserve and the FTC will take this opportunity this morning to update the Committee on their work in implementing the bill.

I thank the Chairman and Ranking Member for their work on these issues over the years and yield back.

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Written Testimony

Before The

HOUSE COMMITTEE ON FINANCIAL SERVICES

Regarding

"Fair Credit Reporting Act: How it Functions for Consumers and the Economy"

June 19, 2007

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Chairman Frank, Ranking Member Bachus and other distinguished members of the Financial Services Committee, the National Association of Consumer Advocates (NACA) thanks you for inviting us to testify today in this important hearing to consider the adequacy of the Accuracy and Reinvestigation protections of the Federal Fair Credit Reporting Act.

My name is Leonard A. Bennett. I have been asked to appear before you on behalf of NACA, a non-profit association of attorneys and consumer advocates committed to representing customers' interests. Our members are private attorneys, JAG officers from the various service branches, state attorneys general deputies and other public sector attorneys, legal services attorneys, law professors and law students whose primary focus is the protection and representation of consumers.

I am a consumer protection attorney. I have practiced law in Virginia since 1994 and in North Carolina since 1995. I have also been admitted to and litigated consumer cases in District Courts across the country. Over the last five years alone, I have spoken at numerous State Bar CLE programs, national Consumer Protection and FCRA conferences and seminars and have regularly taught the Army and Navy JAG school courses on FCRA, Identity Theft and Consumer Protection issues. More than anything else, my practice is devoted to the private enforcement of the FCRA. By most accounts, I have prosecuted more federal claims against Equifax, Trans Union and Experian, as well as many of the nation's largest credit data furnishers, than all but a few advocates. I have received published FCRA decisions from my cases and I have lost only four FCRA cases out of hundreds prosecuted. I have been asked to represent NACA today because of the industry knowledge I have gained by this focused litigation experience.

In most ways, this testimony is directly against my self-interest. Given the current state of affairs and industry non-compliance, our law firm has far more FCRA cases than we can handle. The public, and thus jury pools, are sympathetic. And business for me personally has never been better. If you fix these problems, I would be out of a practice. However, I was not asked to speak today in support of my own self-interest. Rather, I am charged by NACA to speak as a consumer advocate. The problems I discuss herein are not simply those of my retained clients. Instead, they are the difficulties and industry failures imposed on all consumers.

On each of you, on your staff and even more importantly, on your constituents, every one of which will have a credit file, many of which will be inaccurate.

You have received communications and testimony from the official spokespersons and government relations professionals for the industry. I do not profess to have the Washington experience, let alone political savvy of the CDIA attorney, Anne Fortney, or the CDIA lobbyist, Stuart Pratt, employed by Equifax, Trans Union and Experian. What I can offer that each of these alternate witnesses lack is real world knowledge. I have actually read the manuals and internal documents of the national reporting agencies and have taken the depositions of their employees and agents, from the lowest level outsource vendors to the highest officials and in-house attorneys. I have interviewed hundreds of consumers impacted and harmed by credit industry misconduct. In contrast, and with all due respect, I can offer all takers our transcript of the deposition of Anne Fortney, an attorney who represents the CDIA lobbyist team, and her concession that she had not read the subject investigation procedures. And I have already provided internal emails between Ms. Fortney, Mr. Pratt, and the top attorneys from the "Big 3" reporting agencies, in which the CDIA lobbyists acknowledged a lack of substantive knowledge of agency data and procedures.

## OVERVIEW

In 2003, I was invited to testify before the appropriate Financial Services subcommittee, then presided over by Representative Bachus. As I intend to do herein, I provided specific deposition testimony and live knowledge from FCRA litigation. At that time, I cautioned that we were heading to a point in the credit industry's evolution where it would be completely automated. Now, four years later, I can state without condition that we have arrived at that point. All important components of the credit reporting system are automated. What human involvement remains is solely that of data entry, much of it accomplished overseas. Anyone who tells you otherwise is not being truthful.

### *All Studies Show Significant Inaccuracy in Credit Reporting.*

The present credit reporting system is broken. Every analysis or study accomplished in this decade, including the FACTA authorized FTC Pilot Study has found inaccuracies in a significant percentage of the reports considered. Identify theft, very often a misdiagnosed "mixed file" problem, again puts credit reporting inaccuracies at the top of the list of Federal

Trade Commission complaints, 246,035 complaints in 2006 or 36% of the FTC total. The FTC actually estimates the total number of consumers affected by identity theft as in excess of 10 million. The credit reporting agencies receive a rising number of consumer disputes complaining of millions of inaccuracies in their credit reports. Remarkably, when consumers requested a free copy of their report after suffering a credit denial, 75% thereafter informed the bureaus that the report was inaccurate.[1] This Congress can see the failures in the system. Consumers are terrified about the potential impact of credit data leaks because of their correct perception of the ease of identity theft and the difficulty of correcting credit inaccuracies resulting there from. More dangerous for the economy is the fact that credit data has also become a far less effective predictor of future credit behavior. Bankruptcies again are rising. Mortgage and car loan defaults are heading out of control. The credit reporting industry, champions of automated credit decisioning and proponents of the predictive reliability of their credit data, cannot now argue that their systems and files have made the economy stronger, stable and more predictable.

***National Consumer Reporting Agencies are Profiting from Inaccuracies.***

The credit reporting industry response to these problems has been shocking. Rather than increase resources and attention to develop solutions to these inaccuracy and identity theft problems, the national reporting agencies have cut their per capita resources for resolving consumer disputes at the same time they have rushed to maximize profits from same. For example, Equifax pays its outsource vendor in the Philippines between $.41 and $.57 to process each consumer dispute letter it receives. But through the agencies' E-Oscar system, they charge no less than $.25 from their creditor customers for each ACDV dispute form sent electronically. Thus, if a consumer disputes five inaccurate accounts after a file is mixed or an identity stolen, Equifax would pay its vendor a fraction of the gross amount (e.g. $1.25) it charges its creditor customers through E-Oscar. In fact, the more automated disputes it sends out, the more money it generates. It is this "revenue" opportunity that in 2005 caused the national reporting agencies to move the E-Oscar electronic system from their non-profit lobbying organization, the CDIA, to a new for-profit company, Online Data Exchange, L.L.C. I am restricted from offering any further details because of a CRA insisted Protective Order.

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The national CRAs have developed another new and even more substantial profit center based on consumer fear of inaccuracies in credit reports. Each agency markets a credit-monitoring product directly to consumers. For example, Experian has branded and marketed by large television buys its misnamed service www.freecreditreport.com. As the agency reported to its shareholders on May 23, 2007:

> Consumer Direct [*online credit reports, scores and monitoring Services*] delivered excellent growth throughout the period, with strong demand from consumers for credit monitoring services, which led to higher membership rates.

On its internet home page, www.equifax.com, Equifax sells its credit monitoring products to consumers stating: "Make sure your reports are accurate & free of fraud." In its most recent quarterly filing, the agency reported that its sale of these reports and its credit monitoring products directly to consumers had generated no less than 10% of its operating revenue and one sixth of its credit reporting revenue. Ironically, all three agencies market products with "identity theft" insurance to provide attorneys fees and expenses necessary to obtain the correction of their credit reports from those same agencies. Thus, consumers are faced with what can fairly be described as credit extortion. Consumers are told to buy the CRA products or else remain in fear that they will be inaccurate and full of fraud.

It bears noting that these problems and concerns may not face an identified celebrity, regulator or government official. Each of the Big 3 CRAs maintain a list of consumers they identify as "VIP" files.[2] Trans Union's employee witness testified:

> Q. And some references have been made in prior cases to maybe a VIP category. Is there such a category? [. . .] For example, if a lawyer makes a dispute, its handled by your department?
> A. That is correct.
> Q. If a politician or [a person] known to be a politician makes a dispute, are those the types of disputes you might handle?
> A. Yes.
> Q. And celebrities as well?
> A. Yes.[3]

These files, which also include CRA employees, for likely the obvious reasons receive special treatment. They are handled by high level employees. In fact, for Equifax and Trans Union, the

[2] The title "VIP" is not contrived for this testimony. It is the actual title to the status and is detailed in CRA manuals.
[3] Mullins v. Trans Union, et al, Deposition of Shontese Norwood, September 21, 2006.

remarkable difference is that they are handled by an agency employee actually located in the United States.

***The Credit Reporting System is Concentrated in the Control of Three National CRAs***

There are three major national consumer reporting agencies – CRAs. Equifax publically traded and based in Atlanta. Trans Union privately held and based in Chicago. Experian, formerly TRW, British owned and publically traded with U.S. operations based in Costa Mesa, California. Over the last decade, the Big-3 agencies have consolidated data control and ownership by repurchasing their former affiliate territories. While reporting was largely regional years ago, it is now entirely national.[4] The Big-3 long ago created the Associated Credit Bureaus (ACB), which in the early part of this decade changed its name to the Consumer Data Industry Association (CDIA). The CDIA claims a large membership total, but this is deceiving. I cannot share certain information because Equifax has bound me by a Protective Order from doing so. But the CDIA documents we have produced evidence almost total control by Equifax, Trans Union and Experian. Experian currently heads the Board of Directors. You can also review the CDIA email exchanges discussing its current testimony and observe the total control of the organization by the Big-3 agencies.

***The METRO 2 Reporting Format is a Positive Development.***

Years back, the CRAs created a uniform reporting format, Metro. It had considerable limitations and has now been almost entirely replaced by the newer format, Metro 2. This is certainly the most important and economically important product of the CDIA. The Metro 2 format creates a means for creditors and collection agencies to organize and report their data in a consistent manner for each of the three agencies. No one can dispute its importance or success. The format was created by the "Metro Task Force" between the three agencies through the CDIA. It is documented by the Credit Reporting Resource Guide easily obtainable from the CDIA. Metro 2 reporting works like this: A creditor maintains its account records and historical data in its own unique database. It will then adopt a computer program, or hire an outside vendor, to convert that data on a monthly basis out of the creditor-specific format and into Metro 2 format. It will furnish to each CRA one line of Metro 2 code for each of its accounts. Every space in the Metro 2 code line will represent part of a specific field. For example, information

[4] A primary exception is CSC which technically "owns" Equifax's consumer files in certain states. Equifax and CSC have a complicated contractual relationship to divide up royalties and income when their businesses intersect.

placed in certain spaces will be interpreted as last name. Other spaces will be extracted by the CRAs as the social security number. Others will uniformly represent account number. In these monthly Metro 2 data dumps, the creditors will also report whether the account is current, or, if not, how late on payment (*e.g.* 30, 60, 90 days or more, Chargeoff, Foreclosure). The Metro 2 code line for an account will also indicate what the balance is on the account, what the minimum monthly payment is, and when the last payment was made. If the subscriber reports information incorrectly in the Metro 2 code line, it will be entered into each CRA's credit file incorrectly.

The Metro 2 format is remarkable because it allows, and we argue should require, subscribing creditors to furnish complete data on their accounts. However, as I discuss below, the CRAs treat most of their Metro 2 fields as creditor optional. Thus, though they have the contractual and procedural means to ensure complete data through Metro 2, they chose not to do so.

## CREDIT REPORTING INACCURACIES

***Mixed Files.***

Many credit reporting inaccuracies are caused entirely by the CRAs. These are typically the "mixed file" cases and their related offshoot "identity theft." There are multiple causes of "ownership" inaccuracies in which a credit account or other item belonging to one person appears in the credit report of another. One of the ways this can occur, as discussed below, is through inaccurate reporting by a creditor. Another common explanation – mixed or merged files – is caused by the way reporting agencies match data to files.

Mixed or Mismerged files are now a frequent problem. One study found that 44% of consumer reporting complaints to the FTC involved mismerged files. Of these complaints, 64% had total strangers' files mixed in with the consumer's, while 36% involved information belonging to relatives or former spouses.[5] A study of credit scores for mortgage applicants by the Consumer Federation of America and the National Credit Reporting Association found that one in ten files (155 out of 1545) contained at least one, but as many as three additional repository consumer reports and that it was very common for the additional reports to contain a

[5] U.S. Public Interest Research Group, *Credit Bureaus: Public Enemy #1 at the FTC*, October 1993. In this sample, U.S. PIRG analyzed 140 complaints to the FTC.

mixture of credit information, some of which belonged to the subject of the report requested and some which did not.[6] Common reasons for the additional reports include:

- Confusion between generations with the same name (Jr., Sr., II, III, etc.).
- Mixed files with similar names, but different social security numbers.
- Mixed files with matching social security numbers, but different names.
- Mixed files that listed accounts recorded under the applicant's name, but with the social security number of the co-applicant.
- Name variations that appeared to contain transposed first and middle names.
- Files that appeared to track credit under the applicant's nickname.
- Spelling errors in the name.
- Transposing digits on the social security number.[7]

Mixed files are caused almost entirely by the aggressive matching procedures at each of the national CRAs. When Metro 2 code lines are furnished to the CRAs in large monthly batches, the CRAs uses an automated matching system using a mathematical algorithm that integrates certain business rules determined by CRA policy. For example, the CRA will weight certain identifying segments, such as first name and a 7 of 9 digit social security number match heavily and will weight far less last name and even address. A substantive explanation of the CRA matching process was provided in a 2005 deposition of Equifax's Vice President of Technology:

> Q. And what is required to match a tradeline to an existing file?
> A. We use the L90 search logic, which has 13 matching elements, and based on those 13 matching elements, we have an internal algorithm that makes the determination whether the ID matches sufficiently to apply the trade.
> Q. If a first and last name and the full social security number on the tradeline match an existing file, would Equifax report that tradeline to the existing file?
> A. Yes, given there was not other information that was in conflict that prevented that, that kind of took away from the positive match of a name and a Social then, yes, I believe it would. I would like to see the specific example, though.
> Q. What if the current address is on the existing file and the new tradeline did not match?
> A. <u>If the Social Security number matches, that's normally enough information to allow it to update, even if the address does not match</u>.[8]

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[6] Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers*, p.21, December 17, 2002, *available at* www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf.
[7] *Id.*
[8] <u>Beck v. Equifax, et al</u>, Deposition of Phylliss Dorman, August 1, 2005.

If the specific account meets a certain matching score threshold for an existing credit file, it will be added to that file. If there is not an existing file with an exact match to the account data, the CRA process will allow partial data matched accounts to be reported to a file. There may only be a file which matches some of the account id segments. These could include a partial matching name, for example John Watson and John Watts, or Jeff Franks and John Franks. Or the file match to the account may include only a partially matched address, such as 1200 First Avenue and 4516 S. First Landing Street. Typically, the closeness of the match between an account and an existing file is scored or scaled and then the account is placed in the credit file with the closest match. The closer the match to a file, the higher the correlation score. The FTC refers to this process as "file building."[9]

One of the greatest problems with a Mixed File is the CRA refusal to construct business rule barriers to prevent and resolve further credit inaccuracies that result. A Mixed File, for the same reasons true for Identity Theft, is like a virus. Most consumers do not understand what is happening and, without industry knowledge, have no idea how the problem spreads. Mixed Files occur because of some matching identifier, such as address, in the consumer's file. Until that identifying segment is corrected or suppressed, or unless the CRA manually edits the file, the mismerge will continue and likely become worse. For example, in Ms. Dugger's case, she devoted half a decade to recovering her credit after a combination mixed file/identity theft problem. Each time she was turned down for credit, she would request her credit report and dispute the accounts that were not hers. Each time, the CRAs would delete the disputed accounts. And each time new mixed accounts would appear. In litigation, we obtained the CRA internal documents and learned what was happening. The CRAs continued to mix my client's file with an out of state consumer with the same first and last name. The CRAs had inaccurately added the third party's middle initial to my client's file. Every time an account was reported with that middle initial, it was placed in my client's file. Another "virus" problem with mixed files is caused by the cross pollination between the CRAs and their subscribers. In the unrelated cases of Mr. Daniels and Mr. McCue, the respective CRA had added the inaccurately matched identifying segments (address) to my client's file. Before the consumer could dispute the

[9] FTC, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, at 9 (Dec. 2004).

incorrect address, it was provided by the CRA to one of the creditors of the respective similarly-named third party. Thereafter, those creditors reported through their own monthly Metro reporting to each CRA the inaccurate addresses they had obtained through the skip trace credit reports.

Mixed files are also a growing problem for attorneys who institute collection lawsuits and the often innocent consumers they unwittingly sue. One of the first steps a collection attorney will take when he receives an assigned file is to request a skip trace from one of the national CRAs. These reports are often the broadest matched files provided by the bureaus. It is now very common for the collection attorney to receive an incorrectly matched report and to thereafter sue the similarly named but wrong consumer. I suspect that the Committee can substantiate this growing problem by randomly choosing any attorney with an active collections practice. Similarly, consumer mortgage reports are often generated with a loose match algorithm. I thus also suspect that the Committee can substantiate this problem with an inquiry to a randomly selected realtor, mortgage broker or underwriter.

Most know by now of Mr. Carroll's difficulties in Massachusetts in which all three CRAs mixed his credit file. In fact, in preparation for this very hearing, the CDIA noted that Mr. Carroll's credit file still was not corrected. While brought to the Committee's attention by the Boston Globe, this "mixed file" problem, discussed below, is very common. In my 2003 testimony, I offered:

> As common in my case portfolio are those claims we describe as "merged identity" cases. As easy as it is for an identity thief's credit files to be combined with that of an innocent consumer, it is even more likely to happen to persons of similar name and address or social security number. The credit reporting industry is now almost entirely automated. Its file searches do not require full identifying information -either to obtain a credit report or to furnish information to the bureau. As a result, I have been asked to help Sandra K. Brown, who had perfect credit, when Equifax could not keep the files of Sandra M. Brown from merging. And Mary E. Jones and Mary W. Jones, who because of their similar names and addresses had both of their identities combined by Trans Union. Or Teresa B. Davis, who lived on the same street as had Teresa G. Davis several years prior and had much better credit before Equifax merged the two files. These are my cases, solely out of Newport News and Hampton, Virginia. But, there is nothing about this problem which is unique to my community. It is happening everywhere throughout America. And while no one consumer is truly immune from it, the problem is much worse for consumers with common surnames, particularly those who share their name with multiple generations.

Now, in addition to the names of Mrs. Brown, Ms. Jones and Ms. Davis, we can add as well Mr. Carroll. Since 2003, the list of litigated mixed file cases has grown considerably. The National Consumer Law Center discussed a sampled few. The Committee can add to such examples Linda Johnson. In 2003, I discussed a then-pending Fourth Circuit appeal, Johnson v. MBNA. The case was decided favorably for consumers and was the subject of considerable industry reaction. It was considered by the FTC in its recent Reinvestigation Report. The Court of Appeals held that a FCRA investigation must be a "searching and meaningful inquiry" to determine the actual status of an account. Remarkably however, after spending several years litigating for the deletion of her ex-husband's account from her credit file, Linda Johnson came back to me for an entirely new matter. Equifax and Trans Union had merged Ms. Johnson's credit file with another Newport News woman with the same name. It took another year of litigation to again clear her good name.

More recently and more tragically is the case of Kenneth Baker. Mr. Baker had his financial life combined with that of a similarly named total stranger by all three CRAs. The bureaus placed tax liens and defaulted accounts on his credit file and made it impossible for him to move on and survive a difficult part of his life. Mr. Baker took his own life in 2006. The CRAs were mentioned prominently in Ken's final note to his surviving daughter who now fights for some principled justice.

Another troubling and common mixed file problem is when the CRAs combine a parent's credit file with that of a child, as with my client Mr. Payne, or one sibling's file with that of another, such as the pending case of Mr. Schubert. If two consumers have a similar name, even if not exact, and also share either an address or a social security number matching seven of nine digits, the CRAs will very often combine the two files. The CRAs make little accommodation for a son who at some point lived with his parents and shares his father's name (or a close proximity). They make even less for a consumer who received a social security number at the same SSA Office and within a proximate date range as their prodigal sibling. These cases are often the most difficult as they result in even greater division and animus between family members. Creditors and CRAs alike aggressively use the relationship as leverage to obtain payment from the otherwise innocent family member.

These examples are only but a small fraction of the total number of mixed file cases ongoing at any one time. We have represented countless other mixed file victims – to many to name - many incorrectly believing they were identity theft victims. These cases have been brought across the nation by various NACA members and the consumers they represent. We may well have represented one or more of your own constituents so victimized by a mixed file.

***Identity Theft***

This sort of mismerging further aggravates the effects of identity theft. In fact, identity theft is a misnomer. The criminal actually steals from the creditor using only a partial set of a consumer's identifiers. In makes little sense for a criminal to apply for a credit card using the full name and address of the consumer victim. In most instances, beyond the less common mailbox theft, all that would accomplish is the opening of a new account available only to the innocent consumer when he receives the new card. The modern identity theft is accomplished by manipulating the use of some consumer identifiers and not others in a manner that takes advantage of the CRA's loose match policies. For example, the fraudster may use the consumer's first name, but add his own last name, use the consumer's social security number and add a new mailing address. If the consumer has not previously alerted the CRA to a fraud, the CRA will match the data to the consumer's file and provide to the new creditor for the benefit of the identity thief a credit report that will survive the application process. Accordingly, "identity theft" is really only an initial genesis of the problem. It is instead better understood as a form of a mixed file.

In this era with heightened media attention to the problem of identity theft, many consumers incorrectly presume that the appearance of an item which is not theirs is the product of criminal activity, fraud or identity theft. This is very often not the case. Instead, the CRA may simply have mismatched accounts of two otherwise innocent consumers.

Identity theft is made much easier by the CRA refusal to impose meaningful verification requirements on their customers. Often, the creditor requesting a credit report will provide far less information to obtain the report than the CRAs will require from a consumer making a dispute. When a creditor or potential creditor requests a consumer report, the Big 3 CRAs require very little information in the inquiry. The customer is not even required to provide the social security number of the applicant consumer. Some do not provide full names. The CRAs

will furnish a consumer report that is the closest match to whatever data the customer provides in the inquiry. One CRA, Equifax, will furnish every file that is a potential match.

Accordingly, while Congress, the FTC, and other Federal and State officials should continue to battle the criminal aspects of Identity Theft, the Committee must recognize that the mechanics of the problem are in significant part the fault of the national CRAs.

***'Ownership' Disputes.***

Certainly not all inaccuracies originate with the reporting agencies. In fact, many will start upon the furnisher's reporting. Creditors often attribute their account to a consumer who does not owe the debt. Most frequently, the furnisher is incorrectly attributing the "ownership" of the account to a spouse or other authorized user who is not contractually liable. Other times, the consumer may have been the victim of an identity theft where a third party fraudulently opened an account for which the furnisher is now incorrectly attributing ownership. According to CRA statistics, these "ownership" disputes are the most common. The CRAs use the dispute code "Consumer states account is not his/hers" over 30% of the time.

To understand the context of these errors, you need to understand the objectives and motivations of creditors and collectors in the credit reporting system. Creditors and debt collectors report their accounts under contractual obligation to the CRAs and in order to ensure the collection and payment of their billed accounts. When I began the practice of law shortly after graduating law school in 1994, most unpaid or late debts were collected through dunning letters, phone calls and ultimately small claims collection suits. Today, this is much less often the case. The first means of collection is via credit reporting.[10] In fact, many debt collectors do not attempt collection by any other means. They often will report such debts to spouses. And in many such instances, this reporting is accomplished without any review of underlying account documents.[11]

A consumer's discovery that a creditor or collector is reporting the debt of another in his or her credit report is usually the start of a credit reporting ordeal. Sometimes the reported debt is recognized as belonging to a relative or spouse. Some creditor's such as credit card giants MBNA, now merged with Bank of America, and Capital One are renowned for their deliberate

[10] Rivera v. Bank One, 145 F.R.D. 614, 623 (D.P.R. 1993) (a creditor's report of a credit card debt to a CRA is a "powerful tool designed, in part, to wrench compliance with payment terms from its cardholder")

[11] Another new means of modern collection is often the initiation of distant "arbitration" proceedings to which consumers rarely respond, another important issue not now before this Committee.

reporting of accounts to an authorized user spouse. The problem is that many large creditors deliberately destroy or do not retain the underlying account records to support their account reporting. For example, in a 2006 case more recent than the also on-point 2004 Fourth Circuit decision in Linda Johnson v. MBNA, a District Court in North Carolina considered the common proposition in the credit industry that a creditor may report a debt even if it could not otherwise establish its validity. In the somewhat similarly named, but unrelated, Sara Johnson v. MBNA case, the Court explained (and rejected) this industry argument:

> MBNA says its inability to produce a signed application indicating that Plaintiff opened the account is "irrelevant." According to MBNA, it is obligated to retain such records for only two years, pursuant to 12 C.F.R. § 226.25(a) (2005) (Truth in Lending, Regulation Z). (MBNA's Reply Mem. at 5.) However, Section 226.25 concerns only those records which constitute "evidence of compliance" with Regulation Z and states that the two years begin to run "after the date disclosures are required to be made or action is required to be taken." Thus, it may not apply in this case at all. Moreover, MBNA has not produced any records to support its assertion that Plaintiff is a joint obligor on the account, such as the original application, Plaintiff's signature for purchases made with the card, her involvement with or use of the cash withdrawn on the account, or payments on the account made by Plaintiff. Instead, MBNA relies on computerized notations that are inconclusive[.] . . . It is axiomatic that a bank must have more than a person's name on the account statement to establish liability. The court cannot accept MBNA's assertion that Section 226.25 absolves it of an obligation to produce any proof of Plaintiff's liability on the account. *Accord* Linda Johnson v. MBNA Am. Bank, N.A., 357 F.3d 426, 432 (4 Cir.2004) ("jury could reasonably conclude that if ... MBNA no longer had the application, they could have at least informed the credit reporting agencies that MBNA could not conclusively verify that Johnson was a co-obligor")[.].[12]

Over the last decade, debt collection tactics have changed. Particularly with the massive identity theft problem, proving in a small claims court that a consumer is liability by a "preponderance of the evidence" has become unnecessary. The *de facto* burden of proof has shifted and now consumers are forced to prove the negative – to disprove their obligation on a debt. Failing their ability to do so, the creditor or collector will continue to report the consumer's responsibility. In fact, in our litigation of the Linda Johnson v. MBNA case, we learned from MBNA's account records that the consumer was expressly told, "It is not our burden to prove you owe the debt. It's your burden to prove you do not."

[12] Johnson v. MBNA America Bank Nat'l. Ass'n, 2006 WL 618077, n.7 (M.D.N.C. 2006).

Several years ago, the FTC took a rare enforcement action under the FCRA against a debt collector who had espoused the same arguments now so dominating the credit industry.[13] The debt collector was reporting debts to consumer credit files without any attempt to verify same through actual account records. The FTC was successful in obtaining the reporting collector's compliance through a consent order requiring reporting after dispute only when the collector had reviewed the actual underlying account records. This was the only FTC enforcement action of its kind. If the Commission were to more vigorously enforce these same standards today, it could dramatically reduce this type of inaccurate reporting.

***Credit Limits and Other Incomplete Reporting.***

Many credit reporting errors occur because the furnisher has not complied with industry reporting standards, such as METRO 2, and the CRAs have not enforced the requirements of these standards. I will address three examples of such problems.

**Withholding Credit Limits and Account Data.**

Inaccuracy and incompleteness occurs when lenders intentionally withhold positive payment histories or reporting data from the credit reporting agencies for accounts they otherwise report. Mortgage lenders and credit card issuers often do so for strategic reasons. Their asserted objective is to shield their customers from competing lenders who might otherwise solicit them. This practice, which is especially common among subprime lenders, results in credit reports that do not accurately reflect the positive payment histories for borrowers, especially high-interest borrowers in the subprime market.[14] The Comptroller of the Currency suggested that legislation may be required in order to ensure that such information is reported and consumers are protected from such incomplete reporting.[15] Currently, one large credit card lender, Capital One, refuses to report the credit limits for their customer accounts.[16] Recently another, possibly Citibank, appears ready to cease reporting its limits. One of the most heavily weighted parts of a credit score is "credit utilization" which measures the proportion of a

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[13] United States of America v. Performance Capital Management

[14] Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, December 2004, p. 12.

[15] Office of the Comptroller of the Currency, *Press Release NR99-51*, June 6, 1999, *available at* www.occ.treas.gov/ftp/release/99-51.wpw.

[16] Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, December 2004, p. 12-13.

consumer's total revolving credit which is then being used.[17] When a credit card company does not report its customer's credit limit, the reporting agencies substitute the historical value for the highest amount of credit ever used on the account. This can negatively impact a consumer's credit score. This inaccuracy is difficult to diagnose as the consumer will not receive a paper credit report which lists the high credit value in the credit limit field. Instead, the agency computers essentially publish two different reports – one that then enters the scoring algorithm and the one which is printed in narrative form and shown to the consumer. As there are approximately 50 million outstanding Capital One accounts, the number of consumers affected is certainly in the tens of millions.

In considering this issue in its report, the FTC absolved the CRAs from responsibility for these problems upon the assertion from the CDIA that respective creditors may simply forgo the use of their credit reporting services if the CRAs demanded credit limit data. It is unbelievable that the CRA claim that Capital One would cease using national credit reports received any attention let alone was taken seriously by the FTC.

**Post-Bankruptcy Discharge Reporting.**

One of the most prevalent credit reporting problems over the last several years is the failure of the reporting system to provide consumers a "fresh start" after a bankruptcy discharge. Creditors frequently fail to report an updated status for discharged accounts or continue to report their pre-discharge status and balance. Reporting agencies do not update tradelines and judgments they otherwise know have been discharged. My office has represented at least a dozen consumers who were forced to file federal lawsuits to obtain the correction of their credit reports. We are also currently involved in a national case in California targeting the same inaccuracies. Across the country there are scores if not hundreds of such claims active in various stages of federal litigation.

Under the METRO 2 reporting format, a bankruptcy discharge is an account "condition" reported for each consumer who filed. The effect of a bankruptcy on a consumer's credit score is of course initially devastating. However, it is a static event and, all other things equal, a consumer's credit score will continue to improve each day that passes post-discharge.[18]

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[17] http://www.myfico.com/CreditEducation/WhatsInYourScore.aspx.
[18] See e.g. http://moneycentral.msn.com/content/Banking/bankruptcyguide/P108797.asp.

Post-bankruptcy inaccuracies are caused by both furnishers and reporting agencies. A very significant number of creditors never report a pre-Bankruptcy Petition tradeline or collection account as discharged or "included in bankruptcy." Often, when a creditor receives notice of a bankruptcy filing, it simply re-codes its internal account record to reflect the discharge and to avoid violating the bankruptcy stay. This may result in the account never again being reported to the credit bureaus. However, because the CRAs are accustomed to receiving only partial account information or histories, they continue to report the last known status and balance. For example, assume a lender reports a debt as 120 days late on December 31. On January 1, it receives notice of the bankruptcy and internally closes the account. Unless that creditor then re-reports with the new discharge status, the last reported information will be the pre-bankruptcy 120 days late.

Alternatively, some creditors may continue to report or report anew after the consumer's debts have been discharged. The reporting of a discharged debt as outstanding or owing is often accomplished by creditors to continue collection of an otherwise unenforceable debt. A United States Bankruptcy Court cautioned, "Such a notation on a credit report is, in fact, just the type of creditor shenanigans intended to be prohibited by the automatic stay."[19]

**Collection and Transferred Accounts.**

An ongoing problem for the reporting of collection accounts is the date of status or delinquency. Many collectors "re-age" their accounts to report them as more recent than is accurate. This problem is common and frequent. Consumer debtors remain burdened with a serious derogatory account status far longer than the seven years the law would provide. This is especially unjust when the CRA continues to report a "paid" collection or "paid" chargeoff.

Similarly, many collection accounts or credit accounts transferred between creditors are reported without reference to the original creditor or account. In fact, many credit card furnishers such as Capital One and MBNA, now Bank of America, will report an account under a new account number after receiving a consumer's dispute. Debt collectors will add a new collection account that often contains no indication that it duplicates an existing tradeline. These changes and omissions circumvent corrections and blocks placed in a consumer's file by the CRA after a dispute.

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[19] Matter of Sommersdorf, 139 B.R. 700 (Bkrtcy.S.D. Ohio 1991).

All of these above-described problems would not occur if the CRAs did not accept accounts reported without all of the fields required by Metro 2.[20]

**CRA PROCEDURES ARE INADEQUATE FOR HANDLING CONSUMER DISPUTES.**

The intended scheme of the FCRA was one in which a consumer reporting agency could presume its information inaccurate until otherwise put on notice. However, when a consumer notified it of a dispute, the balance was to shift and the agency could not thereafter rely blindly on its creditor customer. Unfortunately, this statutory intent is now systemically ignored by the national reporting agencies.

The consumer's right to dispute information contained in a consumer report is an important safeguard necessary to ensure accuracy.[21] The legislative history rightly characterizes the dispute and correction process as "the heart of ... efforts to ensure the ultimate accuracy of consumer report."[22] The original intent of the FCRA's reinvestigation requirements and their societal importance were plainly stated by Senator Proxmire when the Act was first introduced in the Senate:

> It would be unrealistic to expect credit reporting agencies to be absolutely correct on every single case. But it seems to me that consumers affected by an adverse rating do have a right to present their side of the story and to have inaccurate information expunged from their file. Considering the growing importance of credit in our economy, the right to fair credit reporting is becoming more and more essential. We certainly would not tolerate a Government agency depriving a citizen of his livelihood or freedom on the basis of unsubstantiated gossip without an opportunity to present his case. And yet this is entirely possible on the part of a credit reporting agency.

115 Cong. Rec. 2412 (1969).

Despite the acknowledged importance of the FCRA reinvestigation procedures, the current dispute process is not reliably effective. One study found that ninety-four percent of consumer complaints concerning consumer reporting involved uncorrected errors in reports, and the average consumer had already contacted the CRA over three times--and waited without results for averages of between twenty-three to thirty-one weeks--before complaining to the FTC.[23]

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[20] In fact, in order to accommodate Capital One, the CRAs actually changed the designation of the "credit limit" field in the Metro 2 Manual from mandatory to optional.
[21] In re: Equifax, Inc., 96 F.T.C. 1045, 1065 (1980), *rev'd in part on other grounds*, 678 F.2d 1047 (11th Cir. 1982).
[22] Committee Report accompanying S.650, S. Rep. No. 185, 104th Cong. 1st Sess., at 43 (Dec. 14, 1995).
[23] U.S. Public Interest Research Group, Credit Bureaus: Public Enemy #1 at the FTC (Oct. 1993).

***The FCRA Requires a CRA to Conduct a Meaningful and Independent Investigation.***

Restated, with superfluous text removed, Section 611(a) of the FCRA (15 U.S.C. §1681i(a)) imposes on a CRA upon receipt of a consumer's dispute the following duties:

> [T]he agency shall conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file. §611(a)(2)(A).
> The notice [that the CRA provides to the creditor/furnisher after receiving the consumer's dispute] shall include all relevant information regarding the dispute that the agency has received from the consumer. §611(a)(2)(A).
> The consumer reporting agency shall review and consider all relevant information submitted by the consumer. §611(a)(4).
> [The CRA must immediately remove disputed information if it determines that] the information that is the subject of the reinvestigation is [...] inaccurate or incomplete or [...] cannot be verified. §§611(a)(2)(C) and 611(a)(5).

As written and applied, the FCRA reinvestigation section would seem unambiguous. If a consumer disputes the accuracy of information in a consumer report, the CRA must conduct an investigation. The investigation is called a reinvestigation, presumably because the CRA initially added to its files the item of disputed information only after employing reasonable procedures to ensure maximum possible accuracy in the first place. Before the 2003 FACTA amendments to the FCRA, the Act did not expressly define a qualitative standard by which the CRA must reinvestigate. The FACTA amendments clarified that the reinvestigation must be "reasonable."[24] This addition was consistent with judicial interpretations of the pre-amendment provision.

Underlying the "reasonableness" of a CRA's compliance with its FCRA "accuracy" duties is a two step balancing test used expressly or implicitly by nearly every court to apply the statute. The balancing test was formulated in 1994 by the Seventh Circuit in *Henson v. CSC Credit Services*:

> Whether the credit reporting agency has a duty to go beyond the original source will depend, in part, on whether the consumer has alerted the reporting agency to the possibility that the source may be unreliable or the reporting agency itself knows or should know that the source is unreliable. The credit reporting agency's duty will also depend on the cost of verifying the accuracy of the source versus the possible harm inaccurately reported information may cause the consumer.[25]

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[24] 15 U.S.C. § 1681i(a), *amended by* Pub. L. No. 108-159, § 317 (2003); 16 C.F.R. § 602.1(c)(3)(xviii).
[25] 29 F.3d 280 (7th Cir. 1994).

These two factors--the degree to which the CRA has been alerted as to the unreliability of the information furnisher and the cost of verifying the inaccuracy against its possible harm to the consumer--provide the framework for nearly all judicial analysis applying the CRA's accuracy obligation, and especially interpretations of the FCRA's reinvestigation provisions. A CRA may be entitled to initially rely on an information furnisher because of the inordinate costs in independently verifying a nearly infinite pool of data.[26] However, when a consumer makes a dispute to the CRA, the reasonableness of the CRA's conduct is measured against a heightened standard and the burden shifts to the CRA.[27]

Despite the lack of any statutory ambiguity, each of the national CRAs, Equifax, Trans Union and Experian, are not merely careless with their reinvestigation compliance duties. They entirely ignore them. We recognize that the Committee will hear divergent positions from opposite parties in most of its deliberations. But trust that none of the claims stated herein are without factual support.

***The CRAs Never Conduct a 'Reinvestigation' and Always 'Parrot' their Creditor-customers.***

The most critical provisions in §611(a) are the mandate that a CRA conduct a "reasonable reinvestigation" and the requirement that the CRA "review and consider" the information provided by the consumer. These provisions impose on a CRA the obligation to exercise independent discretion to evaluate the validity of a consumer's dispute. The leading case considering the qualitative standard for a reinvestigation is Cushman v. Trans Union. The Third Circuit stated in this 1997 decision:

> The "grave responsibilit[y]" imposed by [§611(a)] must consist of something more than merely parroting information received from other sources. Therefore, a "reinvestigation" that merely shifts the burden back to the consumer and the credit grantor cannot fulfill the obligations contemplated by the statute. (emphasis added).

When confronted with this decision in litigation, CRA attorneys uniformly make two responses. First, they routinely claim that Congress implicitly repealed the requirement of an independent investigation when it added the FCRA's furnisher liability section in 1996. Secondly, they assert that their procedures do not defer entirely to the creditor and constitute something more than mere "parroting" of their customer's response.

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[26] Henson v. CSC Credit Servs., 29 F.3d 280 (7th Cir. 1994).
[27] Cushman v. Trans Union Corp., 115 F.3d 220 (3d Cir. 1997).

While the first argument seems inconsistent with the statutory text and is more likely to be heard outside the spotlight of this Committee, the CDIA and its CRA directors will assert as they did to the FTC that their procedures involve an independent review and the exercise of discretion. Nothing could be further from the truth. If an industry representative makes such an assertion, the Committee should challenge same and demand a factual rebuttal to the following.

The three major nationwide CRAs all of their tradeline or creditor/collection disputes through an electronic dispute processing system, known as e-OSCAR (Online Solution for Complete and Accurate Reporting). E-OSCAR is owned by Online Data Exchange, L.L.C, a for-profit joint venture with owner ship divided equally amongst the Big-3 CRAs, plus a fourth CRA, Innovis. E-OSCAR is web-based and permits furnishers to communicate with the CRA over the Internet. These communications utilize standard forms with codes, Automated Consumer Dispute Verification forms (ACDVs)and Automated Uniform Data Forms (AUDFs). The CRA initiates a request for a reinvestigation with the furnisher by sending an ACDV through e-OSCAR.

The ACDV contains identifying information about the consumer in the CRA's file; one or two codes summarizing the consumer's dispute; and, if the CRA deems it necessary, a one-line free-form narrative field that supplements the dispute codes. This free-form field is sometimes referred to as the "FCRA Relevant Information field," but is rarely used. The CRAs' procedures manuals offer almost no instructions for their ACDV clerks as to what information should be placed in this one-line text field. As a result, the field is often left blank.

ACDV clerks at the CRA select a specific dispute code from among twenty-six offered by the e-OSCAR system, such as "Not his/hers" and "Claims account closed." These codes are often contained in a dropdown "pick list" and the criteria for selecting the appropriate pick list value for a certain dispute is often more specifically detailed in the procedures manuals.

The CRAs encourage consumers to submit disputes using a limited set of dispute codes, either contained in a pre-created dispute form enclosed with every consumer disclosure, or, more recently, by having the consumer submit a dispute over the Internet using a list of on-line check-boxes to select the basis for the dispute. When such a dispute is submitted over the Internet, there is usually no involvement of the CRA's personnel in the dispute process. The check-box selected by the consumer as most applicable to the dispute is matched to one of the pick-list

ACDV dispute codes and automatically sent to the furnisher without any human intervention. Likewise, regardless of whether the dispute is submitted on-line, via mail, or via telephone, the furnisher's response to the ACDV typically is automatically applied to the tradeline in question with minimal human intervention.

Of the three national CRAs, only Experian processes consumer disputes domestically. TransUnion receives disputes at its consumer relations facility near Philadelphia, scans the dispute into an electronic image and then transmits the image to Intelenet, its subcontractor located in Mumbai, India. Intelenet in Mumbai can connect directly to TransUnion's massive CRONUS database, retrieve a consumer's credit file and initiate the ACDV exchange. If a dispute falls into a certain category which requires "priority processing," such as when a consumer has a mortgage application pending, or the consumer falls with the VIP designation (e.g., a judge, attorney, or celebrity), Intelenet resends the electronic document back to the United States, where a TransUnion employee processes the dispute, albeit using the same CRA procedures manual that the Intelenet employees are contractually obligated to follow at the Mumbai facility. In either scenario, the furnisher's response to the ACDV is automatically reflected in the TransUnion database with no further interaction required and a letter confirming the results of the exchange is then mailed to the consumer.

Equifax maintains a similar dispute processing mechanism. The Equifax business rules require that the consumer's dispute is imaged by Innasource, based in Atlanta. A record of the dispute is logged into the consumer's file, and the dispute is then electronically transmitted to Jamaica, the Philippines, or Costa Rica. The foreign contractor accesses Equifax's database, retrieves the consumer's credit file and initiates the ACDV exchange as applicable. The results of the ACDV exchange are then auto-populated back into the tradelines.

None of these procedures attempt anything other than forwarding the coded "ACDV" to the respective creditor. In a March 2007 deposition, Equifax's Vice President described its entire "reinvestigation" process accordingly:

> Q What knowledge do you have as to the mechanics of how a DDC Filipino employee would process an Equifax dispute? [. . .]
> A The electronic image would be displayed on their screen. They would have an ACIS [Automated Consumer Interview System] screen that they would use. They would then look at the electronic image. They would they would read off the identifying information, enter [. . .] that ID information into the system, access that credit report. At

that point, they'd be able to determine if they were looking at the correct file. If they were, they'd go further. They'd read the read the letter, they gain an understanding of the issues at hand, and they'd look at the credit report to see if the credit report at that time reflects that. If it does, they would send those particular items from the data furnisher or furnishers. They would request that an investigation be started.

Q Through the ACDV?

A Through ACIS, the Automated Consumer Interview System.

Q Okay. And then [. . .] they would check a claim code and fill in the relevant information box from the dispute letter?

A Correct.

Q And then the ACIS system, Equifax's own system, would then generate an ACDV out of that?

A Correct.

Q And then that is sent by automated means through e-OSCAR?

A Correct.

Q And that outsourced vendor's employee's job for that dispute is now finished?

A Assuming they've addressed everything on the --

Q Right. But they're not -- they're not going to handle whatever response the creditor may provide?

A That's correct.

Q Do DDC employees have telephones on their desk?

A I do not believe so.

Q As part of their compliance with Equifax's procedures, do DDC's employees telephone consumers as part of conducting a reinvestigation?

A They do not.

Q Do they telephone creditors, the furnishers, as part of conducting a reinvestigation?

A They do not.

Q Do they telephone anybody from outside DDC or Equifax as part of conducting a reinvestigation of a consumer dispute?

A They do not.

Q What about e-mailing any of those non-Equifax, non-DDC people, creditor, consumer, or third party?

A They should not be -- they do not e-mail them.

Q And what about fax machines?

A [. . .} They do not have fax machines either.

Q Under what circumstances will a DDC employee forward the consumer's actual dispute letter or documents the consumer provided to the furnisher, the creditor, as part of a reinvestigation?

A A mechanism does not exist to forward the actual documents.

This is the same exact process used by each CRA. The only human intervention is to determine the appropriate two-digit code to enter in a computer message to the creditor. No independent discretion is exercised. No information is "considered" in the reinvestigation. The CRA agents

act only as data entry clerks to transfer the consumer's written dispute, of whatever detail, into one of the four primary dispute codes used over 90% of the time.

Each CRA has named its dispute processing manual by a unique name. I am endeavoring to provide Chairman Frank's office and the FTC the most recent complete and unprotected manuals I have in my possession. The pages I cite herein are also attached as an exhibit to this testimony. Experian's "Consumer Investigation Procedures Participant Guide" is the 2002 edition. Equifax's "Indicating Manual" is dated 2004 and Trans Union's "CRS Manual" is also dated 2004. While I have received and read the more recent CRA manuals, I am unable to share them as I remain bound by Protective Orders and CRA designations of such documents as confidential. If the Committee can obtain the agreement of the respective CRAs to release us from their designations, I will promptly provide the most recent manuals. Regardless, as is evident from the recent deposition testimony cited herein, the CRA procedures have not meaningfully changed. If anything, they have become more automated as the agencies have shifted all disputes to the E-Oscar ACDV system. Most of the details in these manuals relate only to how a CRA employee or outsource vendor is instructed to select appropriate dispute codes to send to the creditor. The descriptions of the other aspects of this 'reinvestigation' process are much shorter. For example, Experian lists four steps:

1. The consumer contacts Experian by phone, mail or the internet to request an investigation.
2. Experian notifies the creditor or public records vendor, via a Consumer Dispute Verification (CDV) form or an Automated Consumer Dispute Verification (ACDV) form of the consumer's investigation request.
3. The credit grantor checks their files or the public record vendor revisits the court to confirm or deny the consumer's claim. The A/CDV is returned to Experian with a response.
4. Experian sends the consumer, by mail, a Consumer Disclosure Final (CDF) with the creditor's or vendor's response.[28]

Trans Union's manual extends the Consumer Dispute steps to six and over four pages of its manual explains in relevant part:

1. Identify the Line item. ("[I]dentify the tradeline.")
2. Open the Disputes Screen.
3. Add Claim Code(s). ("Based on the information the consumer provides, select a Claim Code from the Claims drop-down list and chose Add.")

[28] Experian Consumer Investigation Procedures Participant Guide, 2002, p.7.

4. Add Consumer Comment. ("Add a Consumer Comment if the consumer provides additional details about the dispute that is not addressed by the current Claim Codes.")
5. Select an Address. ("If the subscriber/data furnisher has more than one address. . . The CDV will be sent to the displayed address.")
6. Finish opening the Dispute. ("Choose 'Done.")[29]

What is of course missing from these procedures is the exercise of any discretion. The CRAs defer entirely to, or "parrot" their creditor-customers. If the creditor instructs the CRA to retain the information as reported, there is literally nothing the consumer can do to override that instruction. While the CRAs offer the claim that they will review the documents the consumer provides to determine if they are "acceptable" to allow a correction outside the ACDV process, the word "Acceptable" is a proper name for a specific category of documents listed in the CRA manuals. Essentially, for a consumer's dispute of a credit account tradeline, the only "Acceptable" documents are written letterhead communications from the creditor itself instructing the CRA to delete or correct the reported tradeline.[30] Further, the creditor letter would have to be more recent than the last date the creditor had otherwise "verified" the account.

In explaining the real world application of these procedures, Trans Union's employee who performed such dispute processing before such tasks were shipped to India explained:

> Q. [If the] consumer says, 'I dispute this credit card account, here's the account number, it belongs to my husband, not to me, what would you have done if you were complying with Trans Union's procedures in August '05?
> A. I would dispute the account with the appropriate clam code.
> Q. How would you do that?
> A. In the computer. [. . .] I would click on the account and select the appropriate claim code. Once you hit okay, it says open, which means the dispute on that account has been opened.
> Q. After you put the dispute code and click on the dispute, do you have any other role in the investigation or dispute process for that account?
> A. No.
> Q. It just gets sent onto the creditor, and your job as to that dispute is done, right?
> A. Correct.
> Q. It would be fair to say that if you were complying with Trans Union's policies, you're not as an investigator or as a dispute processor making any judgment calls or exercising any discretion about whether a consumer really owns the account? [. . .] You're not exercising that discretion?
> A. No. [. . .]
> Q. How does Trans Union instruct its employees to process the dispute?

[29] Trans Union CRS Manual, September 28, 2004, "Consumer Disputes", pp. 1-4.
[30] Trans Union CRS Manual, September 28, 2004, "Documents Acceptable for Maintenance", pp.1-4.

A. In the system.
Q. By taking the consumer's dispute, summarizing it into a claim or dispute code, inputting that into the system and sending that code to the creditor?
A. Correct.
Q. Is there any other part of an investigation besides that that Trans Union has instructed its employees is required?
A. No.
Q. What if the creditor and the consumer strongly disagree about whether a debt is owed, consumer says that the debt's now owed, the creditor says yes, it is, what does Trans Union do to determine who's correct?
A. It's up to the creditor to make the decision.[31]

Experian's procedures are no more rigorous. Its employee testified:

Q. After you receive a dispute such as Exhibit 1[a multipage dispute letter with nearly 60 pages of supporting documentation], if you were following Experian's mandate or requirement, you would plug the information into the computer, the name, address and social, and pull up the file on the screen, correct?
A. Yes.
Q. You would then review to learn what items were being disputed, is that correct?
A. Yes.
Q. What is the next step that you would follow if you were obeying Experian?
A. I would process the items. [. . .] I highlight on the [tradeline] item, and I enter the option. [. . .]
Q. What options do you have to choose from?
A. I would choose the one 'the consumer states the item is not theirs due to fraud.'
Q. So there is a list of multiple choice options that you would click on?
A. Yes. [. . .]
Q. And can you list some of the other multiple choice codes you could click on?
A. [After estimating that there were as many as 15 dispute codes] There's one for 'not mine, for mixed file.'[32]

None of the CRAs follow procedures to consider and exercise discretion over a consumer's dispute, even if it arose from fraud or identity theft. When another CRA witness was asked, "What does Experian intend for its employees to do in order for them to obtain and review copies of the underlying documents on the dispute – from the creditor on the disputed account?, the employee testified, "It's not Experian's policy to require or suggest that its agent ask for any underlying documents. Experian doesn't train its employees to do handwriting analysis or

[31] Mullins v. Trans Union, et al, Deposition of Selena Bazemore, September 21, 2006.
[32] Beck v. Experian, et al, Deposition of Brenda Hahlen, June 29, 2005.

various other investigative-type things that would be required of reviewing a credit application."[33]

***CRA Procedures Twist the Meaning of "Accuracy".***

The CRAs also now contend that their credit reporting is "accurate' so long as it matches the data provided by their creditor customers. This is plainly contrary to prior judicial and FTC interpretations of the "accuracy" duty. A reinvestigation must be a good faith effort to determine the accuracy of the disputed item.[34] More is usually required than simply confirming that the disputed information was in fact reported as it was received from the original source. However, this is all that the CRAs do. A recent CRA witness testified:

> Q. And how would they [Trans Union's employees] determine if the information is reported incorrectly?
> A. Well, its not – it's to make sure that it's in the right field, the right code.
> Q. Its not to determine –
> A. It's mot to say the balance is correct on so and so's account, no.
> Q. It's not to make sure that the underlying account data is accurate, right?
> A. I don't believe it is, no.[35]

***The CRAs Do Not Forward "All Relevant Information".***

Another requirement for a FCRA reinvestigation is that the CRA forward to the creditor furnisher "all relevant information" provided by the consumer. This is a critical and ongoing battle between consumers and the national CRAs. In fact, as is apparent from the CDIA emails, this was also a matter in contention between the FTC and the CRAs. The consumer's Catch-22 is as follows: If a dispute is made directly to the creditor, it is rarely taken seriously as there is no private remedy for a creditor's failure to comply with Section 623(a) (15 U.S.C. §1681s-29a)). Furthermore, the FTC has initiated only a single enforcement action against a furnisher since the 1996 amendments. However, when a consumer makes a dispute to the CRA, required to trigger the furnisher investigation provisions under Section 623(b), the CRA will reduce the dispute, no matter how detailed, substantive or documented, to an ACDV electronic message with one of a handful of dispute codes. Clearly, a CRA's refusal to forward all relevant documents and details of the dispute appears to violate the statute. The CRA response is to rely on a field in the ACDV

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[33] Beck v. Experian, et al, Deposition of Kimberly Hughes, June 30, 2005.
[34] Curtis v. Trans Union, L.L.C., 2002 WL 31748838 (N.D. Ill. Dec. 9, 2002); FTC Official Staff Commentary § 611 item 2.
[35] Mullins v. Tran Union, et al, Deposition of Eileen Little, September 21, 2006.

form that permits a "free text" comment by the CRA employee or agent. This box is limited to one line and a fixed number of characters. If you attempt an internet dispute and enter details in the free form box provided, you can see firsthand how limited this option really is. In addition, only a minority of ACDV's sent actually contain such a field. Trans Union's employee has testified that it is used less than 10% of the time and even then only if the consumer's dispute is not in a regularly selected category.[36]

What makes matters worse is the CRA collapse of the reinvestigation dispute codes from 100 choices under the old system, to 26 under E-Oscar. And of these twenty six choices, the CRAs use the same four codes for nearly 90% of all disputes, a fact the CDIA emails evidence they sought to conceal from the FTC. The percentage breakdown for the CRAs minimum number of codes is as follows:

| | |
|---|---|
| Not his/hers | 30.5% |
| Disputes present/previous Account Status/History | 21.2% |
| Claims Inaccurate Information. Did not provide specific dispute | 16.8% |
| Disputes amounts. | 8.8% |
| Claims account closed by consumer. | 7.0% |

As the CRA testimony cited above evidences, there is no mechanism in E-Oscar, used now for 100% of all creditor tradeline disputes, by which the CRA agent can or will forward documents to the furnisher or receive documents from the furnisher. Any claim to the contrary is not truthful. Trans Union's witness testified:

> Q. But, again, there is no mechanism at all of which you're aware by which the dispute investigator would send copies of the dispute or documents with the dispute onto the creditor?
> A. No.[37]

In fact, other than the unusual and rare "VIP" disputes handled by the CRA attorneys or legal support, there is never even human contact between the CRA and the creditor source.

This "all relevant information" problem has a real and significant impact on consumers. Often, it strips them of their rights to force the creditor to conduct the very investigation to which the CRA wants to defer. Several Federal Courts have dismissed consumer claims against

[36] *Id.*.
[37] *Id.*

furnishers because of the generality of the CRA ACDV and its failure to forward the actual dispute and documents.[38] The Seventh Circuit explained:

> Credit Control's investigation in this case was reasonable given the scant information it received regarding the nature of Westra's dispute. Credit Control received a CDV from Trans Union indicating that Westra was disputing the charge on the basis that the account did not belong to him. The CDV did not provide any information about possible fraud or identity theft or include any of the documentation provided to Trans Union by Westra. Credit Control verified Westra's name, address, and date of birth and sent the CDV back to Trans Union. Had Trans Union given Credit Control notice that the nature of the dispute concerned fraud, then perhaps a more thorough investigation would have been warranted.[39]

Similarly, in Malm, the Minnesota District Court held:

> While specific notice of Plaintiff's concerns could have compelled Sherman to conduct a more thorough review, thus creating an issue of "reasonableness" for the jury, a more rigorous investigation was not required here based on the superficial notice that Trans Union provided.[40]

The irony is that the CRAs attempt a justification of their deferential procedures by claiming that only the creditor has a substantive investigation duty even though they routinely refuse to forward sufficient, let alone all relevant information to the creditor source.

One argument the CRAs cannot assert is a technological or cost barrier to forwarding the consumer's dispute and supporting documents. First, all three CRAs currently scan and archive the consumer's dispute and documents. There is no greater storage or archive space required. There is also no technological obstacle to forwarding the dispute and documents electronically. Equifax and Trans Union already do so to India and the Philippines. Sending them concurrently to domestic furnishers would not require nearly as much bandwidth and resource devotion. Even beyond these obvious conclusions, we have as well provided the Committee the Proposed Statement of Work drafted by the CRA's E-Oscar vendor, A.T. & T. in 2005. A fix to the E-Oscar system to enable it to include the dispute letters and documents has already been designed. The CRAs need only to implement it.

There are no reasonable privacy objections to forwarding consumer dispute letters to multiple creditors. Each subscriber will have already been the subject of the verification

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[38] Westra v. Credit Control of Pinellas, 409 F.3d 825 (7th Cir. 2005); Malm v. Household Bank, N.A., No. 03-4340 2004 U.S. Dist. LEXIS 12981 (D. Minn. July 7, 2004).
[39] Westra, 409 F.3d at 827.
[40] Malm v. Household Bank, N.A., No. 03-4340 2004 U.S. Dist. LEXIS 12981 (D. Minn. July 7, 2004).

provisions of the FCRA to ensure the security of consumer data. Furthermore, the CRAs cannot feign a privacy concern when they would already willingly sell a consumer's entire credit file to a subscriber who provided only a name and address.

***CRA Reinvestigations are Solely Cost Driven***

The CRA reinvestigation procedures have been implemented and have evolved towards two ends – customer satisfaction and cost. The first motivation is explained by the CRA ambition for greater revenue. The creditor who reports a delinquent account to the CRAs does so in the hope of collecting that debt. And despite the growing profits in credit monitoring services, the CRAs make most of their money from these collecting creditors. For example, we learned in discovery that Trans Union received over $6 million per year from MBNA alone. The CRA has no interest in deferring to a consumer involuntarily captured in a relationship with the agency, when doing so could cause its paying customer to lose collection opportunities and profits.

Equally important is the CRA desire to reduce costs and limit the allocation of resources for functions that do not produce revenue. Until recently, with the move of E-Oscar into a for-profit entity, the reinvestigation function has been seen only as a cost burden, to be minimized and reduced as much as possible. While all three CRAs have taken similar directions, the changes made by Equifax are easiest to measure. Before mid-2004, when Equifax still handled some disputes in-house, its average cost per dispute was $4.67. By late 2004 and into 2005, Equifax was using an outsource vendor in Montego Bay, Jamaica, ACS. Its ACS reinvestigations cost the CRA only $1.08.[41] Now, after the move to DDC in the Philippines, Equifax pays only $.57 per consumer dispute letter, regardless of how many items or accounts are at issue. Trans Union has a different contractual relationship with its outsource vendor. It pays the Indian company a flat $8.00 per man-hour the vendor incurs, but it maintains rigorous production standards the vendor must meet. In addition, nearly all disputes are now conducted by electronic automated means, eliminating the need for human involvement and the expense of a paper enterprise. These dramatic reductions in cost per dispute described above have all come during a period of rising identity theft and fraud disputes.

[41] Faile v. Equifax, Deposition of Gary Poch, March 13, 2007.

Litigation discovery has also revealed quota systems used by the CRAs to force employees to process disputes rapidly and without meaningful inquiry. For example, Experian uses a system to measure the number of "converted units" produced by each employee. Each task is assigned a different value. To meet Experian's minimum standards for a pay incentive if processing the most difficult of disputes – fraud and identity theft claims, the employee would have to perform at least 98.25 disputes per day, or 13.1 per hour.[42] The quota minimum at Trans Union before it outsourced its reinvestigation function was between 10 to 14 dispute letters per hour.[43]

This is as much "cost" information as consumers have yet discovered. In fact, in two recent cases, Beck v. Experian and Faile v. Equifax, both CRAs claimed to not maintain budgets, projections or gross cost estimates for their reinvestigation functions. While this claim is incredible, so long as the agencies continue to assert it, they cannot reasonably argue that a substantive and improved reinvestigation process would be cost prohibitive.

***The 'Red-Herring' of Credit Repair Clinics***

A final retreat for the CRA defense of the shallow investigation system is the industry boogieman, "Credit Repair Clinics." Currently, these are of far less consequence than they may have been five years ago. Still, the CRA concern about credit repair clinics is not entirely unfounded. Pseudo-law firms such as the Lexington Law Group and its protégé deceptively market false promises to obtain the removal of otherwise accurate credit data. However, the CRAs have long ago adapted their procedures to these problem disputes. They each have detailed procedures manuals to train employees and agents to spot these disputes. The credit repair disputes to which the CRAs and the CDIA often refer are generic disputes making a claim such as "This account is inaccurate" with nothing more and are thus easily separated from most disputes.

We do not argue that such an unsupported dispute, without more would require anything other than confirmation from the reporting source. In fact, the FCRA already permits a CRA to refuse to delete or reinvestigate disputed information if the CRA "reasonably determines" a dispute is frivolous or irrelevant.[44] The FTC Staff Commentary states that CRAs must assume

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[42] Beck v. Experian, et al, Deposition of Kimberly Hughes, June 30, 2005.
[43] Evantash v. Trans Union, et al, Deposition of Eileen Little, January 25, 2003.
[44] 15 U.S.C. § 1681*i*(a)(3).

that a consumer's dispute is bona fide, unless there is evidence to the contrary.[45] Such evidence may consist of receipt of letters disputing all information in the file without allegations concerning the specific items in the file.[46] Other evidence, according to the FTC Staff Commentary, would be a dispute made by a common format suggesting that a "credit repair" organization or similar entity is counseling consumers to dispute all items in their files, regardless of whether the information is known to be accurate.[47]

**REGULATORY ENFORCEMENT HAS BEEN INEFFECTIVE**

More than any other factor, the growing permissiveness of the FTC has emboldened the national CRAs and their creditor customers to forgo more cumbersome or substantive FCRA compliance. As drafted, the statute would appear powerful, and for years earlier it was. For example, between 1991 and 2000, the FTC vigorously prosecuted violations of the FCRA by the three national CRAs and obtained multiple consent injunctions. It targeted mixed file problems. It succeeded in forcing reallocation of resources to the CRAs' reinvestigation responsibilities. With modest exceptions, as regards Equifax, Trans Union and Experian, the Commission has been largely silent since.

This has been a mistake. Federal Judges in cases prosecuted by the FTC have injunctive power. The majority of courts to consider whether individual consumer cases present such remedy have concluded that there is no such injunctive relief. While I can represent my client to obtain monetary damage, the FTC can force a systemic change for the benefit of all consumers.

The FTC has also failed to challenge CRA and creditor noncompliance when preparing the several reports required by FACTA. The most important of these, the FTC/FRB Joint Reinvestigation Report concluded hesitantly that there may or may not be a problem with the reinvestigation process. But it did so by ignoring or failing to affirmatively seek out more substantive contributions from consumers and the organizations that represent them. Upon receipt of traditional public comments, the FTC staff then worked side by side with the Big 3 CRAs, through the CDIA, to compose and justify the Report analysis and conclusions.

We do not imply any malevolent objective or temperament of the FTC. In fact, it appears that the Commission's ambitions were fair-minded and well motivated. However, the regulators

[45] *See* FTC Official Staff Commentary § 611 item 11.
[46] FTC Official Staff Commentary § 611 item 11.
[47] *Id.*

have deferred naively to the National CRAs and the CDIA believing wrongly in their objectivity and institutional integrity. We have produced for the Committee a number of communications between the CDIA and the National CRAs that run the organization, each discussing the FTC/FRB effort and report. Each communication by the FTC staff is documented and discussed. While it is apparent that the FTC was acting and operating under the assumption that the CDIA responses were open and reliable, it is now equally apparent that the opposite was true. On numerous occasions documented in these inside exchanges, the CRAs' General Counsel and Government Relations attorneys instructed the CDIA to withhold, disguise or misstate data to the FTC. For example, when the FTC attorney requested an explanation for and sought data pertaining to the increasingly limited number of E-Oscar dispute codes used, the CDIA and the CRA attorneys did not want the FTC's Tom Kane to learn that 90% of their disputes used the same five generic codes. Instead, they removed the percentages, and added four additional codes that are rarely if ever used to imply deceptively that the CRAs use a broader range of descriptions to convey consumer disputes.

On another occasion, after the FTC had requested current dispute statistics, Equifax's General Counsel and its Chief Privacy Officer wrote between one another:

> Mr. Mast (Equifax): "What is the cause in the dramatic change in the data verified percentage? Would seem best to leave [FTC's] Kane with the published older material."
> Mr. Goerss (Equifax): "I'll look into this. Agree that we need to provide him with the most favorable statistics."

Given the difficulties faced by Mixed File victims, it is also telling that the CRAs avoided an explanation to the FTC about how a Mixed File victim could obtain relief through the reinvestigation process. In drafting the Reinvestigation Report, the FTC requested from the CDIA a sample ACDV form showing a typical consumer dispute. On first draft, the CRAs had prepared an ACDV for a Mixed File inaccuracy. However, more calculating heads prevailed and the ACDV with mixed file implications was replaced with one for a simpler problem – a straight ownership dispute. Experian's attorney stated: "I thought we had discussed going with a different example. This one had a lot of identity issues going on (name, SSN) which may raise a lot of 'what do you do when?' questions. Weren't we going to use a simpler dispute to demonstrate a sample form?"

These examples are indicative of the way in which Tom Kane's and the FTC's trust was substantively betrayed through its CDIA exchanges.

The FTC also failed to ask tough questions or to demand the CRA manuals and information provided in this written statement. If the CRAs would not provide their procedures, witness testimony or reinvestigation statistics to the FTC on request, it could certainly have looked elsewhere. Instead, the Commission considered the issues raised in NACA's 2003 testimony and solicited from the CRAs a "Rebuttal" to same.

Similarly, the FTC mistakenly allowed its FACTA Accuracy Report to serve as a defense of the industry's Mixed File problems. The FTC concluded that stricter rules on matching identifying information would result in fewer mixed files, but also result in an increase in cases where no matches were found or "no-hits." The FTC noted that some "no-hits" reflect cases where identity theft may be prevented, but remarkably concluded contrary to the generally held views of Identity Theft, Privacy Rights and consumer advocacy groups that in most cases a no-hit does not provide a benefit to consumers.

Finally, the FTC also deferred to the unsupported assertions of the national CRAs when rejecting consumer requests to require the delivery of the actual credit reports used in a credit denial rather than a differently matched product. Credit reports are furnished in electronic form and rarely look much like what the consumer actually receives. In fact, the CRAs use an entirely different algorithm and in one case even a different database to create the "free credit reports" they provide to consumers. The result is that the creditor often receives a materially different report than that provided to the consumer. For example, in 2003 I discussed the case of Teresa Davis. Ms. Davis, then in the Air Force, was denied credit at her local credit union. She was told that it was based on an Equifax credit report and was because of an outstanding collection. She requested a copy of her free Equifax report and was told in same that she had perfect credit. She again applied and again suffered the denial. It was only after three such attempts that she was able to obtain the bank's copy of the report and saw that it contained different data than that provided to her from the CRA. From the perspective of a litigation advocate, this issue is often a difficult one. The CRAs claim to wipe the creditor report from their files after 90 days even though they retain indefinitely every consumer disclosure report they provide to the consumer. When a consumer plaintiff then attempts to use their disclosure as evidence of what the CRA

would have reported to the third party creditor, the CRA will object and explain that the reports may contain different data.

In FACTA, the Congress asked the FTC to consider the possibility of requiring CRAs to provide to consumers copies of the same reports actually used by the creditor who made a credit denial. This is an especially important issue for consumers such as Mr. Carroll and other mixed file/identity theft victims who might not otherwise understand or learn the real reason for a credit denial. The CRAs fought this, most certainly out of fear of empowering consumer claimants. The argument that they cannot logistically accomplish the archive of such reports is dishonest. All three CRAs maintain all reports they provide to consumers. They maintain at least monthly "snapshots" of a consumer file in one instance as far back as 1989. They retain all dispute documents sent by consumers, all contracts between the agency and their customers, limitless dispute historical data and a wealth of other information far more burdensome than that sought by consumers in these regards. Regardless, as at least two CRAs already retain all such report histories for 90 days, the data is already available to them when a consumer requests their report within 60 days of suffering a credit denial. Had the FTC offered consumers and more knowledgeable consumer groups, or at least required complete procedures data from the CRAs, it could not have reached the conclusion it did.

## RECOMMENDATIONS

Given the range of issues confronting this Congress generally and this Committee specifically, it is our suggestion that the FCRA demands only a small number of immediate improvements, having little cost impact on industry, but offering considerable benefit to consumers. While much has been stated already herein, NACA adopts further the regulatory recommendations of the National Consumer Law Center, with whom we share a public interest.

### *Clarify that the FCRA Provides Injunctive Relief.*

The first limitation of the FCRA that must be corrected is the failure of Congress to explicitly state that United States District Courts retain their injunctive power in individual FCRA cases. Currently in most jurisdictions, a consumer has no alternative to seeking a monetary judgment as a remedy for a FCRA violation and resulting credit inaccuracies. Even in the most egregious circumstances, most courts have found no judicial means to correct systemic violations. While it is likely that Congress never intended to so divest Federal Courts of their

injunctive powers, there is judicial confusion that can be corrected with a short addition to the statute expressly acknowledging such a remedy. This would provide a faster and less burdensome remedy for consumers and ease the growing FCRA trial burden in the federal courts.

***Correct FACTA Scrivener's Error and Continue to Require of Adverse Action Notices.***

The Committee should also correct a second error, this one created in the FACTA codification process. When Congress added a new requirement that mortgage companies provide adverse action notices on counter-offers, it included a provision that stripped the new requirement of a private cause of action. However, because FACTA was drafted with the casual use of the word "Section" to mean this new provision, instead of a clearer "Sub-paragraph" or "Sub-section", some Courts have concluded that the Plain Language of FACTA repealed the private cause of action for every provision in Section 615. This would include the longstanding requirement that a creditor send a denial letter informing a consumer of his right to a free credit report and to make a dispute of inaccurate information in same. Section 615(a).

***Clarify that the CRA Reinvestigation Duties are Substantive***

Beyond these drafting fixes, NACA believe that either this Congress or the FTC must restate by Statutory amendment, Committee Report, or even informal Regulatory Guidance the following otherwise apparent constructs:

The reinvestigation requirement requires a discretionary inquiry by the CRA into the underlying accuracy of reported data and not merely a determination as to whether or not CRA reporting matches furnisher reporting.

The FCRA's reinvestigation requirement requires the CRA to forward consumer disputes and supporting documents to a furnisher in a manner that provides the furnisher all of the information provided by the Consumer.

***Require CRAs to Provide Actual Credit Report or Data Used to Take the Adverse Action.***

Congress must consider requiring the CRAs to furnish to consumers requesting their post-denial free report under the FCRA, the same report data provided to the creditor.

***Enforce the FCRA's Accuracy Requirements to Reduce Mixed Files.***

The FTC must return to its 1990's efforts to regulate the national CRAs in a manner to reduce mixed files.

***Enforce the Federal Credit Repair Organizations Act.***

In light of industry concerns about Credit Repair Clinics, the FTC should consider more aggressive investigation and prosecution of violations of the Federal Credit Repair Organizations Act. This is an ambition our organization, NACA, which bars credit repair clinics from its membership, can share with the national CRAs.

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Speaker and Panelist at numerous state and national seminars and consumer law courses, including regular invitations to speak at the NACA Fair Credit Reporting Act and Auto Fraud conferences, the National Consumer Law Center's Consumer Law conferences; CLE programs for the ABA and various state Bars:

**2007**

- Washington State Bar, Consumer Law CLE, Invited Speaker, July 2007, *Fair Credit Reporting Act.*
- National Association of Consumer Advocates, *Fair Credit Reporting Act National Conference, Multiple Panels*;
- U.S. Army JAG School, Charlottesville, Virginia, Course Instructor, *Fair Credit Reporting Act.*
- Georgia State Bar, Consumer Law CLE, Speaker, *Fair Credit Reporting Act.*

**2006**

- Contributing Author, *Fair Credit Reporting Act, Sixth Edition*, National Consumer Law Center
- National Consumer Law Center, National Consumer Rights Conference, Miami, FL, Speaker for Multiple Sessions, *Fair Credit Reporting Act*,
- Texas State Bar, Consumer Law CLE, Speaker, *Federal Claims in Autofraud Litigation*
- Santa Clara University Law School, Course, *Fair Credit Reporting Act.*
- Widener University Law School, Course, *Fair Credit Reporting Act.*

- United States Navy, Navy Legal Services, Norfolk, Virginia, *Auto Fraud*;

**2005**

- Missouri State Bar CLE, Oklahoma City, Oklahoma, *Fair Credit Reporting Act*;
- National Consumer Law Center, National Consumer Rights Conference, Boston, Mass. *Fair Credit Reporting Act Experts Panel*; and *ABC=s of the Fair Credit Reporting Act.*
- National Association of Consumer Advocates, *Fair Credit Reporting Act National Conference*, New Orleans, Louisiana, *Multiple Panels*;
- United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, *Consumer Law.*

**2004**

- American Bar Association, Telephone Seminar; A*Changing Faces of Consumer Law@,*
- National Consumer Law Center, National Consumer Rights Conference, Boston, Mass.
- *Fair Credit Reporting Act Experts Panel*; and ABC=*s of the Fair Credit Reporting Act.*
- National Association of Consumer Advocates, *Fair Credit Reporting Act National Conference*, Chicago, Illinois; *Multiple Panels*
- Oklahoma State Bar CLE, Oklahoma City, Oklahoma, *Identity Theft*;
- Virginia State Bar, Telephone Seminar, *Identity Theft.*
- United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, *Consumer Law*
- United States Navy, Navy Legal Services, Norfolk, Virginia, *Auto Fraud*;
- Virginia State Bar, Richmond and Fairfax, Virginia, *Consumer Protection Law*;
- Michigan State Bar, Consumer Law Section, Ann Arbor, Michigan; *Keynote Speaker.*

Presented NACA=s Congressional Testimony before House Committee on Financial Services, AFair Credit Reporting Act: How it Functions for Consumers and the Economy@, June 4, 2003, Proposed Amendments to the Federal Fair Credit Reporting Act, http://financialservices.house.gov/media/pdf/060403lb.pdf.

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Statement of

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Director, Division of Consumer and Community Affairs

Board of Governors of the Federal Reserve System

before the

Committee on Financial Services

U.S. House of Representatives

June 19, 2007

Chairman Frank, Ranking Member Bachus, and members of the Committee, I appreciate the opportunity to appear today to discuss the accuracy of credit reports and the rules pertaining to furnishers of information to consumer reporting agencies ("furnisher rules") required under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which amended the Fair Credit Reporting Act (FCRA).

**Introduction**

The accuracy of credit reports is vital because inaccuracies in credit reports can result in a consumer being denied credit or paying higher rates for credit. Inaccurate information can be introduced into credit reports by a variety of means, including mistakes in public records or data processing errors made by furnishers in connection with the information they provide. Other causes are the reporting of fraudulent accounts opened as a result of identity theft, the mixing or commingling of the files of consumers who have similar names or Social Security numbers, or data processing errors made by consumer reporting agencies in connection with the information they receive. Also, information that is correct at the time it is furnished is sometimes not updated in a timely manner. Furnishers and consumer reporting agencies share responsibility for ensuring the accuracy of credit reports.

Prior to the FACT Act, the FCRA imposed duties on both consumer reporting agencies and furnishers with regard to the accuracy of information in credit reports. The FCRA's existing dispute process allows consumers to contact consumer reporting agencies to dispute the accuracy of credit report information, and it requires a furnisher to assist in an investigation and correct any errors in the information furnished.

Congress adopted the FACT Act in 2003 to enhance the accuracy of credit reports and improve the dispute process. Among other things, the FACT Act gives consumers the right to

request free copies of their credit reports annually from each of the three nationwide credit bureaus. This tool makes it possible for consumers to play a more active role in ensuring the accuracy of their own credit reports.

Several other provisions focus on the specific duties of furnishers to ensure the accuracy of the information they report to consumer reporting agencies and to strengthen the dispute process. Under section 312 of the FACT Act, the federal banking agencies,[1] the National Credit Union Administration (NCUA), and the Federal Trade Commission (FTC) (collectively "the agencies") must establish guidelines for use by furnishers to ensure the accuracy and integrity of the consumer information they report to a consumer reporting agency, and they must write regulations requiring furnishers to adopt reasonable policies and procedures to implement the guidelines. In addition, section 312 requires the agencies to identify the circumstances when a furnisher must investigate a consumer's dispute about the accuracy of credit report information based on a complaint that comes to the furnisher directly from the consumer, rather than through a consumer reporting agency. The FACT Act also required the Board to issue a model notice for creditors' use when notifying consumers about the furnishing of negative information to credit bureaus, which the Board published in final form in June 2004. Finally, the FACT Act requires certain studies relating to the accuracy of credit report information and the dispute process. The Board and the FTC jointly submitted a report to Congress in August 2006 regarding the dispute process study. The accuracy study was assigned to the FTC.

The interagency rulemakings to develop the furnisher accuracy and integrity guidelines and direct dispute rules have not yet been completed. An advance notice of proposed rulemaking

[1] The federal banking agencies are the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

(ANPR) relating to these interagency rules was published in March 2006. The agencies are currently working to develop a proposal.

**Consumer Reporting in the United States**

The consumer reporting system in the United States is based largely on the voluntary submission of information by creditors and others to three major nationwide consumer reporting agencies or credit bureaus--Equifax, Experian, and TransUnion. These credit bureaus collect information about consumers and sell the information in their files to creditors and others who have a permissible purpose under the FCRA to obtain and use the information. The databases of the three nationwide credit bureaus contain detailed information that is widely used to determine whether to grant consumers credit or insurance or whether to offer employment, rental housing, or other products and services to consumers, as well as the terms that may be offered to consumers.

The credit reporting system also includes a number of smaller consumer reporting agencies that operate on a regional or local basis. These consumer reporting agencies typically contract for the right to house some or all of the consumer data that they own on the computer systems of one of the major credit bureaus. Some consumer reporting agencies specialize by collecting and maintaining data pertaining only to certain topics, such as employment history, residential or tenant history, medical records or payments, check writing histories, or insurance claims. The credit reporting business also includes "resellers" that buy consumer reports from one or more credit bureaus, add value to the consumer report (for example, by merging files from multiple credit bureaus), and resell to users who have a permissible purpose. For example, some resellers specialize in selling merged-file reports to mortgage lenders.

Much of the information that consumer reporting agencies collect, maintain, and sell is furnished voluntarily by banks, credit unions, finance companies, insurance companies, doctors and hospitals, debt collectors, and landlords. However, as there is no requirement to furnish consumer information to consumer reporting agencies and since furnishers incur costs and obligations by participating in the credit reporting system, some potential furnishers decide not to submit consumer data to consumer reporting agencies. Moreover, not all furnishers provide the same type of information. Many report full account payment information to consumer reporting agencies (positive information when an account is current and negative information when an account is delinquent), but some report only negative information. This is particularly true for accounts related to medical, telecommunications, and utility debts. Some credit card issuers do not furnish data on consumers' credit limits. Finally, some furnishers provide information to only one or two of the nationwide credit bureaus, while others may report only to one of the specialized consumer reporting agencies.

**The Importance of Accuracy in Consumer Reports**

Because credit reports are used to determine whether, and on what terms, consumers may obtain credit and other important products and services, it is essential that the substantive information included in those reports is accurate. Given the range of ways in which inaccuracies can be introduced into credit reports, the issue of data accuracy is of interest to lawmakers, regulators, and others. A number of studies have examined the accuracy of credit report information. Two studies were undertaken by Board staff[2] and another was undertaken jointly

[2] Robert B. Avery, Raphael W. Bostic, Paul S. Calem, and Glenn B. Canner, An Overview of Consumer Data and Credit Reporting, Federal Reserve Bulletin, vol. 89, at 47-73 (Feb. 2003) (2003 Board staff study); Robert B. Avery, Paul S. Calem, Glenn B. Canner, and Shannon C. Mok, Credit Report Accuracy and Access to Credit, Federal Reserve Bulletin, vol. 90, at 297-322 (Summer 2004) (2004 Board staff study).

by the Consumer Federation of America and the National Credit Reporting Association.[3] In addition, the FTC, as directed by Congress in the FACT Act, is undertaking a long-term study of the accuracy and completeness of information contained in credit reports and of potential methods for improving accuracy and completeness.[4]

The findings of the studies vary and do not purport to be exhaustive or conclusive, but they do suggest a number of ways in which furnishers may contribute to inaccurate credit report information. For example, the studies conducted by Board staff suggest that some furnishers may not update account information, such as when an account is closed or transferred. Furnishers also may report inaccurate, incomplete, or duplicative information regarding accounts in collection.[5]

Of course, not all inaccuracies in credit reports adversely impact the credit scores of consumers. The 2004 Board staff study suggested that inaccuracies such as the failure to report the closure of an account may have little, if any, impact on consumers' credit scores. Inaccuracies related to collection accounts, on the other hand, may lower a consumer's credit score and potentially decrease credit availability or increase the cost of credit for affected consumers. The same study suggested that inaccuracies may have a greater impact on consumers who have only limited information in their credit reports. For these consumers, who are likely to be new to the credit system or have very little credit, inaccuracies can have a more significant impact because they represent a larger proportion of the available data.

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[3] Consumer Federation of America and National Credit Reporting Association, Credit Score Accuracy and Implications for Consumers (Dec. 17, 2002), at http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf.
[4] The FTC's first and second interim reports to Congress regarding this ongoing study are available at http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf and http://www.ftc.gov/reports/facta/041209factarpt.pdf.
[5] 2003 Board staff study; 2004 Board staff study.

**Current Legal Requirements, Board Enforcement, and Industry Practices**

Existing FCRA Responsibilities of Furnishers

Recognizing the importance of data accuracy in credit reports, Congress imposed requirements on furnishers in the FCRA, as amended by the FACT Act, to ensure the accuracy of the data that are furnished to consumer reporting agencies and to require furnishers to investigate disputes about accuracy when notified by a consumer reporting agency about a dispute.

Under the FCRA, a person may not furnish information about a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate. However, the FCRA provides that this standard does not apply to a furnisher that clearly and conspicuously provides consumers with an address for submitting notices of dispute. Nevertheless, if a consumer sends a dispute to that address challenging the accuracy of any information the furnisher has provided to a consumer reporting agency about the consumer, and the information is, in fact, inaccurate, the furnisher must not report the incorrect information to any consumer reporting agency in the future.

In addition, the FCRA generally imposes the following obligations on furnishers that regularly and in the ordinary course of business furnish information to one or more consumer reporting agencies:

- Duty to correct and update information. If the furnisher determines that the information it has reported is not complete or accurate, it must promptly notify, and provide corrected or updated information to, any consumer reporting agency to which it has reported the information, and refrain from subsequently reporting the incomplete or inaccurate information;

- Duty to provide notice of a dispute. If the furnisher continues to report information that the consumer has disputed, such as information it furnishes when an ongoing investigation is not yet complete, it must notify the consumer reporting agency of the dispute when reporting the information;
- Duty to provide notice of closed accounts. The furnisher must notify the consumer reporting agency about the voluntary closure of accounts by the consumer; and
- Duty to provide a negative information notice. If the furnisher provides negative information about the consumer to a consumer reporting agency, it must provide a one-time notice to the consumer either prior to, or no later than thirty days after, furnishing negative information.

Moreover, the FCRA generally requires any furnisher of information to a consumer reporting agency to do the following:

- Duty to provide notice of delinquency of accounts. If the furnisher provides information to a consumer reporting agency regarding delinquent accounts placed for collection or charged off, it must notify the consumer reporting agency of the date of delinquency on the account; and
- Duty to stop furnishing information relating to identity theft. A furnisher must have in place reasonable procedures to prevent the refurnishing of information that has been blocked by a consumer reporting agency as resulting from identity theft. These procedures must be implemented upon receipt of notification of the block from a consumer reporting agency. A furnisher is also prohibited from reporting information to a consumer reporting agency if a consumer has submitted an identity theft report to

the furnisher stating that the information reported is the result of identity theft, unless the furnisher subsequently learns that the information is correct.

Existing FCRA Dispute Process

The FCRA establishes a comprehensive dispute process that allows a consumer to dispute the accuracy or completeness of information in the consumer's credit file with the consumer reporting agency that maintains the file. When the consumer reporting agency receives such a dispute, it must notify the furnisher. Both the furnisher and the consumer reporting agency have responsibilities under the FCRA for investigating and resolving the dispute.

Duties of the Consumer Reporting Agency. If a consumer disputes the accuracy or completeness of any information in the consumer's file, the consumer reporting agency must:

- Conduct a reasonable investigation (referred to as a "reinvestigation" in the FCRA), free of charge, to determine whether the disputed information is inaccurate, and complete the investigation generally within thirty days after receiving the notice of dispute from the consumer;
- Review and consider all relevant information submitted by the consumer in conducting the investigation;
- Notify any furnisher that provided any information in dispute within five business days after receiving a notice of dispute from the consumer;
- Provide to the furnisher with the notice all relevant information received from the consumer;
- Delete or modify information that is found to be inaccurate or incomplete as a result of the investigation, and notify the furnisher of that information of the deletion or modification; and

- Notify the consumer of the results of the investigation within five business days after completion of the investigation.

Duties of the Furnisher. Once a furnisher has been notified by a consumer reporting agency that information it furnished has been disputed by a consumer, the furnisher must:

- Conduct an investigation with respect to the disputed information;
- Review all relevant information provided by the consumer reporting agency;
- Report the results of the investigation to the consumer reporting agency;
- If the investigation finds that the information is incomplete or inaccurate, report corrected information to all nationwide consumer reporting agencies to which the information was furnished;
- Complete the foregoing steps within the thirty-day time period that the consumer reporting agency has to complete its investigation; and
- Promptly modify, delete, or permanently block the reporting to a consumer reporting agency of information disputed by a consumer that is found to be inaccurate, incomplete, or cannot be verified as a result of an investigation.

Board Oversight of Furnishers

The Federal Reserve System examines state-member banks and other entities over which it has FCRA enforcement authority for compliance with the FCRA's existing furnisher provisions. The OCC is responsible for enforcing the FCRA against national banks. The FDIC is responsible for enforcing the FCRA against state non-member banks. The OTS is responsible for enforcing the FCRA against thrifts. The NCUA is responsible for enforcing the FCRA against federal credit unions. The FTC is responsible for enforcing the FCRA against most other

entities, including consumer reporting agencies, non-bank finance companies, state-chartered credit unions, utilities, retailers, and others.

State-member banks will be cited for violating the law if Reserve Bank examiners find violations of the FCRA's furnisher provisions. Between January 1, 2004, and May 1, 2007, examiners cited three banks for violations of section 623 of the FCRA. In each case, the bank failed to comply with the negative information notice requirement.

The Federal Reserve System also investigates consumer complaints against state-member banks. The Reserve Banks have cited banks for violating the FCRA based on those complaints when warranted. The Board maintains a database of consumer complaints against state-member banks. Between January 1, 2004, and May 1, 2007, the Federal Reserve System received approximately 360 consumer complaints against state-member banks relating to the furnishing of inaccurate account information to consumer reporting agencies. For most of the complaints received, there was no violation of the FCRA. Four of the consumer complaints received during this period, however, revealed violations of the FCRA and prompted the Reserve Bank to cite the bank. These violations are in addition to the three violations noted above. Thus, during the forty-month period surveyed, the Federal Reserve System cited a total of seven violations of the furnisher provisions of the FCRA, three identified during bank examinations and four resulting from consumer complaints.

In many cases in which there was no violation, the bank made an accommodation to the consumer to resolve the complaint. For example, in one case, the complaining consumer believed she had paid her account in full and closed it, but her credit report indicated that the account was delinquent. The Reserve Bank found that the consumer had paid the balance in full at one point, but found no evidence of a request to close the account. Unpaid fees continued to

accrue on the account and therefore the delinquency remained on the consumer's credit report. The bank agreed to waive the unpaid fees and close the account after it learned of the complaint.

In approximately forty cases, the bank made an error and corrected the error. Of course, not every bank error constitutes a violation of the FCRA. For example, in one case, the consumer filed a complaint asserting that her credit card account was current and that the bank had erroneously reported to the credit bureau that her account was delinquent. The Reserve Bank's investigation found that the bank had not updated its files to reflect the complaining consumer's new address. Therefore, the consumer had not received periodic statements at her new address and, consequently, her account was past due. Because the bank made the error, it updated its files and instructed the credit bureaus to remove the negative information from the consumer's account history.

FACT Act Dispute Study

Compliance with Existing Dispute Responsibilities. The FACT Act required the Board and the FTC jointly to study the extent to which consumer reporting agencies and furnishers comply with the FCRA's existing requirements to investigate disputes about the accuracy of credit reports. The Board and the FTC submitted their report (Dispute Study) to Congress in August 2006.[6] In preparing the Dispute Study, the Board solicited public comment about the practices of furnishers under the existing dispute process.

When a consumer reporting agency notifies a furnisher of information about receipt of a dispute from a consumer, the FCRA requires the notice to include all relevant information received from the consumer. The Dispute Study offers some insight into how the three nationwide credit bureaus typically provide information to the furnisher using a consumer dispute verification (CDV) form sent by mail or fax or an electronic automated consumer dispute

[6] Report to Congress on the Fair Credit Reporting Act Dispute Process (August 2006) (hereafter "Dispute Study").

verification (ACDV) form that is prepared by the credit bureau. The nature of the dispute is reflected in the form, with one or two codes (out of a total of twenty-six codes) typically used to summarize the nature of the consumer's dispute. If the credit bureau deems it necessary, a narrative summary is provided to supplement the dispute codes.

The nationwide credit bureaus typically do not forward to the furnisher documents provided by the consumer to support his or her claim. Consumer groups that provided comments to the Board and the FTC as part of the Dispute Study criticized this practice as a flaw in the current dispute process and as inconsistent with the statute's requirement for the credit bureau to provide "all relevant information" received from the consumer to the furnisher. The nationwide credit bureaus, on the other hand, have taken the position that providing to the furnisher a code that summarizes the consumer's dispute satisfies the requirement to provide "all relevant information" to the furnisher.

Direct Disputes. The Dispute Study also examined current practices of furnishers regarding disputes they receive directly from consumers about the accuracy of information reported to consumer reporting agencies. Most furnishers that commented reported that they investigate and attempt to resolve disputes received directly from consumers using procedures similar to those used for investigating disputes received through a consumer reporting agency, even though they are not currently required to do so. Some furnishers that commented reported that they provide or plan to provide a specific address or other information to enable consumers to initiate a dispute directly with them.

Enforcement Actions and Complaints. As part of the Dispute Study, several banking agencies contributed data about enforcement actions and complaints. The Board and the FDIC looked at violations of the furnisher dispute provisions by state-chartered banks and found very

few violations. In addition, the Board, FDIC, and OCC surveyed their complaint databases and found only a small number of complaints alleging that furnishers failed to properly reinvestigate information disputed by consumers.

Recommendations. In the Dispute Study, the Board and the FTC did not make any recommendations for further legislative action related to the dispute process because some of the new FACT Act requirements on furnishers and consumer reporting agencies have only been implemented recently and others still need to be implemented. The Board and the FTC agreed that further legislative action would be premature.

**Status of the FACT Act Rulemakings**

The FACT Act amended the FCRA to enhance the ability of consumers to combat identity theft, improve the accuracy of consumer reports, restrict the use of medical information in credit eligibility determinations, and allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. Many provisions of the FACT Act are not self-executing, but require the issuance of implementing rules before taking effect. A number of these implementing rules must be developed on an interagency basis by the Board, the other federal banking agencies, the NCUA, the FTC, and, in one instance, the Securities and Exchange Commission.

There are two reasons for the delay in completing the furnisher rules under section 312 of the FACT Act. One reason has to do with setting priorities. Given the number of rulemakings required under the FACT Act and the complexity of many of those provisions, the agencies had to set priorities. In setting priorities, the agencies were guided by two principles. The agencies gave priority to working first on those rulemakings for which Congress set a statutory deadline for completion, such as for the medical information rules. Congress set statutory deadlines for

completing some, but not all, of the rulemakings, and did not set a statutory deadline for completing the interagency furnisher rulemakings. The agencies also gave priority to working on rulemakings that address areas where federal consumer protection law is less developed. For example, identity theft is a serious problem and federal consumer protections for identity theft are less developed than the consumer protections relating to furnisher responsibilities. Therefore, the agencies worked to develop the identity theft red flags provisions, which were proposed in August 2006, before turning to the furnisher rules.

A second reason has to do with the interagency process itself. On the one hand, interagency rulemakings ensure that different perspectives are considered in developing a rule and that all agencies have a say in the outcome. On the other hand, the interagency rulemaking process generally is a less efficient way to develop new regulations. Frequently, it can be challenging to achieve a consensus among the different agencies involved in an interagency rulemaking. As a result, interagency rulemakings can take considerably longer to complete than rulemakings that are assigned to a single agency. In the case of the FACT Act, these challenges are compounded by the fact that we are not dealing with a single interagency rulemaking but with multiple interagency rulemakings.

There are three rulemakings required by the FACT Act that pertain to the duties of furnishers. One of these rulemakings, which did not involve multiple agencies, was completed in 2004. The two interagency rulemakings dealing with furnishers under section 312 have not yet been completed. The status of each of these rulemakings is summarized below.

Negative Information Notice

The FACT Act requires a financial institution that furnishes negative information to a consumer reporting agency regarding credit extended to a customer to provide a notice to the

customer about the furnishing of negative information. This provision applies to financial institutions that extend credit and regularly furnish information to nationwide consumer reporting agencies. For example, a financial institution must inform a customer that it has provided or may provide information about late payments, missed payments, or other defaults to credit bureaus. The statute requires the Board to prescribe a model disclosure that financial institutions may use to comply with this requirement. The Board fulfilled its statutory mandate by publishing a model disclosure in the Federal Register in June 2004, following notice and a period of public comment.

Accuracy and Integrity Guidelines

The FACT Act requires the agencies to establish and maintain guidelines for use by each furnisher regarding the accuracy and integrity of the consumer information that the furnisher provides to consumer reporting agencies. In addition, the agencies must prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the accuracy and integrity guidelines. The agencies must consult and coordinate with one another so that, to the extent possible, the regulations published by each agency are consistent and comparable.

Developing these regulations and guidelines is a complex task. In fact, Congress instructed the agencies to take a deliberative approach in developing the accuracy and integrity guidelines by specifically directing the agencies to:

- Identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;
- Review the methods (including technological means) used to furnish consumer information to consumer reporting agencies;

- Determine whether furnishers maintain and enforce policies to assure the accuracy and integrity of information furnished to consumer reporting agencies; and
- Examine the policies and processes employed by furnishers to conduct reinvestigations and correct inaccurate consumer information that has been furnished to consumer reporting agencies.

In March 2006, the agencies took the first step in this process by publishing an ANPR regarding the interagency furnisher rules (71 Fed. Reg. 14,419 (Mar. 22, 2006)). Two purposes of the ANPR were to gather information about the four elements the agencies must consider in developing the accuracy and integrity guidelines and to seek public input regarding reasonable policies and procedures for implementing the guidelines.

Commenters on the ANPR identified certain furnisher activities that may compromise the accuracy and integrity of consumer reports. These activities include:

- Creditors failing to provide complete or accurate information to debt collectors;
- Debt collectors failing to report an account as paid-off or transferred;
- The failure to report credit limits on credit card accounts; and
- Manual processing, coding, and data entry errors.

Commenters also provided input on reasonable policies and procedures that furnishers should implement to ensure the accuracy and integrity of the information they provide to consumer reporting agencies. Suggestions included maintaining proper internal controls, training employees, conducting regular audits, using standardized reporting methods, requiring furnishers to review documents provided by the consumer, and requiring debt collectors and debt sellers to improve their practices.

One challenge in developing the accuracy and integrity guidelines is to ensure that they address only those inaccuracies introduced into credit reports by furnisher actions, rather than by the actions of other parties. For example, some commenters on the ANPR noted that inaccuracies can result from the conversion or translation of furnished data by the consumer reporting agency using proprietary algorithms, even when the furnished data is accurate. In such cases, the consumer reporting agency would be the party responsible for introducing the inaccuracy, but the guidelines will not apply to them.

Furnishers can do a number of things to improve the accuracy of the information they furnish to consumer reporting agencies. All furnishers should establish and implement policies and procedures to ensure the accuracy of the information that they furnish. Such policies and procedures may include implementing appropriate controls, training employees, and conducting regular audits of furnishing activities. As the 2003 and 2004 Board staff studies noted, the inaccurate, incomplete, or duplicative reporting of collection accounts by debt collectors is one particular area of concern. I expect these items to be addressed in the accuracy and integrity guidelines.

Furnishers, however, cannot take full responsibility for improving the accuracy of credit reports. Consumer reporting agencies need to examine their policies and procedures to ensure that they are not introducing errors into credit reports, for example, through data translation or data conversion errors or through the mixing or commingling of information about two consumers. Errors can also exist in public records, such as bankruptcy court data, that consumer reporting agencies include in credit reports. Finally, consumers now have access to free annual copies of their credit reports from each of the nationwide credit bureaus. Consumers should obtain their free annual credit reports and check them for accuracy.

Direct Dispute Regulations

The FACT Act requires the agencies jointly to prescribe regulations that identify the circumstances under which a furnisher is required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report based on a direct request by the consumer. Development of this rule is also a complex task. As it did with the accuracy and integrity guidelines, Congress instructed the agencies to take a deliberative approach in developing these regulations by specifically directing the agencies to weigh the following considerations:

- The benefits to consumers balanced against the costs to furnishers and the credit reporting system;
- The impact on the overall accuracy and integrity of consumer reports of any direct dispute requirements;
- Whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any dispute; and
- The potential impact on the credit reporting process if credit repair organizations are able to circumvent the statute's provision excluding from the direct dispute process any dispute submitted by, on behalf of, or on a form supplied by a credit repair organization.

Another purpose of the March 2006 ANPR was to gather information with regard to each of the four considerations that the agencies must weigh when promulgating the direct dispute rules. Commenters on the ANPR had a variety of views about when furnishers should be required to investigate alleged errors in credit reports based on direct communication from the consumer.

Many industry commenters believed that there were few, if any, circumstances in which furnishers should be required to investigate direct disputes. Some believed that disputes initiated through a consumer reporting agency tend to be handled more quickly and are less prone to error. Others believed that having a single point of contact is more efficient for consumers who find multiple errors on their credit reports. Finally, others noted that furnishers are not equipped to resolve certain types of errors, such as errors involving commingled account information or mixed files.

On the other hand, some industry commenters suggested that investigations of direct disputes should be required only in connection with the most complicated types of disputes, such as those alleging fraud or identity theft. According to industry commenters, financial institutions generally investigate disputes received directly from consumers even though the FCRA currently does not require them to do so.

Consumer group commenters said that furnishers should be required to investigate direct disputes. These commenters noted that most furnishers already have obligations under other laws to investigate disputes received from consumers regarding many of their major product categories, such as credit cards and mortgages. These commenters also believed that a direct dispute rule would mitigate problems that arise when furnishers either do not receive, or receive but fail to consider, documentation provided by the consumer to the consumer reporting agency.

One challenge for the agencies in developing direct dispute rules is to determine when direct disputes would provide benefits to consumers, such as improved consumer report accuracy and expedited dispute resolution, without imposing undue costs or burdens on furnishers and the consumer reporting system. For example, a system in which consumers routinely submit duplicate disputes to both furnishers and consumer reporting agencies would likely impose

undue costs and burdens on furnishers and the consumer reporting system. A complicating factor is the fact that in many cases a consumer who discovers an inaccuracy in his or her credit report may not know whether the furnisher or the consumer reporting agency caused the error.

**Conclusion**

Credit report accuracy is vital because inaccuracies can result in a consumer being denied credit or paying higher rates for credit. Responsibility for ensuring accuracy must be shared by furnishers and consumer reporting agencies. Consumers can also play an active role by obtaining free copies of their credit reports annually and checking them for accuracy. The existing FCRA standards that apply to furnishers regarding the accuracy of credit report information and the investigation of disputes provide meaningful protections for consumers. However, improvements to the furnisher rules can and should be made where appropriate. The Board and the Reserve Banks enforce the existing FCRA furnisher standards against state-member banks through the examination process and assist consumers in resolving complaints about the reporting of inaccurate information to consumer reporting agencies. To supplement these important consumer protections, the Board is committed to working with the other agencies to complete the interagency furnisher rulemakings as expeditiously as possible.

# STATEMENT OF ANNE P. FORTNEY

**BEFORE THE**

**COMMITTEE ON FINANCIAL SERVICES**
**HOUSE OF REPRESENTATIVES**

**ON**

**CREDIT REPORTS: CONSUMERS' ABILITY TO DISPUTE AND CHANGE INACCURATE INFORMATION**

**June 19, 2007**

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**Statement of Anne P. Fortney**

Chairman Frank, Congressman Bachus and members of the Committee, thank you for this opportunity to appear before the Committee on Financial Services.

I am a partner in the Washington, DC office of the Hudson Cook law firm. Our firm specializes in consumer financial services;[1] my practice focuses primarily on issues arising under the Fair Credit Reporting Act (FCRA) and similar consumer protection laws. I bring to this practice more than 30 years experience in the consumer financial services field, including service as Associate Director for Credit Practices at the Federal Trade Commission (FTC), as in-house counsel at a consumer credit card issuer and as a practitioner who counsels clients on compliance with the FCRA and related laws. I also serve as a consultant and an expert witness in FCRA litigation.[2]

I commend you for holding this hearing on the accuracy of credit report data and the effectiveness of the consumer dispute process under the FCRA. Through the leadership of this Committee, the FCRA was amended by the Fair and Accurate Credit Transactions Act (FACT Act) of 2003.[3] The FACT Act changed the FCRA to improve, in pertinent part, the accuracy and integrity of data furnished to consumer reporting agencies and the resolution of consumer disputes regarding this data.

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[1] As explained on the firm's website: "Hudson Cook, LLP was established in 1997 with a single purpose in mind - to provide the best possible service to companies needing advice and assistance in the ever changing and challenging world of consumer financial services law. Our wide-ranging services cover virtually all aspects of state and federal consumer financial services law. At some law firms, the consumer financial services practice is at best an adjunct to the litigation or general business or banking law practice. At Hudson Cook, consumer financial services law is what we do." www.hudsoncook.com.

[2] A more detailed description of my background and experience is attached to this statement.

[3] See Public Law 108-159, "The Fair and Accurate Credit Transactions Act of 2003," amending 15 U.S.C. 1681 *et seq.*

**Summary of Testimony**

My testimony today concerns the obligations of creditors and other furnishers of credit report information to consumer reporting agencies under the FCRA. The primary concerns involve the accuracy of information furnished and the resolution of consumer disputes about this accuracy. I believe my experience provides a unique perspective on FCRA compliance challenges facing furnishers. From my experience, I observe that, although questions about consumer report accuracy and the dispute process continue to generate concern, furnishers take their FCRA compliance obligations very seriously and devote substantial resources to the fulfillment of their responsibilities. I also believe that new FACT Act provisions should, when fully implemented, enhance consumer report accuracy and dispute resolution and that additional requirements should not be created until the overall effectiveness of these provisions can be determined.

**FACT Act Provisions to Enhance Accuracy and Integrity of Data**

In 2003, Congress enacted the FACT Act, in part, in response to consumer concerns about the accuracy of information reported to consumer reporting agencies and the need for a more efficient and effective dispute process. Many of the provisions are still being implemented. It is expected that the dispute process will be further enhanced when all the provisions are fully implemented.[4]

The FACT Act includes two provisions that directly affect furnishers' obligations relevant to today's hearing. Section 312 requires the federal agencies to prescribe guidelines and regulations that furnishers must follow to enhance the accuracy and

[4] *See, e.g.,* 2 Federal Trade Commission and Board of Governors of the Federal Reserve System Report to Congress on the Fair Credit Reporting Act Dispute Process (August 2006) ("2006 Report to Congress"), pp. 33-35.

integrity of data reported to consumer reporting agencies.[5] When the agencies establish guidelines for furnishers to accomplish this objective, they must consider the following:

- Identify patterns, practices and specific forms of activity that can compromise the accuracy and integrity of information.
- Review the methods used to furnish information.
- Determine if furnishers maintain and enforce policies to furnish accurate information.
- Examine policies and procedures used by furnishers to conduct investigations and correct inaccurate information.

On March 22, 2006, the agencies published a Federal Register notice soliciting comments to assist them in developing accuracy and integrity guidelines and regulations.[6] The agencies determined that, in advance of proposing the guidelines and rules, they would benefit from public comment on issues relating to: (1) criteria to be considered in developing the accuracy and integrity guidelines, (2) reasonable polices and procedures for implementing the guidelines and (3) considerations involved in promulgating rules that identify circumstances when furnishers must investigate consumers disputes made to them directly. To that end, the agencies posed detailed questions related to accuracy and integrity of data and the direct dispute resolution process.

The agencies are appropriately concerned about the various types of furnishers that will be required to follow the guidelines and rules, and specifically asked furnishers to explain how their responses might differ depending on the type of furnishers providing the information, the type of information provided, the frequency of reporting, and the

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[5] The FTC, the Board of Governors of the Federal Reserve System, the OCC, the FDIC, the OTS and the NCUA.

[6] 71 Fed.Reg. 14419 (March 22, 2006).

type of consumer reporting agency to which the information is provided. The questions posed highlight the complexity of the agencies' task of providing meaningful and workable guidelines and rules.

The FACT Act also contains a provision for consumers to directly dispute with furnishers the accuracy of information furnished to nationwide consumer reporting agencies. This provision will take effect after the agencies prescribe regulations in accordance with the requirements of the Act.[7]

Section 312(b) of the FACT Act changed the standard for furnishers reporting information to the consumer reporting agencies. Before the FACT Act, furnishers could not furnish information about a consumer to a consumer reporting agency if the furnisher knew or consciously avoided knowing that the information was inaccurate. Under the FACT Act, the furnisher may not report information if it "knows or has reasonable cause to believe that the information is inaccurate."[8] The term "reasonable cause to believe that the information is inaccurate" means "having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information."[9]

Under Section 314 of the FACT Act, if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after reinvestigation, the furnisher must modify that item of information, delete that item of information, or permanently block the reporting of that item of information.

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[7] FACT Act § 312(c).

[8] FACT Act § 312(b)(1).

[9] FACT Act § 312(b)(2).

Given the number and diversity of furnishers who will be subject to the guidelines and regulations, the agencies have taken time to develop guidelines and rules that will achieve the goal of improving accuracy and the dispute process. In this interim period, some furnishers have implemented procedures for responding to direct consumer disputes.[10] Furnishers expect that the system will be further improved and/or refined when the agencies ultimately issue their guidelines and regulations. The agencies have not announced an expected date for the proposed rulemaking.

**Furnishers' Compliance Efforts**

In working to improve the accuracy and integrity of data reported, it is important to consider the volume and scope of the data involved. Billions of items of tradeline information are furnished to consumer reporting agencies each month, resulting in the creation and maintenance of files on more than 200 million consumers, with more than 1.5 billion consumer reports issued annually.[11] Creditors benefit because readily available credit information enables them to offer more credit, incur less default risk, and obtain greater lending capital through the bundling and selling of consumer credit obligations in the secondary market.[12] Consumers benefit because they have easy access

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[10] *See* 2006 Report to Congress, pp. 25-27.

[11] Federal Trade Commission, Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003 (2004), pp. 8-9, http://www.ftc.gov/reports/facta/041209factarpt.pdf.

[12] Water F. Kitchenman, *U.S. Credit Reporting: Perceived Benefits Outweigh Privacy Concerns*, The Tower Group, p. 7 (1999).

to credit and pay less for credit extended.[13] Our consumer reporting system is unequaled in the world in terms of scope and benefits.[14]

Congress has never imposed, and should not impose, a perfect information obligation upon furnishers of credit report information or upon the consumer reporting agencies.[15] Given the speed and volume of consumer reporting transactions, mistakes will occur. The challenge is to minimize the avoidable errors, quickly resolve inevitable mistakes and still encourage maximum participation in a voluntary system.

It is my experience that furnishers expend considerable resources in ensuring the accuracy of the information they report to consumer reporting agencies and resolving customer disputes about the accuracy of this information.[16] Furnishers have financial and reputation interests at stake when they report information about their customers and when they investigate consumer disputes. If furnishers fail to comply with their legal obligations, they will have dissatisfied customers, lose future business opportunities in a

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[13] Kitchenman, *U.S. Credit Reporting*, p. 7; *see also* Staten and Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation*, (May 2003), p. vii, http://www.ftc.gov/bcp/workshops/infoflows/statements/cate02.pdf.

[14] Staten and Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act*, pp. iii, v-vi; *see also* Fred H. Cate and Richard J. Varn, *The Public Record: Information Privacy and Access – A New Framework for Finding the Balance* (1999), p. 11, http://it.ojp.gov/initiatives/files/Public_Record.pdf

[15] *See* FTC Commentary on the FCRA, 16 C.F.R. Part 600, ¶ 607(b) -3: "The section does not require error free consumer reports."

[16] In addition to my experience counseling furnishers, I also participate frequently in industry conferences. I observe that furnishers place an emphasis on compliance and staying current on trends, issues and legal requirements to ensure that they are aware of their obligations and best practices. In this regard, it is telling that the Consumer Financial Services Committee of the American Bar Association currently has more than 800 members and holds extensive meetings three times a year. Although the Committee strives to include participation by all counsel who serve the consumer financial services industry (including consumer representatives, academicians and government officials), most of the Committee members counsel creditors.

competitive marketplace, maintain inaccurate internal records, and may face litigation and regulatory enforcement actions. Customer disputes may also alert furnishers to actual or potential identity theft or other fraud, and the resolution of those disputes may prevent additional losses or facilitate loss recovery.

Many furnishers have systems and procedures in place for reporting a consumer's account activities. In the vast majority of cases, the information furnishers report is accurate.[17] However, furnishers also recognize that some mistakes are inevitable in light of the volume of data and the daily changes in information. To correct mistakes, furnishers have adopted policies and procedures to respond to consumer accuracy disputes received from consumer reporting agencies and directly from consumers.

Furnishers typically have multiple layers of review in place to ensure that their responses to consumer disputes are accurate. I have found that furnishers typically have the following general procedures in place:

- Written policies governing reporting requirements and procedures;
- Written policies regarding investigation of disputes, in some cases with step by step instruction;
- Special policies and procedures when identity theft is alleged; and
- Escalated reviews in more difficult cases.

Furnishers' policies and procedures account for the fact that some disputes are inquiries that can be resolved by reviewing, comparing and verifying information, or

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[17] *See* Robert B. Avery, Paul S. Calem & Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin (Summer 2004): "This analysis of the effects of data problems on credit history scores indicates that the proportion of individuals affected by any single type of data problem appears to be small." *See also:* 2006 Report to Congress at Appendix D, Table 1, showing pending disputes at .18%.

explaining to the consumer the information that was furnished. For disputes that are not resolved by explanation, verification or updating, it is my experience that furnishers will, at a minimum, verify the consumer information by matching the name, Social Security number and other pertinent data; and review the account history, including payment history and any historical notes related to the account. When a consumer claims identity theft, many furnishers submit the dispute to a fraud investigation department or specialist for special handling. Some furnishers refer all disputes to a research department.

Under the current law, furnishers have the flexibility to respond as the consumer dispute dictates. Some cases require little investigation; others more skilled handling. Through the years, furnishers have gained experience and information so that they can best assess the nature and complexity of the dispute and properly respond to disputes in the most efficient and effective manner.

Obviously, it is important for furnishers to report accurate information and investigate disputes in compliance with the law. Failure to do so can lead to an undesirable expenditure of resources and sometimes litigation costs. Although some have advocated more stringent sanctions for failures to meet furnishers' obligations, additional penalties would not incentivize furnishers to enhance compliance efforts. Instead, the more likely result of imposing penalties would be that furnishers would delete accurate tradeline information or settle frivolous litigation. Neither result would enhance the overall system for consumers or creditors; in fact, doing so would undermine the accuracy and integrity of the information upon which creditors rely.

**Challenges Faced by Furnishers**

According to the 2006 Report to Congress, approximately 18 to 22 % of consumers who obtained file disclosures from a consumer reporting agency in 2003 disputed information in their credit files.[18] This percentage should be compared to the Report's chart showing that only 0.18% of all accounts reported by one nationwide consumer reporting agency had pending disputes.[19] Furnishers usually resolve disputes by modifying information or deleting information; if the information is accurate, furnishers verify the information.[20]

Consumer complaints may arise when the furnisher verifies the disputed information, or makes a modification that does not mirror the consumer's request. The following factors help provide context to these complaints:

1. Consumers do not understand the information reported or the reason for the information reported. When a consumer obtains a file disclosure, a consumer may not recognize some information – such as the current account owner (which occurs when an account is sold) or the account number (which is often changed from the number the consumer uses for privacy and identity theft protection purposes). Consumers may not understand that if they make delinquent payments and subsequently bring an account current, furnishers will continue to report the past delinquent history. In these situations, it is not a matter of the furnisher conducting a more comprehensive investigation; the

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[18] 2006 Report to Congress, p. 12.

[19] *Id.*, Appendix D.

[20] *Id.*, p. 24.

information reported is accurate. When the information is accurate, the furnisher has no obligation to change it or delete it.

2. When a consumer claims identity theft, the consumer may not provide sufficient information or documentation within a reasonable time period, and furnishers may determine that the account has been ratified or that the consumer made a false claim of identity theft to avoid an obligation. The 2006 Report to Congress indicates that of the consumers surveyed by the GAO who disputed information in their credit files, only 2% claimed that they were victims of identity theft.[21] Thus, furnishers deal with a relatively small number of identity theft claims compared to other types of disputes. However, identity theft claims appear to present some of the most challenging circumstances. The obvious reason is that the identifying information used by the identity thief matches the information on the victim in the furnishers' files. In addition, consumers may claim identity theft, when, in fact, they have agreed to sign as co-obligors on accounts only to later change their minds given the risk, or having forgotten over time that they agreed to act as co-obligors.[22] Still other unscrupulous individuals may assert an identity theft claim in an attempt to remove accurate, negative information from their tradelines. For these reasons, furnishers do not simply rely on a consumer's assertion, but require substantiation of the claim.

The challenge in resolving identity theft claims may be compounded when victims know the thief's identity and initially decide not to report the crime or dispute the account because they do not want to accuse family members, friends or co-workers of a

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[21] 2006 Report to Congress, p. 12.

[22] *See, e.g., Cope v. MBNA America Bank, N.A.*, 2006 WL 655742 (D.Or. March 8, 2006).

crime or because they believe that the thief will pay the account. Unfortunately, as a result, identity theft cases may not be reported until long after the account has been opened and is in default.[23] When a victim does not report identity theft, or assists the identity thief by making payment arrangements, the creditor/furnisher has no way of knowing that the account was improperly opened and/or used. When a claim of identity theft is made long after the account is opened and payments made, the creditor/furnisher may reasonably conclude, based upon the identifying information, the account payment history, and no report of identity theft, that identity theft did not occur. Instead, the furnisher may reasonably believe that the consumer disputes the matter only because the account is in default. It is my experience that before reaching such a conclusion, the creditor/furnisher will investigate the matter, and if there is any indication that the account was unauthorized, will delete the tradeline information. However, if there is information that a consumer has accepted liability on the account, or that the account was opened with the consumer's knowledge or consent, the creditor/furnisher may choose not to delete the tradeline.

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[23] This view was shared by a consumer expert witness (the late Richard LeFebvre). Mr. LeFebvre reported that in 2004, 43% of identity theft victims knew the perpetrator. The identity thief was often a relative, significant other, friend, co-worker, or neighbor. Mr. LeFebvre also offered expert testimony on behalf of a consumer that in cases where the victim knows the identity thief, the victim usually does not report the crime for a significant period of time: "[T]he last thing you want – even though you've been victimized, the last thing you want to do is put your girlfriend or your friend or your father in jail. So there is going to be that period of time in which people kind of go into … reclusion and don't know what to do. … So there's a lot of lag time from the time they first find out until they actually do something about it. Sometimes it's a big lag time" *See Sweitzer v. American Express*, U.S. District Court (S.D. Ohio, Eastern Div.) Case No. 2:05-CV-650, LeFebvre Deposition, January 17, 2007, p. 147:7-19.

3. Consumers raise frivolous disputes directly or through credit repair clinics in order to obtain credit on terms for which they otherwise would not qualify. In order to satisfy their obligation to protect the accuracy and integrity of information provided to consumer reporting agencies, furnishers must confirm the validity of disputes, and not merely remove accurate, derogatory tradeline information because the consumer has disputed the information. If furnishers delete accurate information on consumer demand, all consumers will bear the cost. Imposing more stringent investigation standards on furnishers will not stop these activities or enhance results for consumers.

4. The reasonableness of a furnisher's investigation should be measured by the procedures that were followed in light of the information reasonably available to the furnisher at the time of the dispute. The reasonableness of a furnisher's investigation depends on the circumstances existing at the time of the dispute. Even if a furnisher reaches a "wrong" conclusion, this result does not mean that the furnisher employed flawed or deficient procedures. In evaluating the reasonableness of a furnisher's investigation, the pertinent inquiry should focus on the information that was reasonably available to the furnisher at the time of the dispute. In some instances, however, litigation will uncover information that was not known or reasonably available to the furnisher when the dispute was investigated.

It is important to note that a furnisher does not and cannot conduct the same level of inquiry as occurs during litigation, which involves written discovery and depositions. For example, disclosure of new information may occur in cases of identity theft, where evidence of the crime may be established through extensive pre-trial discovery. If the circumstances of the crime were not presented to the furnisher or were not otherwise

reasonably available at the time of the dispute, information that is later uncovered or disclosed should not bear on the assessment of reasonableness of the investigation. To require otherwise would impose strict liability on furnishers in conducting investigations and would create serious disincentives for voluntary participation in the consumer reporting system. It is for this reason that the FCRA imposes, and should impose, liability only for failure to comply with the FCRA investigation requirements and not strict liability for the furnisher's conclusions reasonably based on the investigation.

5. The fact that a case ends in litigation does not mean that the furnisher's investigation was unreasonable. In my experience, very few cases result in escalated or unresolved disputes, and ultimately in litigation. When cases do end in litigation, some courts have agreed with consumers; [24]others courts have found a furnisher's investigation reasonable as a matter of law.[25] In other instances, the courts have held that the reasonableness of the furnisher's investigation is a factual question for the jury.[26] The conclusion to be drawn from these cases is that the reasonableness of a furnisher's investigation will depend upon the specific facts of each individual case and that no pattern has emerged. As a result, the cases do not reveal any systemic problems that would warrant Congressional action.

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[24] *See, e.g., Johnson v. MBNA America Bank, N.A.*, 357 F.3d 426 (4th Cir. 2004).

[25] *See, e.g., Cope v. MBNA America Bank, N.A.*, supra note 22; *Westra v. Credit Control of Pinellas*, 409 F.3d 825 (7th Cir. 2005); *Malm v. Household Bank*, 2004 WL 1559370 (D. Minn. 2004).

[26] *See, e.g., King v. Asset Acceptance, LLC*, 452 F.Supp.2d 1272 (N.D. Ga. 2006).

**Specific Issues**

The Committee has asked that my testimony address the following issues as appropriate. Although I believe that my testimony does address these issues, I will respond to each of the questions to the extent that they seek information within the scope of my testimony.

**1. Please describe, in detail, the types of errors, problems, or other factors that may impair the accuracy, completeness, or integrity of information in credit reports.**

Because of the volume and complexity of the data that constitute credit reports and the automated systems that enable the credit reporting system to operate, errors are inevitable. From its inception, the FCRA has provided for consumer access to their files at consumer reporting agencies and procedures for correcting and updating credit report information. These procedures have been improved through amendments and through the automated e-OSCAR system. Consumers today have quick and easy access to information at consumer reporting agencies, and are in the best position to challenge information that they believe to be inaccurate or incomplete. The 2006 Report to Congress indicates that consumers do avail themselves of the access and correction procedures, and that the majority of the disputes (about 70%) result in modifications or deletions of disputed information.

**2. Are consumer reporting agencies' current procedures adequate for handling consumer disputes to ensure maximum possible accuracy in the resolution of consumer disputes? Is relying on automated systems adequate to handle consumer disputes under the FCRA?**

Furnishers rely on the information in the Automated Consumer Dispute Verification (ACDV) received from consumer reporting agencies, including the transmission of "all relevant information" as required under the FCRA. The ACDV

form includes a free-form field which furnishers use to provide additional information. I am aware that some consumers complain that underlying documentation of their disputes is not always fully conveyed to furnishers. In addition, furnishers sometimes find the e-OSCAR dispute codes to be somewhat deficient. In my experience, however, I have not seen this to be a problem. My observation is borne out by the 2006 Report to Congress, which stated "most furnishers reported that the information provided to them through e-OSCRA usually is sufficient to investigate the dispute."[27]

The imposition of any new requirements with respect to paper documentation could raise practical problems, and if mandatory in all cases, will undoubtedly increase costs, slow dispute processing times and impair the overall efficiency of the dispute resolution process. For these reasons, I believe that any such requirements should be based on empirical studies, rather than anecdotes, and be implemented only if studies show that the overall benefits outweigh any impairments to the system and processing delays.

**3. How effective are the FCRA provisions and regulations for insuring maximum possible accuracy in consumer reports and resolution of consumer disputes?**

I believe that the statistics show that the vast majority of consumer reports are accurate, and then when disputes arise, in most instances, they are quickly resolved to the consumer's satisfaction. For the reasons described above, complete accuracy of consumer report information is not possible. The FCRA appropriately requires consumer reporting agencies to maintain *reasonable procedures* to insure the maximum possible accuracy in providing consumer reports and to resolve consumer disputes. Thus under

[27] 2006 Report to Congress, p. 17. The report also mentions that a furnisher can contact a customer directly for information if necessary.

the FCRA, the focus is, and I believe should be, on the reasonableness of the procedures under the applicable circumstances. I believe that, when the FCRA provisions are applied to this process, the effectiveness of the Act's consumer protections can be evaluated in each individual case, and if there are FCRA violations, consumers have adequate remedies under the law.

**4. To what extent do considerations of cost impact the ability of CRAs and data furnishers to report accurate information or satisfactorily resolve all consumer disputes?**

As stated above furnishers devote significant resources to handling their customers' disputes, whether those disputes are made directly or are received from a consumer reporting agency. The costs associated with these resources are necessary for legal compliance, customer satisfaction, loss prevention and recovery, reputation and related costs that are essential to success in a competitive environment. If a creditor or other furnisher were to cut those costs, it would do so to its own detriment.

**5. What actions are consumer reporting agencies, furnishers and regulators taking to improve the accuracy of credit reports? What actions should they take?**

For the reasons discussed above, it makes sense for all concerned to work to assure the accuracy of credit report information. The industry's adoption of the standard Metro and Metro-2 formats improve uniformity and accuracy in the furnishing of consumer report information.[28] Statistics also show that the automated e-OSCAR dispute system has increased the effectiveness of the dispute resolution process.[29]

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[28] *See* 2006 Report to Congress, p. 10.

[29] *Id.*, pp. 21-24.

**6. Have the regulators taken adequate enforcement actions regarding credit reporting issues involved accuracy of information?**

I am aware of the enforcement actions that the regulators have publicly announced. I have no reason to believe that their enforcement actions are anything less than adequate.

**7. What factors may limit the ability of consumers to enforce the provisions of the FCRA?**

I believe that significant progress has been made in consumer access to credit report information. Much of this progress is due to the emerging direct-to-consumer market for this information. This access has enabled consumers to dispute and, in most cases, remove or modify inaccurate or incomplete credit report information. If consumer report information is unchanged following a dispute, that result may be because the information is, in fact, accurate. In that case, the process serves the valuable function of educating consumers as to the nature and source of their credit report information.

When consumers are dissatisfied with the dispute outcome, they may continue to dispute the information. If they provide additional information or documentation, the dispute may subsequently be resolved to their satisfaction. If it is not, consumers have the right to insert a statement regarding the dispute into the file at consumer reporting agencies. Moreover, the FCRA requires furnishers to note the existence of a dispute when furnishing disputed information to a consumer reporting agency. Consumers also may block the furnishing and reporting of tradeline information that results from identity theft. In short, the FCRA contains many provisions that enable consumers to enforce the

rights and protections available to them. Their ability to do so may be hampered by lack of information. Consumer education as to their FCRA rights is key.

Finally, consumers with claims based on FCRA violations may bring suit to redress injury; and their counsel may recover attorneys' fees in successful actions or settlements.

**8. What recommendations would you make to the FTC and banking regulators for rulemaking for Sec. 312?**

As discussed in my testimony, the questions the agencies raised in their March 2006 Federal Register notice demonstrate the complexity of the issues involved in developing consumer report accuracy and integrity guidelines and regulations. The responses to those questions further illustrate the magnitude of the challenge. Our consumer reporting system has evolved on a voluntary basis in a competitive market with extensive government oversight and increasing regulation. The challenge is to preserve the flexibility inherent in this dynamic system and assure the benefits derived from credit report information, while reducing the prospect for individual harm that can result from inaccurate information. I believe that the FTC and banking regulators are taking the right approach, which is to base any guidelines and regulations on empirical information and a full understanding of the diverse business practices and limitations of those who are considered "furnishers" of consumer report information. If any new requirements are ultimately based on isolated incidences of harm, they should be instituted only if those instances are indicative of systemic problems, the resolution of which will increase consumer protection but not be off-set by a reduction in the availability and value of credit report information.

**Closing Comments**

In closing, I would like to thank the Committee again for the opportunity to present these views. I would like to conclude with the following observations:

1. Furnishers currently have strong incentives to provide accurate information to consumer reporting agencies, and have nothing to gain by furnishing inaccurate information about consumers;

2. Furnishers face challenges in addressing consumer disputes due to the complexity of the consumer reporting system and the problems created by identity theft and credit repair clinics;

3. Furnishers try hard to comply with existing laws and to ensure that they have policies and procedures in place to satisfy their legal responsibilities;

4. The FACT Act includes provisions not yet in effect that should further enhance the accuracy and integrity of information provided to consumers.

I am happy to answer any questions that the Committee may have.

***Anne P. Fortney***
***Curriculum Vitae***

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**Employment**

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|---|---|
| • 2003-Present | Partner, Hudson Cook, LLP. |
| • 1997-2003 | Managing Partner, Lovells, Washington, DC; Of Counsel (1997-1998). |
| • 1987-1997 | Partner, Carlsmith Ball, Honolulu, HI and Washington DC; Of Counsel (1987-1989). |
| • 1982-1986 | Associate Director for Credit Practices, Bureau of Consumer Protection, Federal Trade Commission (FTC), Washington DC. |
| • 1976-1982 | Attorney, JC Penney Company, Washington DC. |
| • 1973-1976 | Attorney, Bureau of Consumer Protection, FTC, Washington DC. |
| • 1972-1973 | Attorney Advisor, Commissioner Mary Gardiner Jones, FTC, Washington DC. |
| • 1969-1971 | Associate Attorney, Cleary, Gottlieb, Steen and Hamilton, Washington DC. |

**Education**

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|---|---|
| • 1985 | Harvard University, John F. Kennedy School of Government, Senior Managers in Government Program. |
| • 1969 | Georgetown University Law Center (Juris Doctor). |
| • 1966 | Mary Washington College (Bachelor of Arts with Final Honors). |
| • 1965 | Institute for American Universities, Aix-en-Provence, France. |

**Bar Admissions**

- 1987 Hawaii State Bar Association.
- 1982 United States Supreme Court Bar.
- 1969 District of Columbia Bar.

**Expert Witness on FCRA Issues**

*Anthony v. Antwerpen Chevrolet, Ltd., et al.*, Case No. 24-C-06-004512, Circuit Court for Baltimore City, Maryland, 2007

*Ashby et al. v. Farmers Group, Inc., et al.*, Case No. CV01-1446-BR, U.S. District Court for the District of Oregon, 2004.

*Beck v. Equifax Information Services, LLC, et al.*, Case No. 3:05CV091, U. S. District Court for the Eastern District of Virginia, Alexandria Division, 2005.

*Brownstein v. Equifax Information Services, LLC and American Express Company*, Case No. 05-1774, U. S. District Court for the Eastern District of Pennsylvania, 2006.

*Bruce v. Keybank National Association, doing business as Champion Mortgage*, Case No. 2:05-CV-330, U.S. District Court for the Northern District of Indiana, 2006.*

*Cairns v. GMAC Mortgage Corporation, Experian Information Solutions, Inc., Equifax Information Services, L.L.C., and The Provident Bank d/b/a PCFS Mortgage Resources*, CV-04-1840 PHX-DGC, U.S. District Court for the District of Arizona, 2005.

*CSI Investment Partners II, L.P., et al., v. Cendant Corporation, et al*, Case No. 00Civ.1422(DAB), U.S. District Court for the Southern District of New York, 2006.*

*Cope v. Experian Information Solutions, Inc. et al.*, Case No. 04-CV-493-JE, U. S. District Court for the District of Oregon, 2005.*

*In Re: Farmers Insurance Co., Inc. Fair Credit Reporting Act Litigation,* MDL No. 1564, Case No. CIV-03-158-F, U.S.District Court for the Western District of Oklahoma, 2006.*

*In re: H&R Block Mortgage Corp., Prescreening Litigation*, Case No: 2:06-MD-230 (MDL 1767), U. S. District Court for the Northern District of Indiana, 2007.

*Grizzard v. Trans Union, L.L.C. et al.,* Case No. 3 :04CV625, U. S. District Court for the Eastern District of Virginia, Richmond Division, 2005.*

*Holmes v. TeleCheck International, Inc., et al.*, Case No. 3:05-0633, U.S. District Court for the Middle District of Tennessee, 2006.*

*Mendoza v. Verizon Wireless, et al.*, Case No. H-02-2465, U.S. District Court for the Southern District of Texas, Houston Division, 2003.

*Mark v. Valley Insurance Company and Valley Property and Casualty*, Case No. 01-1575 BR, U.S. District Court for the District of Oregon, 2003.

*Moseley v. Monogram Credit Card Bank of Georgia*, Case No. CV05-0801-PHX-SRB, U.S. District Court for the District of Arizona, 2006.

*Rausch and Jason Reynolds v. The Hartford Financial Services Group, Inc. and Hartford Fire Insurance Company*, Case No. CV 01-1529 BR, U.S. District Court for the District of Oregon, 2003.

**Expert Witness on FCRA Issues (Continued)**

*Razilov v. Nationwide Mutual Ins. Co. and Allied Group, Inc.*, Case No. 01-1466 BR, U.S. District Court for the District of Oregon, 2003.

*Smith et al. v. The Progressive Corporation et al.*, Case No. 1:00-CV-210-MMP, U.S. District Court, Northern District of Florida, 2001.

*Sweitzer v. American Express Centurion Bank, et al.*, Case No. 2:05-CV-650, U.S. District Court for the Southern District of Ohio, Eastern Division, 2007.*

*Thomas v. Friends Rehabilitation Program, Inc. et al*, Case No. 001012, Court of Common Pleas for Philadelphia County, 2006.

*Willes v. State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Company*, Case No. 01-1457 BR, U.S. District Court for the District of Oregon, 2003.

*White v. First American Registry, Inc.*, Case No. 04 CV 1611 (LAK), U.S. District Court for the Southern District of New York, 2004.*

* Cases marked with an asterisk are those where I gave deposition testimony; I have not testified at trial in any of the above cases.

**Professional Activities**

- Committee Counsel, American Financial Services Association Law Committee.
- Compliance Counsel to the Consumer Data Industry Association (formerly Associated Credit Bureaus).

**Civic and Professional Associations**

| | |
|---|---|
| • 1982-Present | Member, Consumer Financial Services Committee of the American Bar Association Business Law Section; Chair, Consumer Communications Subcommittee (1983-1986); Vice-Chair, Privacy Subcommittee (1991-1992); Chair, Privacy Subcommittee (1993-1995); Vice-Chair, FTC Activities Subcommittee (1997-2000); Chair, Federal and State Practice Subcommittee (2000-2003). |
| • 1995-Present | Member, Governing Committee of the Conference on Consumer Finance Law; Vice-President (1999 – 2007); President (since 2007). |
| • 1996-Present | Founding Member, American College of Consumer Financial Services Lawyers. |
| • 1992-1995 | Vice-Chair, Financial Services Committee of the American Bar Association Administrative Law Section. |

**Recent Presentations at Industry Conferences and Programs**

- American Bar Association Consumer Financial Services Committee (multiple times, 1997-2006).
- American Conference Institute (multiple times, 2001-2006).
- American Financial Services Association (multiple times, 1989-2007).
- Consumer Bankers Association (March and Aug. 2001).
- Conference on Consumer Finance Law (multiple times, 1995-2004).
- Consumer Data Industry Association (multiple times, 1997-2007).

- Consumer Industry Research Council (multiple times, 2000-2005).
- Credit Card Bank Compliance Association (multiple times, 2002-2005).
- Experian Law Conferences (multiple times, 1998-2007).
- Hudson Cook Housing and Auto Finance Workshop (multiple times, 2004-2006).
- National Retail Federation ("NRF") (Aug. 2000).
- NRF Credit Managers Division (Sept. 1997 and Sept. 2000).
- Practicing Law Institute (multiple times, 1998-2000).

**Publications Since 1996**

- *Federal Laws Applicable to Consumer Data Security Breaches*, 59 Consumer Fin. L. Q. 229 (2005).
- *Uniform National Standards for a Nationwide Industry – FCRA Preemption of State Laws under the FACT Act*, 58 Consumer Fin. L. Q. 259 (2004).
- *Auto Finance Litigation Under the Equal Credit Opportunity Act*, 57 Consumer Fin. L. Q. 227 (2003).
- *Selected Fair Credit Reporting and Privacy Issues and Developments*, 56 Consumer Fin. L. Q. 58 (2002).
- *How to Comply With the Fair Credit Reporting Act* (Associated Credit Bureaus, Inc. 2000).
- *How to Comply With the Fair Credit Reporting Act* (Associated Credit Bureaus, Inc. 1997).
- *Fair Lending Law Developments*, 55 Bus. Law. 1309 (2000).
- *Fair Credit Reporting Act Potential Liability of Furnishers and Users of Consumer Reports*, 1114 PLI/Corp 361 (April-May 1999).
- *Fair Lending Law Developments*, 54 Bus. Law. 1329 (1999).
- *Recent Fair Lending Developments Affecting Auto Lenders and Lessors*, 52 Consumer Fin. L. Q. 358 (1998).
- *The New Fair Credit Reporting Act – New Duties; New Liabilities; New Questions*, 52 Consumer Fin. L. Q. 17 (1998).
- *Fair Credit Reporting Act Duties of Furnishers and Users of Consumer Reports*, 1048 PLI/Comm 9 (April-May 1998).
- *Fair Credit Reporting Act Creates New Duties for Employers*, Credit World (May/June 1998).
- *An Argument for Retaining the Uniform Commercial Code*, 51 Consumer Fin. L. Q. 315 (1997).
- *Privacy, Consumer Credit Reporting, and Fair Lending Developments*, 51 Consumer Fin. L. Q. 41 (1997).
- *Fair Lending Issues Affecting Subprime Credit Markets*, 50 Consumer Fin. L. Q. Rep. 290 (1996).

PRIVACY TIMES

EDITOR: EVAN HENDRICKS

**Testimony of**

Evan Hendricks, Editor/Publisher
Privacy Times
www.PrivacyTimes.com

Author
Credit Scores & Credit Reports:
How The System Really Works, What You Can Do
www.CreditScoresandCreditReports.com

"Credit Reports: Consumers' Ability to Dispute and Change Information"

Before The House Committee On Financial Services
June 19, 2007

Mr. Chairman, and Members of the Committee, thank you for the opportunity to testify before the Committee. My name is Evan Hendricks, Editor & Publisher of *Privacy Times*, a Washington newsletter since 1981. For the past 30 years, I have studied, reported on and published on a wide range of privacy issues, including credit, medical, employment, Internet, communications and government records. I have authored books about privacy and the Freedom of Information Act. I have served as an expert witness in litigation, and as an expert consultant for government agencies and corporations.

I am the author of the book, "Credit Scores and Credit Reports: How The System Really Works, What You Can Do." (2nd Edition, Privacy Times 2005) The Third Edition is due out later this year.

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**The Credit Reporting System**

Without question, the U.S. credit reporting system has played a central role in the expansion of consumer credit in this country. The largely digital credit reporting system, and the companion credit scoring system, have automated credit "decisioning," greatly reducing the time and cost of granting credit, to the benefit of millions upon millions of consumers, and thousands of businesses. It has improved the profit worthiness of the financial services industry in general. It has proven to be very profitable for the three major credit reporting agencies (CRAs).

While I readily willing to acknowledge the benefits of the credit reporting system, I am consistently disappointed by industry witnesses who decline to admit that the system remains plagued by serious problems relating to accuracy, fairness, responsiveness and privacy.

The lives of too many consumers are still tormented by chronic inaccuracy, inadequate reinvestigations of genuine disputes, non-responsiveness and gross invasions of privacy. Yes, these were the same problems that consumers faced in the late 1980s and early 1990s when the Federal Trade Commission and State Attorneys General conducted extensive investigations and reached consent agreements with each of the Big Three CRAs or their corporate predecessors. In those consent agreements, the CRAs vowed to significantly improve their practices, but in reality did not improve them, in my opinion.

And yes, these were the same problems that Congress heard about during the seven years leading up to the 1996 FCRA Amendments, as well as those Congress heard about in 2003 when it amended the FCRA by passing the FACT Act.

The same problems persist today. In my view, a major reason Congress has consistently strengthened the FCRA is so consumers *won't have to file a federal lawsuit* in order to get errors in their credit reports corrected. However, I have seen a steady rise in cases in which the only practical way the consumer could get errors corrected was by filing a federal lawsuit.

**Why The Same Old Problems?**

When taking up the FCRA, why does Congress continue to hear about the same problems of inaccuracy, inadequate reinvestigations of disputes, non-responsiveness and loss of privacy?

First, in a significant number of cases, there is systematic non-compliance with the *goals* of the FCRA. The CRAs, and even some creditors, behave like naughty children who simply refuse to do the right thing unless their parent is standing over them, making them do it. (A significant difference is that naughty children are not managing the sensitive personal credit report data of 220 million-plus Americans.)

Second, there is not systematic enforcement of the FCRA. The FTC's last large-scale enforcement action vs. the CRAs was in the early 1990s. The banking regulatory agencies, which were supposed to begin enforcing inaccurate reporting violations by creditors in 1997, to date have not brought a notable enforcement action. Currently, the only serious enforcement comes from private lawsuits. In recent years, some notable court opinions and jury verdicts have

been issued. The good news is that the law is finally beginning to catch up to some of the industry's worst practices. The bad news is that this is a slow and uneven process, which at its current pace, will take years to accomplish the FCRA's goals on a national level.

Third, the financial services industry in general, and the three CRAs in particular, clearly appear to have made the calculation that it is more beneficial to them to continue the old ways than to change in a manner sufficiently robust to spare thousands of consumers of the same old problems that the FCRA was intended to prevent.

**FCRA Compliance Is A 'Cost;' Industry's Goal Is To Reduce Cost (Automation)**

Naturally, a central issue is the industry's goal of reducing the cost of FCRA compliance. The primary means of accomplishing this is through automation of the processes for "building" consumer files and for responding to consumer disputes. Yet the manner in the CRAs and major furnishers have set up their automated systems, and their resistance to making obviously necessary adjustments, are at the core of the kinds of maddening inaccuracy problems that consumers continue to experience. Another more recent method of reducing costs is to outsource dispute processing to low-wage countries like the Philippines, Jamaica and Costa Rica.

**Partial Matching & Inaccuracy**

A major cause of inaccuracy is the CRAs' use of "partial matching" for building consumer files. At the core of "partial matching" is the willingness of CRAs to allow two consumers to be considered the same consumer if 7-out-of-9 digits of the Social Security Number (SSN) match, and there is enough geographic similarity, as well as common letters in the consumer's *first name*. Thus, when the results of CRA Partial Matching are incorrect, the consumer becomes the victim of a "Mixed File," meaning that information on another consumer was mixed into the victim's file. Mixed Files were the leading cause of complaints to the FTC and some State AGs *in the early 1990s*. In separate consent agreements, each of the Big Three CRAs acknowledged the importance of using "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." Yet deposition testimony indicates that at least two CRAs did not make significant changes in their partial matching practices after the consent agreements. The underlying reason that CRAs cling to their old ways is that their fundamental goal is to provide the "maximum possible *amount of information*" to its paying subscribers. The problem is that the CRAs' goal often clashes with the FCRA's fundamental requirement that they have "reasonable procedures for maximum possible accuracy."

When partial matching goes awry, it systematically causes inaccuracy. Moreover, after the CRA sold an inaccurate, mixed-file credit report, and the consumer was declined credit, when the consumer requests his or her file from the CRA, there have been cases where the CRA only disclosed to the consumer a "thinner" file that doesn't include all of the derogatory data that might have disadvantaged the consumer in his or her credit application. Put simply, in these cases the CRA sells one set of data to the creditor but gives a less complete set to the consumer. This is because when the consumer requests his or her own file, the CRAs use an *exact match* of the SSN to determine what information goes into the consumer's file.

**Partial Matching Helps Identity Thieves**

Partial matching has significantly helped identity thieves, but for different reasons. The CRA algorithms assign great importance to an exact match of the SSN. As explained in my book, the exact match of the SSN will permit wrongful release of the victim's credit report, even if the thief uses a different address or city:

> In "true-name fraud," the key moment occurs when the CRA discloses the innocent victim's credit report to a subscriber holding the identity thief's application for credit. This disclosure enables the fraudster to obtain credit in the name of the innocent victim.
>
> Identity thieves often enter mistaken data when they fraudulently apply for credit. But if they have obtained the victim's SSN, it will help override other discrepancies in the application and convince the CRA algorithm to disclose the victim's credit report. Even if there are mistakes in the SSN, the "partial match" tolerance within the algorithm still gives the fraudster a chance of triggering release of the credit report.

CRAs continue to defend partial matching as necessary. However, there should be no dispute that CRAs should adjust towards more exact matching after victims of a mixed file or identity theft (or some other form of chronic inaccuracy) notifies the CRA of inaccuracies in their reports. Astonishingly, the CRAs don't do this. Moreover, this crucial issue of post-notification partial matching was not even addressed in the FTC's report.

However, it was addressed in the 2006 case of Victoria Apodaca v. Equifax (417 F.Supp.2d.1220), by U.S. District Judge M. Christina Armijo, in New Mexico. Ms. Apodaca had very good credit until Equifax permitted the bankruptcy of another "Vickie Apodaca," with a similar SSN, to be included in Ms. Apodaca's report. Equifax failed to remove the highly damaging bankruptcy notation, despite Ms. Apodaca's repeated disputes. Judge Armijo observed:

> I agree with Equifax that if Plaintiff were relying solely on a general policy argument in favor of scrapping partial matching logic and the CDV process altogether, then such an argument would not suffice to prove willfulness in this case because there is nothing illegal *per se* about using partial matching logic and the CDV process as part of Equifax's credit reporting business. We do not live in a perfect world, and therefore any credit-reporting agency must choose between a system that defaults to a procedure that is under-inclusive or a system that defaults to a procedure that is over-inclusive," she continued.
>
> The real question Plaintiff is raising in this case, however, is ... what additional steps, if any, are required to override or correct the standard procedures to which a credit-reporting agency defaults when those procedures are not functioning."

"In other words, I do not understand Plaintiff to be claiming punitive damages merely because Equifax's credit-reporting system initially defaulted to an over-inclusive procedure that mistakenly included information belonging to another consumer on her credit report and relied on the furnisher of that information to determine its accuracy or applicability. Rather, I understand Plaintiff to be making the argument that punitive damages are warranted because Equifax consciously and recklessly decided not to make available any additional steps which would have overridden or supplemented the standard procedures to which it initially defaulted in Plaintiff's case, even though the company knew that those procedures were so over-inclusive they would result in violations of consumer rights without such additional steps," she wrote.

There are circumstances in which the FCRA may require a credit-reporting agency to go beyond the initial CDV process and 'verify the accuracy of its initial source of information.' Courts determine the existence and extent of such a requirement by balancing 'the cost of verifying the accuracy of the source versus the possible harm inaccurately reported information may cause the consumer,' which in turn 'will depend, in part, on whether the consumer has alerted the reporting agency to the possibility that the source may be unreliable or the reporting agency itself knows or should know that the source is unreliable.' 'Once a claimed inaccuracy is pinpointed, a consumer reporting agency conducting further investigation incurs only the cost of reinvestigating that one piece of disputed information.' In such instances, 'the likelihood that the cost-benefit analysis will shift in favor of the consumer increases markedly.'"[1]

**Inadequate Reinvestigations: The 'ADCV Exchange'**

Why are there times when CRAs and furnishers simply don't correct or delete erroneous data?

The fundamental problem is that CRAs, as a matter of policy, don't truly "investigate" serious consumer disputes. Instead, they exchange messages with creditors with the basic purpose of determining what information the creditor furnished before and whether the furnisher wants essentially the same information to continue to be included in the consumer's report.

The goes to the automated system set up by the industry to respond to consumer disputes, and to which Judge Armijo alluded. It is known as E-Oscar, or the "ACDV Exchange."[2]

ACDV stands for "Automated Consumer Dispute Verifications." When the consumer sends his dispute to the CRA, the CRA creates an ACDV with the consumer's identifying

[1] The Apodaca case was settled for confidential terms after Judge Armijo's opinion, just weeks before trial.
[2] In fact, Congress required such a system in the 1996 Amendments, but Judge Armijo indicated, Congress never even hinted that this system should be the exclusive means for responding to consumer disputes.

information (name, address, city-state-zip, SSN, sometimes previous address),[3] and then reduces the dispute to a two-or three-digit, or alpha-numeric code that cryptically describes the dispute (e.g., "not mine" or "fraud"). In a "not mine" dispute, the CDV instructs the furnisher to provide "complete ID."

Upon receipt of the CDV form, the creditor will advise the CRA if a sufficient number of identifiers (i.e., name, Social Security number) match up, and if the description of the account on the ACDV is the same as that in the creditor's database (i.e., "90-days late' or "charge-off"), and then "instruct" the CRA to either delete, modify, or "verify" the information so that it remains.

Thus, this process is better described as a ***comparison*** of each entity's existing data on the consumer, rather than an independent evaluation or investigation of the consumer's dispute.

As case after case illustrates, there can be several problems with the CDV-exchange serving as the principal means of responding to consumer disputes. First, a cursory exchange of messages does not amount to an investigation under any normal sense of the word. The Webster's New Collegiate Dictionary defines "investigate" as, "v. To observe or study by close examination and systematic inquiry. Systematic—adj. Marked by thoroughness and regularity." An exchange of messages is neither a "study by close examination" nor "marked by thoroughness and regularity," in my opinion.

Second, when the misapplication (mixed file) or misuse (identity theft) of the victim's identifiers *is the cause* of the inaccuracy in the victim's credit report, the CDV-exchange is not reasonably calculated to successfully determine whether a consumer's dispute should be honored.

Third, because the CRAs and creditors rely principally on the CDV-Exchange, they do *not even consider* taking other reasonable investigative steps that likely would be more effective in resolving a dispute over highly damaging errors caused by mixed files, identity theft, or mis-assignment of liability. Such alternative steps would include contacting the consumer directly by phone or email, or using readily available investigatory tools, like look-up services, to verify addresses.

Fourth, CRA dispute handling processes are biased in favor of the word of creditors over the word of consumers, which in my opinion, reflects disregard for the FCRA's goals of fairness and impartiality. There are times when the creditor is right and the consumer is wrong. However, there are times when the consumer is correct in pointing out that errors exist on her credit report and the credit grantor is incorrect in "verifying" errors. It is the CRAs' responsibility to analyze all available data -- that from the consumer, from the creditor, and that which is in its own files -- and then decide which disputed data should remain and which should be removed from the consumer's report.

The ACDV-exchange system is reasonably calculated to blunt credit repair-styled disputes that send in a barrage of disputes in the hope that CRAs-creditors won't comply with the 30-day time limit, and consequently, will have to remove the disputed information. However,

[3] The CRAs often refer to identifiers as "indicative data"

Trans Union's executive testified in 2003 that credit repair outfits were responsible for about 35 percent of dispute volume. This means that CRAs and creditors are exclusively relying on a system that might not be reasonably calculated to satisfactorily resolve millions of disputes.

It is important to note that this very problem was identified some 16 years ago by the FTC and State AGs. One of the provisions in the consent agreements – again, agreed to by each of the Big Three CRAs – related to the importance of having experienced CRA personnel oversee investigations of consumer disputes over the more complex Mixed Files cases.

For instance, in the 1992 agreement with the State Attorneys General, Trans Union agreed to adhere to the following practices:

> As to Consumer disputes concerning Mixed Files, assigning such disputes, for investigation and resolution, to Senior Investigators who are experienced in handling such disputes. In such cases the Investigator shall, as appropriate: 1) pull all files which may be involved in the dispute; 2) fully verify disputed tradelines to determine whether the tradeline is owned by the Consumer in whose file it resides; 3) make any changes, deletions, or additions to correct the Consumer's file and resolve the dispute; and 4) for files which are found to be mixed, prepare a summary and hard copies of the files involved to the systems support division of the Data Processing Department, for review and analysis by that Department as to the need for corrective action…

Instead of honoring the spirit of this agreement, CRAs have gone the other direction, outsourcing dispute processing to low-wage countries where personnel has less experience and less familiarity with our consumer credit system. This is not to say that the CRAs don't train low-wage, outsourced personnel on their priorities. Outsourced dispute processors from one low-wage country consistently testified that their CRA trained them to carefully look at the creditor's response on an ACDV form and then decide what goes into the consumer's file based on the creditor's instructions.

This goes to the heart of how CRAs view their role, and even how *they* define "accuracy." CRAs view their primary role as to faithfully include on a consumer's report those data that are furnished to it by its paying customers, the creditors. As long as the creditors furnish accurate information, this is fine. But it is problematic when the information is inaccurate and the CRAs' file-building and dispute resolution systems default toward the creditors' reporting, even when the consumer is right and the creditor is wrong.

Accordingly, CRAs essentially define "accuracy" as faithfully including on the consumer's report what is furnished to them by the creditor, rather than seeing accuracy as having a direct relationship with the underlying truth. The dictionary defines accuracy as, "1.the condition or quality of being true, correct, or exact; freedom from error or defect; precision or exactness; correctness."

I see the CRAs' pro-creditor bias conflicting with the FCRA's stated purpose that they "exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."

**Lack of Enforcement**

The FCRA is a good statute, but systematic enforcement by the federal agencies that are charged with that duty is totally lacking. I look forward to hearing if the federal banking agencies can cite any significant enforcement actions on their part in regards to systemically inaccurate credit reporting by creditors.

Moreover, the federal agencies have dismally missed deadlines for promulgating several important rules under the FACT Act. Most of these failures can be attributed to the agencies' propensity to kowtow to industry pressure.

**Private Enforcement**

The most important enforcement of the FCRA comes in the form of private lawsuits.[4]

These cases have come to light since Congress finished work on the FACT Act Amendments in 2003.

In January 2000, Matthew S. Kirkpatrick, a Portland, Ore. carpenter and father of two young children, was surprised to learn that he had been denied a loan, since he always had top-of-the line credit. But he had become a victim of identity theft by an unknown perpetrator in Idaho, and his once-pristine credit report was mauled by 19 fraudulent accounts. The diligent Kirkpatrick sent Equifax a dispute package consisting of

- Coeur d'Alene and Portland police reports confirming that Kirkpatrick was not responsible for the fraud
- Letters from two defrauded creditors confirming that he was not at fault
- A copy of his Social Security card w/ signature
- A copy of his driver's license with his photo and current home address in Portland
- A cover letter explaining that he was a victim of identity theft.

A week or so later, Kirkpatrick called Equifax to ensure that it had received the package. An Equifax operator said it was never received. Kirkpatrick re-sent the package, placed a follow up call, and again was told by an Equifax operator that it was never received. He sent the same package a third time, but was later told on the phone that Equifax didn't have the package. The third operator told him to send it certified, return receipt requested. Kirkpatrick did, and promptly received the signed USPS green card, showing that Equifax received the package. But when he called, an Equifax operator told him it was no where to be found. The operator convinced Kirkpatrick to do a dispute over the phone. The story got worse from there. Equifax

[4] Many of the attorneys who specialize in FCRA are members of the National Association of Consumer Advocates (NACA, www.Naca.net and subscribe to the FCRA manual published by the National Consumer Law Center www.NCLC.org.)

consistently failed to delete the fraudulent data. Information that was patently false had been "verified" by its investigations, Equifax claimed. Some data that it deleted was later reinserted. Kirkpatrick missed a deadline for getting the financing he needed to complete a home renovation that he had started to add a bedroom, as his wife was pregnant with his third child. As the weeks and months went by, Kirkpatrick was trapped in credit report purgatory, and the constant stress made his life Hell.

Kirkpatrick was one of several consumers who was only able to effectuate correction of his credit report by filing a federal lawsuit.[5] The lawsuit is necessary because the defense attorneys have the authority to finally override the automated systems that are causing – or failing to fix – the problem in the first place. Unlike most such suits, Kirpatrick's actually went to trial.

In her pre-trial deposition, Alicia Fluellen, head of Equifax's dispute-handling department,[6] denied that Equifax had violated even one provision of the FCRA.[7] But at trial, five years after his ordeal began, Fluellen, who was speaking for the company, Equifax admitted it had failed Kirkpatrick, but couldn't explain the breakdowns.

"It appears to me to be the Murphy's law of all dispute handling. I have truly never seen that. Every last opportunity that we had to get it right, we just – it was missed or wasn't taken."

> Further, Kirkpatrick finally got an apology when the soft-spoken Fluellen, facing him from the witness stand, said, "I am completely and utterly embarrassed by the errors, very disappointed that we made so many errors on one particular consumer's credit file. This is my very first time coming into contact with Mr. Kirkpatrick. I really do believe he deserves an apology and I really would like to say that I am very, very sorry in the way we handled your disputes. I truly am."

Fluellen did not mention that prior to Kirkpatrick, John Harrison had a similar experience: he too was a victim of identity theft with 15 fraudulent accounts that Equifax failed to remove despite repeated disputes. Fluellen was personally involved in Harrison's case after he filed suit. Harrison testified before this Committee in May 2003

**Nicole M. Robinson**, an Alexandria, Virg. resident, who for the past five years served as the volunteer East Coast coordinator of the Identity Theft Resource Center, has spent some six years trying to get her Equifax report corrected – all to no avail. The fraudulent accounts caused by the perpetrator – Nicole A. Robinson, of San Antonio, Tex. – have marred victim Nicole's Equifax reports since 2000, and prevented her and her daughter from purchasing a home. She tried everything she could think of: she's testified before Congress and State Legislatures, she has appeared in the media, she was an invited guest at President Bush's 2006 White House meeting on identity theft. She also spoke directly with dispute department higher-ups at Equifax.

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[5] Mr. Kirkpatrick was represented by Michael Baxter and Robert Sola, Portland, Ore.
[6] Fluellen's title was director of consumer customer care.
[7] That portion of the deposition was read at trial.

None of this was enough to persuade Equifax to remove obviously fraudulent data in her file. Her case is pending in federal court in Alexandria, Virg.[8]

**No Sign of Change**

In 2002, a jury hit Trans Union with a $5 million punitive damages award because its routine procedures caused the chronic mixing of plaintiff Judy Thomas' file (of Klamath Falls, Ore.,) with the negative history of Judith Upton (Stevenson, Wash.) In January 2003, Magistrate Judge John Jelderks reduced the punitive award to $1.2 million, which Trans Union paid. Later in 2003, a federal jury in Fresno, Calif. awarded $939,900 -- $325,000 in punitive damages and $614,900 in compensatory damages -- to a husband and wife who sued Trans Union after the credit bureau continued reporting tax lien delinquencies well after the couple disputed their accuracy.[9] Yet despite these verdicts, it's not clear if Trans Union has made any significant changes to its procedures because of these verdicts, according to Oregon attorneys Michael and Justin Baxter. The Baxters continue representing plaintiffs against TU and other CRAs over inaccuracies stemming from mixed files and identity theft.

**Sandra Cortez** had a rude surprise when she went to a Denver-area auto dealer to buy a car: on the front page of her TransUnion report, there were multiple listings referencing "OFAC Alerts" for Sandra Cortes Quintero, a suspected narcotics associate from Cali, Colombia. The alerts caused the car dealer to call law enforcement authorities. Ms. Cortez was asked to wait in a room until local police could reach the FBI. Ms. Cortez later testified at trial that she was terrified that the FBI would burst into the room and begin interrogating her.

"OFAC" stands for the U.S. Treasury Department's Office of Foreign Assets Control, which maintains a list of over 6,000 names suspected terrorists, narcotics traffickers, and other "specially designated nationals."

Ms. Cortez could readily see that the Colombian narcotics suspect was a completely different person. Sandra Cortes Quintero had a Colombian passport number and a date-of-birth of "06/21/1971;" Ms. Cortez was born some 27 years earlier.

When Cortez repeatedly disputed the information with TransUnion, the credit bureau's dispute operators told her there was no such information about Quintero or OFAC in her file. This was in part true because TransUnion testified it did not integrate the OFAC alerts into its central credit reporting database. Instead, TransUnion has an arrangement with a vendor, Accuity, which obtains the information from OFAC and then transfers it to TransUnion. The credit bureau would include OFAC information on a consumer's report based solely on a "name match," even if the matching name was a middle name instead of a last name. TransUnion testified that it did nothing more to vet information, like comparing dates-of-birth, before putting OFAC data on a consumer's report. TransUnion argued that since it never put the OFAC data into its principle credit reporting database, but instead merely passed it on to users of its credit reports, the activity was not covered by the FCRA.

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[8] Ms. Robinson is represented by A. Hugo Blankingship III

[9] Soghomonian v. U.S.A., 278 F. Supp. 2d 1151 (E.D. Cal. 2003)

But Senior Judge John P. Fullum, of the Eastern District of Pennsylvania, rejected TransUnion's argument that it wasn't covered by the FCRA, and let the case go to the jury.

A federal jury in Philadelphia awarded Ms. Cortez $50,000 in actual damages and $750,000 in punitive damages. The jury foreperson apparently took it on her own to write the following at the end of the verdict form: "The Trans Union business process needs to be completely revamped with much more focus on customer service and the consumer." Trans Union said it will appeal.[10]

Ms. Cortez's experience was not an isolated one. A 2007 report by the Lawyers' Committee for Civil Rights of the San Francisco Bay area (LCCR) found that financial institutions, credit bureaus, charities, car dealerships, health insurers, landlords, and employers are now checking names against the list before they open an account, close a sale, rent an apartment, or offer a job. TransUnion, one of the three major credit bureaus, markets and sells an OFAC screening service as an add-on to credit reports.

"The OFAC list threatens to become an even wider problem than the no-fly lists: while the no-fly lists are screened at the airport by a limited number of private companies (commercial airlines), the OFAC list is potentially checked by hundreds of thousands of private businesses across many sectors of the economy, with no standards for training or for compliance with civil rights," the report said. "The government's indiscriminate OFAC policies end up drafting large swathes of American society into domestic surveillance."

**Defending the Indefensible**

It is most fortunate that Anne Fortney is appearing before the Committee, as her expert witness work provides a useful window into some of industry's anti-consumer policies and practices. Ms. Fortney's work also underscores industry's determination to defend and continue these practices.

The most important court opinion regarding furnishers' duties to reinvestigate consumer disputes is Johnson v. MBNA[11]. In that case, the U.S. Court of Appeals for the Fourth Circuit (Richmond) rejected MBNA's claim that all that was required of its investigation in response to a consumer's FCRA dispute was that it briefly review its own records to determine if the disputed information was what it previously reported.

Writing for the Fourth Circuit panel, in an opinion authored by Chief Judge William W. Wilkens made it clear that the standard industry automated "parroting" was not enough:

> Stated differently, MBNA contends that this provision does not contain any qualitative component that would allow courts or juries to assess whether the creditor's investigation was reasonable.

[10] Ms. Cortez was represented by John Soumalis and Jim Francis of Francis & Mailman in Philadelphia.
[11] Linda Johnson v. MBNA America Bank, 357 F.3d 426 (4th Cir. 2003)

> The key term at issue here, 'investigation,' is defined [by the dictionary] as 'a detailed inquiry or systematic examination.' Thus, the plain meaning of 'investigation' clearly requires some degree of careful inquiry by creditors," he wrote.
>
> ... [T]he statute uses the term "investigation" in the context of articulating a creditor's duties in the consumer dispute process outlined by the FCRA. ***It would make little sense to conclude that, in creating a system intended to give consumers a means to dispute – and, ultimately, correct – inaccurate information on their credit reports, Congress used the term 'investigation' to include superficial, unreasonable inquiries by creditors.*** We therefore hold that § 1681s-2(b)(1) requires creditors, after receiving notice of a consumer dispute from a credit reporting agency, to conduct a reasonable investigation of their records to determine whether the disputed information can be verified."

Despite the Fourth's Circuit's unequivocal holding, however, she continued to express opinion that the FCRA did not require creditors' FCRA investigations to be overly concerned with the accuracy of disputed information, but only to report accurate the results of their reinvestigations.

Ms. Fortney once wrote: "Lawsuits, like Gail Cope's, confuse (1) the requirement that the furnisher ***report accurately the results*** of its investigation to the CRA with (2) the requirement that the furnisher ***report accurately the information*** investigated." [Emphasis in original]

Under Ms. Fortney's view then, a creditor would never be liable whenever it *accurately reported* that *the result* of its "investigation" was that it erroneously "verified" false information – regardless of the adequacy of the investigation. In my opinion, such a result does not square with the FCRA's goals of accuracy and fairness.

**Adverse Action Notices.** Under the FCRA, when a consumer is denied credit or somehow disadvantaged in the insurance context because of any information in his or her credit report, the creditor or insurer must so inform the consumer in an adverse action notice. The notice must also inform the consumer which CRA was used and that the consumer has a right to obtain a free credit report from that CRA.

Ms. Fortney, however, has expressed the opinion that the required adverse action notices do not actually have to inform the consumer that an adverse action in fact has taken place. This sort of sophistry was rejected by the U.S. Supreme Court in its very recent Safeco opinion in which Justice David Souter wrote, "The notice must point out the adverse action, explain how to reach the agency that reported on the consumer's credit, and tell the consumer that he can get a free copy of the report and dispute its accuracy with the agency."

In a tenant-screening case, Ms. Fortney expressed the opinion that it was reasonable for a specialized tenant-screening CRA to compile a report showing that the consumer had been sued

by a former landlord, but at the same time fail to mention that other court records, already in its possession, showed the landlord's suit against the consumer was dismissed.

**Troubling Developments**

Credit reporting and credit scoring are very dynamic fields. Some of recent developments of concern include:

**Triggers: Endorsed By FTC.** For the past year or so, the three major credit reporting agencies have been selling a service to mortgage brokers and lenders that reveals, sometimes within 24 hours, when a consumer has applied for a mortgage or refinance. The controversial program, first marketed as "Triggers" by Experian, has drawn sharp criticism from consumer advocates and the National Association of Mortgage Brokers (NAMB) as both an invasion of privacy and an unfair business practice. The practice is also the target of lawsuits charging that it violates the Fair Credit Reporting Act (FCRA). Despite the growing controversy, the Federal Trade Commission, which is responsible for consumer protection, deterring unfair trade practices and enforcing the FCRA, in February issued a statement endorsing Triggers because it meant that consumers would receive "more offers" when seeking a mortgage or refinance. But a growing list of anecdotes indicates that unscrupulous lenders and brokers are using the leads to make deceptive "bait-and-switch" proposals.

**The FTC's FreeCreditReport.com Settlement**. Although no one knows the total, FreeCreditReport.com probably made millions of dollars in profit inducing consumers with the misleading offer of "free (Experian) credit reports." Yet the FTC agreed to settle charges of deceptive practices for $1 million. The FTC[12] went after FreeCreditReport.com a second time, but this time only fined them $300,000. I agree with the dissenting opinion of FTC Commissioner Jon Liebowitz from a separate case, "I would rather go to trial and risk losing, than settle for a compromise that makes an FTC action just a cost of doing business."

**Post-Bankruptcy Inaccuracies**. There is a systematic problem with inaccuracies in post-bankruptcy credit reporting. After debts are discharged, they are supposed to be reported as "included in bankruptcy," with a zero balance, which mitigates the negative impact on a credit scores. But all too often, creditors continue to report discharged debts as still owed, which dramatically punishes a consumer's credit score. The CRAs have been too lenient in permitting this, and there has been little in the way of investigation or enforcement from U.S. banking agencies.

**Credit Reporting As Debt Collection.** Some creditors don't actively pursue debts, they just report them as unpaid to the CRAs. This is appropriate if the debt is actually owed, but this

[12] Many experts and consumer advocates believe that in recent years, the FTC has been "soft" on the credit reporting industry. Some believe that one reason for this is that Timothy Muris, the previous FTC Chairman, and his chief of consumer protection, Howard Beales, were once reported to be expert witnesses for TransUnion in a case brought against it by the FTC. Moreover, the current FTC Chairman, Deborah Platt Majoras, is from Jones Day, the law firm that represents Experian in FCRA cases. If this pattern continues, the next FTC Chairman will have ties to Equifax. In the future, Congress should conduct an "FCRA-impact analysis" when evaluating candidates for FTC Chairmen.

practice "crosses the line" when creditors and collectors threaten to report debts – or actually report debts – that they know or should know are not the responsibility of the consumer.

**Authorized Users.** For years, the FICO scoring model has "scored" authorized users, even though they are not responsible for the credit card's debt. However, now services are selling the right to become an authorized user on the card of a complete stranger for the purpose or boosting one's credit score. In response, Fair Isaac said its next version of the scoring model, due out later this year, will no longer score authorized users. Such a change is likely to bring even more inconsistency and confusion, as most lenders likely will not use the new version.

**Pattern Recognition Software.** Credit card companies often use "pattern recognition software" to detect changes in customer buying patterns that might indicate a lost card and fraudulent use. When identity theft occurs, it is typical that the victim's credit report file is rapidly hit by several fraudulent tradelines. However, to my knowledge, the CRAs do not use any sort of "pattern recognition software" to spot new signs of identity theft. Moreover, it does not appear the CRA dispute operators are trained to look for such patterns when receiving fraud disputes from victims of identity theft.

**What To Do**

This is not a hearing on proposed legislation, so this is not the time to present to the Committee detailed proposals for improving the FCRA. It is worth noting, however, that despite Congress's successful efforts to strengthen the statute on behalf of consumers in both 1996 and 2003, the miscreant behavior of major industry players continues.

I strongly endorse the calls for injunctive relief, as well as all other improvements recommended by my colleagues Chi Chi Wu, of the National Consumer Law Center, and Leonard Bennett, one of the nation's leading FCRA attorneys.

**Adverse Action Notices.** It would be extremely helpful to consumers and not burdensome to require that Adverse Action Notices be more specific, so that the consumer would have a better and more immediate idea as to what information in his or her credit report is causing disadvantage. In part, this could be achieved by passing through to the consumer the "reason codes" that accompany a credit score, as is done in the mortgage context.

**Consumer Protection Statute.** Frankly, I think the FCRA is quite clear that it is first and foremost a Consumer Protection Statute. But some industry officials continue to deny this is the case. A Congressional reaffirmation of this could prove beneficial to consumers.

**Failed Regulatory Oversight.** A clear goal of the FACT Act Amendments was to increase and improve federal agency oversight of the consumer reporting industry. Given their dismal performance in both enforcement (lack thereof) and missing rule-promulgation deadlines, it is important to recognize that this approach thus far has proven to be a failure, and that the federal agencies charged with FCRA oversight have failed American consumers.

**Catalyst theory**. For several years, the "Catalyst Theory" applied to Freedom of Information Act (FOIA) lawsuits. This meant that if a lawsuit prompted a federal agency to release records under the FOIA, the plaintiff's attorney was eligible for attorney's fees. Given that there is little in the way of enforcement of from federal overseers, and that in many important cases, the only way that consumers can get their credit reports corrected is by filing an FCRA suit, it is important that the Catalyst Theory become part of the FCRA.

**Credit Monitoring.** Prior to the free-credit report requirement of the 2003 FACT Act Amendments, the FCRA capped the price of a credit report. However, the credit monitoring services offered by the three CRAs can range between $79 to $119 per year. These services represent an "end-run" around the Act's intent to encourage access by prohibiting excessive charges. The FCRA can encourage better consumer access to their own data by capping the price of monitoring services. In fact, this is one place where there could be a "win-win." Let's say a CRA is charging 1 million consumers $80 a year for annual revenue of $80 million. Wouldn't it be better if 30 million American were paying $10 per year for annual revenues of $300 million? Finally, I see plugging people into their own data as a model for facilitating consumer access to other types of personal data.

This is only a partial list of improvements many of us would like to see. At the appropriate time, we could provide a more detailed list.

Mr. Chairman, Members of the Committee, again, thank you for this opportunity. I'd be happy to answer any questions.

**PREPARED STATEMENT OF**

**THE FEDERAL TRADE COMMISSION**

**on**

# CREDIT REPORTS: CONSUMERS' ABILITY TO DISPUTE AND CHANGE INACCURATE INFORMATION

**Before the**

**HOUSE COMMITTEE ON FINANCIAL SERVICES**

**Washington, D.C.**

**June 19, 2007**

## I. Introduction

Chairman Frank, Ranking Member Bachus, and members of the Committee, my name is Lydia Parnes, and I am the Director of the Bureau of Consumer Protection at the Federal Trade Commission ("Commission" or "FTC").[1] I appreciate the opportunity to appear before you today to discuss the Commission's efforts to improve the accuracy of credit report information and to enhance consumers' ability to dispute and correct inaccurate information. These efforts have included implementation of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") and its accuracy-related provisions.[2]

The FACT Act amended the Fair Credit Reporting Act ("FCRA"), the federal law that governs the operation of the nation's consumer reporting system. The Commission shares enforcement authority for the FCRA with the federal banking regulatory agencies ("banking agencies"),[3] and has played a central role in interpreting and enforcing the FCRA since its inception.

This testimony will provide an overview of the FCRA and describe the Commission's efforts to carry out the tasks mandated by the FACT Act. The FACT Act required the Commission, alone or with other agencies, to issue almost 30 rules, guidelines, compliance forms, notices, educational campaigns, studies, and reports. This testimony summarizes our substantial progress to date toward completing these tasks and also summarizes other actions the

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[1] While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

[2] Pub. L. No. 108-159, 117 Stat. 1953 (2003).

[3] As used here, this term applies to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System ("Federal Reserve"), Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration.

Commission has taken to improve the accuracy of consumer reports and enhance the dispute process. These actions include an aggressive law enforcement program, and extensive consumer and business guidance.

## II. The Fair Credit Reporting Act

The FCRA, enacted in 1970, governs the collection, assembly, dissemination, and use of consumer report information[4] and provides the framework for the credit reporting system in the United States. The FCRA regulates the practices of consumer reporting agencies ("CRAs"), businesses that compile and sell creditworthiness and similar information for use by credit grantors, insurance companies, employers, landlords, and other entities in making eligibility and pricing decisions about consumers. The FCRA is designed to (1) prevent the misuse of sensitive consumer information by limiting access to those who have a legitimate need for it, (2) improve the accuracy and integrity of consumer reports, and (3) promote the efficiency of the nation's banking and consumer credit systems.

The FCRA imposes duties on the three key types of participants in the credit reporting system: those who provide information about consumers to CRAs ("furnishers"), those who use consumer report information ("users"), and the CRAs themselves. The Act also provides consumers with a number of rights and protections relating to the privacy and accuracy of their personal information.

## III. The FACT Act

The FACT Act added a number of new or amended provisions to the FCRA designed,

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[4] Section 603(d) of the FCRA defines "consumer report" as information from a CRA concerning "a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility" for credit, insurance, or other purposes authorized by the FCRA.

among other things, to prevent and assist victims of identity theft and enhance consumer privacy and consumer report accuracy.

**A. Identity theft and privacy provisions**

Before December 2003, the FCRA did not specifically address identity theft. The FACT Act included significant new provisions to help reduce the incidence of identity theft and to minimize the injury to victims that results from the corruption of their credit histories. First, with respect to prevention, the FACT Act contains provisions to limit the opportunities for wrongdoers to obtain unauthorized access to consumer report information. For example, the Act mandates that businesses dispose of consumer report information in a safe manner.[5] Merchants must truncate the account number and redact the expiration date on consumers' copies of electronic credit card receipts.[6] Further, CRAs are prohibited from disclosing medical information in consumer reports, except under specified conditions.[7]

Second, the FACT Act increases consumers' opportunities to review their credit records and spot incipient signs of identity theft before further damage ensues. Consumers have the right to receive a free credit report every twelve months, through a centralized source, from each of the nationwide CRAs,[8] as well as from nationwide "specialty" CRAs.[9] Consumers also may purchase a credit score from a CRA,[10] and certain mortgage lenders are required to provide a

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[5] 15 U.S.C. § 1681w.

[6] 15 U.S.C. § 1681c(g).

[7] 15 U.S.C. § 1681b(g).

[8] 15 U.S.C. § 1681j(a)(1)(A)-(B).

[9] 15 U.S.C. § 1681j(a)(1)(C). Specialty CRAs include tenant and employment screening services, medical records databases, and check verification services.

[10] 15 U.S.C. § 1681g(f).

score without charge to home loan applicants.[11]

Third, the FACT Act empowers consumers to take steps to limit the damage from identity theft once they become victims. Consumers who have a good faith suspicion that they have been or are about to become victims of fraud or related crimes such as identity theft may place an initial, 90-day fraud alert on their credit files, alerting potential users of their report to exercise special vigilance in opening accounts in the consumers' names.[12] Actual victims may request an extended, seven-year alert if they provide a police report to the CRA. In addition, victims may obtain from creditors the underlying documentation associated with transactions that may have been fraudulent,[13] block fraudulent information on their credit file,[14] and prohibit creditors from reporting fraudulent information to CRAs.[15]

**B. Accuracy provisions**

The FCRA mandates that CRAs follow "reasonable procedures to assure maximum possible accuracy of the information [they report]."[16] It does not establish an absolute standard of accuracy and does not require CRAs to guarantee that reports are error-free. The FCRA further promotes accuracy by creating a self-help mechanism that empowers consumers to obtain copies of their reports and dispute erroneous or incomplete information. Consumers who suffer adverse action as a result of information in their credit reports have the right to receive

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[11] 15 U.S.C. § 1681g(g).

[12] 15 U.S.C. § 1681c-1.

[13] 15 U.S.C. § 1681g(e).

[14] 15 U.S.C. § 1681c-2.

[15] 15 U.S.C. § 1681s-2(a)(6).

[16] 15 U.S.C. § 1681e(b).

notification of the actions,[17] obtain copies of their credit reports at no charge,[18] and dispute inaccurate information in their reports with the CRA.[19] The consumer's filing of a dispute triggers an obligation on the part of the CRA and the furnisher of the contested information to investigate the dispute and make any appropriate deletions or modifications to the report.[20]

The FACT Act added several new provisions to improve the accuracy of consumer reports. The FACT Act facilitates consumers' access to their credit reports by granting them the right to free annual reports, and gives identity theft victims a number of new remedies for eliminating fraudulent information from their reports. The Act also requires furnishers to establish reasonable policies and procedures to comply with guidelines to be specified by the federal agencies regarding the accuracy of the information furnishers submit to CRAs.[21]

In addition, several FACT Act provisions are designed to improve the effectiveness of the dispute process and thus enhance the accuracy of consumer reports. First, the Act supplements the adverse action process by adding a new notification requirement for creditors, the so-called "risk-based pricing notice." Creditors must send this notice when, based on a credit report, they offer material terms that are materially less favorable than the most favorable terms available to a

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[17] 15 U.S.C. § 1681m.

[18] 15 U.S.C. §§ 1681g, 1681j.

[19] 15 U.S.C. § 1681i(a)(1)(A).

[20] 15 U.S.C. §§ 1681i(a), 1681s-2(b). Under the FCRA, CRAs must convey a dispute about the accuracy or completeness of information in a consumer report to the furnisher of that information for investigation. The CRA also must send to the furnisher all relevant information about the dispute supplied by the consumer. Upon receipt of the dispute, furnishers must (i) review the information provided by the CRA, (ii) make appropriate corrections if the disputed information is inaccurate or incomplete, and (iii) provide the corrections to all nationwide CRAs that received the inaccurate or incomplete information.

[21] 15 U.S.C. § 1681s-2(e).

substantial proportion of consumers from or through that creditor. Like the adverse action notice, this notice will alert consumers to the role their credit reports played in receiving less favorable terms, thereby encouraging them to obtain copies of their reports and review them for possible inaccuracies.[22] Second, the FACT Act grants consumers the right to dispute the accuracy of their consumer reports directly with the furnisher of the disputed information, under circumstances to be determined by the FTC and the banking agencies.[23] Third, the FACT Act requires financial institutions that regularly furnish information to CRAs to provide a notice to consumers when they furnish negative information.[24] Fourth, the Act prohibits furnishers from re-reporting disputed information found to be inaccurate or incomplete.[25]

Accuracy in consumer reporting always has been a primary goal of the FCRA. As businesses and other entities continue to make greater use of consumer reports in granting credit, employment, insurance, rentals, and other products or services, it is critical that the information in the reports be as accurate as possible and that consumers' dispute rights be effective. This is all the more important for victims of identity theft, the consequences of which can include fraudulent information corrupting the victim's credit report. The Commission works to enhance consumer report accuracy in three ways - promulgation of rules and studies under the FACT Act, law enforcement, and education and guidance to consumers and businesses.

## IV. Commission Actions Implementing the FACT Act

As noted above, the FACT Act assigned the Commission the responsibility, alone or with

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[22] 15 U.S.C. § 1681m(h).

[23] 15 U.S.C. § 1681s-2(a)(8).

[24] 15 U.S.C. § 1681s-2(a)(7).

[25] 15 U.S.C. § 1681s-2(b)(1)(E).

one or more other agencies, to promulgate approximately twenty implementing rules, guidelines, compliance forms, and notices, and conduct nine studies and issue reports to Congress.[26] After the enactment of the FACTA Act, the FTC created an internal FACT Act implementation working group, comprised of staff from all parts of the agency, including the Bureau of Consumer Protection, Bureau of Economics, and Office of General Counsel.[27] At any given time, the Commission has about 15-20 staff assigned to FACT Act implementation. Through these efforts, the FTC has completed the FACT Act implementation activities assigned solely to it, with limited exceptions.[28] In addition, the Commission and its sister agencies have made substantial progress in completing their required joint tasks.

**A. Rules, guides, forms, and notices**

The FTC and other agencies have completed most of the FACT Act-mandated rules, guides, forms, and notices, while a few are still in progress. The most significant tasks in which the Commission participated, and their current status, are listed below.

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[26] Some of the studies must be conducted multiple times over a period of years. In addition to these requirements, the FACT Act directs the Commission to consult on four other rules or studies for which other agencies are responsible, conduct two educational campaigns, and serve as a member of the Financial Literacy and Education Commission.

[27] In early 2006, the Bureau of Consumer Protection implemented an internal reorganization. Before 2006, the Bureau's Division of Financial Practices was responsible for privacy and security generally, including FACTA implementation, and protecting consumers in the financial services marketplace. As part of its reorganization, the Division of Financial Practices was split into a new Division of Financial Practices, focusing on consumer protection in the financial services marketplace, and a new Division of Privacy and Identity Protection, focusing on privacy and security, including FACTA implementation. The purpose of this reorganization was to refocus resources on each of these programs.

[28] Three activities are ongoing: the final Circumvention Rule is still in interim form; the Commission continues to monitor the marketplace in determining a credit scoring fee; and, although the Commission has begun the complaint-sharing program with credit reporting agencies and referred 20,000 complaints, it is working to resolve some anomalies and will submit its first annual report to Congress shortly. See further discussion in sections A and B above.

### 1. Completed Tasks

- *"Circumvention" Rule.* Pursuant to section 211(b) of the FACT Act, on February 24, 2004, the Commission published an interim final rule that barred nationwide CRAs from reorganizing or taking other steps to avoid their duties to provide free credit reports.

- *"Free Credit Report" Rules.* Section 211(a) and (d) of the FACT Act directed the Commission to issue regulations requiring that (i) nationwide CRAs establish a centralized source through which they must make free annual file disclosures to consumers, and (ii) nationwide specialty CRAs establish a streamlined process for consumers to request such disclosures. On June 24, 2004, the Commission published final rules implementing these provisions. Since December 1, 2004, the nationwide CRAs have issued over 52 million free file disclosures under this program.[29] The Commission has acted aggressively to uphold the integrity of the free report program, including bringing two actions against a company that offered "free" credit reports tied to the purchase of a credit monitoring service, through the web site "freecreditreport.com."[30]

- *"Identity Theft" Rules.* Section 111 of the FACT Act directed the Commission to define the terms "identity theft" and "identity theft report" for the purposes of various identity-theft related provisions of the Act. In addition, section 112 required the Commission to establish by rule the duration of active duty alerts available to members of the armed services and to define what constitutes "appropriate proof of identity" for certain purposes. On November 3, 2004, the Commission published final rules implementing these provisions.

- *"Records Disposal" Rule.* Pursuant to section 216 of the FACT Act, on November 24, 2004, the Commission and other agencies published coordinated final rules requiring proper disposal of consumer report information. These rules require entities to take reasonable measures to dispose of covered information in a manner that reduces the risk of identity theft.

- *"Summary and Notices."* Pursuant to section 211 of the FACT Act, on November 30,

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[29] Agency Information Collection Activities; Submission for OMB Review; Comment Request, 72 Fed. Reg. 14575, 14576 (Mar. 28, 2007).

[30] *FTC v. Consumerinfo.com, Inc.*, SACV05-801AHS(MLGx) (C.D. Cal. Aug. 15, 2005); *FTC v. Consumerinfo.com, Inc.*, SACV05-801AHS(MLGx) (C.D. Cal. Jan. 8, 2007). In the original case in 2005, the Commission charged, among other things, that the defendants, affiliates of the nationwide CRA Experian, had deceptively mimicked the FACT Act free report program. The stipulated order required the defendants to make prominent disclosures that their program is not associated with the free annual report program and provide a link to the official web site for that program, www.annualcreditreport.com. The defendants also agreed to pay $950,000 in disgorgement, and to provide refunds to dissatisfied past customers. In the 2007 case, the Commission alleged that Consumerinfo had violated the 2005 order. The new order prohibits the company from suggesting that it is affiliated with the FACT Act program, and includes a $300,000 judgment for consumer redress.

2004, the Commission published standard forms that CRAs must give to consumers when providing them with their credit reports, summarizing consumers' rights under the FCRA. The Commission also issued forms that CRAs must provide to information furnishers and consumer report users summarizing their FCRA duties. These forms were revisions to forms previously prescribed by the Commission in 1997.[31]

- *"Identity Theft Summary."* Pursuant to section 151 of the FACT Act, on November 30, 2004, after consultation with the banking agencies, the Commission published a model form that CRAs must provide to identity theft victims, summarizing victims' FCRA rights.

- *"Prescreen Opt-Out Notice" Rule.* Section 213(a) of the FACT Act directed the Commission, in consultation with the banking agencies, to prescribe a simple and easy-to-understand notice that creditors and insurers must include in written "prescreened" offers. On January 31, 2005, the Commission published such a notice, which informs consumers of their right to opt out of prescreened offers and explains the process for doing so.

- *"Identity Theft Forms and Procedures" Guidance.* On April 27, 2005, the Commission published guidance to implement section 153 of the FACT Act, which directed the Commission, in consultation with the banking agencies, to develop a model form for identity theft victims to use to contact creditors and CRAs.

- *Medical Information Rule.* Section 411 of the FACT Act amended the FCRA to prohibit creditors from obtaining or using medical information in determining a consumer's eligibility for credit, except as permitted by regulations to be issued by the banking agencies (but not including the FTC). The agencies issued final regulations on November 17, 2005. The Commission had provided extensive written comments to the banking agencies to aid in the rulemaking proceeding.

- *Nationwide Identity Theft Campaign.* Last year, the Commission launched a nationwide identity theft education program mandated by the FACT Act, centered around the themes "Deter, Detect, and Defend." This campaign includes information about how victims can mitigate the damage caused by identity theft should it occur.

### 2. Tasks still in progress

Certain of the agencies' FACT Act tasks are still in progress. The agencies are actively working on each task and are committed to completing them as quickly as possible.

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[31] Section 211(c) of the FACT Act specifically required the Commission to revise the consumer summary form. The Act did not require revision of the furnisher or user notices, but various changes to the FCRA introduced by the FACT Act rendered the existing forms obsolete.

- *"Affiliate Marketing" Rule.* Section 214 of the FACT Act requires the FTC, the banking agencies, and other agencies to promulgate coordinated rules to provide consumers with notice and a right to opt out of affiliates' use of certain personal information for marketing purposes. A proposed rule was issued for comment in 2004, and the agencies are completing work on a final rule.

- *"Furnisher" Rules.* Section 312 of the FACT Act requires the Commission and the banking agencies to promulgate two rules relating to furnishers of information to CRAs: (i) coordinated rules to prescribe guidelines and regulations to ensure the accuracy and integrity of information furnished to CRAs,[32] and (ii) a joint rule identifying circumstances under which furnishers must investigate a dispute in response to a consumer's direct request.[33] The agencies published an Advanced Notice of Proposed Rulemaking for both of these rules on March 22, 2006.[34] Agency staffs are evaluating the comments and, as specified by the FACT Act, considering the costs and benefits of possible new obligations on furnishers.

- *"Risk-based Pricing" Rule.* Section 311 of the FACT Act requires the FTC and the Federal Reserve to issue joint rules prescribing the form, content, time, and manner of delivery of risk-based pricing notices. The rules also must define certain terms used in the statutory provision, provide for exceptions to the notice requirement, publish a model notice, and determine the timing of the notice. The agencies have conducted extensive outreach to stakeholders to learn more about the feasibility and cost of different approaches to effectuating the notice requirements, and are in the process of drafting proposed rules that will be issued for public comment.

- *Credit Score Fee Determination.* Section 212(b) of the FACT Act requires the Commission to determine a "fair and reasonable" fee that CRAs may charge for a credit score. On November 3, 2004, the Commission published an Advanced Notice of Proposed Rulemaking seeking public comment on various approaches to determining the fee. The Commission is continuing to monitor the credit score market to ensure that the market remains vigorous and competitive.[35]

- *"Red Flags" Rules.* Section 114 of the FACT Act requires the Commission and banking

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[32] 15 U.S.C § 1681s-2(e).

[33] 15 U.S.C. § 1681s-2(a)(8).

[34] Interagency Advance Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 71 Fed. Reg. 14419 (Mar. 22, 2006), *available at* http://www.ftc.gov/os/2006/03/interagencyANPRfrn.pdf.

[35] Currently, many credit reporting agencies appear to be charging fees under $10 to obtain a credit score.

agencies to promulgate guidelines and regulations requiring creditors to establish reasonable procedures to identify identity theft risks. In addition, section 315 of the FACT Act requires the agencies to prescribe regulations to provide guidance for reasonable policies and procedures by users of consumer reports when they are notified of a discrepancy between the address in a consumer's credit file and that on a credit application. On July 18, 2006,[36] the agencies published a Notice of Proposed Rulemaking for both rules, with a 60-day comment period that closed on September 18, 2006. The agencies have reviewed the comments and are preparing recommendations for final rules.

- *Complaint Sharing Program.* Section 313(a) of the FACT Act directed the Commission to establish a complaint sharing program, either voluntarily or by regulation, with the nationwide CRAs.[37] Under this program, the Commission must refer to the CRAs consumer complaints it receives in which the consumer alleges that the CRA failed to properly resolve a dispute filed by the consumer. The CRAs are required to review the complaints, report back to the Commission on the actions taken as a result of the review, and maintain records sufficient to show compliance. Finally, section 313 requires the Commission to submit an annual report to Congress on the information gathered under the program.

  In early 2004, the Commission staff reached agreements with each of the three nationwide CRAs on the operation of the complaint referral program. Beginning in April 2004, Commission staff began forwarding to the CRAs on a monthly basis relevant consumer complaints from the Commission's complaint database.[38] Since the initiation of the program, the Commission has forwarded nearly 20,000 consumer complaints to the CRAs.

  As required under the program, the CRAs have reported on a sample of the selected complaints on a quarterly basis. However, the reported data have contained some anomalies, and the Commission staff is working to address them. The Commission expects that the anomalies will be resolved soon, at which time it will submit its first annual report to Congress.

**B. Studies and reports**

The Commission, alone or with one or more other agencies, has completed six FACT Act-

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[36] Interagency Notice of Proposed Rulemaking: Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003, 71 Fed. Reg. 40786 (July 18, 2006), *available at* http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-6187.pdf.

[37] 15 U.S.C. § 1681i(e).

[38] *See* FTC press release, "FTC Will Refer Consumer Complaints to Credit Bureaus" (Apr. 23, 2004), *available at* http://www.ftc.gov/opa/2004/04/cra.htm.

mandated studies and transmitted reports to Congress.[39] All of the completed studies relate to the accuracy of consumer reports. Some of the study obligations are ongoing, requiring periodic reports over several years. Two studies are still in progress:

- *Accuracy study.* Section 319 of the FACT Act requires the Commission to undertake a long-term study of the accuracy and completeness of consumer reports over an 11-year period. The Commission is required to submit reports on this study to Congress biennially starting in December 2004. The Commission's first report, submitted on December 29, 2004, described in detail the nation's consumer reporting system, the challenges in assuring accuracy and completeness in that system, the applicable FCRA provisions, and the Commission's efforts to enforce those provisions and educate consumers and businesses about their rights and duties.[40] The first report also reviewed previous studies of accuracy by other parties and outlined the Commission's plan for a pilot study to determine the feasibility of a national accuracy survey. The Commission's second report, submitted on December 5, 2006, described the results of the pilot study and the methodological difficulties that arose in executing it.[41] The report recommends performing a second pilot study. The Commission asked for public comment on the proposed new pilot study on October 19, 2006, and published a second notice (required by the Paperwork Reduction Act) on February 6, 2007.

- *Four specific accuracy proposals.* On December 9, 2004, the Commission reported to Congress on four specific proposals for improving the accuracy of consumer reports, as required by section 318 of the FACT Act.[42] The report notes that there are a number of reasons why a consumer report may not be a complete, accurate representation of a consumer's credit history. First, a data furnisher may submit information to the CRA that is incorrect or incomplete, or may not provide any information at all. Second, a furnisher may send correct information, but the CRA may not place it in the correct person's file. Third, a CRA may send to a subscriber a consumer report that pertains to the wrong person, or may not be able to find the file.[43]

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[39] As noted earlier, the FACT Act mandated additional studies for which the Commission is not responsible.

[40] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003,* 18-20 (Dec. 29, 2004), *available at* http://www.ftc.gov/reports/facta/041209factarpt.pdf.

[41] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 5, 2006), *available at* http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006.pdf.

[42] *See* http://www.ftc.gov/opa/2004/12/factarpt.shtm.

[43] *See supra* note 40.

The FACT Act required the Commission to consider four specific proposals for improving the accuracy of consumer reports.

- "*Data Matching*." Should CRAs be required to increase the number of points of information (*e.g.*, name, address, Social Security number) that they must match to ensure that the consumer is the correct individual to whom a consumer report relates? The report concludes that there are considerable uncertainties in calculating the costs and benefits of requiring several matching points, and notes that it is unclear whether the benefits to consumers would outweigh the costs. Requiring the matching of additional data points could lead to more instances of "fragmented" files, where, as a result of minor discrepancies in matching information, multiple partial files for an individual consumer are created.

- *"Negative Information."* Should consumer report users be required to provide notice to consumers when they furnish negative information to a CRA? The report discusses the costs and benefits of this requirement and concludes that it would be premature to impose such a requirement.

- *"Same Report."* Should CRAs or creditors be required, when adverse action about a consumer is taken based on his credit report, to provide to the consumer a copy of the same report as that upon which the creditor took the adverse action? The report concludes that this requirement would impose substantial costs to obtain uncertain (and likely limited) benefits, and therefore recommends against its adoption.

- *"Common Unreported Financial Transactions."* What are common financial transactions, not generally reported to CRAs, the reporting of which would be useful in evaluating creditworthiness, and how can that reporting be encouraged? The report notes the benefits of reporting nontraditional credit transactions for many consumers who lack a traditional credit history, but concludes that any additional legislation would be premature given the rapid development of nontraditional credit reporting in the marketplace.

  Although the Commission has not learned of any information that would change the conclusions of these studies, it continues to stay abreast of market conditions to determine whether these conclusions should be modified.

- *Dispute study*. Section 313(b) of the FACT Act required the Commission and the Federal Reserve to conduct a study of the extent to which CRAs and furnishers are complying with the consumer dispute provisions of the FCRA. The agencies issued the study report on August 9, 2006.[44] It includes a detailed discussion of the responsibilities

[44] Federal Trade Commission & Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006) ("Dispute Study"), *available*

of CRAs and furnishers in the dispute process. The report also describes concerns voiced by some commenters about the quality of the CRAs' and furnishers' investigations.[45] The report does not recommend additional administrative or legislative action, but rather that the recent FACT Act provisions intended to improve the dispute process be given time to take effect.[46] The Commission and the Board will continuing to monitor the performance of the dispute process, effectuate the new FACT Act dispute-related provisions, and explore possible improvements to the system.

- *Credit and insurance score study.* Section 215 of the FACT Act requires the Commission and the Federal Reserve, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including mortgages, auto loans, credit cards, and property and casualty insurance. Section 215 further directs the agencies to study the extent to which the use of scores and scoring models could result in negative or differential treatment of protected classes under the Equal Credit Opportunity Act, and the extent to which the use of underwriting systems could achieve comparable results through the use of factors with less negative impact. The agencies have gathered data from the credit and insurance industries and are completing the study report, with release expected this summer.

- *Affiliate-sharing study.* Section 214 of the FACT Act requires the Commission and the banking agencies to conduct an ongoing study of the affiliate-sharing practices of financial institutions and other creditors or users of consumer reports. The agencies must submit reports to Congress every three years. On August 21, 2006, the agencies published a Federal Register Notice seeking comment on the proper methodology for collecting the information required for the study. The agencies have reviewed the comments and are drafting a survey instrument.

### C. The Identity Theft Task Force

In May 2006, President Bush established the Identity Theft Task Force.[47] The Task Force's mission was to create a strategic plan for improving the effectiveness of the federal government's efforts to combat this pernicious crime, specifically with respect to identity theft awareness, prevention, detection, and prosecution. The Task Force, comprised of representatives

*at* http://www.ftc.gov/os/comments/fcradispute/P044808fcradisputeprocessreporttocongress.pdf.

[45] *See* Dispute Study at 27.

[46] *See* Dispute Study at 7, 34, and Appendix F.

[47] Executive Order 13,402 (May 10, 2006).

of seventeen federal agencies, including the FTC, transmitted its strategic plan to the President on April 17, 2007.[48] The plan contains over 60 recommendations of actions that can be taken to attack identity theft at each stage of its life cycle. Broadly, the recommendations include:

- keeping sensitive information out of the hands of thieves by, among other things, improving data security in the public and private sectors;
- making it more difficult for thieves to use the information they obtain to steal identities by enhancing customer verification and authentication techniques;
- helping victims recover from the experience; and
- taking away the fruits of the crime by strengthening efforts to prosecute the thieves.

As part of its plan to improve victim recovery, the Task Force recommended that the Task Force agencies with relevant authority assess the effectiveness of existing tools available to identity theft victims pursuant to the FACT Act, including victims' rights to place fraud alerts, block fraudulent information on their credit reports, and obtain business records relating to fraudulent accounts. The FTC, along with other relevant agencies, have begun this assessment, and plan to complete a report by 2008.

## V. Other Commission Efforts to Enhance the Accuracy of Consumer Reports

In addition to carrying out its responsibilities under the FACT Act, the Commission has used its law enforcement powers, as well as outreach to consumers and businesses, to enhance consumer report accuracy.

### A. Law Enforcement

The Commission monitors the operation of the credit reporting system to identify and investigate possible law violations. Although it does not have examination or auditing authority,

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[48] Available at http://www.ftc.gov/opa/2007/04/idtheft.shtm.

the Commission has pursued an aggressive law enforcement program to ensure that CRAs, furnishers, and consumer report users comply with their accuracy-related responsibilities under the FCRA. Over the past decade, the Commission has brought over twenty cases alleging violations of the FCRA, resulting in civil penalties totaling over $19 million.

The Commission has filed several actions alleging that CRAs failed to follow reasonable procedures to ensure the accuracy of the reports they sold or failed to meet their dispute process duties. For example, in cases filed in 2000 against the three principal nationwide CRAs - Equifax, Experian, and TransUnion - the Commission alleged that the companies violated the FCRA by failing to maintain adequate personnel to respond to consumers registering disputes by telephone, resulting in busy signals, excessive hold times, and the blocking of calls from particular locations. The CRAs agreed to consent decrees requiring them to maintain adequate personnel, conduct audits to ensure future compliance, and pay a total of $2.5 million in civil penalties.[49] More recently, the Commission brought an action against Far West Credit, a Utah-based CRA that allegedly failed to use reasonable procedures to ensure accuracy.[50] The

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[49] *United States v. Equifax Credit Info. Services, Inc.*, No. 1:00-CV-0087 (N.D. Ga. 2000); *FTC v. Experian Mktg. Solutions, Inc.*, No. 3-00CV0056-L (N.D. Tex. 2000); *United States v. Trans Union LLC*, 00C 0235 (N.D. Ill. 2000). More recently, the Commission alleged that Equifax had violated its consent decree and obtained another Order requiring it to pay $250,000 in disgorgement. *United States v. Equifax Credit Info. Services, Inc.*, Civ. No. 1:00-CV-0087 (N.D. Ga. 2003). *See also Trans Union Credit Info. Co.*, 102 F.T.C. 1109 (1983); *FTC v. TRW Inc.*, 784 F. Supp. 361 (N.D. Tex. 1991); *Equifax Credit Info. Services, Inc.*, 120 F.T.C. 577 (1995). Separately, the Commission brought an action last year against data broker and CRA ChoicePoint, Inc., charging that it failed to properly investigate the legitimacy of prospective purchasers of its consumer reports and other sensitive data files as required by the FCRA. As a result of these failures, ChoicePoint allegedly sold over 160,000 consumer files, including thousands of credit reports, to identity thieves posing as customers. The order settling the case required ChoicePoint to undertake specific procedures to monitor and oversee its customers, pay a civil penalty of $10 million, and provide an additional $5 million for redress to consumers who may have suffered identity theft as a result of ChoicePoint's actions. *United States v. ChoicePoint, Inc.*, CV-0198 (N.D. Ga. Jan. 30, 2006).

[50] *United States v. Far West Credit, Inc.*, Civ. No. 2:06-CV-00041 (D. Utah 2006).

Commission's complaint alleged that Far West inserted into consumer reports facially dubious information from an interested party without adequately verifying the information. In settling the case, Far West agreed to put in place reasonable procedures to assure the maximum possible accuracy of information in consumer reports that it prepares, and to pay $120,000 in civil penalties.

The Commission also has brought actions against furnishers for allegedly reporting inaccurate information to CRAs.[51] For example, in three cases, the FTC alleged that furnishers reported inaccurate dates for delinquent accounts, with the result that the adverse information remained on the consumers' reports for more than the seven-year limit provided under the FCRA.[52]

The Commission has brought numerous actions against consumer report users. Most involved the failure of users to provide compliant adverse action notices to consumers.[53] In two

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[51] *United States v. DC Credit Services, Inc.*, No. 02-5115 (C.D. Cal. 2002) (consent decree) ($300,000 civil penalty); *United States v. Fairbanks Capital Corp.*, Civ. No. 03-12219 (D. Mass. 2003) (consent decree). The FCRA imposed no accuracy or other duties on furnishers until 1997.

[52] *FTC v. NCO Group, Inc.*, Civ. No. 04-2041 (E.D. Pa. 2004) (consent decree) ($1.5 million civil penalty); *United States v. DC Credit Services, Inc.*, No. 02-5115 (C.D. Cal. 2002) (consent decree) ($300,000 civil penalty); *United States v. Performance Capital Management, Inc.*, No. 01-1047 (C.D. Cal. 2000) (consent decree) ($2 million civil penalty).

[53] *E.g., United States v. Imperial Palace, Inc.*, Civ. No. CV-S-04-0963 (D. Nev. 2004); *Quicken Loans Inc.*, FTC Docket No. D-9304, available at http://www.ftc.gov/os/2003/04/quickendo.htm; *United States v. Unicor Funding, Inc.*, Civ. No. 99-CV-1228 (C.D. Cal. 1999); *Bruno's, Inc.*, 124 F.T.C. 126 (1997); *Aldi, Inc.*, 124 F.T.C. 207 (1997); *Altmeyer Home Stores, Inc.*, 125 F.T.C. 1295 (1998); *Marshall Field & Co.*, 116 F.T.C. 777 (1993); *Kobacker Co.*, 115 F.T.C. 13 (1992); *Keystone Carbon Co.*, 115 F.T.C. 22 (1992); *McDonnell Douglas Corp.*, 115 F.T.C. 33 (1992); *Macy's Northeast, Inc.*, 115 F.T.C. 43 (1992); *Electronic Data Systems Corp.*, 114 F.T.C. 524 (1991); *Hospital & Health Services Credit Union*, 104 F.T.C. 589 (1984); *Associated Dry Goods Corp.*, 105 F.T.C. 310 (1985); *Wright-Patt Credit Union*, 106 F.T.C. 354 (1985); *Federated Dep't Stores*, 106 F.T.C. 615 (1985). *See also United States v. Norwest Financial, Inc.*, Civ. No. 87 06025R (C.D. Cal. 1987).

recent cases, the Commission alleged that telecommunications carriers had failed to provide adverse action notices when, based on applicants' credit reports, they conditioned the receipt of telephone services on advance deposit or maximum charge limits.[54] The two companies were ordered to pay a total of nearly $1.5 million in civil penalties.

The Commission also enforces the Credit Repair Organizations Act (CROA) by aggressively pursuing businesses engaging in fraudulent "credit repair."[55] By frivolously or fraudulently disputing accurate information in CRA databases, unscrupulous credit repair firms can degrade the accuracy and quality of information in credit reports.[56]

Finally, the Commission staff actively monitors compliance with the FACT Act. As noted earlier, the FTC has filed two actions against Consumerinfo.com for allegedly deceiving consumers about its affiliation with the FACT Act free annual credit report program. The staff currently is pursuing a number of nonpublic investigations of possible violations of several of the new FACT Act requirements.

**B. Consumer and Business Education**

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[54] *United States v. Sprint Corp.*, Civ. No. 4:04cv361 (N.D. Fla. 2004) (consent decree); *United States v. AT&T Corp.*, Civ. No. 022-3160 (D.N.J. 2004) (consent decree).

[55] Under Section 404(a)(1)-(2) of CROA, "No person may make any statement, or counsel or advise any consumer to make any statement, [to a CRA] which is untrue or misleading . . . with respect to any consumer's credit worthiness, credit standing, or credit capacity . . . [or] the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete." 15 U.S.C. § 1679b.

[56] *See, e.g., FTC v. ICR Services, Inc.*, Civ. No. 03-C-5532 (N.D. Ill.2003) ($1.15 million in consumer redress). The Commission also has conducted several sweeps of fraudulent credit repair operations, including Project Credit Despair (twenty enforcement actions brought by the FTC, U.S. Postal Inspection Service, and eight state attorneys general in 2006); Operation Eraser (32 actions brought by the FTC, state attorneys general, and the U.S. Department of Justice in 1998); and Operation New ID - Bad Idea I and II (52 actions brought by the FTC and other law enforcement agencies in 1999).

A critical part of ensuring consumer report accuracy is educating businesses about their legal obligations and consumers about their rights and remedies. Among other outreach efforts, the Commission has published a large volume of consumer and business education materials designed to assist those complying with the FCRA. The agency's consumer publications include: *Getting Credit: What You Need to Know About Your Credit,*[57] which among other things explains credit reports and credit scores and how to improve them; *Credit Scoring,*[58] which explains the system creditors use to determine whether to grant consumers credit; *Building a Better Credit Record,*[59] which teaches consumers how to legally improve their consumer reports, deal with debt, and spot credit-related scams; *Credit Repair: Self-Help May Be Best,*[60] which explains how to improve your creditworthiness and lists legitimate resources for low or no cost help; and *How to Dispute Credit Report Errors,*[61] which explains how to dispute and correct inaccurate information on a consumer report and includes a sample dispute letter.

In addition, one of the key elements of the Commission's comprehensive identity theft education and assistance program is guidance on what victims should do to clean up their credit reports. The Commission's website, www.ftc.gov/idtheft, serves as a comprehensive resource for victims and includes publications and links to testimony, reports, press releases, identity theft-related state laws, and other resources. The Commission also hosts a toll-free hotline, 1-877-ID THEFT, and a secure online complaint form on its website for consumers. The

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[57] *Available at* http://www.ftc.gov/bcp/conline/pubs/credit/gettingcredit.shtm.

[58] *Available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm.

[59] *Available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre03.shtm.

[60] *Available at* http://www.ftc.gov/bcp/conline/pubs/credit/repair.htm.

[61] *Available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm.

Commission receives about 15,000 to 20,000 consumer contacts each week seeking information on how to recover from identity theft, or avoid becoming a victim in the first place. Victims who contact the hotline receive counseling from trained personnel on steps they can take to recover from identity theft, including their rights under the FACT Act. In addition, the Commission's identity theft primer[62] and victim recovery guide[63] are widely available in print and online.

As noted above, last year, the Commission launched a nationwide identity theft education program mandated by the FACT Act, centered around the themes "Deter, Detect, and Defend." This campaign includes direct-to-consumer brochures, as well as training kits and ready-made materials (including presentation slides and a video) for use by businesses, community groups, and members of Congress to educate their employees, communities, and constituencies. The Commission has distributed over 3.5 million brochures and 40,000 kits to date. The Commission also has partnered with other organizations to broaden its reach. As just one example, the U.S. Postal Inspection Service recently initiated an outreach campaign to place FTC educational materials on subway cars in New York, Chicago, San Francisco, and Washington D.C.

The Commission also recently helped launch a new website, www.idtheft.gov, which will eventually serve as a centralized government clearinghouse for educational resources for consumers, businesses, and law enforcement on ways to prevent and detect identity theft and help victims recover.

Finally, the Commission has issued a number of publications providing information and advice for consumers on their FACT Act rights. For example, as the free annual credit report

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[62] *Avoid ID Theft: Deter, Detect, Defend, available at* http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt01.pdf.

[63] *Take Charge: Fighting Back Against Identity Theft, available at* http://www.ftc.gov/bcp/edu/pubs/consumer/idtheft/idt04.htm.

program took effect in different regions of the country, the FTC issued press advisories and radio public service announcements informing consumers of this new right, and published a "how to" guide on ordering free reports.[64] The Commission also has issued public warnings about "imposter" sites that pose as the official free report site, www.annualcreditreport.com.[65] The Commission's widely-distributed identity theft publications contain comprehensive information on consumers' FACT Act rights.[66]

The Commission also provides extensive guidance to the business community on its obligations relating to consumer report accuracy. Business publications include *Credit Reports: What Information Providers Need to Know*[67] and *Using Consumer Reports: What Employers Need to Know*.[68] The Commission also makes information available to the business community via the FCRA section of its website at www.ftc.gov/os/statutes/fcrajump.shtm, which includes links to the statute and rules, the Commission's FCRA commentary, staff opinion letters, comments on proposed rules, enforcement and other actions, and educational materials for businesses. In addition, the Commission makes presentations at industry meetings and conferences regarding firms' consumer report obligations, and Commission staff routinely responds to questions and concerns raised by the business community on an informal basis. Moreover, the Commission has made substantial efforts to educate businesses about their

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[64] *See* http://www.ftc.gov/bcp/conline/pubs/credit/freereports.shtm.

[65] *See* http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt156.shtm; http://www.ftc.gov/bcp/conline/pubs/alerts/fakealrt.shtm.

[66] *See* http://www.ftc.gov/bcp/edu/microsites/idtheft.

[67] *Available at* http://www.ftc.gov/bcp/conline/pubs/buspubs/infopro.shtm.

[68] *Available at* http://www.ftc.gov/bcp/conline/pubs/buspubs/credempl.shtm.

obligations under the FACT Act. For example, FTC publications provide compliance guidance on such subjects as the Disposal Rule[69] and the truncation of account numbers on credit and debit card receipts.[70]

**VI. Conclusion**

The FACT Act significantly increased the protections afforded to consumers in ensuring the accuracy of the information in their consumer reports. The Commission, along with its sister agencies, has made substantial progress in implementing the FACT Act through rulemakings, studies, and other actions. Consumer and business education and, when necessary, law enforcement are also important tools used by the Commission to promote consumer report accuracy.

The Commission is troubled that, despite its efforts, consumers continue to report errors in their credit reports that have made it difficult, or more expensive, to obtain credit, insurance, or employment. The Commission is committed to using all of the tools at its disposal to address consumer report accuracy concerns. We look forward to working with this Committee to protect consumers' rights.

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69 *See* http://www.ftc.gov/bcp/conline/pubs/alerts/disposalalrt.shtm.

70 *See* www.ftc.gov/bcp/edu/pubs/business/alerts/alt007.pdf.

***STATEMENT OF***

STUART K. PRATT

CONSUMER DATA INDUSTRY ASSOCIATION

WASHINGTON, D.C.

***BEFORE THE***

Committee on Financial Services

House of Representatives

***ON***

"Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information"

June 19, 2007

Chairman Frank, Ranking Member Bachus and Members of the Committee, thank you for this opportunity to appear before the Committee on Financial Services. I am Stuart Pratt, President and CEO for the Consumer Data Industry Association (CDIA).

The CDIA, is an international trade association representing approximately 300 consumer data companies that are the nation's leading institutions in credit and mortgage reporting services, fraud prevention and risk management technologies, tenant and employment screening services, check fraud prevention and verification products, and collection services.

We commend you for holding this hearing and welcome the opportunity to share our views. Thanks to the leadership of this Committee, the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) was materially amended in 2003 through enactment of the Fair and Accurate Credit Transactions Act of 2003.[1] This Act changed the FCRA in a number of ways that are relevant to today's hearing.

My comments today will focus on:

- Our members' management of the quality of data in their databases, and consumer dispute processes, which have been stories of hard work and success.

- Tying up 30% of the industry's resources for assisting consumers with repetitive disputes that are deceptive is a problem worth solving. We believe that deceptive

[1] See Public Law 108-159, "The Fair and Accurate Credit Transactions Act of 2003."

credit repair activities are best addressed through additional resources dedicated to the FTC which has primary enforcement responsibilities over CROA. The FTC is doing a good job and could do more if resources are made available.

- Finally, CDIA data shows that the FACT Act has already had a positive effect on consumers. However, we believe that its provisions should be given time to work in the marketplace and that the full effectiveness of the Act cannot be assessed until all rulemaking processes are final

**Data Accuracy – Industry and the Law**

The FCRA makes it clear that all consumer reporting agencies are to "...follow reasonable procedures to ensure the maximum possible accuracy of information concerning the individual about whom the report relates."[2] The term accuracy is difficult to define and an extensive discussion of this point can be found in Appendix I.

The Federal Trade Commission's (FTC) own Commentary on the FCRA provides insight into the question of intent regarding the FCRA duty to be accurate:

> "General: The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may

[2] FCRA Sec. 607(b) or 1681e(b).

indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it can review its procedures for assuring accuracy."

Our members employ a range of internal strategies for ensuring the quality of data reported to them. Some are proprietary, but the sampling below gives you an idea of what goes into managing incoming data.

*New data furnishers* – all of our members report having specialized staff, policies and procedural systems in place to evaluate each new data furnisher. Common practices include reviews of licensing, references, and site visits. All apply robust tests to sample data sets and all work with the furnisher to conform data reporting to the Metro 2 data standard. Once a furnisher is approved, there may be ongoing monitoring of this data reporting stream during a probationary period of time.

*Ongoing furnishing* – Our members report a variety of practices; some of these are listed below:

- Producing reports for data furnishers which outline data reporting problems, including errors in loading data and data which is not loaded. This reporting process ensures data furnishers are receiving feedback regarding the quality of their data furnishing practices.
- Cross-referencing data in certain fields to look for logical inconsistencies are often used as a data quality check.

- Historical data reporting trends, at the database level or data furnisher level, are used as baseline metrics upon which to evaluate incoming data.
- Manual reviews of data can occur when anomalous data reporting trends are identified.
- Reviewing incoming data for consistency with the Metro 2 data standard.

Beyond the extensive, individual corporate strategies for ensuring data quality, our members have undertaken industry-level strategies as well. Central to these efforts has been the development of a data reporting standard for all 18,000 data sources which contribute to their databases. The latest iteration of this standard is titled Metro2. Appendix III provides an overview of this standard. Standardizing how data is reported to the consumer is a key strategy for improving data quality. The National Consumer Law Center, writing on behalf of a range of consumer groups, appears to agree with this point when it stated in its letter to the Federal Reserve Board[3]:

> *"However, the failure to report electronically or to use Metro2 creates even more inaccuracies."*

Use of the Metro 2 data reporting format is climbing steadily. In 2005 CDIA reported to the FTC that approximately 50 percent of all data provided to our members' data bases was reported using the Metro2 Format. Today, this percentage has grown to 81.3 percent. Our members' data quality teams believe this 62.6 percent increase is directly

[3] Comments of the National Consumer Law Center, ANPR: Furnisher Accuracy Guidelines and Procedures Pursuant to Section 312 of the Fair and Accurate Credit Transactions Act, Pp. 16.

attributable not only to our members' tenacious efforts, but also to the FACT Act's focus on accuracy and yet-to-be proposed guidelines and rules governing accuracy and integrity of data.[4]

In addition to our members' individual efforts to encourage adoption of the Metro 2 Format, CDIA provides access to a "Credit Reporting Resource Guide" which is the comprehensive overview of the Metro2 Format. This guide is designed for all types of data furnishers, but it also provides specific guidance for certain types of furnishers to encourage proper use of the format. Target audiences include collection agencies, agencies which purchase distressed debt, all parties which report data on student loans, child support enforcement agencies and utility companies.

More than 500 of these guides are provided free of charge to data furnishers each year. Further, since 2004, CDIA and its Metro2 Task Force have administered telephonic and in-person workshops for thousands of data furnishers on a range of specialized topics regarding Metro2 including, for example:

- Reporting Requirements for Third Party Collection Agencies and Debt Purchasers.
- Reporting Requirements Specific to Legislation & Accounts Included in Bankruptcy.

[4] No data furnisher must report any data to a consumer reporting agency or to do so using a particular reporting standard. We will discuss this point in greater detail later in this testimony, but the voluntary nature of our system of data furnishing is important context.

**Data Accuracy – Studies**

Both the General Accountability Office and the FTC have also acknowledged the difficulty of developing a working definition of accuracy that is meaningful.

As this Committee knows, Congress believed that more information was necessary to understand the true error rate in credit reports. Section 319 of the FACT Act requires the FTC to conduct an ongoing study of credit report accuracy and completeness. Five interim reports are due over the period of time between the date of enactment and 2014, which is when a final report to Congress is due. The FTC has issued two reports and is still working on a methodology by which to measure the accuracy and completeness of reports.

Often quoted statistics about rates of accuracy are flawed. In fact the GAO's statement below is a clear warning against using these studies as a yardstick for measuring accuracy:

> 'We cannot determine the frequency of errors in credit reports based on the Consumer Federation of America, U.S. PIRG, and Consumers Union studies. Two of the studies did not use a statistically representative methodology because they examined only the credit files of their employees who verified the accuracy of the information, and it was not clear if the sampling methodology in the third study was statistically projectable.'
>
> *Statement of Richard J. Hillman, Director, Financial Markets and Community Investment, General Accountability Office, Before the Senate Banking Committee, July 31, 2003.*

In contrast to the studies discussed above by the GAO the Federal Reserve Board conducted research on more than 300,000 credit reports and made the following observations regarding the accuracy of reports:

> "This analysis of the effects of data problems on credit history scores indicates that the proportion of individuals affected by any single type of data problem appears to be small…"
>
> "Available evidence indicates that the information that credit-reporting [sic] agencies maintain on the credit-related experiences of consumers, and the credit history scoring models derived from these experiences, have substantially improved the overall quality of credit decisions while reducing the costs of such decision making.
>
> *Avery, Robert, et al., Federal Reserve Bulletin, "Credit Report Accuracy and Access to Credit", Summer 2004.*

While The FACT Act requires studies of the question of accuracy, it also sought to "connect" consumers with their credit file disclosures with the goal of ensuring consumers review their reports proactively and on an annual basis. Consider the following data that result from enactment of the FACT Act.

Between December of 2004 and December of 2006, over 52 million free reports have been issued through www.annualcreditreport.com. In fact, CDIA estimates that through the combination of direct-to-consumer products and consumers exercising their rights under the FCRA (including the new FACT Act right to one free disclosure per year) our members operating as nationwide consumer reporting agencies have issued over 160 million disclosures since December of 2004.

Further, while consumer groups claim error rates as high as 79 percent of "credit reports" reviewed by consumers, data from www.annualcreditreport.com shows that 89 percent of the credit file disclosures issued resulted in no disputes. There are a number of points to consider with regard to the 11 percent of consumers who did submit a dispute:

- The 11 percent dispute rate is low by all measures. The GAO's 2004 FACT Act-required survey of consumers regarding credit report literacy suggested that dispute rates ranged from 18-21.8 percent of the disclosures made to consumers. In fact, a CDIA study conducted in 1991 showed a dispute rate of 25 percent of disclosures.
- Out of 52 million credit file disclosures reviewed by consumers, only 1.98% of these resulted in a dispute where data was deleted.
- Many disputes, perhaps as much as 55 percent, are in reality a request for an update of accurate data.[5]
- A dispute is not synonymous with an error. As discussed below deceptive disputes submitted by credit repair agencies have nothing to do with the accuracy of data. In approximately 25 percent of the disputes, the data is verified as accurate.
- A dispute is not synonymous with an error which is consequential and which will lead to an adverse result.[6]

[5] Note that in the Federal Reserve Board's Federal Reserve Bulletin, Summer 2004, it was reported that data furnishers did not always report as consistently as they should and that approximately 29 of all accounts in the sample of 300,000 credit reports had not been updated in the 90 days. Further the Federal Reserve Board found that most disputes related to accounts closed by the consumer but which were not annotated by the lender as such.

**Data Accuracy and the FACT Act**

This Committee specifically addressed the question of ensuring the accuracy of data through bipartisan provisions in the Fair and Accurate Credit Transactions Act of 2003. The FACT Act passed the Committee by a bipartisan margin of more than a sixty votes and passed the House with more than 300 votes.

Many of the FACT Act requirements became effective on December 1, 2004, and one of the most relevant changes to the FCRA was the amendment to Sec. 623(a)(1)(A). This amendment directly addressed the accuracy of data furnished by a lender or other data source to a consumer reporting agency. The new standard of liability for furnishing accurate data to consumer reporting agencies is now "...knows or has reasonable cause to believe that the information is inaccurate" and it operates in stark contrast with the old standard of "...knows or consciously avoids knowing that the information is inaccurate."

Certain debt collection practices were also addressed in the FACT Act which speak to accuracy of data furnished to our members. For example, a prohibition on the sale or transfer of a debt where the owner of the account has been notified that it has been blocked by a consumer reporting agency due to an identity theft report (Sec. 615(f)). This provision ensures that accounts are not re-reported to a CDIA member, thus penalizing the consumer a second time. Sec. 615(g) requires third-party debt collectors

[6] The FRB/FTC Report to Congress on the Fair Credit Reporting Act Dispute Process cites a 2005 GAO survey of consumers where 13% of the reasons for submitting a dispute were due to either incorrect personal information (such as a misspelling reported by a data furnisher) or incorrect information on a former spouse (where a divorce is not accounted for by a data furnisher).

to notify the owner of the account when a consumer notifies it that the debt "may be fraudulent or may be the result of identity theft..." Here again, if an account can be properly identified as associated with identity theft, then the collector can return it to the owner and can proactively delete the account from the consumer's file.

The above provisions are effective today, however a number of rules which could have an effect on overall accuracy of data reporting to CDIA members are not yet complete, but are worth noting.

*Accuracy and Integrity* - An interagency advance notice of proposed rulemaking for enhancing the accuracy and integrity of information furnished to consumer reporting agencies was issued and CDIA provided comments on May 22, 2006. This particular rulemaking process includes consideration of the reinvestigation process, as well as practices regarding the upfront furnishing of data.

*Red Flag Guidelines* - Also incomplete are red flag guidelines which include rules for resolving address discrepancies. Resolving such discrepancies at the account opening will reduce the likelihood that data reported to a consumer reporting agency is inaccurate.

*Direct Disputes* - Finally, rules have not been promulgated regarding the circumstances under which a consumer may dispute information directly with a data furnisher rather than having to go through the consumer reporting agency (see Sec. 623(a)(8)). We believe this rule could be particularly helpful to consumers if drafted properly, taking into

account the effects it could have on a voluntary system of data furnishing. The GAO found in their 2004 FACT Act Survey of credit report literacy that 64 percent of consumers wish to dispute information directly with the furnisher of information.

Regardless of which rulemaking processes are not complete, CDIA members have sought to assist data furnishers which choose to respond to consumers who come to them directly. Through the e-Oscar system, all 18,000 data sources have an automated means of updating data previously reported. This voluntary effort results in 35 million automated updates to data per year that are not a result of consumer disputes or regular, cyclical data reporting. These updates are a strong indicator that consumers are already interacting with their lenders and lenders wish to work with their customers.

In closing this discussion, we believe that the agencies are exercising care in their work and we can appreciate the complexity of issuing guidance and rules that have a positive effect for consumers and lending practices, but which do not harm the voluntary system of data furnishing. We cannot fully assess many of the positive, longitudinal effects of the FACT Act until these regulatory processes are complete and the regulations have been given time to work.

**Accuracy and a Voluntary System**

It would be wrong to close out our discussion of accuracy without first touching on the careful balance which has to be maintained in a voluntary system of data provision.

Again, not a single one of the more than 18,000 data furnishers has to provide a single record of data to our members. Some tend to think of the data furnisher community as just large financial institutions. To the contrary, amongst these 18,000 furnishers of data are thousands small banks, credit unions and retailers. These furnishers remain committed to furnishing data and often provide data which ensures that all credit-active consumers have a full and complete report. A regulatory overreach, sending costs and liabilities too high, will not "fix" anything, but it will likely have the effect of driving data furnishers to reconsider reporting any data at all to our members' databases. We discuss this point in greater detail in our letter to the FRB found in Appendix I.

**Accuracy Summary**

It is no surprise that this Committee already has a very good understanding of the importance of data flows to consumers, not just at the macro-economic level, but at the level of each individual consumer. Just this year, H.R. 1852 was passed out of committee. It included an amendment offer by Congressman Green requiring The FHA to find ways to ensure that alternative credit data is used in automated underwriting systems. Clearly data empowers consumers to build better lives and vouches for them when a lender otherwise has no relationship.

In closing, the consumer reporting industry is constantly working to ensure that data reported is of the highest quality. In the context of a system where data is provided voluntarily, we must not stifle or retard the growth of alternative data sources as a means of empowering more consumers to qualify for a sustainable and responsible loan. Nor

should we develop a regulatory framework that encourages data furnishers to drop out of the world's most sophisticated "credit reporting" system. Either result harms consumers most of all.

**Reinvestigation Process – FACT Act**

The FACT Act amended the FCRA significantly with regard to the reinvestigation process both for consumers in general and for those who may be victims of identity theft. Consider the following provisions:

1. FCRA Sec. 623(a)(6) – Data Furnisher Accuracy & Identity Theft – This newly created section of law requires that a data furnisher accept a consumer's allegation that he/she is a victim of identity theft where the consumer provides an identity theft report. Where this takes place the data furnisher may not continue to furnish such information to a consumer reporting agency.

2. FCRA Sec. 623(a)(8) – Data Furnishers & Direct Disputes – this newly created section of law requires data furnishers to accept disputes directly regarding an item of data they have previously reported to a consumer reporting agency. This provision is not effective until the FRB, NCUA and FTC issue regulations. Regulations have not been issued at this time.

3. FCRA Sec. 623(e) – Data Furnishers & Regulations – For the first time in the history of this Act, Congress determined that the question of the accuracy and integrity of the data reported to consumer reporting agencies would not only be regulated by the law, but by the federal banking agencies issuing guidelines and implementing regulations. These guidelines and regulations would also address reinvestigations conducted by data furnishers when in receipt of a dispute from a consumer reporting agency. To date, guidelines and regulations have not been issued.

4. FCRA Sec. 605B – Consumer Reporting Agencies and Reinvestigations – Consumers who have a valid ID Theft Report can direct a consumer reporting agency to block data which is identified as resulting from the crime.

5. FCRA Sec. 611(a)(1)(A) – Consumer Reporting Agencies & Reinvestigations - This amendment changed the standard by which reinvestigations are conducted by consumer reporting agencies. The new standard states that a consumer reporting

agency "shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate."

6. FCRA Sec. 611(a)(5)(A)(ii) – Consumer Reporting Agencies & Reinvestigations- This amendment ensured that the data furnisher received confirmation from the CRA that the CRA had in fact followed through on the data furnisher's response to a dispute (e.g., delete or modify the data). This confirmation also serves as a reminder to the data furnisher to ensure that its system does not attempt to reinsert disputed information that is now correct.

Not only did the FACT Act directly address the reinvestigation process, but the FRB and FTC were also required to study the process, as well. This study was issued in August of 2006 and included no new legislative requirements. The statement below explains the agencies' thinking in this regard.

> "The FACT Act Section 313(b)(4) requires the FTC and the Board include in this report any legislative or administrative recommendations for improvements to the dispute process that the agencies jointly determine to be appropriate. The agencies recommend that no legislative action be taken at this time, in large part because the agencies believe such action would be premature. The FACT Act imposes a number of new requirements on CRAS and furnishers that should enhance the consumer dispute process and improve accuracy, including measures to reduce identity theft and new requirements on furnishers. Many of these requirements are being implemented, and their effects on the dispute process have yet to be seen. This is particularly important given the voluntary nature of the reporting system and the uncertainty of how additional requirements and burdens would affect that system."
>
> *Federal Trade Commission "Report to Congress on the Fair Credit Reporting Act Dispute Process", August 2006,Pp. 34.*

CDIA strongly agrees with this conclusion. However, the absence of legislative recommendations does not mean that the FACT Act has not already had a positive effect in the marketplace.

For example the number of disputes handled by our members' automated system for handling consumer disputes (named e-Oscar) has risen from 83 percent per the FRB/FTC report (see page 15) to 94 percent today (up 13.35 percent).[7] This is only good news for consumers because data furnishers that use the e-Oscar system respond to more than 72 percent of all disputes in 1-14 days. Consumers want responses that are both correct and timely. e-Oscar accomplishes this goal.

Consumers also expect their file to be complete and e-Oscar helps data furnishers manage this consumer expectation. When a lender does not respond to a dispute, law requires that data be deleted. This is not always a good result and may mean the removal of an entire account rather than only a particular item in dispute. The e-Oscar system provides data furnishers with tools necessary to effectively manage incoming disputes. Much wider use of the e-Oscar system and ongoing investments to ensure ease of use for data furnishers has led to a dramatic drop off in the percentage of disputes for which a data furnisher fails to respond. In CDIA's 2003 testimony before the Senate Banking Committee we reported that fully 16 percent of all disputes were not processed by data furnishers and thus data was deleted. This failure of a data furnisher to respond to a consumer's dispute has been reduced from 16 percent to 6.27 percent of all disputes. This is tremendous progress by any measure and benefits both consumers and our lending system.

The increase in the percentage of disputes handled by the e-Oscar system is, not surprisingly, paralleled by an increase in the number of users from 15, 400 per the

[7] For a complete discussion of the e-Oscar system, see Appendix II.

FTC/FRB report (see page 15) to more than 17,500 users[8] (which is a 13.63% percent increase). This is also positive for consumers because it means that virtually all disputes are now handled in a standardized way and, thus, whether a consumer is working with one of the largest or smallest lenders in the country, he or she can have confidence in the quality of the dispute process.

**Consumer Disputes and Automated Dispute Processing**

The FRB/FTC report on the reinvestigation process states that "Consumer groups commented that consumers often supply CRAs with information and documentation sufficient to support their disputes (including account applications, billing statements, and letters), but CRAs neither review the documentation nor forward it to furnishers." CDIA strongly disagree with this assertion based on the following data. First, on average across our members' consumer relations divisions 54.34 percent of all disputes are submitted by consumers through telephone or the Web. Use of these channels is increasingly the choice consumers themselves are making.

Of the 44.43 percent of consumers who submitted data in writing:

- Approximately 85% submitted <u>only</u> a standardized form or letter.
- Approximately 10% involved an identity theft report.
- Approximately 2-3% of communications involved other information.

[8] CDIA estimates that there were approximately 1000 users on the e-Oscar System in 2001.

It is clear from these data that, in fact, very few disputes involve extensive data and disputes are most often successfully processed to the satisfaction of the consumer with little more than a Web or telephonic communication. The FRB/FTC report cites data from TransUnion suggesting that 95 percent of the disputes handled are done to the satisfaction of the consumer with only 5 percent of consumers coming back to dispute the same data again (see page 24). Note that repetitive disputes are not necessarily an indication that the process is failing, when you consider that on average 30 percent of all disputes submitted are a result of credit repair activities. The problem of credit repair is discussed more thoroughly below.

The underlying concern some have expressed about automation is that the system of coding disputes used by our members often means consumer data is not submitted. The above data tells you that this is clearly not the case and that perceptions of the extent to which consumer's provide supporting data are inflated.

However, leaving aside how often a consumer submits additional data related to a dispute, the perception that our members' system for coding disputes is not effective is also wrong. As stated in the FTC's report on reinvestigations (page 17), CDIA's members estimate that a free-form field is used an average of 30 percent of the time to augment the dispute codes, clearly demonstrating that our members take a responsible approach to balancing the codes with additional data. This field allows an operator to include additional data for a data furnisher to consider.

It is also important to note that not all material submitted is legitimate and as discussed below efforts by credit repair agencies are an ongoing concern. For example, one of CDIA's members has a sample document which was ostensibly from Bank of America except that the name of the bank was misspelled on the stationery. One of the challenges our members have is ensuring that the dispute system is effective for consumers with legitimate concerns, but is not a system for deleting predictive data necessary for safety and soundness.

**Credit Repair is a Concern**

Our discussion of data accuracy and also reinvestigation processes would not be complete without acknowledging the problem of credit repair. It was this committee which enacted what is now known as the Credit Repair Organizations Act (citation) as Title II of the reform of the Fair Credit Reporting Act, all of which was passed in 1996. This enactment followed on the heels of more than 30 states which have enacted laws regulating such companies.

Historically credit repair operators would promise to delete accurate but negative data from a consumer's file for fees that in some cases exceeded $1,000. Their primary tactic was to flood the reinvestigation system with repeated disputes of the same negative data in an effort to "break" the system and cause the data furnisher to both give up and not respond or to simply direct the consumer reporting agency to delete the data. Today,

operators are savvier and often avoid making false promises but even now they suggest that they will assist the consumer with disputing inaccurate or "unverifiable" information. In many cases "unverifiable" equates to the same practice of flooding the system and trying to have accurate, predictive derogatory data removed.

Our members estimate that on average across our members operating as nationwide consumer reporting agencies, no less than 30% of disputes filed are tied to credit repair. Repetitive disputes can be particularly harmful to smaller data furnishers such as community banks, thrifts, credit unions and retailers. These data sources are often a key to ensuring full and complete data on all credit-active consumers, but their ability to absorb costs is limited. In extreme cases, small-business data sources may simply choose not to report at all if costs of responding to disputes are too high.

Thankfully, no one data source is usually the target of a credit repair operator and credit repair efforts most often end up in failure. But this failure is at a cost to our members and to consumers. Consumers spend money on a service that cannot deliver. Industry incurs costs as well when it has to dedicate resources which could be used to service legitimate disputes, to disputes that are not likely to be valid.

The FTC has materials for consumers cautioning them when it comes to using credit repair and in fact one official made the following quote:

> "The credit repair people that claim there's a bullet, a loophole in the laws that's going to let you instantly fix your credit, are lying to you. It's not true."

*Steven Baker, Federal Trade Commission as quoted on MSNBC, 4-30-02*

We believe the FTC should be given greater resources to investigate and prosecute violations of CROA. We also support amendments suggested by the FTC that would make their job of investigating and prosecuting those who violate the law.

**Summary**

In closing, let me touch on my opening three points again:

Our members' efforts to manage the quality of data in their databases, and consumer disputes have been a story of hard work and success. The data we've presented speaks for itself.

Tying up 30% of the industry's resources for assisting consumers with repetitive disputes that are deceptive is a problem worth solving. We believe that the problem of deceptive credit repair is best addressed through additional resources dedicated to the FTC which has primary enforcement responsibilities over CROA. The FTC is doing a good job and could do more if resources are made available.

Finally, we believe that the provisions of the FACT Act, which are extensive, should be given time to work in the marketplace and that the full effectiveness of the Act cannot be assessed at this time, though CDIA data shows that it has already had a positive effect.

Thank you for this opportunity to testify and I am happy to answer any questions.

**Appendix I - Defining Accuracy**

Following is a discussion of the difficulty of defining what constitutes accurate information and ultimately what is consequential.

We all know what we mean by the term 'accuracy.' But when we apply this term to an industry that sells three billion consumer reports per year and in fact which loads three billion updates of information per month, there's some context that can help us in our discussion. Consider the following points about the term "accuracy."

Accuracy and Voluntary Reporting: Fundamental to understanding the flow of information to consumer reporting agencies from more than 18,000 data furnishers is the fact that these data are provided voluntarily. Thus, there is always a careful balance that has to be maintained in order to ensure that the law creates appropriate duties for ensuring accuracy and alternatively, does not create a legal regime that imposes a strong disincentive to report at all.

Accuracy, Consumer Reporting Agencies and the Law: The CDIA's members are governed under the Fair Credit Reporting Act (15 U.S.C. Sec. 1681, *et seq.*), which establishes a duty that any consumer reporting agency must employ reasonable procedures to ensure the maximum possible accuracy of the information contained in the consumer report produced on a given consumer at a given point in time. Simply put, the law requires that the information contained in the report must be accurate as of the date reported. The Federal Trade Commission's own Commentary on the FCRA provides the following comment:

> "General: The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it can review its procedures for assuring accuracy."

Accuracy, Data Furnishers and the Law: In 1996, the FCRA was materially amended. Perhaps the most significant change was the addition of Section 623, which imposed for the first time an express duty on data furnishers to report accurate data to the consumer reporting agencies. In taking this step, the Congress acknowledged that consumer reporting agencies, on their own, could not fully ensure the accuracy of information absent the partnership with the data furnishers that voluntarily provide information to the databases of consumer reporting agencies.

Accuracy and the Absence of Information in All Files: Some have posited that consumer reports are inaccurate when there is data missing from the file. CDIA disagrees with this characterization. There is no doubt that while the vast majority of the nation's largest lenders report voluntarily to all of the nationwide consumer reporting agencies which produce what are commonly called "credit reports", there are some smaller data furnishers which may choose to report only to one system. Some variance in product will always be evident in a competitive marketplace. However, while there are modest variances between nationwide consumer reporting agencies' databases, they all compete based on file quality and content and, thus, all are constantly seeking to ensure that their reports are complete and fully representative of the consumer about whom the report relates.

Note that credit repair can have a deleterious effect on the completeness of a consumer's credit report and, thus, where third-party file comparisons identify absences of data between files, this is in part attributable to credit repair. One of our members testified that more than 30 percent of all consumer disputes were generated by credit repair agencies, which commonly dispute accurate, derogatory information with the sole intention of having that information deleted from the file. In 1996, the Congress recognized the seriousness of the credit repair problems and enacted the Credit Services Organizations Act (Public Law 90-321, 82 Stat.164). That law prohibits the following with regard to credit repair activities and there is a continued need for even greater enforcement resources in order to ensure the effectiveness of the Act:

> SEC. 404. PROHIBITED PRACTICES. (7)
> (a) In General. --No person may--
> (1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness, credit standing, or credit capacity to--
>
> (A) any consumer reporting agency (as defined in section 603(f) of this Act);

Accuracy and Data Furnishing/Data Reporting Timing Issues: Some have reviewed reports about the same consumer obtained from more than one nationwide consumer credit reporting system and have suggested that differences in the status of a particular account (e.g., 30- v. 60-days delinquent) is an inaccuracy. The data are in fact accurate as of the date reported. There are a number of reasons for differences in the status of the same account on different "credit reports" produced by different credit reporting systems. For example, if a lender's data center is on the west coast and it ships physical media of accounts receivable information to each nationwide credit reporting systems, then the physical media may arrive on different days. The result is one of the nationwide systems may receive and load its update of a particular account sooner than the others. Thus, the status of a particular account is shown as sixty days delinquent on one system as of June

1, and on another the same account may, until the update is loaded, display the same account as thirty days delinquent (pending the update to sixty days as of June 1). Another reason may be that a data furnisher produced an incorrect set of data for one of the three systems and, via the credit reporting systems' audit controls, this physical media is sent back to the data furnisher for reprocessing and correction. Physical media are also, though infrequently, damaged in transit and have to be sent back to a data furnisher for reprocessing. Our members report success in migrating data furnishers from physical media reporting to electronic. One member reports that 90% of data is now reported electronically.

Accuracy and the Consumer – Perceptions and Realities: One of our members observed that items in a consumer's credit file may be accurate, but not in sync with the consumer's perspective. Consumers have a tendency to "dispute" such items that are not in sync with their perspective, even when the data is accurate. Below are a few examples[9]:

(1)Maiden name – A married woman obtains a copy of her file and sees that her married name is not on file. She calls to dispute this and the representative asks her if she has applied for any credit in her married name. She replies in the negative and offers that she and her husband are now starting to apply for joint credit accounts. She is advised that information in her file is reported to us by the credit grantors with whom that she holds accounts. Since she does not have any credit accounts in her married name, we would have no way of knowing that she has changed her name unless she reported this directly to us.

(2) A consumer sees an old, dormant account on his file and indicates that he had long ago instructed the credit grantor to close the account. He might have confused that request with a similar request to another credit grantor. Or maybe he might have instructed the credit grantor to close the account and they never did. The point is that the information on file is "accurate", because it is an open account.

(3) A consumer sees an account with General Electric Consumer Credit (GECC) on his file and swears that he never did business with GECC before. However, the account in question was with a retailer who subsequently outsourced their lending to GECC and the consumer never knew of that relationship or isn't aware that some retailers outsource their lending. In this case, the consumer will be adamant that the account is incorrect, but, in fact, it is accurate. Once they are made aware of the retailer's name (i.e. Home Depot for example), they acknowledge they do have a Home Depot account. The file was accurate.

(4) A consumer sees a previous address listed as the current address and vice versa. He cannot understand how the credit bureau could make that mistake. However, the consumer had failed to notify some of his credit grantors about the previous move, so some credit grantors are still reporting the old address as current. This hasn't been an

[9] These are actual examples are drawn from the industry experts who lead consumer relations/assistance units for the nation's largest consumer reporting agencies which maintain files on the majority of credit-active consumers.

issue for the consumer because the mail from those credit grantors is getting forwarded or the account is so inactive the credit grantors do not need to send him/her a billing statement very often.

(5) A consumer sees his or her name listed with an unrecognizable combination of personal initials they don't remember using. The consumer's inclination is to believe the credit bureau is responsible for this. However, the fact is that our members' systems are incapable of making up a name. That particular name was transmitted to us by the credit grantor. Either the consumer previously used that name with a credit grantor in the past or the credit grantor transmitted the erroneous name.

(6) Consumers also often find that employment data is not current on their file disclosures. This is due to the fact that many lenders do not report employment data any longer. Nonetheless, the FCRA requires that a consumer reporting agency disclose "all information in the file at the time of the request" and this includes dated employment data.

The previous examples have no bearing on the lender's risk decision. Yet, the consumer has questions about this data and regards these as "errors" by the credit reporting agency.

Accuracy and Divorce: One very significant challenge for CDIA's members is the problem lenders and consumer reporting agencies have with how credit obligations are handled incorrectly by divorce courts. A divorce decree does not supersede an original contract with a creditor and does not release a consumer from his or her legal responsibility on those accounts entered into jointly with the former spouse.

A consumer will see an item on his or her report and call to dispute the accuracy of it because they feel the divorce court adjudicated it. Despite the explanation that the debt is still owed the consumer will argue that her lawyer did not advise her at the time of her divorce that this would be the case. We explain to the consumer that it is ultimately his or her responsibility to contact creditors and seek a binding legal release of the debt obligations that have been incurred.

Accuracy and Expectations of Immediacy: Another very significant challenge is the perception by consumers that their credit reports should and can be updated nearly instantaneously. For example, consumers may review their credit reports and while data is accurate as of the date reported, they believe that recent payments should already be reflected showing a lower outstanding balance. A majority of data in the nationwide credit reporting systems is updated on a thirty-day cycle and this timing correlates with the thirty-day billing cycles for many types of contractually prescribed credit payments to creditors. A great many disputes are driven by a desire to update information, which is otherwise accurate.

Accuracy and Misunderstandings About the Law: Often enough our members report that consumers believe that when an account is delinquent and subsequently paid, that any negative information about the missed payments will be expunged from the record.

Similarly, consumers often believe that an item placed for collection should be expunged once paid. In fact, the law recognized that it is important for creditors to know when the account was paid and to also maintain a history of the timeliness of past payments for purposes of safety and soundness. Thus, the law permits adverse information to remain on the file, but for no more than seven years.[10]

We strongly believe that this context is essential. Anecdotes can be based on problems that are not real and in some cases are driven by perceptions or misconceptions about how the system does or should work and even how other laws work. Finally we caution against making the term "accuracy" synonymous with "consequential." Some inaccuracies are inconsequential to the consumer, such as a missing middle initial, and some inaccuracies may be very consequential, such as a lender incorrectly reporting a consumer as 30 days late on an account."

[10] Note that bankruptcies may stay on the file for as long as 10 years.

**Appendix II – Background on E-OSCAR-web™**

In 1993, CDIA's nationwide consumer credit reporting agency members voluntarily established an automated system to simplify and standardize the system of sending disputes to data furnishers. They recognized the importance of establishing a system which: (1) supported high response rates from data furnishers to disputes submitted by the consumer reporting agencies; (2) reduce the time for data furnishers to respond; (3) improve the quality of the responses received from data furnishers; and (4) lowered the cost of dispute processing for data furnishers and consumer reporting agencies.

In 1996[11] Section 611 the Fair Credit Reporting Act[12] was amended to include Section 611(a)(5)(D) which requires that "...any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to the consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies." This amendment codified the 1993 voluntary initiative of the association's nationwide consumer credit reporting agency members. Below you will find an excerpt from CDIA's testimony before the Senate Banking Committee[13] which describes this system:

*E-OSCAR-web™*

The consumer reporting industry, through the auspices of the industry association, came together in 1992 to build an Automated Consumer Dispute Verification (ACDV) process. This voluntary industry effort predated the FCRA amendments by a full five years. The network went live in November of 1993 and began growing quickly thereafter. Fully 50% of all consumer disputes sent by the consumer reporting industry to data furnishers were traveling through the ACDV process by 1996. From 1996 through 1998, the industry remained at that 50% market penetration. In 1998, we began a reengineering process to help capture additional users. We also took the opportunity to match up the ACDV process with the new Metro 2 Format. In 2001, we began beta testing the E-OSCAR-web™ network with data furnishers. We successfully went live in the early summer of 2001 and have retired our old network. The new network is secure, encrypted, and available to a larger number of companies because it is browser based. The industry has ambitious plans to encourage all of the data furnishers to migrate to the E-OSCAR network.

The essential process has remained the same since created in 1992, though recent technology innovations should encourage broader use of the system by smaller data furnishers. The consumer reporting agency receiving the dispute sends that dispute to the data furnisher.

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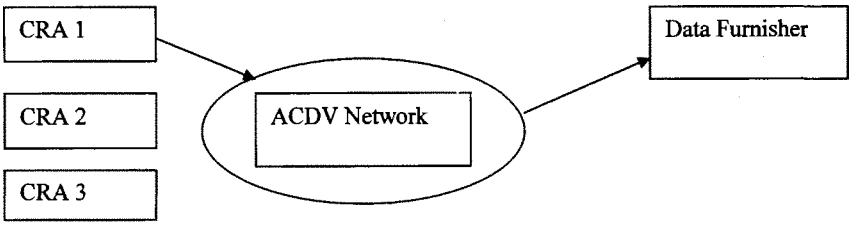
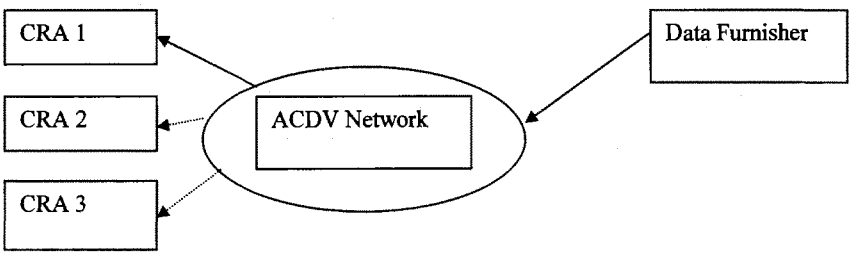
[11] PL 104-208
[12] 15 U.S.C. 1681 *et seq.*
[13] Testimony of Stuart K. Pratt before the Senate Banking Committee, July 10, 2003, Pages 18-19.




The data furnisher researches the dispute, provides an answer and, if changing the account or deleting it, provides a copy of the dispute and the response to each of the consumer reporting agencies to which it reported the data originally.



**Appendix III – Background on Voluntary Industry Data Reporting Standards**

*METRO FORMAT*

More than 18,000 data furnishers provide approximately three billion updates of information per month to the nationwide credit reporting systems. No law requires any furnisher of information to provide data to a consumer reporting agency.

A data format standard becomes a very important part of how the industry can ensure greater precision in the reporting of information, particularly with such a wide diversity of data furnishers[14]. If each of these data furnishers can choose how to report data and what data goes into what fields or how to define the status of accounts, etc., then the files of any given consumer are likely to reflect a wide variety of approaches to reporting information making it far more difficult to properly and fairly assess a consumer's risk.

The original Metro format for credit reporting was first developed in the mid '70s. Over the years, it has gained in popularity and achieved a high level of use in the market place. By 1996, more than 95% of all data was received by the nationwide credit reporting systems in this format. In 1996, the credit reporting industry took advantage of the opportunity afforded by the Year 2000 data processing "bug" to completely reengineer the format for credit reporting. The Metro 2 format was introduced in 1997 and has been steadily gaining in use by the data furnisher community. At this time, more than half of all accounts are reported in this new format.

Both the original and the new Metro 2 formats are maintained by an industry task force of volunteers from each of the national systems. This group meets on a regular basis to develop industry-wide responses to questions from data furnishers and create new codes or fields as necessary. Annually this group creates and delivers training sessions on the Metro 2 format for data furnishers that have not yet converted to the new format. More of these training sessions are scheduled for 2006.

Typically, data furnishers report data on a regular basis, usually monthly. The industry does encourage those companies that bill their customers in cycles (e.g., every 30 days) to report that data to the consumer reporting agencies in cycles thus ensuring that the data is not only accurate as of the date reported but is also as current as possible.

The Metro 2 Format documentation is distributed within the industry by the Association. Data furnishers can obtain the document in hard copy or can download it from the CDIA website. The documentation is quite extensive and granular. For example, for the FCRA Compliance/Date of First Delinquency field, a full page is devoted to a description of each particular circumstance under which this date should be reported. A full definition of the field is provided. Procedures for reporting data in the field if the account should become current are discussed. In addition, the industry developed three detailed

[14] Examples of data furnishers include credit unions, savings and loans, thrifts, mortgage lenders, credit card issuers, collection agencies, retail installment lenders, auto/finance lenders and more.

examples showing exactly how to calculate this important date in different situations. We also provide the exact language of the Fair Credit Reporting Act detailing this requirement for the convenience of customers.

81.3 percent of all data is voluntarily furnished using the Metro 2 format. CDIA's members continue to encourage data furnishers to migrate their practices from the Metro Format to Metro 2 due to the added precision this reporting format offers.

**Testimony before the**

**U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES**

regarding

"Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information"
June 19, 2007

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Testimony of Chi Chi Wu, National Consumer Law Center
before the U.S. House Committee on Financial Services
regarding
"Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information"
June 19, 2007

Mr. Chairman, Representative Bachus, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding accuracy in credit reporting and the Fair Credit Reporting Act (FCRA) dispute process. We offer our testimony here on behalf of our low income clients.[1]

Mr. Chairman, we thank you for holding this hearing to examine the issue of how errors in credit reporting affect consumers, and whether they are able to correct errors using the FCRA dispute process. The short answer is that the American credit reporting system is rife with errors that are predictable and preventable, and the dispute process - the safety net designed to correct those errors - is full of gaping holes. This failure has created economic harm, hardship, and distress for untold numbers of consumers. Specifically, we discuss how:

- Credit reports are plagued by inaccuracies, such as files mixing the identities of consumers, errors caused by furnishers of credit information, the fallout caused by identity theft, stale information "re-aged" by debt collectors, and missing credit limits.
- The consumer reporting agencies (CRAs) conduct the dispute reinvestigations required by the FCRA in an automated and perfunctory manner. The CRAs translate detailed written disputes submitted by consumers into two or three digit codes, and fail to send supporting documentation to furnishers.
- Some furnishers themselves conduct non-substantive investigations that consist of nothing more than verifying the challenged data by comparing the notice of dispute with the recorded information that is itself the very subject of the dispute. The CRAs then "parrot" the furnisher's self-fulfilling results also without conducting any independent review, with the ultimate effect that no one ever investigates the substance or merits of the consumer's complaint.
- CRAs have little incentive to conduct proper disputes or improve their investigations. They treat disputes as a nuisance, and the investigation of errors as a money drain, devoting as little resources as possible by using automation that produces formalistic results.
- Consumers need help from Congress and vigorous enforcement by regulators to fix these problems. Consumers should have the ability to ask a court to order the CRAs and

[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by inaccurate credit reporting from every part of the nation. It is from this vantage point – many years of observing the problems created by incorrect credit reporting in our communities – that we supply these comments. *Fair Credit Reporting* (6th ed. 2006) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, with assistance from Lauren Saunders of NCLC and Richard Rubin.

furnishers to correct errors on their credit reports. Regulators also need to be aggressive in setting firm standards and requiring the CRAs and furnishers to obey current laws.

**I. The Important Role of Accuracy in Credit Reports and the Unique Market Forces in that Industry**

Congress enacted the FCRA in the explicit recognition that the health of the consumer banking and credit system "depend[s] upon fair and accurate credit reporting" and that "[i]naccurate credit reports directly impair the efficiency of the banking system." 15 U.S.C. §1681(a)(1), (a)(4), and (b). Congress realized that credit decisions made on the basis of faulty information undermine the vitality of the consumer credit system and the ability of Americans to enjoy the fruits of this country's material prosperity. Failure within this system is not only expensive but also severely disruptive, while accuracy keeps the system running well. Congress designed the FCRA to increase that accuracy.

While critically important to consumers and the national economy, the credit reporting industry is unlike most other industries in some fundamental respects. It is essential to keep in mind that the paying clients of the credit reporting industry are not consumers, but the creditors who furnish or use the information contained in the CRAs' databases. Moreover, consumers have no say in whether their information is included in the CRAs' databases. Most Americans cannot avoid having a credit history. Unless they are very wealthy, consumers will need to borrow money if they want to buy a house or attend college.

Thus, unlike almost all other business relationships, consumers who are unhappy with the actions of a CRA cannot vote with their feet – they cannot remove the information or take their business elsewhere. Creditors, in contrast, do have the ability to switch between CRAs if they wish. And vigorous investigation of consumer disputes is likely to drive creditors away. Traditional competitive market forces therefore provide little incentive for CRAs to incur the costs to institute new procedures that ensure information is accurate or to undertake investigations to correct errors, since these activities primarily benefit consumers. Only the FCRA itself compels such behavior.

**II. Inaccuracies Abound in the Credit Reporting System**

Unfortunately, despite Congress's explicit purpose in enacting the FCRA, the consumer reporting system does not provide accurate information to its users. In the hearings that led to the Fair and Accurate Credit Transactions Act of 2003 (FACTA), Congress was presented study after study documenting errors in credit reports. For example, a study by the Consumer Federation of America and National Credit Reporting Association documented numerous serious errors and inconsistencies, such as the fact that 29% of credit files had a difference of 50 points or more between the highest and lowest scores from the three nationwide CRAs (i.e., Equifax, Experian and Transunion).[2] Members of Congress cited studies from U.S PIRG showing errors

[2] *The Fair Credit Reporting Act and Issues Presented by Reauthorization of the Expiring Preemption Provisions: Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs*, 108th Cong. 381 (2003)(statement of Stephen Brobeck, Executive Director, Consumer Federation of America).

in 25% of credit reports serious enough to cause a denial of credit.[3] This level of inaccuracy continues after FACTA, with the most recent study by U.S. PIRG showing no improvement and finding that 25% of credit reports studied still contain serious errors.[4] Even the Consumer Data Industry Association (CDIA) has admitted that, out of 57.4 million consumers who ordered their own credit reports in 2003, 12.5 million (or 21.8%) filed a dispute that resulted in a reinvestigation.[5]

There are many types of errors in credit reports; we focus on a few of the most egregious.

*Mixed files*

Mixed or mismerged files occur when credit information relating to one consumer is placed in the file of another, thus creating a false description of both consumers' credit histories. Mismerging occurs most often when two or more consumers have similar names, Social Security Numbers (SSNs), or other identifiers (for example, when information relating to John J. Jones is put in John G. Jones' file).

Mixed files occur largely because the CRAs' computers do not use sufficiently rigorous criteria to match consumer data precisely, even when such unique identifiers as SSNs are present. For example, CRAs will include information in a consumer's file even when the SSNs do not match, but other information appears to match.[6] Thus, they have been known to mismerge files when the consumer's name is similar and they share seven of nine same digits in their SSN.[7]

The case of Eric Carroll documented by the Boston Globe is, at a minimum, a mixed file case.[8] It may be an identity theft case, but as discussed below, that crime is often facilitated by the CRAs' loose matching criteria. Other recent mixed file cases include the case of Victoria Apodaca, whose file was mixed with the file of Victoria Lopez Apodaca because they had the same last and first name, seven of the nine digits in their SSN matched, and they both resided in the state of New Mexico.[9] Despite filing dispute after dispute with the CRAs, Ms. Apodaca was unable to get her credit report fixed until she took legal action.

Mixed files could be prevented by requiring the CRAs to use strict matching criteria, for example requiring an exact match on SSNs, or could be reduced by merely requiring an eight of nine SSN match. However, the CRAs have chosen to be excessively and unreasonably over-inclusive because, as the Federal Trade Commission (FTC) noted "lenders may prefer to see all potentially derogatory information about a potential borrower, even if it cannot all be matched to the borrower with certainty. This preference could give the CRAs an incentive to design

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[3] *Id.* at 351 (statement of Senator Paul S. Sarbanes).
[4] Nat'l Ass'n of State PIRGs, Mistakes Do Happen: A Look at Errors in Consumer Credit Reports 11 (2004) .
[5] FTC/FRB August 2006 Report at 12.
[6] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 40 (Dec. 2004) (hereinafter "FTC 2004 Report").
[7] Apodaca v. Discover Fin. Servs. 417 F.Supp.2d 1220 (D.N.M. 2006). Practitioners report that one nationwide CRA relies on a match of as few as five of the nine digits in an SSN.
[8] Beth Healey, *Credit Agencies Lag on Errors, Fraud*, Boston Globe, Dec. 28, 2006.
[9] Apodaca v. Discover Fin. Servs. 417 F.Supp.2d 1220 (D.N.M. 2006).

algorithms that are tolerant of mixed files."[10] Despite this, the FTC has supported the CRAs' position in opposing stricter matching criteria, arguing that the costs outweigh the harm to people like Eric Carroll.[11]

*Identity Theft*

With an estimated ten million consumers discovering they were the victim of some form of identify theft in a twelve month period – the fastest growing crime in this country - identity theft itself presents a serious source of inaccuracies in the credit reporting system. The identity thief, however, is not the only culprit. CRAs and furnishers bear a share of the blame as well.

Most identity theft problems are actually caused by the CRAs' loose matching procedures, discussed above. For example, if an impostor has only adopted the victim's first name and SSN but not his or her last name or address, the algorithm used by CRAs to "merge" information often will incorporate the impostor's information into the victim's file at the time the CRA compiles the report. Once the fraudulent debt is reported, often after default and non-payment, and especially when collectors begin attempting skip trace searches, the account ends up merged into the victim's file even though many of the identifiers do not match. Accordingly, the "identity theft" is really characterized as a hybrid of a mixed file problem.

Another factor contributing to identity theft is the way in which furnishers have aided and abetted identity theft with their recklessly low security controls in their granting of credit. We could not describe it better than one federal District Court judge, who stated:[12]

> In an age of rampant identity theft, it is irresponsible to allow consumers to open credit cards over the telephone, without ever requiring written verification of that consumer's identity. Citibank did not even bother to save the specific intake information that it collected over the telephone when this account was opened. These sloppy business practices facilitate identity theft. Citibank's lax record keeping permits a thief to easily accumulate thousands of dollars of debt in the name of an innocent consumer once the thief has acquired the consumer's social security number. At no time is the consumer given the opportunity to confirm that he or she ever agreed to be liable for the debt.

Many of the protections added by FACTA focused on assisting victims of identity theft. However, the most important new FACTA duties - the fraud alerts - are not proactive and instead are triggered only when consumers notify a CRA of suspected fraud. 15 U.S.C. §§ 1681c-1 and c-2. FACTA also contained several measures to prevent identity theft. Two important protections are the "red flag" guidelines and address discrepancy notice, both of which involve detecting possible signs of identity theft. The FTC and banking regulators are to issue regulations requiring creditors to establish programs to respond to these signs of identity theft.

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[10] FTC 2004 Report at 47.

[11] In the early to mid-1990s, the FTC reached consent orders with the CRAs requiring them to improve their procedures to prevent mixed files. FTC v. TRW, Inc., 784 F. Supp. 361 (N.D. Tex. 1991), *amended by* (N.D. Tex. Jan. 14, 1993); In the Matter of Equifax Credit Information Services, Inc., 61 Fed. Reg. 15484 (Apr. 8, 1996) (consent order). However, over a decade later, mixed files remain a significant problem.

[12] Erickson v. Johnson, 2006 WL 453201 (D. Minn. Feb. 22, 2006).

However, the regulators' proposed regulations incorporate far too much discretion, allowing users to reject even the most obvious signs of identity theft.[13]

*Furnisher errors*

A significant source of errors in credit reports is inaccurate information provided to the CRAs by furnishers. Furnisher inaccuracies primarily fall into two categories types. First, the furnisher might report the consumer's account with an incorrect payment history, current payment status, or balance. Alternately, a creditor may have attributed the account to a consumer who does not owe the debt, often called an "ownership dispute."

The first type of error sometimes occurs because the creditor has not complied with industry reporting standards, such as the Metro 2 format. The second type, ownership disputes, often involves a spouse or other authorized user who is not contractually liable on the account. Other times, the consumer may have been the victim of identity theft.

Any error sent by the furnisher in its computer file automatically appears in the consumer's credit report, even if the information patently contradicts information appearing in other parts of the credit report. Thus, one defect of the credit reporting system is the failure of the nationwide CRAs to exercise virtually any quality control over the information initially provided to them by furnishers. The CRAs blindly rely on furnishers and provide no oversight of the quality of the information being reported. This unquestioning acceptance and re-publication of furnisher information invites abuse. This is especially true when it comes to debt collectors and debt buyers, who present their own special types of errors discussed below.

*Re-aging of obsolete debts*

A recurring abuse that results in inaccurate reporting is the "re-aging" of obsolete debts. This problem has grown particularly prevalent and profitable in recent years with the emergence of a multi-billion dollar distressed debt industry that buys, sells, and re-buys large portfolios of defaulted and time-barred debt for pennies on the dollar and then duns vulnerable consumers for inflated sums. The FCRA requires most consumer debts to be deleted from a credit report after seven years from the date of charge-off or 180 days after the delinquency. 15 U.S.C. §1681c(a)(4) and (c).

"Re-aging" occurs when these "scavenger" debt buyers purposefully misrepresent the date of delinquency to fall within the seven-year period. The debt buyers thereby resurrect long dormant and nearly worthless debts with the simple act of false credit reporting. FACTA attempted to address re-aging by requiring debt collectors to use the date of delinquency used by the creditor. 15 U.S.C. § 1681s-2(a)(5)(B). Despite this change, re-aging abuse continues.[14]

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[13] 71 Fed. Reg. 40,786 (July 18, 2006). See Comments to the FTC re: Identity Theft Red Flags and Address Discrepancies under FATCA, Privacy Rights Clearinghouse, September 18, 2006.

[14] *See, e.g.*, Gillespie v. Equifax Information Services, 484 F.3d 938 (7th Cir. 2007); Maloney v. LVNV Funding LL, 2006 WL 3006484 (N.D. Tex. Oct. 20, 2006); Allen v. Experian Information Solutions, Inc., 2006 WL 1388757 (S.D. Ill. May 12, 2006).

Perhaps one reason for its continuation is that the changes added by FACTA were codified in a section of the FCRA that consumers cannot privately enforce.

The CRAs play a role in re-aging abuse as well, failing to control properly for debt buyers who are effectively gaming their systems. For example, Experian has been aware of re-aging or "date flipping" for several years. In one deposition, an Experian employee testified that the CRA had stopped taking the data of a one debt buyer - Asset Acceptance - and had removed Asset's data from its systems.[15] However, this employee revealed in a later deposition that Experian had allowed Asset back into its system,[16] despite Asset's proven record of abuse.

In addition, the Seventh Circuit recently expressed its concern over Equifax's procedures concerning the "Date of Last Activity" field, which is the date used by that CRA to calculate the seven year expiration period. The Seventh Circuit believed that Equifax's procedures for that field could "effectively allow Equifax the opportunity to keep delinquent accounts in the credit file past the seven and one-half year limitation of" the FCRA.[17]

*Debt Buying*

The purchase and transfer of old consumer debts creates other problems in addition to re-aging. These problems include pursuing collection against consumers who are not liable on the account and not providing the name of the original creditor and type of creditor involved.[18] When debt buyers collect a debt that is a decade or more old,[19] the first issue is whether the debt is still even valid, since some states prohibit any collection after the passage of the statute of limitations. Furthermore, there may be an issue as to whether the consumer really still owes the debt - the FTC alleged that 80% of the consumers from whom one debt buyer collected never even owed the debt[20] - or whether they paid it or otherwise resolved it.[21] With records long gone due to the passage of time, there is often nothing more than the victimized and hapless consumer's word against the presence of her name in an unverifiable electronic list purchased by the debt buyer.

Indeed, the fundamental problem is that debt buyers and collectors often are given nothing more than a list of debts. There is no account application, original agreement, history of periodic statements, or indication of whether any of the debt was disputed with the creditor or settled with a previous collector. The debt buyer is at fault for collecting debts on this flimsy record, and the original creditor is at fault for not providing more documentation.

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[15] Deposition of Kathy Centanni, Allen v. Experian Information Solutions, Civ. No. 04-817 (S.D. Ill. Dec. 6, 2005).
[16] Deposition of Kathy Centanni, Murphy v. Midland Credit Management, Civ. No. 05:CV-1545 (E.D. Mo. June 21, 2006).
[17] Gillespie v. Equifax Information Services, 484 F.3d 938 (7th Cir. 2007).
[18] *Collecting Consumer Debts: The Challenges of Change, Comments to the Federal Trade Commission regarding the Fair Debt Collection Practices Act*, National Consumer Law Center, June 6, 2007.
[19] For an example of a debt buyer attempting to collect on a nearly 30 year old debt, *see* Rosenberg v. Cavalry Investments, LLC, 2005 WL 2490353 (D. Conn. Sept. 30, 2005).
[20] *See* FTC Press Release, *FTC Asks Court to Halt Illegal CAMCO Operation; Company Uses Threats, Lies, and Intimidation to Collect "Debts" Consumers Do Not Owe* (Dec. 8, 2004), *available at* www.ftc.gov/opa/2004/12/CAMCO.htm.
[21] *See, e.g.*, Asset Acceptance Corp. v. Proctor, 804 N.E.2d 975 (Ohio Ct. App. 2004) (consumer claimed that he made payments toward amount claimed to be owed).

The lack of this original documentation cannot help but create inaccuracies in credit reporting. For example in a recent case, an identity theft victim disputed a delinquent credit card account opened by his ex-girlfriend.[22] The account had been sold to a debt buyer, which did not have any of the original account documents. When the victim disputed the delinquent account to a CRA, the debt buyer merely compared the data in its files that had produced the disputed information with the identical information that the CRA was naturally then reporting. The debt buyer did not request documents from the original creditor. The most that this debt buyer would do in an identity theft investigation is to ask the consumer for a fraud affidavit. How is a proper investigation for identity theft conducted without looking at the signature on the original credit card application to see if it was forged or not?

*Missing credit limits*

The deliberate withholding of credit limit information by credit card furnishers is a well-documented and extremely serious problem. The withholding of credit limit information has a considerable impact on the consumer's credit score, because the ratio of credit used to credit available often constitutes 30% of the score.[23] A Federal Reserve Board study indicates about that 46% of consumers have at least one revolving account in their credit files that does not contain information about the credit limit.[24]

One researcher has theorized that requiring the reporting of credit limits might even help in part to address one of the most vexing problems with respect to the use of credit scoring -- its apparent disparate impact on certain minority populations, as shown by study after study finding that African Americans and Latinos have lower credit scores as a group. The Brookings Institution has suggested that part of the reason for the racial divide in credit scoring may the failure of certain lenders to report complete information such as credit limits.[25]

*No Interest in Helping*

Finally, there is one more example that shows how uninterested the CRAs are in ensuring accuracy or responding to consumers. In 2005, several consumer groups attempted to assist survivors who were undergoing major economic disruption caused by Hurricane Katrina from suffering adverse consequences of credit scores that would be artificially depressed as a result of that disaster. Fair Isaac, the developer of scoring models, was willing to work with the consumer groups. However, because developing a scoring model adjustment for disasters would take some time, we approached each of the three nationwide CRAs with a simple request to retain on file a "pre-disaster information" credit score based on current information on consumers in the counties affected by Hurricane Katrina. Each of the nationwide CRAs flatly turned us down.[26]

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[22] King v. Asset Acceptance, 452 F.Supp.2d 1272 (N.D. Ga. 2006).
[23] Fair, Isaac, *What's In Your Score*, available at www.myfico.com/CreditEducation/WhatsInYourScore.aspx.
[24] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, at 306.
[25] *See* Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006 at 10 (suggesting that failure to report complete information may affect the relationship between race and credit scores).
[26] Press Release, *Credit Reporting Agencies Reject an Important Step to Help Hurricane Survivors:*

**III. The Safety Net Is Broken: The Failure Of The Reinvestigation Process**

The credit reporting industry has attempted to rebut charges of systemic inaccuracies in credit reports with their own studies, claiming that fewer than 3% of credit reports are inaccurate.[27] Even if the industry were correct, 3% of 200 million files[28] means that inaccurate credit reports are sabotaging the lives of 6 million Americans. These include Americans who work hard their entire lives, pay their bills on time, are responsible credit users, and otherwise play by the rules. Yet the credit reporting industry has the audacity to minimize the damage and disruption that inaccurate reporting wreaks on 6 million lives (or 50 million lives if one uses the 25% figure).

The FCRA does not impose strict liability for these inaccuracies - it requires CRAs to "follow reasonable procedures to assure maximum possible accuracy." 15 U.S.C. § 1681e(b). That is the first level of protection for accuracy in credit reporting. However, for those consumers who this first level of protection fails- whether it be 3% or 25% of the U.S. adult population- Congress enacted a second level of protection: the dispute process. The dispute process is the safety net when something goes wrong in the processing of billions of pieces of data for hundreds of millions of files. Unfortunately, the credit reporting industry has created gaping holes in that safety net.

The reinvestigation system in its current form is fundamentally flawed, and consumer advocates have stated so repeatedly in testimony to Congress and the regulatory agencies. As we discuss and the testimony of my fellow consumer advocates show, these flaws have not been addressed since the passage of FACTA. In fact, the FTC's August 2006 report on the dispute process similarly documents a lack of change in the reinvestigation process, but unfortunately treats the absence of reform as acceptable.

Two of the main problems with the credit reporting system's investigation process are: (1) the automated dispute system, in which CRAs convert detailed consumer disputes into cryptic two or three digit codes and do not forward to furnishers the documentation of errors that consumers send to the CRAs; and (2) furnishers' investigations of disputes involve merely verifying that the information matches their own computer records, without undertaking a meaningful examination of the underlying facts, with the CRAs accepting whatever the furnishers tell them without conducting an independent review. The continued result of this lackadaisical reinvestigation system is that consumers find it extremely difficult, frustrating, and expensive to dispute errors.

*Automation Creates Flawed Reinvestigations*

All too commonly, CRAs and furnishers fail to take complaints from consumers either seriously or seriously enough. Testimony and other evidence from cases suggest that CRAs

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*Many Katrina Victims Will Face Additional Economic Difficulties as Credit Scores Drop Due to Disaster*, Consumers Union et al., October 6, 2005.

[27] FTC 2004 Report at 25.

[28] FTC/FRB 2006 Report at 3.

receive tens of thousands of consumer disputes each week while imposing quotas for the number of consumer disputes that employees must process. CRA employees have testified that employees are required to process one dispute every four or six minutes in order to meet quotas.[29]

In order to crunch down the time for a consumer's dispute into a mere matter of minutes, CRAs have developed a highly automated, computer-driven system that precludes any meaningful reinvestigation. A consumer's dispute is communicated using a Consumer Dispute Verification form (CDV). An automated version of the form, communicated entirely electronically, is known as Automated Consumer Dispute Verification (ACDV). Furthermore, all three CRAs collaborated through CDIA to create an automated on-line reinvestigation processing system called "e-OSCAR." According to the CDIA, 83% of disputes are processed using e-OSCAR, and each of the three nationwide CRAs has announced plans to stop accepting paper-based disputes.[30]

This automated system is heavily dependent upon standardized dispute codes used to communicate the nature of the dispute. Approximately 80% of consumer disputes are written.[31] These written disputes often consist of a detailed letter with supporting documentation, painstakingly written by concerned and even desperate consumers. All of these documents, including a consumer's careful description of a specific dispute, fashioned to make detection and correction easy, are reduced to a two or three digit code that the CRA employee who glances at the material believes best describes the dispute.

The code is sent to the furnisher and is often communicated alone, without supporting documentation provided by the consumer - documents such as account applications, billing statements, letters, and payoff statements that can show overwhelming and even conclusive proof. These critical documents are left out of the reinvestigation process while both the CRA and furnishers rely instead on the automated dispute process and its coding of information. Disturbingly, the actual policies and practices of the CRAs are to *not* forward documents and other information to furnishers that would allow the furnisher to evaluate the accuracy and completeness of the disputed information.[32] The CRAs claim forwarding documents through e-OSCAR is "questionable," a difficult claim to believe given how easily documents can now be transmitted electronically via PDF files.

Thus, the automated dispute system deliberately violates the FCRA's requirement that the CRA include "all relevant information" about the dispute that the CRA received from the consumer. 15 U.S.C. § 1681i(2). And if all relevant communication is not forwarded, the furnisher cannot comply with the FCRA's requirement to "review all relevant information" provided by the CRA. 15 U.S.C. § 1681s-2(b)(1)(B). This essential requirement to review all relevant information has become a nullity because such information is never communicated.

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[29] *See* Cushman v. Trans Union Corp., 115 F.3d 220, 224-25 (3d Cir. 1997). *See also* Deposition of Regina Sorenson, Fleischer v. Trans Union, Civ. Action No. 02-71301 (E.D. Mich. Jan 9, 2002).
[30] FTC/FRB August 2006 report at 16.
[31] *See* Deposition of Eileen Little, Evantash v. G.E. Capital Mortgage, Civ. Action No. 02-CV-1188 (E.D. Pa. Jan. 25, 2003).
[32] FTC/FRB August 2006 Report at 18.

The use of this automated system also has contributed to the problem that some furnishers merely verify the existence of disputed information, and do not actually investigate disputes. In addition to failing to provide a meaningful description of the dispute and underlying documentation, this system permits a furnisher to simply check a box indicating that the disputed information has been verified, an exercise which aids and abets inadequate furnisher investigation. Once the disputed information is purportedly reinvestigated, the CRAs then send generic and uninformative letters stating that an investigation has been made, without including any details as to whom they have contacted and what information was obtained or relied upon for a final determination.

As you can imagine, numerous difficulties with this level of automation have been noted by consumer counsel. Even furnishers have complained that the dispute codes are "vague and overbroad."[33] As the Seventh Circuit noted about the ACDV processes:

> It seems that Experian has a systemic problem in its limited categorization of the inquiries it receives and its cryptic notices and responses. For example, there is the meaningless communication [plaintiff] received from Experian in response to her notice of dispute: "Using the information provided the following item was not found: Grossinger City Toyota." Another example is the opaque notice of dispute sent by Experian to U.S. Bank: "Claims Company Will Change or Delete." Moreover, in what appears to be an unresponsive form letter rather than the report of an adequate investigation into her claim, [plaintiff] was notified that the "Paid/Was a repossession" notation would remain in her report and the only change would be the addition of: "Account closed at consumer's request."[34]

*Inadequate Investigation*

Consumer advocates repeatedly confirm that CRAs and furnishers are simply not conducting meaningful reinvestigations. Instead, some furnishers default to verifying the existence of an account and the disputed information itself. They do not actually research the underlying dispute, review documents, or speak to consumers about the dispute. These furnishers simply verify information to the CRAs, who in turn "parrot" this verification without conducting an independent review.

For what should be done in an investigation, consider the testimony of Elizabeth Aadland, who once worked as a fraud investigator for the bank for Zales Jewelers. Ms. Aadland described how she conducted a fraud investigation for Zales, which included:[35]

- gathering original documents, including the credit application, the sales tickets, and any statements from the store personnel that were in written form;
- gathering copies of identification and police reports;

[33] *Id.* at 17
[34] Ruffin-Thompkins v. Experian Info. Solutions, Inc., 422 F.3d 603, 610-611 (7th Cir. 2005).
[35] Deposition of Elizabeth Aadland, Smith v. Citifinancial Retail Services, No. 3:06-cv-02966 (N.D. Cal. March 23, 2007).

- examining the signature of the purchaser on the sales ticket and account application;
- interviewing store personnel, including the store manager, where possible, and the sales associate who had handled the actual transaction;
- preparing statements to be signed by store personnel or taking notes of interviews;
- interviewing the fraud victim because "often they would have additional information that would help us in locating a suspect or determining how the fraud or forgery had occurred."

Now contrast that with testimony by furnishers showing that they conduct FCRA investigations by merely comparing the information in the ACDV with their internal computer records. These include:

> **Capital One** - Capitol One employee Pamela Tuskey described how all three of the nationwide CRAs instructed Capital One personnel to simply verify information and to "make our system look like your system." The CRAs even discouraged the Capital One personnel from actively researching by pulling statements or similar activities.[36]
>
> **MBNA** - In *Johnson v. MBNA*, the furnisher's employees testified that it was their practice to merely confirm the name and address of consumers in their computers and note from the applicable codes that the account actually belongs to the consumer, and that they *never* consult underlying documents such as account applications to determine accuracy of disputed information.[37]
>
> **Asset Acceptance** - *King v. Asset Acceptance* describes how that debt buyer responds to an FCRA dispute by merely reviewing the account information provided in ACDV and comparing it to the information in Asset's files. Asset does not typically request account documents from the original creditor in its review of an ACDV. If the ACDV or the consumer indicates identity theft or fraud, Asset's sole additional response is to send the consumer a letter requesting that the consumer provide an identity theft report.[38]

As for CRAs, their main response to FCRA disputes is to "parrot" what the furnishers respond to them, even when a simple check would reveal inconsistent information. For example, *Allen v. Experian Information Systems* involved a Sears account that was being reported on the consumer's credit report as "included in bankruptcy" past the limitations period for that information. The consumer's bankruptcy had occurred in 1993, yet the Sears account was reported as included in bankruptcy in 1997. When asked why Experian investigators didn't address the consumer's dispute by cross-checking their own records or check the records of the United States Bankruptcy Court as to the correct date of the bankruptcy, Experian employee Kathy Centanni answered:[39]

> ...the consumer is not disputing the bankruptcy. If they were disputing the bankruptcy as such, we would dispute the public record.

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[36] Deposition of Pamela Tuskey, Carol Fleischer v. Trans Union, Case No. CV 02-71301 (E.D. Mich.).
[37] Johnson v. MBNA, 357 F. 3d 426 (4th Cir. 2004).
[38] King v. Asset Acceptance, 452 F.Supp.2d 1272 (N.D. Ga. 2006).
[39] Deposition of Kathy Centanni, Allen v. Experian Information Solutions, Civ. No. 04-817 (S.D. Ill. Dec. 6, 2005).

> The consumer is disputing the information being reported by a creditor, and it's our responsibility to go back to that creditor for them to research it.

In other words, the CRA's policy is that what the furnisher says is gospel and even court records cannot contradict that. Another recent example of this practice of refusing to conduct an actual investigation and instead to parrot the furnisher is *Cairns v. GMAC Mortg. Corp.*,[40] in which Equifax argued that "by contacting GMAC regarding Mr. Cairns' dispute, it had complied with the statutory obligations regarding reinvestigation." Fortunately, the court disagreed that Equifax's sole responsibility in an investigation was to contact the furnisher.

Even when the consumer is successful in getting documents into the hands of CRAs or furnishers, advocates know from recurring cases that the standard response of CRAs and furnishers is to ignore the documentation. For example, CSC Credit Services, which is an Equifax affiliate, has explicitly stated its policy of not considering any payoff letter from a creditor over 90 days old.[41] In another case, a consumer disputed information in her Equifax credit report, which the furnisher simply confirmed, even though the consumer had already won a court decision that she did not owe the debt. When the consumer again disputed the entry with Equifax, the furnisher again confirmed the debt, plus it increased the amount owed from $488.00 to $829.00.[42]

All of these examples show that furnisher reinvestigations consist primarily of checking information in their computer data, while CRAs do even less by simply parroting the results supplied by the furnisher. Checking information against computer records is not an investigation of whether information is accurate; it is simply verification of files. That is NOT the standard in the FCRA.

## IV. Why the CRAs and Furnishers Ignore Their Duties Under the FCRA

*Disagreement Over "Accuracy"*

The term accuracy is not defined in the FCRA, but it is a critical concept in the statute. While one would think there would be no reason to disagree over what constitutes "accuracy," the matter is not so simple. For years, CRAs and furnishers have used a different standard of accuracy. They have treated a piece of information as accurate if it matches the data in their records. This is not enough. Accuracy is not simply "Conformity to data records." It is conformity to truth, to the objective reality of what is correct.

This definitional controversy over "accuracy" is part of the reason why CRAs and furnishers have not conducted real investigations, but simply considered information accurate if they could verify it against their computer records.

*Money Talks, Everything Else Walks*

[40] 2007 WL 735564 (D. Ariz. March 5, 2007).
[41] McKinley v. CSC Credit Serv., 2007 WL 1412555 (D. Minn. May 10, 2007).
[42] Betts v. Equifax Credit Information Services, 245 F. Supp. 2d 1130 (W.D. Wa. 2003).

The primary reason that the CRAs and furnishers fail to conduct proper reinvestigations under the FCRA is simple: money. The CRAs and furnishers treat disputes as nuisances and devote correspondingly little effort to them, because there is little economic incentive to conduct true reinvestigations. A real investigation would cost the CRAs and furnishers real money. For the CRAs, this is money spent on people who are not their real customers, except for the handful that might buy "credit monitoring products" (far outweighed by what the furnishers/subscribers pay).

The risk of an occasional lawsuit appears not to have overcome these economic incentives. The result is persistent inaccuracies in credit reports, which harms both consumers and creditors. Until the failure to conduct a real investigation becomes more expensive than not conducting a real investigation, the current system will remain broken. Furthermore, any protections for identity theft victims cannot be effective in the absence of a real investigation.

**V. Role of the Federal Trade Commission and Banking Regulators**

Vigorous enforcement is critical in the credit reporting realm, even more so than in many other areas of consumer protection. There are many sections of the FCRA that are only enforceable by the FTC or by the banking regulators, including:

- Accuracy requirements for furnishers under 15 U.S.C. § 1681s-2(a)(1);
- Consumer's right to dispute debt directly to furnisher under 1681s-2(a)(8);
- Identity theft victim's right to identity theft transaction information under 1681g(e);
- Red flag guidelines under 1681m(e);
- Risk based pricing notices under 1681m(h)(8) (and potentially all FCRA notices);
- Furnisher's response to an identity theft victim under 1681s-2(a)(6);
- Notice of furnishing of negative information under 1681s-2(a)(7); and
- Accuracy and integrity guidelines under 1681s-2(e).

The primary job of enforcement lies with the FTC. The FTC has brought several FCRA enforcement actions in the past decade, many against non-bank furnishers and users of credit information. However, the FTC has only brought a handful of cases during this decade against the nationwide CRAs, and apparently none of which involved the accuracy of information. More critically, the FTC has failed to be assertive in its role as the administrative agency which interprets the FCRA and issues rules.

For example, the FTC has failed to recommend several proposals to improve credit reporting accuracy that FACTA required the agency to study, such as:[43]

- requiring the CRAs to institute stricter matching criteria to prevent mixed files, such as requiring complete SSN matches.
- providing consumers who have experienced adverse actions based on a credit report the right to receive a copy of the same report that the creditor relied upon.

[43] FTC 2004 Report at 53-55, 66-67.

Another example of an inadequate response is the FTC's decision not to address the CRAs' failure to forward consumer's documentation to furnishers during the dispute process. Despite the FCRA's unqualified requirement that the CRAs provide "all relevant information," the FTC and FRB concluded that the CRAs' failure did not necessarily violate the Act.

At least the FTC has taken some enforcement actions under the FCRA. We do not know of any FCRA enforcement actions that federal banking agencies have taken with respect to banks under their supervision. If there have been any such actions, they have not been publicized. The banking regulators are the sole entities capable of enforcing the accuracy requirements of the FCRA against bank furnishers under 15 U.S.C. § 1681s-2(a). They have abdicated this responsibility, leaving consumers unprotected against inaccurate and even deliberate misreporting by bank furnishers.

Finally, all of the regulators are also extremely tardy in issuing guidelines required by Section 312 of FACTA to enhance accuracy by furnishers. The FTC and banking regulators have only issued an Advanced Notice of Proposed Rulemaking, to which we submitted comments in response in May 2006 and are attached as Appendix 1.

**VI. What Consumers Need In Order to Protect Their Rights**

*"Fix That Report"*

The number one right that consumers lack under the FCRA is the ability to ask a judge to tell the CRAs and furnishers: "fix that report." With one minor exception, the FCRA does not provide for declaratory or injunctive relief in actions by private parties. The vast majority of courts have held that courts do not have the power to issue an injunction under the FCRA. The FCRA is an anomaly in this respect, as the Supreme Court decision in *Califano v. Yamasaki* provides the basis for injunctive relief for most other laws.[44]

Consider a consumer who has filed dispute after dispute with the CRAs, who has supplied evidence of fraud or mistake, and who has sued to protect her rights under the FCRA. If she can show that the CRAs or furnishers were unreasonable in their investigations, she might be able to get actual damages if she can prove the error caused a denial of credit after the dispute or is in a jurisdiction that permits intangible damages. If she can show the CRAs or furnishers knew they were violating the law or acted with reckless disregard, she can seek statutory or punitive damages. But she cannot seek the one thing she really wants, the remedy that started her down this arduous path in the first place - an order telling the CRAs and furnisher to correct the error.

Providing courts with explicit authority to issue injunctive relief would further the purpose of the FCRA to "assure maximum possible accuracy." Courts should be granted the explicit authority to order CRAs and furnishers to delete inaccurate information and cease issuing reports that contain such inaccuracies. Judicial efficiency would also be served since

[44] 442 U.S. 682 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction.")

consumers would not be compelled to file multiple suits when CRAs repeatedly include inaccuracies or fail to comply with the FCRA's requirements.

The FCRA currently protects creditors and other furnishers from all liability for furnishing inaccurate information -- even if the consumer has repeatedly informed the creditor of errors, or the information is blatantly wrong, or even if the information is furnished spitefully. We propose that consumers be granted the limited right to correct inaccuracies by obtaining injunctive and declaratory relief against furnishers. In this initial process, consumers seeking injunctive and declaratory relief would not be entitled to monetary damages, only the reasonable attorney's fees incurred for successfully obtaining injunctive or declaratory relief.

*Correcting a Scrivener's Error*

FACTA inadvertently created ambiguity about whether consumers may enforce the FCRA requirement that creditors give notice to consumers when an "adverse action" is taken, *i.e.*, credit or insurance is denied or provided on less favorable terms, on the basis of an unfavorable credit report. 15 U.S.C. § 1681m. FACTA was intended to limit the remedies for the new risk-based pricing notice, but not to change the enforceability of existing FCRA notice requirements. 15 U.S.C. § 1681m(h)(8). However, the phrase "this section" in the limiting provision has been interpreted by several courts to apply to the pre-existing adverse action requirements, making the entirety of 15 U.S.C. § 1681m unenforceable under the FCRA private right of action.[45] This scrivener's error should be fixed by changing "this section" in § 1681m(h)(8) to "this subsection."

*Recommendations to the Regulators*

In addition to our legislative proposals, we have made a number of recommendations to the FTC and banking regulators as to what these regulators should require. If the regulators refuse to adopt these measures, Congress should do so. Some of our recommendations are set forth below, and the entire text of our comments is attached as Appendix 1.

- Original creditors must be required to retain the operative records for any account for which they are reporting a tradeline. These documents would include the original account applications, original contract or agreements, any billing statements, any contract modifications or forbearance agreements, any records of disputes, and for real estate secured loans, the settlement package.
- Debt collectors and debt buyers must be required to obtain the original records needed to verify a debt from the creditor and to review them before furnishing information to a CRA. For example, in a credit card case, the debt buyer must be required to obtain and review the consumer's account application, original agreement, history of periodic statements, and any record showing whether any of the debt was disputed with the creditor. At a minimum, if the consumer disputes the debt and the debt buyer does not have adequate original documentation, the tradeline must be deleted from the consumer's file.

[45] Perry v. First Nat. Bank, 459 F.3d 816 (7th Cir. 2006) (collecting cases).

- CRAs must be required to convey to furnishers the actual documents that support the consumer's dispute, and failure to do so should be *per se* unreasonable.
- Furnishers must be required to investigate the specific dispute raised by the consumer rather than merely verifying that the disputed information itself appears in their own records. At a minimum, the furnisher's reinvestigation must involve reviewing the actual documents provided by the consumer. Depending on the nature of the dispute, the furnisher may also have to review documents in its own possession or in the possession of an earlier holder of the debt, and may have to contact third parties. In short, the reinvestigation must make a substantive determination of the validity of the specific dispute at issue.
- Furnishers should be required to rebut the consumer's specific disputes by providing to the consumer and the CRA documentation that shows that the information furnished is correct. Furnishers should not be allowed simply to tell the CRA that the consumer is wrong and the original information was correct, and CRAs should not be allowed to accept such a report. Instead, the furnisher should be required to give the consumer and the CRA the underlying information - copies of documents with original signatures to rebut a forgery claim, for example, or copies of the payment record to demonstrate that the claimed balance is correct.
- The CRA must be required to review and evaluate the response from the furnisher, rather than merely parroting it.
- The CRAs should be required to set up an appeal procedure that the consumer can invoke, that involves a telephone conference with a CRA employee who has the consumer's dispute and all the documentation provided by the furnisher and the consumer.

**VII. Conclusion**

Three and a half years after FACTA, the American credit reporting system continues to be plagued by errors, and its safety net mechanism to correct those errors is broken. The CRAs have the ability to address these errors by revising their systems, but have chosen not to do so. Instead, they have created an automated and perfunctory dispute processing system, substituting computer codes and automated processing for real, meaningful investigations. Some furnishers participate in this perfunctory system by conducting investigations that consist of nothing more than comparing computer records to the notice of dispute. CRAs have little incentive to improve their procedures or investigations, because improvements cost money and only benefit consumers, who are not their real customers.

The credit reporting industry will only improve if Congress or the regulators take action. They will only improve if forced to do so by a court, yet consumers cannot even ask a court to issue injunctive orders. Without these measures, consumers will continue to be victimized by credit reporting errors and will be unable to use the rights granted to them by Congress to fix those errors.

Thank you for the opportunity to testify today.

# APPENDIX 1

**COMMENTS**
**of the National Consumer Law Center**
**(on behalf of its low-income clients)**

**and**

**Consumer Federation of America**
**Consumers Union**
**National Association of Consumer Advocates**
**U.S. Public Interest Research Group**

**to the**
**Office of the Comptroller of the Currency**
**12 CFR Part 41**
**Docket No. 06-04**

**Office of Thrift Supervision**
**12 CFR 571**
**No. 2006-06**

**Federal Reserve System**
**12 CFR 222**
**Docket No. R-1250**

**Federal Deposit Insurance Corporation**
**12 CFR 334**
**RIN 3064-AC99**

**National Credit Union Administration**
**12 CFR 717**

**Federal Trade Commission**
**16 CFR Parts 660 and 661**
**RIN 3084-AA94**

**Advanced Notice of Proposed Rulemaking: Furnisher Accuracy Guidelines and Procedures Pursuant to Section 312 of the Fair and Accurate Credit Transactions Act**

The National Consumer Law Center ("NCLC")[1] submits the following comments on behalf of its low income clients, as well as the Consumer Federation of America,[2] Consumers

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[1]**The National Consumer Law Center** is a nonprofit organization specializing in consumer credit issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys around the country, representing low-income and elderly individuals, who request our assistance with the analysis of credit

Union,[3] National Association of Consumer Advocates,[4] and the U.S. Public Interest Research Group[5] regarding the Interagency Advance Notice of Proposed Rulemaking concerning procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies ("CRAs").[6] The Fair and Accurate Credit Transactions Act of 2003 required the federal banking regulatory agencies and the Federal Trade Commission ("Regulatory Agencies") to issue guidelines regarding furnisher accuracy and integrity as well as regulations governing when furnishers are required to investigate direct disputes from consumers.[7]

## I. PRELIMINARY DEFINITIONAL ISSUES: WHAT IS "ACCURACY"?

One of the fundamental issues that the Regulatory Agencies will need to address is what constitutes "accuracy." There are a number of definitional issues, which are discussed below.

### a. "Accuracy" Should Be Defined to Mean that Information is Factually Correct in the Real World.

The term accuracy is not defined in the FCRA, but it is a critical concept in the statute. While one would think there would be no reason to disagree over what constitutes "accuracy", the matter is not so simple. The Regulatory Agencies must address this issue and define "accuracy" as information that is objectively true.

For years, furnishers have used a different standard of accuracy. They have treated a piece of information as accurate if it matches the data in their records. This is not enough. Accuracy is not simply "Conformity to data records." It is conformity to truth, to the objective

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transactions to determine appropriate claims and defenses their clients might have. As a result of our daily contact with these practicing attorneys, we have seen numerous examples of invasions of privacy, embarrassment, loss of credit opportunity, employment and other harms that have hurt individual consumers as the result of violations of the Fair Credit Reporting Act. It is from this vantage point – many years of dealing with the abusive transactions thrust upon the less sophisticated and less powerful in our communities – that we supply these comments. *Fair Credit Reporting* (5th ed. 2002) and *Credit Discrimination* (3rd ed. 2002) are two of the eighteen practice treatises that NCLC publishes and annually supplements. These comments were written by Chi Chi Wu, Staff Attorney, with the assistance of Richard Rubin, Gail Hillebrand, Travis Plunkett, Ian Lyngklip, Evan Hendricks, Robert Hobbs, and Carolyn Carter. They are submitted on behalf of the Center's low-income clients.

[2] The **Consumer Federation of America** is a nonprofit association of some 300 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through advocacy and education.

[3] **Consumers Union**, the nonprofit publisher of Consumer Reports magazine, is an organization created to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications. And noncommercial contributions, grants and fees. Consumers Union's publications carry no advertising and receive no commercial support.

[4] The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

[5] **U.S. PIRG** serves as the federal lobbying office for the state Public Interest Research Groups, which are non-profit, non-partisan public interest advocacy organizations.

[6] 71 Fed. Reg. 14419 (March 22, 2006).

[7] Pub. L. No. 108-159, 117 Stat. 1952, § 312 (2003).

reality of what is correct. For example, the first entry in the American Heritage dictionary defines accuracy as: "Conformity to fact"[8]

This controversy over "accuracy" has manifested itself most often in the area of disputes, discussed further in our Response to A.8. Furnishers have not conducted real investigations, but simply considered information accurate if they could verify it against their computer records. For example, in the notable case of Johnson v. MBNA, employees of a major credit card issuer testified that "in investigating consumer disputes generally, they do not look beyond the information contained in the [MBNA computerized Customer Information System] and never consult underlying documents such as account applications."[9]

As the jury found in Johnson, and other courts have held,[10] this method of ensuring accuracy is entirely unacceptable. The Regulatory Agencies should issue guidelines stating the same.

b. "Accuracy" Must Consider The Issue Of Credit Scoring.

Any test of accuracy must be considered in context of credit scoring. What may seem to be a minor issue standing alone may create enormous inaccuracies with respect to credit scoring. For example, the failure to report a credit limit by itself is a slight omission, except for the fact that Fair Isaac's credit score models base 30% of a credit score on the ratio of credit used to credit available.[11] Thus the failure to report a credit limit can significantly depress a credit score (see Response to A.1 below).

Another example where credit scoring matters is when a furnisher deletes a tradeline instead of correcting inaccurate adverse information. Not only does the deletion make the consumer report incomplete, which makes it inaccurate, such a deletion may have a tremendous impact on a credit score. The tradeline could be worth significant additional "points" in a credit score if properly corrected, if for example, it is the oldest account in the consumer's file or it affects the consumer's utilization ratio.

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[8] The American Heritage Dictionary of the English Language, (4th Ed. 2000). The first entry in the Merriam-Webster Online Dictionary is similar - "freedom from mistake or error." Available at http://www.m-w.com/dictionary/accuracy

[9] Johnson v. MBNA Am. Bank, NA, 357 F.3d 426 (4th Cir. 2004).

[10] Cushman v. Trans Union Corp., 115 F.3d 220, 224-25 (3d Cir. 1997) (perfunctory investigation improper once a claimed inaccuracy is pinpointed); Henson v. CSC Credit Services, 29 F.3d 280, 286-87 (7th Cir. 1994) (must verify accuracy of initial information); Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151, 1160 (11th Cir. 1991) (whether error could have been remedied by uncovering additional facts); Dynes v. TRW Credit Data, 652 F.2d 35-36 (9th Cir. 1981)(single effort to investigate inadequate); Bryant v. TRW, Inc., 689 F.2d 72, 79 (6th Cir. 1982) (two phone calls to the creditors insufficient; Swoager v. Credit Bureau, 608 F. Supp. 972, 976 (D.C. Fla. 1985) (merely reporting whatever information a creditor furnished not reasonable; *In re* MIB, Inc., 101 FTC 415, 423 (1983) (FTC ordered the CRA to include as part of such reinvestigation a reasonable effort to contact original sources); *In re* Credit Data Northwest, 86 FTC 389, 396 (1975) (FTC ordered a credit reporting agency to "request[] examination by the creditor, where relevant, of any original documentation relating to the dispute in addition to its own records). These cases predate the 1996 amendments to the FCRA.

[11] Fair, Isaac, *What's In Your Score,* available at www.myfico.com/CreditEducation/WhatsInYourScore.aspx.

c. Technical Accuracy is Not "Accurate": Information Must Be Complete and Non-Misleading

A third key definitional issue is whether information can be considered "accurate" if it is technically true in some narrow sense, but is overly general, incomplete, out of date, or misleading. We believe that technical accuracy is not enough; a report should not be misleading or incomplete, even if true in the narrowest sense.[12] This standard for accuracy is not *sui generis*. The omission of a material fact constitutes misrepresentation under common law and deception under the Federal Trade Commission Act.[13] This view is also supported by the FTC in its Commentary and other interpretations.[14]

"Technically accurate" but misleading or incomplete reports have the potential to wreak great havoc on consumers and the integrity of the credit reporting system. For example, a report might be technically accurate if it stated that a debt was turned over to a collection agency, but neglected to include that the debt was subsequently fully paid.[15] It might be technically accurate if it reported a suit against an individual, but omitted that the individual was sued in his official capacity as deputy sheriff.[16] Even if "technically accurate" and complete, a report still will be inaccurate when it is misleading or ambiguous in view of the jargon or understanding within the community or industry of its intended users.[17] Each of these reports is not truly accurate because it misleads the reader or omits critical information.

A review of the congressional history provides clear support that the FCRA has never contemplated a "technically accurate" standard. Consider, for example, an exchange between Senator Bennett, the industry spokesman in debates, and Senator Proxmire, the drafter of the Act:

> **Sen. Bennett:** "It doesn't take any judgment in the end to discover whether or not something is accurate in terms of treatment."
> **Sen. Proxmire:** "Well, here is a situation that has developed. One man's file had the charge in it that he had suffered a charge of assault. This was in the file. The information was not in the file that the charge had been dismissed because under the

[12] *See, e.g.*, Dalton v. Capital Associated Industries, 257 F.3d 409, 415-16 (4th Cir. 2001); Sepulvado v. CSC Credit Services, 158 F.3d 890, 895 (5th Cir.1998); Henson v. CSC Credit Services, 29 F.3d 280 (7th Cir. 1994); Pinner v. Schmidt, 805 F.2d 1258 (5th Cir. 1986), *cert. denied*, 483 U.S. 1022 (1987); Koropoulos v. Credit Bureau, Inc., 734 F.2d 37 (D.C. Cir. 1984); Thompson v. San Antonio Retail Merchants Ass'n, 682 F.2d 509 (5th Cir. 1982); Neal v. CSC Credit Services, Inc., 2004 WL 628214 (D. Neb. Mar. 30, 2004) (Wilson turns on warning that information might be inaccurate); Agosta v. Inovision, Inc., 2003 WL 22999213 (E.D. Pa. Dec. 16, 2003) (misleading or materially incomplete entry is inaccurate). Curtis v. Trans Union, L.L.C., 2002 WL 31748838 (N.D. Ill. Dec. 9, 2002); Alexander v. Moore & Assoc., 553 F. Supp. 948 (D. Haw. 1982) (technical accuracy is not the standard; a consumer report must be accurate to the maximum possible extent); Bryant v. TRW, Inc., 487 F. Supp. 1234 (E.D. Mich. 1980), *aff'd*, 689 F.2d 72 (6th Cir. 1982); Tracy v. Credit Bureau, Inc. of Georgia, 330 S.E.2d 921 (Ga. Ct. App. 1985). *See also* Wilson v. Rental Research Serv., Inc., 165 F.3d 642 (8th Cir. 1999), *rehearing en banc without published opinion*, 206 F.3d 810 (8th Cir. 2000) (by vote of an equally divided court, the district court's order is affirmed) (case involved disclaimers placed in consumer reports).
[13] 15 U.S.C. § 45; National Consumer Law Center, Unfair and Deceptive Acts and Practices § 4.2 (6th ed. 2004).
[14] FTC Official Staff Commentary §§ 607 items 3F(1), (2), (3), 611 items 5, 6.
[15] Todd v. Associated Credit Bureau Services, Inc., 451 F. Supp. 447 (E.D. Pa. 1977), *aff'd*, 578 F.2d 1376 (3d Cir. 1979), *cert. denied*, 439 U.S. 1068 (1979).
[16] Austin v. Bankamerica Service Corp., 419 F. Supp. 730 (N.D. Ga. 1974).
[17] Cassara v. DAC Services, Inc., 276 F.3d 1210 (10th Cir. 2002).

circumstances what had happened was that he had witnessed the mugging of an elderly person in the dark in the street and had gone to the elderly person's defense and in the course of doing this he had to assault the person who was mugging the elderly person. He was a hero. The person who had engaged in the mugging sued him for assault. Of course, it was dismissed.
You can have a report which is accurate but not complete and not fair. I think this is one of the reasons why you have to go a little further than simple accuracy."
**Sen. Bennett**: "I don't think a report that is that incomplete can be said to be accurate. But now we are talking about words."[18]

In the alternative, the Regulatory Agencies should issue guidelines that information lacks "integrity" if it is only technically accurate but omits critical information. The integrity of the credit reporting system depends on information that does not mislead the reader.

Further discussion of the problems of incomplete consumer reports is discussed in the Response to A.1 below.

## II. RESPONSES TO SPECIFIC QUESTIONS IN THE REGULATORY AGENCIES' REQUEST FOR INFORMATION

Below are specific responses to some of the Regulatory Agencies' request for information

A1. *Please describe, in detail, the types of errors, omissions, or other problems that may impair the accuracy and integrity of information furnished to consumer reporting agencies. . . .*

### Out of date information[19]

One of the most frequent errors is the "re-aging" of old debts by debt collection agencies and debt buyers, in which these furnishers report the date of last activity as a date later than what is legally permitted under the FCRA. There are numerous reported cases involving debt buyers and collectors re-aging debts,[20] including two major enforcement actions by the Federal Trade Commission.[21]

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[18] *Hearings on S. 823, Subcommittee on Financial Institutions on the Senate Banking and Currency Committee 91st Cong., 1st Sess. 34 (1969).*

[19] The comments of Evan Hendricks contain additional information regarding this issue and we refer the Agencies to those comments.

[20] Rosenberg v. Cavalry Investments, LLC, 2005 WL 2490353 (D. Conn. Sept. 30, 2005) (re-aging of a decades-old debt by debt buyer; summary judgment denied to debt buyer on FDCPA and FCRA claims); Thomas v. NCO Financial Systems, 2002 WL 1773035 (E.D. Pa. July 31, 2002) (approval of settlement involving FDCPA claims for re-aging). *See also* United States v. Gallant, 2006 WL 278554 (D. Colo. Feb. 3, 2006) (criminal case where defendant re-aged entire portfolio); Gillespie v. Equifax Information Services, 2006 WL 681059 (N.D. Ill. March 9m 2006) (example of re-aging case, summary judgment for CRA because obsolete information was never disclosed in a consumer report)

[21] United States v. Performance Capital Management (Bankr. C.D. Cal 2000) (complaint), available at www.ftc.gov/opa/2000/08/performance.htm; United States. v. NCO Group, Inc., 2004 WL 1103323 (E.D. Pa. 2004) (consent decree requiring monitoring of FCRA complaints, particularly regarding delinquency date).

Debt buyers and collectors "re-age" debt by placing an incorrect "date of last activity" in the relevant field (Base Segment, Field 25) in the Metro 2 format. This field is extremely important as it sets the date for calculating the start of the obsolescence period under section 1681c of the FCRA. This date is supposed to be the date of first delinquency, i.e., 180 days after charge off or placement for collection. The Credit Reporting Resource Guide ("Metro 2 Manual") states *repeatedly* that this date of first delinquency of the debt is the operative date.[22] This is true regardless whether the debt was sold to subsequent entities. The date is also unaffected by subsequent repayment arrangements. When a buyer of bad debt purchases an account, the original owner should zero out the "current balance" field and inform the purchaser of the debt the date the account first became delinquent.[23]

Despite the clear directions of the Metro 2 manual, debt buyers and collectors are all too likely to report the date of first delinquency as the date of their acquisition of the debt and not, as required, the first delinquency experienced by the original creditor. This failure to comply with the Metro 2 industry standard effectively (and illegally) extends the FCRA obsolescence period. This error -- one that we have found is regularly committed intentionally[24] -- is economically beneficial to the collector because it causes the debt to be reported well beyond the time it is legally obsolete, thus illustrating the truism that reporting a debt to a CRA is "a powerful tool designed, in part, to wrench compliance with payment terms....[and] to tighten the screws on a non-paying customer."[25]

**Omission of credit limits** [26]

The deliberate withholding of credit limit information by credit card furnishers is an extremely serious and widespread problem, as the Regulatory Agencies well know. One Federal Reserve Board study indicates about 70% of consumers have at least one revolving account in their credit files that does not contain information about the credit limit.[27] A later study by the FRB found that the percentage of consumers whose credit files had missing credit limit information had declined to 46%, due to efforts to encourage reporting of credit limits.[28] Still, nearly half of all consumers, and 14% of all credit card accounts remain affected by the practice.

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[22] Credit Reporting Resources Guide, *Consumer Data Industry Association* (2003), at 4-17,10-4 (hereinafter "Metro 2 Manual").
[23] *Id.* at 6-8.
[24] Of course, intentionality is not and never should be required to show an FCRA violation. Willful and negligent inaccuracy is just as harmful for consumers.
[25] Rivera v. Bank One, 145 F.R.D. 614, 623 (D.P.R. 1993); *accord*, Matter of Sommersdorf, 139 B.R. 700, 701 (Bankr. S.D. Ohio 1991); Ditty v. CheckRite, Ltd., Inc., 973 F.Supp. 1320, 1331 (D. Utah 1997); Sullivan v. Equifax, Inc., 2002 WL 799856, * 4 (E.D.Pa.).
[26] The comments of Evan Hendricks contain additional information regarding this issue and we refer the Agencies to those comments.
[27] Robert Avery, Paul Calem, Glenn Canner, and Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, February 2003, at 71. *See also* Federal Financial Institutions Examination Council, *Advisory Letter*, January 18, 2000 (stating that "certain large credit card issuers are no longer reporting customer credit lines of high credit balances or both."), available at www.ffiec.gov/press/pr011800a.htm (last viewed July 2003).
[28] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, at 306.

Furthermore, the latter study found that over 60% of these consumers would have experienced an increase in their credit score if the credit card issuer had not withheld the credit limit information.

The withholding of credit limit information has a considerable impact on the consumer's credit score. Fair Isaac states that, for its scoring models, the ratio of credit used to credit available accounts for 30% of an individual's score.[29]

It appears that credit card issuers not only deliberately withhold credit limit information, they do so to maximize their profit at the expense of the consumers and the integrity of the credit reporting system. One major credit card issuer has admitted that it deliberately failed to report credit limits of its customers as a way to artificially depress credit scores, citing "competitive advantage."[30] The Regulatory Agencies should promulgate guidelines that specifically prohibit withholding of credit limits by credit card furnishers.

One researcher has theorized that requiring the reporting of credit limits might even help in part to address the one of the most vexing problems with respect to the use of credit scoring -- its apparent disparate impact on certain minority populations, as shown by study after study finding that African Americans and Latinos have lower credit scores as a group.[31] The Brookings Institution has speculated that part of the reason for the racial divide in credit scoring may the failure of certain lenders to report complete information such as credit limits.[32]

**Incomplete Files**

As discussed above, an accurate consumer report is one that at a minimum has complete information. Yet a significant problem with credit reports is that they are frequently incomplete, in that they do not paint a complete picture of a consumer's credit record and other history. First of course, we know a consumer's files usually does not include information from non-subscriber creditors, such as landlords, where the consumer's regular payments would reflect positively on the consumer's overall creditworthiness.

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[29] Fair, Isaac, *What's In Your Score*, available at www.myfico.com/CreditEducation/WhatsInYourScore.aspx.
[30] Kenneth Harney, *Credit Card Limits Often Unreported*, Washington Post, December 25, 2004; Michele Heller, *FCRA Hearing to Shine Spotlight on Credit Reports*, American Banker, June 12, 2003, at 10.
[31] The most recent study is from the Brookings Institution, which found that "[c]ounties with relatively high proportions of racial and ethnic minorities are more likely to have lower average credit scores." Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006 at 9. Studies of insurance credit scores, which have not relied on geographic location as proxies for race, have produced similar findings. Texas Department of Insurance, *Report to the 79th Legislature - Use of Credit Information by Insurers in Texas*, December 30, 2004; Brent Kabler, *Insurance-Based Credit Scores: Impact on Minority and Low Income Populations in Missouri*, Missouri Department of Insurance – Statistics Section, January 2004. For other studies showing the correlation between race and credit scores, *see* Raphael W. Bostic, Paul S. Calem, and Susan M. Wachter, *Hitting the Wall: Credit as an Impediment to Homeownership*, Joint Center for Housing Studies of Harvard University, February 2004; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, at 313 (Table 2); Freddie Mac, *Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families*, September 1996, at 27.
[32] *See* Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006 at 10 (suggesting that failure to report complete information may affect the relationship between race and credit scores).

More troubling for consumers is the inclusion of information concerning preliminary actions that reflect negatively on the consumer without any follow up as to an eventual outcome that is more favorable to the consumer. For example, an auto lender may report that it has charged off a car loan on a car that has been totaled without reporting that the consumer continued to pay the note on time. A lease company might report that a lessee had gone through bankruptcy without noting that the lessee continued to be current on the car lease despite the bankruptcy. A Federal Reserve Board study has noted the problem with incomplete or out-of-date information. In particular, the study found that furnishers sometimes do not report or update information on consumers who consistently make their required payments or on consumers who have been seriously delinquent, particularly accounts with no change in status.[33] Incomplete files can be highly misleading.

Another sort of incomplete file develops when furnishers selectively withhold good payment histories from the CRAs. As both the Regulatory Agencies and the CRAs are aware, certain furnishers who wanted to keep their most reliable customers have purposefully withheld payment data to shield those customers from competing lenders who might seek to recruit them. This practice, which is common among subprime lenders, will result in credit reports that do not accurately reflect the positive payment histories for borrowers, especially high-interest borrowers in the subprime market. This practice distorts the credit market, trapping borrowers who are now good credit risks in the subprime arena.

Information also differs from CRA to CRA. According to the FRB report, CRAs all have their own rules for determining whether identifying information is sufficient to link information to a single individual, which sometimes results in "fragmentary files" that are multiple and incomplete credit reports for the same individual. CRAs also receive and post information at different times; furnishers may report to one or two CRAs, but not all three; and changes made to disputed information may be reflected in only the CRA that received the dispute and not the others.

The discrepancies that exist in the underlying information held and reported by CRAs have serious negative consequences for many Americans. A study of credit scores for more than half a million consumers by the Consumer Federation of America found that nearly one out of three files (29 percent) had a score discrepancy between the three biggest CRAs of 50 points or more. The study found that these differences put approximately 40 million consumers, or one in five, at risk of misclassification into the subprime mortgage lending market. Roughly eight million consumers, or one in five of those who are at risk – are likely to be misclassified as sub-prime upon applying for a mortgage.[34]

Incomplete information that is not related to any particular item in a file, but that would make the whole file more complete, is itself a troubling type of inaccuracy. The Regulatory

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[33] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, at 301, *available at* www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf.

[34] *Credit Score Accuracy and Implications for Consumers*, Consumer Federation of America, December 17, 2002.

Agencies should encourage entities that are already furnishers to furnish information on all their customers.[35]

The failure of a furnisher to add information to items already in the file to make them accurate is a different kind of incompleteness. This problem should be specifically addressed by the Regulatory Agencies' accuracy and integrity guidelines. There should be no question that furnishers must have an obligation to add information to already preexisting items if the failure to do so would render the item misleading.

**Duplication in tradelines**

Debts that are sold or transferred to others for collection present another fundamental accuracy problem - duplicate accounts. This problem is especially acute with student loan and collection accounts. Generally speaking, the Metro 2 system relies upon the transferring creditor to delete the accounts from agency files and the new creditor or servicing agent to begin furnishing information about the account. A servicer, one who does not itself hold the note, must also continue to use the identification number of the holder. Mistakes when accounts are transferred can result in false or misleading information in consumer reports. Specifically, because credit grantors expect from the Metro 2 industry standard that tradelines will not be duplicated, errors such as these that falsely appear to multiply the amount of outstanding debt have harmful adverse impacts on consumers as well as on the credit grantors who lose otherwise qualifying loans on the mistaken belief that the consumer is overextended.

Note that the Metro 2 Manual states:

36. Question: What causes duplicate tradelines?
Answer: Any change in Account Number, Identification Number, Portfolio Type, and/or Date Opened may cause duplication if the consumer reporting agencies are not notified prior to the change.[36]

As one can imagine, these pieces of information often change when an account is transferred. For example, the plaintiff in Jordan v. Equifax had successfully gotten a student loan tradeline resulting from identity theft deleted from his file. The servicer then transferred the account to its affiliate, Sallie Mae, which assigned it a new account number. The fraudulent loan then began reappearing again due to the simple act of changing the account number.[37]

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[35] Requiring furnishers to report missing positive tradelines or information is not a radical concept. The Agencies themselves have previously disapproved of the practice of withholding good credit information. Fed. Fin. Insts. Examination Council, *Advisory Letter* (Jan. 18, 2001), available at www.ffiec.gov/press/pr011800a.htm. The former Comptroller of Currency has suggested that legislation might be a possibility to ensure that such information is reported and consumers are protected from such incomplete reporting. Office of the Comptroller of the Currency, *Press Release NR99-51*, June 6, 1999, available at www.occ.treas.gov/ftp/release/99-51.wpw. Freddie Mac has reminded its sellers and servicers that its Single-Family Seller/Servicer Guide requires monthly submission to all three credit repositories of a complete file of mortgage information. Freddie Mac, *Industry Letter* (Feb. 22, 2000).
[36] Metro 2 Manual at 6-12.
[37] Jordan v. Equifax Information Services, LLC, 410 F.Supp.2d 1349 (N.D. Ga. 2006).

Another example in the student loan context are status code 88 cases, which have been referred to the Department of Education for payment of the insured balance on the loan. If the claim is denied, the lender or servicer must delete the account and furnish afresh information about the debt, using the original date opened, status, and other attributes. If the lender or servicer does not report this correctly, an error may result in the same student loan debt being reported twice.

In the mortgage context, duplicate tradelines often appear when the servicing for a loan is transferred. According to the FRB study from 2004, closed mortgage accounts comprised a significant portion of the "stale accounts" in credit reports.[38]

**Incorrect Status Codes**

The Metro 2 format allows the furnisher to provide the current status of the reported account based on a series of standardized codes. There are many codes that can be reported generally to reflect the account status. Many furnishers' data entry employees are not well trained in the variety of entries that can be made and therefore use an inapplicable code that incorrectly describes the consumer's precise circumstances. For instance, a vehicle may have been "account paid in full, was a repossession," "account paid in full, was a voluntary surrender," or "voluntary surrender," to name just a few. There is a significant difference between these statuses, not the least of which is that some indicate the lack of a deficiency after the lender takes possession of the vehicle.

A2. *Please describe, in detail, the patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies. . . .*

**Reckless Granting Of Credit**

One of the biggest problems with the accuracy of credit reports is very simple - the way in which furnishers have aided and abetted identity theft with their recklessly low security controls in their granting of credit. While identity theft may not numerically comprise the absolute greatest number of inaccurate items, they certainly constitute the most serious item. Identity theft imposes extremely high costs on the victim (both financially and emotionally) as well as the credit system. With an estimated ten million consumers discovering they were the victim of some form of identify theft in a twelve month period – the fastest growing crime in this country[39] - the failure of furnishers to exercise more care in opening new accounts is reprehensible. We could not put it any better than a recent federal District Court judge, who stated:

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[38] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, at 297-322, available at www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf.

[39] Federal Trade Commission, *Identity Theft Survey Report* (Sept. 2003), *available at* http://www.ftc.gov/os/2003/09/synovatereport.pdf.

In an age of rampant identity theft, it is irresponsible to allow consumers to open credit cards over the telephone, without ever requiring written verification of that consumer's identity. Citibank did not even bother to save the specific intake information that it collected over the telephone when this account was opened. These sloppy business practices facilitate identity theft. Citibank's lax record keeping permits a thief to easily accumulate thousands of dollars of debt in the name of an innocent consumer once the thief has acquired the consumer's social security number. At no time is the consumer given the opportunity to confirm that he or she ever agreed to be liable for the debt. Although the FDCPA does not punish Defendants for continuing to attempt to collect this debt when their proof of verification was weak, the Court admonishes Defendants and their clients that both good business practices and good citizenship require them to do their part to prevent identity theft.[40]

**Debt Buying**

The purchase and transfer of old consumer debts creates another huge source of inaccurate information. The re-aging of old debts, as discussed above, is but one of these problems. Other problems include pursuing collection against consumers who are not liable on the account and not providing the name of the original creditor and type of creditor involved. When debt buyers collect a debt that is several decades old,[41] it's not just re-aging that is an issue – the first issue is whether the debt is still even valid, since some states prohibit collection after the passage of the statute of limitations. Furthermore, there may be an issue of whether the consumer really still owes the debt - the FTC alleged that 80% of the consumers from whom one debt buyer collected from never even owed the debt[42] - or whether they paid it or otherwise resolved it.[43] With records long gone due to the passage of time, it's the consumer's word against the presence of her name in an electronic list purchased by the debt buyer.

Indeed, the fundamental problem is that debt buyers and collectors often are given nothing more than a list of debts.[44] There is no account application, original agreement, history of periodic statements, or indication of whether any of the debt was disputed with the creditor. The debt buyer is at fault for collecting debts on this flimsy record, and the original creditor is at fault for not providing more documentation. Both parties should be required to revise their procedures, as discussed in the Response to A.4 below.

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[40] Erickson v. Johnson, 2006 WL 453201 (D. Minn. Feb. 22, 2006).

[41] For an example of a debt buyer attempting to collect on a nearly 30 year old debt, *see* Rosenberg v. Cavalry Investments, LLC, 2005 WL 2490353 (D. Conn. Sept. 30, 2005).

[42] *See* FTC Press Release, *FTC Asks Court to Halt Illegal CAMCO Operation; Company Uses Threats, Lies, and Intimidation to Collect "Debts" Consumers Do Not Owe* (Dec. 8, 2004), *available at* www.ftc.gov/opa/2004/12/CAMCO.htm.

[43] *See, e.g.*, Asset Acceptance Corp. v. Proctor, 804 N.E.2d 975 (Ohio Ct. App. 2004) (consumer claimed that he made payments toward amount claimed to be owed).

[44] *See, e.g.*, Atlantic Credit and Finance, Inc. v. Giuliana, 829 A.2d 340 (Pa. Super. 2003) (striking collection complaint of debt buyer for failure to produce a cardholder agreement and statement of account, as well as evidence of the assignment from creditor to debt buyer); First Selection Corporation v. Grimes, 2003 WL 151940 (Tex Ct. App. Jan. 23, 2003)

"Zombie" debt collection is another practice that impairs the accuracy of the credit reporting system. This is the debt buyer's practice of offering debtors a new credit card account, then slapping the old debts onto the account. Not only does this re-age the debt, but the debt buyers also usually violate the FDCPA in so doing.[45] Zombie debt collection also impugns the integrity of the credit reporting system by disguising old debts as new tradelines.

Debt buyers are inherently unreliable, as are many collectors. As discussed in the Response to A.4 below, they should be held to a higher standard than other furnishers.

**Bankruptcy Issues**

Any report mentioning a bankruptcy can have a detrimental impact on the consumer. Thus it is important that the report accurately indicate what kind of bankruptcy is involved and the proper status of any bankruptcy proceeding. The Metro 2 format requires that a furnisher specify in some detail the nature of any reference to bankruptcy.

Metro 2 clearly distinguishes between the primary and secondary consumers. Both the base segment and the associated consumer segments have a field for consumer information indicators. In the base segment, the consumer information indicator provides information about the primary consumer only; the furnisher should not report any bankruptcy information concerning an associated debtor here. The associated consumer segment of the Metro 2 format has its own field for the bankruptcy codes appropriate to the secondary consumer(s). The record should therefore be clear which of two joint obligors has filed bankruptcy, and it should be entirely possible to separately track and report independently the accurate status of each consumer.[46]

Despite these specific instructions, consumer reports on one consumer often include information about a bankruptcy filed by the other obligor This inaccuracy was not resolved until a major class action lawsuit forced the CRAs to change their procedures.[47] However, the furnishers share much of the blame for this problem, and should have been held accountable for their systemic failure to maintain accuracy.

Another frequent problem with bankruptcy reporting is the failure to accurately report debts discharged in bankruptcy. Metro 2 instructions require that debts discharged in bankruptcy be reported with a zero balance. Yet often furnishers will continue to inaccurately report a debt as seriously past due with a significant balance, information which is much more negative than

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[45] Carbajal v. Capitol One, F.S.B., 2003 WL 22595265 (N.D. Ill. Nov. 10, 2003).

[46] According the Metro 2 Manual, the status of such a bankruptcy account should be reflected as follows:

> For joint accounts where only one borrower files bankruptcy, report one Base Segment for the account with the Consumer Information Indicator (CII) set to the appropriate bankruptcy code for the borrower who filed bankruptcy. The CII for the other consumer should be blank. The Account Status (field 17A) should reflect the status of the ongoing account for the consumer who did not file bankruptcy.

Metro 2 Manual at 6-5.

[47] Clark v. Experian Information Solutions, 2004 WL 256433 (D.S.C. Jan. 14, 2004).

correctly reporting that the debt has been discharged in bankruptcy.[48] This error deprives the debtor of the legally provided "fresh start" of a bankruptcy discharge and is time consuming and expensive to correct. Furthermore, this problem happens with alarming frequency, and sometimes is used by creditors and debt collectors as an attempt to get the debtor to pay a debt for which he is not legally obligated.

A3. *Please describe, in detail, any business, economic, or other reasons for the patterns, practices, and specific forms of activity described in item A2.*

One reason for the inaccuracies in the credit reporting system is the CRAs' and furnishers' disregard of their obligations when consumers dispute items, a topic discussed below in our Response to A.8. At present, furnishers treat disputes as nuisances and devote correspondingly little effort to them. The underlying problem is that there appears to be little economic incentive to conduct true reinvestigations. A real investigation would cost the furnishers real money.

In fact, furnishers actually have a positive economic incentive for not conducting an investigation and keeping negative information on a consumer's credit record – even if it is inaccurate. Maintaining negative information on a report limits the consumer's options to obtain other, less expensive debt, and is often the impetus to force a consumer to pay the furnisher even on an unjust claim. It has even been alleged that furnishers deliberately reward fraud investigators for finding against a consumer by tying their salaries to their ability to contain losses.[49]

Even more egregious are furnishers who have used credit reporting to collect debts from consumers who they KNEW did not owe the debt, or have used negative information to pressure family members or authorized users not liable on debt. For example, a court found that First USA Bank's reinvestigation of a consumer's claim that his wife fraudulently opened accounts in his name ignored evidence that signatures on credit card applications did not match the consumer's signature on his driver's license.[50] In another case, a furnisher continued to report a fraud account for a 77 year old widow, despite the fact that the furnisher's executives KNEW the widow was the victim of identify theft by her granddaughter - and at one point, the furnisher recommend that the widow's credit rating for revolving accounts be demoted to the worst possible score despite knowing about the identity theft.[51] Numerous other cases of furnishers collecting debts from family members abound.[52] Debt buyers are even more notorious for pursuing non-liable parties, with the FTC alleging that "as much as 80 percent of the money [one

[48] *See, e.g.*, Helmes v. Wachovia Bank, N.A. (*In re* Helmes), 336 B.R. 105 (Bkrtcy. E.D. Va. 2005). The comments of Evan Hendricks contain additional information regarding this issue and we refer the Agencies to those comments.
[49] Carrier v. Citibank (South Dakota), N.A., 383 F. Supp.2d 334 (D. Conn. 2005).
[50] Bruce v. First U.S.A. Bank, N.A., 103 F. Supp. 2d 1135 (E.D. Mo. 2000) (No one from First USA's investigation unit spoke with the consumer or his former wife about the fraudulent accounts).
[51] Bach v. First Union Nat. Bank, 149 Fed.Appx. 354 (6th Cir. August 22, 2005) (resulting $2.6 million jury punitive damage award vacated and remanded).
[52] *See e.g.* Johnson v. MBNA Am. Bank, NA, 357 F.3d 426 (4th Cir. 2004).

debt buyer] collects comes from consumers who never owed the original debt in the first place."[53]

The risk of an occasional lawsuit appears not to have overcome these other economic incentives. The result is persistent inaccuracies in credit reports, which harms both consumers and creditors. Until the failure to conduct a real investigation becomes more expensive than not conducting a real investigation, the current system will remain broken. Furthermore, any protections for identity theft victims cannot be effective in the absence of a real investigation.

A4. *Please describe, in detail, the policies and procedures that a furnisher should implement and maintain to identify, prevent, or mitigate those patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to a consumer reporting agency.*

**Original Creditors**

Original creditors must be required to retain the operative records for any account for which they are reporting a tradeline. These documents would include the original account applications, original contract or agreements, any billing statements, any contract modifications or forbearance agreements, any records of disputes, and for real estate secured loans, the settlement package (HUD-1, RESPA Good Faith Estimate, appraisal, etc)

Several cases has shown that some creditors fail to keep these key records for an account, most notably in the Johnson v. MBNA case, where MBNA admitted that it fails to retain records such as the original account application for more than 5 years.[54] This failure to keep records resulted in MBNA being unable to demonstrate whether the consumer was a joint account holder or merely an authorized user, despite trying to hold the consumer liable as the former.[55]

In this day and age of computerized storage of information, furnishers cannot be allowed to use the excuse that it is too costly or voluminous to retain such records (which can be electronically stored as PDF or image documents to maintain the consumer's signature). Indeed, credit card slips are now electronically retained by merchants[56] - if the merchants can retain even individual credit card receipts in their systems, the creditors should be able to maintain the more limited documents of application, agreement, and billing statements.

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[53] *See* FTC Press Release, *FTC Asks Court to Halt Illegal CAMCO Operation; Company Uses Threats, Lies, and Intimidation to Collect "Debts" Consumers Do Not Owe* (Dec. 8, 2004), *available at* www.ftc.gov/opa/2004/12/CAMCO.htm ("Many consumers pay the money to get CAMCO to stop threatening and harassing them, their families, their friends, and their co-workers.").

[54] Johnson v. MBNA Am. Bank, NA, 357 F.3d 426 (4th Cir. 2004).

[55] *See also* Deaville v. Capital One Bank, 2006 WL 845750 (Capital One admits that they don't keep original copy of credit card disclosures sent to consumers; credit card account used for zombie debt collection); Citibank (S.D.) Nat'l Assn. v. Whiteley, 149 S.W.3d 599 (Mo. Ct. App. 2004) (collection case; Citibank could not offer up original agreement or any other documentation on account).

[56] *See, e.g.*, Symbol Technologies, *Federated Department Stores Saves Millions of Dollars in Credit Card Dispute Resolution Costs with Electronic Signature Capture*, SymbolSolutions, January 2003.

Thus, original creditors must be required to retain original records to maintain the accuracy and integrity of the credit reporting system. If they do retain original records, an original creditor can rely on their records, so long as they actually review them when there is a dispute. However, if a consumer disputes an account or a charge based upon information that cannot be determined by records alone, the original creditor must be required go beyond its records. For example, in an identity theft case involving a forgery, the creditor must be held to the same standard as CRAs, which are required to compare an exemplar of handwriting submitted by the consumer with the signature on the account application.[57] In a case involving a telephone application, the creditor should be required to review phone records showing that the consumer never placed the phone call opening the account.

**Debt Buyers and Collectors**

Because of their inherent unreliability due in part to the age of the debts and incomplete records, debt buyers and collectors should be held to an even higher standard than an original creditor, who at least have some stake in the accuracy and integrity of the information they furnish as well as in maintaining good will with actual customers. Original creditors also have a stake in the integrity of the credit reporting system itself, to ensure that potential customers who are good credit risks are not wrongfully excluded. Debt buyers and collectors do not have any interests in preserving good relations or ensuring that the credit reporting system works properly (as long as it works for their benefit). Debt buyers and collectors have only one goal and one interest– to elicit payment out of the consumer (whether or not it is the right consumer).

The concept of holding certain furnishers as less reliable and therefore subject to a higher standard would not be a novel one under FCRA jurisprudence. The converse is certainly true - when a CRA has no reason to believe a furnisher is inaccurate, it is under no obligation to take additional steps initially to verify the accuracy of its information prior to being notified by the consumer of a putative inaccuracy.[58] So when a CRA does have reason to believe that a source is inherently unreliable, that furnisher must be held to a higher standard. The Regulatory Agencies should also hold these furnishers to a higher standard.

Thus, a debt buyer or collector must be required to obtain the original records from the creditor. A reasonable procedure is to require debt buyers and collectors to obtain and review certain records before furnishing information to a CRA. For example, in a credit card case, the debt buyer must be required to obtain and review the consumer's account application, original agreement, history of periodic statements, and any record showing whether any of the debt was disputed with the creditor. At a minimum, if the consumer disputes the debt and the debt buyer does not have adequate original documentation, the tradeline must be deleted from the consumer's file.

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[57] Cushman v. Trans Union Corp., 115 F.3d 220 (3d Cir. 1997).

[58] *See, e.g.,* Henson v.. CSC Credit Services, 29 F.3d 280, 285 (7th Cir.1994); *cf.* Cushman v. Trans Union Corp., 115 F.3d 220, 224-26 (3rd Cir.1997) (holding that where a consumer reporting agency relies on a reliable source, it does not have a duty to go beyond its original source unless a consumer alerts a consumer reporting agency to an alleged error)

In fact, the FTC specifically required a debt buyer to review the files of an original creditor in its enforcement action against Performance Capital Management.[59] This standard should be applied to all debt buyers, assignees, and collection agencies.

A5. *Please describe, in detail, the methods (including technological means) used to furnish consumer information to consumer reporting agencies. Please describe, in detail, how the use of these methods can either enhance or compromise the accuracy and integrity of consumer information that is furnished to consumer reporting agencies.*

The CRAs encourage reporting through the use of an electronic medium through Metro 2, the standard automated data reporting format created by CDIA. The CRAs also use a number of other standard reporting formats, such as the Universal Data Form (UDF) to provided updated information.

One consequence of this reliance upon electronic communication is that even when a consumer successfully disputes inaccurate information, the incorrect information will re-appear or be "reinserted" if the correction is not reflected with precision in the same database used to report current information on a weekly or monthly basis to the CRAs. In other words, the reliance on data furnished using Metro 2 is so complete that the latest Metro 2 "information dump" will often supersede a correction made earlier by a creditor if the creditor failed to also correct the data put into its Metro reports.[60] The problem of reinsertion should be addressed by the guidelines, and the Regulatory Agencies should require furnishers to ensure that their systems do not continue to report erroneous information after it has been deleted or corrected.

Electronic reporting and Metro 2 are certainly not a flawless system. However, the failure to report electronically or use Metro 2 creates even more inaccuracies. For example, manual reporting and its conversion to electronic format are prone to transcription errors. While the CRAs claim that up to 80% of their subscribers or furnishers have converted to the Metro 2 reporting system, we question whether the 80% figure is based on the data being reported and not the percentage of furnishers who submit the data. Furthermore, not all furnishers use Metro 2 properly. Some furnishers fail to report essential information, such as whether the tradeline is disputed.

Furnishers who assign different values to the information in the same field also compromise the accuracy and integrity of the credit reporting system. For example, in Cassara v. DAC Services, a truck driver history database used an overly broad definition of what constituted an "accident," leading employers to use different standards to report accidents. The court held rightfully that these discrepancies raised a genuine issue as to the accuracy of such reports, stating:

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[59] U.S. v. Performance Capital Management (Bankr. C.D. Cal 2000) (consent decree), *available at* www.ftc.gov/opa/2000/08/performconsent.htm.

[60] *See e.g.*, Evantash v. G.E. Capital Mortgage Serv., 2003 WL 22844198 (E.D. Pa. Nov. 25, 2003). The comments of Evan Hendricks contain additional information regarding reinsertion and we refer the Agencies to those comments.

> if (furnishers) in that industry are to communicate meaningfully among themselves within the framework of the FCRA, it proves essential that they speak the same language, and that important data be reported in categories about which there is genuine common understanding and agreement. Likewise, if [the CRA] is to "insure maximum possible accuracy" in the transmittal of that data through its reports, it may be required to make sure that the criteria defining categories are made explicit and are communicated to all who participate.[61]

While the initial reporting of information in electronic format should be encouraged, the opposite is true for handling disputes. We have serious concerns about the ACDV process and its reduction of disputes into electronic format, discussed below in the Response to A.8.

A6. *Please describe, in detail, whether and to what extent furnishers maintain and enforce policies and procedures to ensure the accuracy and integrity of information furnished to consumer reporting agencies, including a description of any policies and procedures that are maintained and enforced, such as policies and procedures relating to data controls, points of failure, account termination, the re-reporting of deleted consumer information, the reporting of the deferral or suspension of payment obligations in unusual circumstances, such as natural disasters, or the frequency, timing, categories, and content of information furnished to consumer reporting agencies. Please assess the effectiveness of these policies and procedures and provide suggestions on how their effectiveness might be improved or enhanced. . . .*

We are not privy to the furnishers' policies and procedures to ensure the accuracy and integrity of information furnished to CRAs. What we do know is that these policies and procedures have not been adequate to meet this goal. The policies and practices that we do know about, such as the failure to retain records in Johnson v. MBNA and the automated dispute system, are actually counterproductive to the goal of accuracy and integrity of information.

*A7. Please describe, in detail, any methods (including any technological means) that a furnisher should use to ensure the accuracy and integrity of consumer information furnished to a consumer reporting agency.*

Furnishers who use the Metro 2 format must properly follow the instructions for that system, which appear to be written to comply with the FCRA and ensure accuracy. They must also be required to adequately train, supervise, and monitor their employees to properly follow the instructions for Metro 2. Other suggestions are in responses to questions A.4 and A.5.

A8. *Please describe, in detail, the policies, procedures, and processes used by furnishers to conduct reinvestigations and to correct inaccurate consumer information that has been furnished to consumer reporting agencies. Please include a description of the policies and procedures that furnishers use to comply with the requirement that they "review all relevant information provided by the consumer reporting agency" as stated in section 623(b)(1)(B) of the FCRA.*

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[61] Cassara v. DAC Services, Inc., 276 F.3d 1210 (10th Cir. 2002).

The reinvestigation system in its current form is fundamentally flawed, and we have stated so repeatedly in testimony to Congress and the Federal Reserve Board.[62] Two of the main problems are that (1) CRAs do not provide furnishers with the documentation of errors that consumers send to the CRAs; and (2) furnishers' reinvestigations of disputed information typically involve merely verifying that the information matches their own computer records, without undertaking a meaningful examination of the underlying facts. The continued result of this lackadaisical reinvestigation system is that consumers find it extremely difficult, frustrating, and expensive to dispute errors, which all too often remain uncorrected long beyond the timeframe contemplated by the FCRA.

**Automation Creates Flawed Reinvestigations**

All too commonly, CRAs, furnishers, and others maintain inadequate procedures to ensure accuracy and fail to take complaints from consumers either seriously or seriously enough. Testimony in cases suggests that CRAs receive tens of thousands of consumer disputes each week (one agency reportedly receives between 35,000 and 50,000 per week). Some CRAs have quotas for the number of consumer disputes agency employees must process. CRA employees have testified that employees are required to process one dispute every four or six minutes in order to meet quotas.[63]

In order to crunch down the time for a consumer's dispute into a mere 4 to 6 minutes, CRAs and furnishers have developed a highly automated, computer-driven system that precludes any meaningful reinvestigation. A consumer's dispute is communicated using a Consumer Dispute Verification form (CDV). An automated version of the form, communicated entirely electronically, is known as Automated Consumer Dispute Verification (ACDV). According to one CRA, 52% of its data furnishers participate in ACDV system.[64] Furthermore, all three CRAs collaborated through CDIA to create an automated on-line reinvestigation processing system "E-OSCAR."

This automated system, like the Metro 2 format, is heavily dependent upon standardized dispute codes used to communicate the nature of the dispute. Difficulties with this level of automation have been noted by consumer counsel. Most critically, it appears that use of this automated system has resulted in the problem that furnishers merely verify the existence of disputed information, not reinvestigate disputes.

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[62] *See* National Consumer Law Center, et al, *Comments to the Federal Reserve Board's Request for Information for the Study on Investigations of Disputed Consumer Information Reported to Consumer Reporting Agencies, Docket No. OP-1209*, September 17, 2004, *available at* www.consumerlaw.org. *See also* Testimony of Anthony Rodriguez before the Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit (2003). These documents are attached as Attachments 1 and 2 to these comments. The comments of Evan Hendricks contain additional information regarding this issue and we refer the Agencies to those comments.

[63] *See* Cushman v. Trans Union Corp., 115 F.3d 220, 224-25 (3d Cir. 1997). *See also* Deposition of Regina Sorenson, Fleischer v. Trans Union, Civ. Action No. 02-71301 (E.D. Mich. Jan 9, 2002).

[64] Statement of Harry Gambill, Chief Executive Officer, Trans Union, L.L.C., before the Subcommittee on Financial Institutions and Consumer Credit, June 4, 2003.

The industry has asserted that approximately 80% of consumer disputes are written.[65] These written disputes, often containing a detailed letter and other documentation, are translated into a two digit code that the credit reporting agency employee believes best describes the dispute. Thus, a consumer's careful detailing of a specific dispute, fashioned to make detection and correction easy, may be relegated to a generalized code.[66]

The code is sent to the furnisher for verification. They are often communicated alone, without supporting documentation provided by the consumer. Typically, underlying and essential documentation of inaccuracies such as account applications, billing statements, letters, and the like, are left out of the reinvestigation process while both the CRA and furnishers rely on the automated dispute process and its coding of information. In fact, the policies and practices of the CRAs are to not forward documents and other information to furnishers that would allow the furnisher to evaluate the truthfulness and completeness of the disputed information.[67]

Thus, the automated dispute system actively violates the FCRA's requirement at § 1681i(2) that all relevant information about the dispute be communicated. And if all relevant communication is not forwarded, how can the furnisher comply with the requirement at § 1681s-2(b)(1)(B) to "review all relevant information" provided by the CRA? The requirement to review all relevant information has become a nullity because such information is never communicated.

Furthermore, this system permits a furnisher to simply check a box indicating that the disputed information has been verified, an exercise which aids and abets the second problem that furnishers fail to properly investigate disputes. In addition, the dispute codes are not uniformly applied among the major CRAs, so the same information disputed in the same manner by a consumer may be categorized differently by different CRAs.

Once the disputed information is purportedly reinvestigated, the CRAs then send generic and uninformative letters stating that an investigation has been made, without including any details as to whom they have contacted and what information was obtained or relied upon for a final determination.[68]

In order to correct this massive flaw in the credit reporting system, CRAs must be required to convey to furnishers the actual documents that support the consumer's dispute, as explicitly required by the FCRA. Failure to do so should be per se unreasonable. The Regulatory Agencies must also set forth guidelines that a furnisher cannot simply blindly rely on the ACDV form, but must ensure that it has the complete dispute documentation from the consumer.

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[65] *See* Deposition of Eileen Little, Evantash v. G.E. Capital Mortgage, Civ. Action No. 02-CV-1188 (E.D. Pa. Jan. 25, 2003).

[66] For a criticism of this system, *see* the Seventh Circuit's decision in Ruffin-Thompkins v. Experian Information Solutions, 422 F.3d 603 (7th Cir. 2005) (noting "the opaque notice of dispute sent by Experian to U.S. Bank").

[67] In just one reported example, an employee of Trans Union actually testified that it is Trans Union's policy to send consumer dispute verification forms without ever including the underlying documents. Crane v. Trans Union, LLC, 282 F. Supp. 2d 311, 316 (E.D. Pa. 2003).

[68] The Seventh Circuit has called an example of these letters a "meaningless communication". Ruffin-Thompkins v. Experian Information Solutions, 422 F.3d 603 (7th Cir. 2005).

**Furnishers' Inadequate Investigation**

Consumer advocates repeatedly confirm that regardless of where the dispute is made (directly with the furnisher or through a CRA), furnishers are simply *not* conducting meaningful reinvestigations; they do *not* train their employees on effective reinvestigation procedures,[69] and they repeatedly default simply to verifying the existence of an account and the disputed information itself. Rarely do furnishers actually research the underlying dispute, rarely are documents reviewed, and too often there is no analysis of the furnishers' own data for inconsistencies and errors.

Advocates also know from recurring cases that the standard response of furnishers is to ignore documentation even once the consumer is successful in getting it into their hands. In Johnson v. MBNA, the furnisher's employees testified that it is their practice to merely confirm the name and address of consumers in their computers and note from the applicable codes that the account actually belongs to the consumer. These employees testified that they *never* consult underlying documents such as account applications to determine accuracy of disputed information.[70]

In another case, a consumer disputed information in her Equifax credit report, which the furnisher simply confirmed, even though the consumer had already won a court decision that she did not owe the debt. When the consumer again disputed the entry with Equifax, the furnisher again confirmed the debt, plus it increased the amount owed from $488.00 to $829.00. Yet, the furnisher asserted that it could rely on a state department of licensing report and that it had no further duty to investigate the accuracy of the information.[71]

All of these examples show that furnisher reinvestigations have consisted primarily of checking information in their records. Checking information against computer records is not an investigation of whether information is accurate, it is simply verification of files. That is NOT the standard in the FCRA.

Some furnishers rely on third parties to both gather information from public sources and conduct the reinvestigations of the gathered information. Even if their selection of a third party vendor is reasonable, the furnisher should remain liable, as the duty to conduct a reasonable reinvestigation is a non-delegable task.

Thus, in order for the credit reporting system to work correctly, the Regulatory Agencies must significantly increase the duties upon furnishers in a dispute in two respects:

- Furnishers must be required to investigate the dispute rather than merely verifying that the disputed information appears in their own records. At a minimum the furnisher's reinvestigation must involve reviewing the actual documents provided by the consumer.

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[69] *See* Deposition of Gino Archer, witness on behalf of Cavalry Investments, LLC, Rosenberg v. Calvary Investments, LLC, U.S. Dist. Ct. D. Conn., Case No. 03-cv1087, at 8.
[70] Johnson v. MBNA, 357 F. 3d 426 (4th Cir. 2004)
[71] Betts v. Equifax Credit Information Services, 245 F. Supp. 2d 1130 (W.D. Wa. 2003).

Depending on the nature of the dispute, the furnisher may also have to review documents in its own possession or in the possession of an earlier holder of the debt, and may have to contact third parties. In short, the reinvestigation must make a substantive determination of the validity of the dispute.

- Furnishers should be required to rebut the consumer's specific disputes by providing to the consumer and the CRA documentation that shows that the information furnished is correct. Furnishers should not be allowed simply to tell the CRA that the consumer is wrong and the original information was correct, and CRAs should not be allowed to accept such a report. Instead, the furnisher should be required to give the consumer and the CRA the underlying information - copies of documents with original signatures to rebut a forgery claim, for example, or copies of the payment record to demonstrate that the claimed balance is correct.

A9. *Please describe, in detail, the policies, processes, and procedures that furnishers SHOULD use to conduct reinvestigations and to correct inaccurate consumer information that has been furnished to consumer reporting agencies.*

Many furnishers are already under an obligation to investigate disputes for their major product categories, which are discussed in detail in the Response to B.1. Some of these regulations set forth detailed requirements for investigation. For example, the Official Staff Interpretations under the Truth in Lending Act suggests that creditors take some of the following steps if the consumer claims unauthorized use:[72]

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

Furnishers should be under the same types of obligations when they conduct reinvestigations they receive from CRAs as when they receive direct disputes from consumers. This should not merely be a similar duty, but an identical duty based on an identical statutory term. Under TILA's Fair Credit Billing Act, Congress requires a credit card issuer to "conduct[] an investigation" of a consumer's dispute. 15 U.S.C. § 1666(a)(3)(B)(ii). Furnishers are required to "conduct an investigation" with respect to disputed information under §§ 1681s-2(a)(8)(E)(i) and (b)(1)(A). The Federal Reserve Board and the courts have repeatedly stated

[72] Federal Reserve Board, Official Staff Interpretations to 12 C.F.R. § 226.12(b) at paragraph 3.

this same phrase creates a duty to conduct a "reasonable" investigation.[73] Furnishers should be under the same reasonable investigation standards under the FCRA

For a reasonable investigation, furnishers should be to undertake the same steps as those required under TILA, FCBA and Regulation Z. They should be required to consult their own record - not just computer records but actual documents in their files - and to review any documents that the consumer has sent to them or to the CRA. Furnishers should also be required to request documentation from third parties, such as merchants or police departments or telephone companies.[74] They should review security measures, such as signatures or PIN entries, when determining whether the consumer actually incurred the debt or not.

Furthermore, furnishers should be required to report their investigation results in no less detail than that required by reporting procedures for the initial furnishing of the information. For most creditors, this obligation means that the information should be at least as specific and detailed as called for in the Metro 2 format. Other outside benchmarks for accuracy may also exist. For example, regulated utilities are subject to general codes of conduct issued by state public utility commissions or the Federal Energy Regulatory Commission. Medical information bureaus will also have standards for conveying accurate and useful information, such as completing Medicare forms, as may other specialized forms of CRAs.

*B1. Please identify the circumstances under which a furnisher should (or alternatively, should not) be required to investigate a dispute concerning the accuracy of information furnished to a consumer reporting agency based upon a direct request from the consumer, and explain why.*

Many furnishers are already under an obligation to investigate disputes for their major product categories. The addition of FCRA dispute obligations should add only marginal costs, since they should have a pre-existing system set up to handle disputes for these products. For example:

**Credit cards** – consumers already have the right to dispute credit card transactions under the Truth in Lending Act, 15 U.S.C., §§ 1601-1666j. In fact, they have *three* separate dispute rights with respect to credit cards: (1) protections against unauthorized use under 15 U.S.C. § 1643; (2) the Fair Credit Billing Act at 15 U.S.C. § 1666; and (3) the right to assert claims and defenses under 15 U.S.C. § 1666i.

**Real estate secured loans** – consumers have dispute rights available under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e)(1)(B), namely the right to require mortgage servicers to investigate disputes by sending a qualified written request.

[73] Regulation Z, 12 C.F.R. § 226.13(f) and note 31; Burnstein v. Saks Fifth Avenue & Co., 208 F.Supp.2d 765, 772-73 (E.D. Mich. 2002).

[74] Olwell v. Medical Information Bureau, 2003 WL 79035 (D. Minn. Jan. 7, 2003) (a reasonable jury could find that failure to contact outside sources during reinvestigation was unreasonable); Bruce v. First U.S.A. Bank, 103 F. Supp. 2d 1135 (E.D. Mo. 2000).

**Home equity lines of credit** – these accounts are covered by the Fair Credit Billing Act, which applies to all open-end credit accounts. 15 U.S.C. § 1666.

**Deposit accounts** – consumers have dispute rights with regard to their ATM, debit card, and other electronic transactions under the Electronic Funds Transfer Act, 15 U.S.C. §§ 1693f and 1693g. Other checking account transactions may be disputable under the Uniform Commercial Code or the Check Clearing for the 21st Century Act.

Thus, there are only a few product lines for which many furnisher/creditors do NOT have a pre-existing dispute obligation, the most notable being automobile-secured credit and high cost fringe credit (payday loans, refund anticipation loans, auto title loans). The addition of these product lines to a furnisher's dispute responsibilities should not impose a great burden. In fact, the product lines for which there are pre-existing dispute rights comprise the great majority of consumer disputes for certain furnishers. According to the Office of Comptroller of Currency, these product lines account for 80% of complaints to national banks.[75]

There is no good reason to leave out the remaining types of products or to leave out non-financial institution furnishers, especially since they involve products or entities that are often abusive. The problems with subprime auto loans, especially "yo-yo" sales, is well documented.[76] There is no conceivable reason to let off fringe creditors, such as payday loan outlets and refund anticipation lenders, from having to handle disputes when mainstream credit card issuers and mortgage companies must deal with them. There is also no reason to let off debt buyers and collection agencies from direct dispute responsibilities since as discussed above, these types of furnishers are inherently unreliable and prone to inaccurate reporting. Of all furnishers, they more than anybody should be subject to a duty to investigate consumer disputes over erroneous reporting.

*B2. Please describe any benefits or costs to consumers from having the right to dispute information directly with the furnisher, rather than through a consumer reporting agency, in some or all circumstances. Please address the circumstances under which direct disputes with furnishers would yield more, fewer, or the same benefits or costs for consumers as disputes that are first received and processed through the consumer reporting agencies and then routed to furnishers for investigation. Please quantify any benefits or costs, if possible.*

If consumers have the right to directly dispute credit reporting errors with furnishers, it would go a long way toward resolving one of the fundamental problems of the reinvestigation process - the failure of the CRAs to properly forward a consumer's actual written dispute plus supporting documentation to the furnisher, as discussed in our Response to A.8. As discussed in

[75] Office of Comptroller of Currency - Customer Assistance Group, *PowerPoint Presentation for "Ombudsman: Will the Canadian System Be a Model For the United States?"*, Consumer Financial Services Committee of the American Bar Association, Spring 2006 Meeting (April 6, 2006)

[76] A yo-yo sale or spot delivery occurs when the dealer sells a vehicle and gives possession to the consumer on the spot, often taking the consumer's old vehicle as a trade-in. The dealer later tells the consumer that the financing deal has fallen through, and the consumer will have to pay more in financing costs or purchase a different car. *See* National Consumer Law Center, Unfair and Deceptive Acts and Practices, § 5.4.5 (6th ed. 2004 and Supp) (description of yo-yo abuses).

that Response, the entire ACDV process is an impediment to compliance with § 1681i(a)(2), which requires that all relevant information about a dispute be provided to the furnisher. Requiring furnishers to investigate complaints directly from consumers could mitigate some of the enormous flaws of the automated reinvestigation process, which one federal court of appeals has criticized as being "opaque".[77]

Direct disputes might also rein in some of the problems where furnishers ignore documentation from consumers about errors or fraud, as described in the Response to A.3. Because the FCRA requires the furnisher to "review all relevant information provided by the consumer," when there is a direct dispute (§ 1681s-2(a)(8)(E)(ii)), furnishers will be required by the statute itself to pay attention to the documentation submitted by consumers.

*B3. Please describe any benefits to furnishers, consumer reporting agencies, or the credit reporting system that may result if furnishers were required to investigate disputes based on direct requests from consumers in some or all circumstances. Please quantify any benefits, if possible.*

The primary reason to require all furnishers to investigate direct disputes is simply that it will result in a more accurate credit reporting system. A more accurate system means that consumers who are truly good risks do not mistakenly suffer bad credit reporting, which harms not only the consumer but other creditors who would have found the consumer to be a profitable and reliable customer. The harms from inaccurate reporting are not insubstantial. For example, the erroneous reporting of "included in bankruptcy" affected four million consumers.[78] That's four million consumers shut off from mainstream affordable credit, who may have been good customers but were never given the chance.

Many of the problems discussed in this comment and witnessed by consumer counsel are not isolated incidents affecting a handful of consumers, but systems problems affecting millions. Even identity theft is not just a problem of "sporadic crime," when 10 million consumers may be potentially affected in one year.

Thus, when considering the cost of direct disputes to a furnisher, the costs to the entire community of creditors must be considered. While it might cost a furnisher $25 to process a dispute, it may cost a fellow creditor thousands in lost profits.[79] And of course, the failure to investigate might wrongfully cost a consumer thousands of dollars as well as countless hours of grief and aggravation because the error remains uncorrected.

Another benefit of direct disputes with the furnisher will be the standardization of different types of consumer complaints, something much prized by the industry. With direct dispute capability, a credit card issuer will not have to deal with two different standards for

[77] Ruffin-Thompkins v. Experian Information Solutions, 422 F.3d 603 (7th Cir. 2005).
[78] Clark v. Experian Information Solutions, 2004 WL 256433 (D.S.C. Jan. 14, 2004).
[79] For example, a bank had to place special conditions on a mortgage for a condo purchase by an identity theft victim, which led the victim to abandon the transaction. Bach v. First Union Nat. Bank, 149 Fed.Appx. 354 (6th Cir. August 22, 2005)

investigations for a credit card dispute, depending on whether the dispute involves a dispute over a particular charge or a credit reporting matter.

Finally, we know that many consumers already dispute directly with furnishers, because they do not know that they must go through the CRAs. After all, the intuitive step for most people with a problem is to deal directly with the party that is responsible for the problem, *i.e.*, the furnisher. Furnishers should be required to act responsibly and reasonably when they are directly contacted.

*B4. Please describe any costs, including start-up costs, to furnishers and any costs to consumer reporting agencies or the credit reporting system, of requiring a furnisher to investigate a dispute based on a direct request by a consumer in some or all circumstances.*

* * * * *

*Does the FCRA's section 623(a)(8)(F)(ii) timing requirement for a Notice of Determination that a consumer dispute is frivolous or irrelevant impose additional costs? If so, please provide quantitative data about such costs.*

As discussed in the Response to B.1, many furnishers already have direct dispute responsibilities. Thus, start up costs should not be extremely burdensome for them. The marginal cost of each investigation is minimal since the necessary information is typically in the possession of the furnishers; however, we have seen estimates for processing a dispute range from $25[80] to $200. These costs would be greatly exceeded by the harms to consumers who cannot obtain relief from adverse credit reporting errors.

As for the timing requirements for the Notice of Determination that a dispute is frivolous or irrelevant at 15 U.S.C. § 1681s-2(a)(8)(F)(ii), we object to any indication that the Regulatory Agencies are contemplating altering the time frame of this requirement. The 5 day window is specifically written into the statute. The statute does not give the Regulatory Agencies the authority to extend this period. Apparently, requiring furnishers to give notice within 5 days was important enough for Congress to specify the number of days in the FCRA itself, instead of reserving the issue for rulemaking. Congress's reasons for so doing are logical - it is important that the consumer receive the notice quickly, especially if it identifies additional information that the consumer can provide to get the dispute investigated (as provided by § 1681s-2(a)(8)(F)(iii)(I)). The faster the notice, the faster the consumer can gather and send additional information to the furnisher and get the dispute processed.

*B5. Please discuss whether it is the current practice of furnishers to investigate disputes about the accuracy of information furnished to a consumer reporting agency based on direct requests by consumers.*

See Response to B.1 above.

B6. *Please describe the impact on the overall accuracy and integrity of consumer reports if furnishers were required, under some or all circumstances, to investigate disputes concerning*

[80] *Credit Cards: What's Wrong With This Bill?*, Consumer Reports at 27 (February 2004).

*the accuracy of information furnished to consumer reporting agencies based on the direct request of a consumer.*

See Responses to B.2 and B.3 above.

B8. *Please describe the potential impact on the credit reporting process if a person that meets the definition of a credit repair organization is able to circumvent section 623(a)(8)(G).*

Since we fully expect that the furnishers will supply information on the costs of credit repair organizations, we will discuss the potential impact on consumers from the reverse situation, *i.e.*, when furnishers reject legitimate disputes from consumers as being from credit repair organizations.

It has been reported that some CRAs are rejecting consumers' dispute letters erroneously believing them to come from credit repair companies. CRAs no doubt have rules or protocols for handling disputes from credit repair companies. However, these rules are inappropriately and illegally excluding legitimate consumer disputes and cause these CRAs to violate the FCRA requirements with respect to reinvestigations.

Some CRAs send consumers letters suggesting that the CRAs do not have to reinvestigate any dispute if the letter comes from any third party, not just credit repair organizations. This would include family members or someone trying to help the consumer from a social services organization. Not only is this exclusion not legally correct, it prevents the most vulnerable of consumers – those with limited literacy skills or limited English speakers, for example – from exercising their rights under the FCRA. About 1 in 20 adults in the U.S. are non-literate in English, or about 11 million people. Overall, 14% of adults have below basic literacy skills and would not be able to compose a dispute letter.[81]

The Regulatory Agencies must protect the rights of these consumers to dispute erroneous credit report information with both the CRAs and furnishers by setting clear guidelines that prohibit the CRAs and furnishers from inappropriately excluding disputes sent by family members or non-CROA agencies, such as social services providers. In fact, a furnisher who is a creditor under the Equal Credit Opportunity Act may well be violating the ECOA by excluding disputes that have been sent by a third party who has translated the letter for a non-English speaking consumer. The Americans with Disabilities Act might similarly require reasonable accommodations that include third party assistance for a blind consumer.

Finally, an argument is being advanced that attorneys cannot help consumers send direct disputes to furnishers because attorneys fall under the definition of a "credit repair organization" under § 1681s-2a(8)(G).[82] This conclusion would be highly dubious and absurd, since an attorney is a duly empowered fiduciary who acts on the consumer's behalf. Furthermore, as you

[81] National Center for Education Statistics, *National Assessment of Adult Literacy: A First Look at the Literacy of America's Adults in the 21st Century*, Dec. 15, 2005. *See also* White and Mansfield, *Literacy and Contract*, 132 Stanford Law & Policy Rev. 233 (2002).

[82] Gregg B. Brelsford, *Why Lawyers Can't Help Challenge Credit Scores: FACTA and the Forfeiture of Consumers' Rights*, 22 GPSolo 51 (American Bar Ass'n April/May 2005).

know from the litigation over Gramm-Leach-Bliley coverage, licensed attorneys are extensively regulated and subject to strict codes of conduct. One would assume that furnishers would benefit from having a knowledgeable and skilled professional to prepare a dispute letter, since it would ensure that the letter is clearly written, adequately documented, and already reviewed to ensure it is not frivolous or irrelevant. As one court opined in a credit reporting dispute "It is inconceivable to the Court that an attorney could not represent a consumer in this regard, . . ."[83]

## III. CONCLUSION

The Regulatory Agencies have a critical task ahead of them in establishing the standards for furnisher accuracy as well as the ability of consumers to dispute credit reporting errors directly with furnishers. Ensuring the accuracy of credit reports is ever more critical given the expanding reliance on credit scores in all financial aspects of a consumer's life. Even inaccurate information that is not facially negative (such as a wrong balance on a revolving account) can significantly depress a credit score. For this reason, we urge the Regulatory Agencies to consider the recommendations above and issue guidelines that have meaningful protections for consumers.

[83] Pinner v. Schmidt, 617 F.Supp. 342 (E.D. La. 1985), *reversed in part on other grounds*, 805 F.2d 1258 (5th Cir. 1986).

**Boston Globe Articles on Credit Reports**

- **Credit agencies lag on errors, fraud**
  By Beth Healy, The Boston Globe
  December 28, 2006

- **Frank to hold hearings on correcting errors in credit reports**
  By Beth Healy, The Boston Globe
  December 31, 2006

**Credit agencies lag on errors, fraud**
By Beth Healy, The Boston Globe
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Dec. 28--BRIDGEWATER -- Eric W. Carroll's credit report says he has a home in Florida, a wife named Katrina, and a pile of unpaid bills.

He first learned this when a debt collector called him in 2002, dialing his apartment in Bridgewater, yet asking for an Eric W. Carroll from Avon Park, Fla. Carroll insisted there was some mistake: He was not married, and he had never lived in Florida.

Nearly five years later, collectors are still hounding the wrong Eric Carroll.

The details of his financial life have been hopelessly interwoven with those of another man by the same name, a man who appears, in credit reports, to have stiffed more than two dozen creditors, from banks to utilities, and has a history of bouncing checks. As a result, the Massachusetts Eric Carroll, living in Newton with his fiancee Nancy and their new baby, can't get a mortgage, can't rent an apartment in his own name, and last July could not buy an engagement ring without his father's help.

"I felt this big," said Carroll, 29, pinching together his thumb and forefinger. "It literally ruins your life."

Carroll was one of scores who contacted the Globe after a Spotlight Team report this summer on debt collection abuses. Many felt victimized by the power and ruthless tactics of debt collectors. But Carroll and others complained of another maddening aspect of the system: The glacial and ineffectual response of the three giant keepers of consumer credit records -- Experian, Equifax, and TransUnion -- to any errors in their files, even those that appear to result from fraud.

Until the errors are corrected, debt collectors will try again and again to squeeze out a payment. Some back off when they find they're after the wrong consumer, but often, another firm buys the account and goes after the likes of Carroll again.

The local, state, and federal law enforcement response to complaints of identity fraud is similarly passive, despite the huge volume of complaints -- 255,000 last year to the Federal Trade Commission alone. Consumers are left to fend for themselves -- a recipe for frustration and worse, as Carroll has found.

"This kid's trying to start a life for himself," said Leo "Buddy" Carroll, Eric's father, who has devoted hundreds of hours to fielding calls from collectors on his son's behalf, and helping him dispute items on his credit report. "It's not fair."

Was this identity theft, or a data debacle? Either way, Eric Carroll's credit was ruined. And the Carrolls couldn't get to the bottom of the case, nor could they get help in solving it.

They quickly suspected that the real deadbeat was the Carroll from Florida, whose address appeared on the Massachusetts Carroll's credit reports. The Florida man shares the middle initial W, though it stands for Wayne, not Winslow. He is almost the same age, at 31, and shows up on numerous accounts with the Newton man's Social Security number.

But all that was not enough to untangle the mess -- or even spark an investigation by the credit bureaus. The information was a conversation stopper with debt collectors, who hung up upon hearing they had the "wrong" Eric Carroll. Two creditors, Dell Computer and Sprint, looked into the matter after Carroll complained, and wrote him letters saying they'd found evidence of fraud and that he was not responsible for the bills. But neither company, as a practice, passes such findings on to law enforcement.

The credit bureaus, in turn, generally expect consumers to dispute incorrect items on their credit reports one by one, over the Internet, and to patiently wait 30 days for each item to be checked out. When they find evidence of fraud, the credit bureaus will flag or temporarily "freeze" a consumer's record, to prevent banks and others from mistakenly extending credit to a person they suspect of fraud. But they are under no legal obligation to pass the information on to authorities.

David Rubinger , a spokesman for Equifax Inc. , said the company does what it can to help people deal with identity theft, but ultimately, "The consumer needs to help themself ."

The credit bureaus do urge consumers to file police reports. But that step usually accomplishes little. In Carroll's case, the Bridgewater Police Department took his report of alleged identity theft and "went the extra mile," according to Sergeant Christopher Delmonte , faxing the report to the Highlands County Sheriff's Office in Florida. But that's as far as they could take it, he said.

Even when the police do pass along a tip, it can die quickly. Leo Carroll recalls speaking with a deputy sheriff in Highlands County, Robert Campbell, to follow up. He said Campbell told him Eric's was a case of mistaken identity. Campbell, in an interview with the Globe, said he recalled going to see an Eric W. Carroll, who was then living in Lake Placid, Fla. He said he determined

that the matter was a data error, not identity fraud, although he could not remember how he came to that conclusion. The county could not locate any record of the investigation.

A little further digging turned up an arrest record for the Florida-based Eric W. Carroll that included charges of defrauding several people on eBay in 2004.

In a telephone interview from Florida, Carroll said he'd had longtime financial problems. He got into trouble on eBay, he said, when he started a business selling music amplifiers but ran short of cash -- taking orders from people that he couldn't fulfill. Records show the charges against him were dropped. "I was able to get everybody their money back," Eric Wayne Carroll said.

He denied having used the Social Security number of Eric Carroll in Massachusetts, and said he had no knowledge of their intertwined identities. He did not respond to subsequent calls and e-mails from the Globe.

In Norwell, Susan and David Litchfield figured they, too, were hot on the trail of an identity thief. While battling the credit bureaus for six years to erase numerous debts on their record that were incurred by a David J. Leighton of Tampa, the Litchfields obtained a copy of one credit card agreement they had allegedly signed. On the form, which the Globe reviewed, is what appears to be Leighton's signature, along with David M. Litchfield's Social Security number neatly penned in.

But that did not interest the credit bureaus. Susan Litchfield wrote to the three companies, telling them of the apparent fraud, to no avail. She said she filed a complaint with the FTC, and she called the FBI and US Secret Service. She has disputed more than a dozen items on the report, including a Tampa child support enforcement order that last December totaled $19,060, according to an Experian credit report.

In 2004, the Litchfields went to the Norwell police. The department forwarded the matter to the Tampa police, who responded that the case "was investigated by our Department and determined to be unfounded." A Tampa detective wrote that the accounts had been mixed up because the two men have nearly the same Social Security number, except for the last digit.

But that didn't explain Litchfield's Social Security number appearing on the credit application with Leighton's name, address, and apparent signature.

Leighton, reached by telephone, said he had heard from the Litchfields years ago and thought the issue was resolved. He said he had no memory of signing for the Mastercard application on which his name appears and said, "The only Social Security number I've used is my own." He did not respond to numerous requests to see a copy of his signature.

The ordeal has been costly to the Litchfields, who first learned of the problem when they were rejected for a student loan for the younger of their two daughters. Sears and Citibank have raised the Litchfields' credit card interest rates, as a penalty for the Leighton items on their credit report. And when they recently went to refinance their home equity loan, the bank where Susan Litchfield has done business her entire life, Scituate Federal Savings Bank, at first declined them

over the credit report. "I just sat here and cried," she said. After she explained they were victims of fraud, the bank did extend the loan -- but not on the best terms the Litchfields were used to.

After an inquiry by the Globe, TransUnion, one of the credit bureaus, reviewed Litchfield's case. On Dec. 15, the Chicago firm's director of consumer solutions and fraud victim assistance, Steve Reger , told Susan Litchfield that the company had found evidence of fraud and promised to wipe the record clean. In an interview, Reger said: "Mr. Leighton was using Mr. Litchfield's Social Security number."

Meanwhile, the Carrolls are still fighting for justice for Eric.

In response to Globe questions, Experian recently asked several creditors, including Wachovia Bank, to review their files on Eric W. Carroll. Wachovia then wrote to the Carrolls, asserting that its records on Eric were correct, attaching a copy of the credit card contract it said belonged to him. It was signed by Katrina S. Carroll -- Lake Placid, Fla.

It would take another round of calls by the Carrolls, and a bank investigation, to get Wachovia to back down. The new information from creditors has led Experian, too, to a new conclusion; the firm now says Carroll's file shows evidence of identity theft.

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Dec. 31--US Representative Barney Frank said he plans to hold hearings early in 2007 about procedures at consumer credit bureaus, following a Globe Spotlight report last week on how difficult those firms often make it for people to correct errors on their credit reports, even those resulting from possible fraud.

Frank, a Democrat from Newton, becomes chairman this week of the House Financial Services Committee.

That panel oversees US financial institutions, including three major credit bureaus -- Experian, Equifax, and TransUnion -- and the thousands of creditors who pay them for consumer data.

"We will have some hearings about how to fix this," Frank said in an interview Friday. He said a law passed by Congress in 2003, to give consumers access to free annual credit reports, so they can monitor any errors, may not have gone far enough.

"If you can't correct the report, that's a problem," Frank said. "You've got to be able to correct it."

The credit bureaus are essentially data warehouses that track consumers' credit histories. They say they know which credit cards are in each consumer's wallet.

They also say they know how much is due on the mortgage and whether the electric bill is paid on time. But if the wrong information gets into their systems, whether through identity theft or errors transmitted by creditors, untangling the mess can be almost impossible, according to dozens of consumers who contacted the Globe.

People like Eric W. Carroll of Newton have spent several years battling the credit bureaus, to no avail.

Carroll, a 29-year-old electrician, cannot get a mortgage, or rent an apartment.

He cannot get credit of any kind, because his credit report is littered with the history of a Florida man by the same name, a man who has thousands of dollars in overdue bills and bounced checks.

Efforts to disentangle the two men has been a full-time frustration for the Newton man's parents, Leo and Judy, who have fielded hundreds of calls from debt collectors seeking the Florida Eric Carroll.

"I am beside myself," Leo Carroll said Friday, having just received yet another report from Experian, still listing Florida addresses for his son.

Heather Greer, a spokeswoman for Experian Ltd. in Costa Mesa, Calif., expressed sympathy for the Carrolls. She said the firm had removed the wrong information, but every time creditors send in new data, it is automatically added to the file. "The problem is the creditors giving us the wrong information," she said.

In the case of Carroll and another victim, David M. Litchfield of Norwell, Social Security numbers appear to be at the root of the problem. On credit reports and on databases, each man's Social Security number is associated with that of another.

Those other people say they did not steal the Social Security numbers. Whether by error or by malice, the result is the same: There are credit headaches for the victims, who must prove their innocence to the credit bureaus, and for the creditors, who insist they owe money.

Ed Mierzwinski, a consumer program director at the US Public Interest Research Group in Washington, said he believes the only answer is to give consumers control of their own credit reports, a measure that creditors and the credit bureaus have opposed. In his view, consumers should be able to lock their credit reports.

"They want access to our information," Mierzwinski said of the credit reporting industry. "Then they've got to protect it better."

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June 18, 2007

The Honorable Barney Frank
Chairman, House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank:

On behalf of over 1.3 million members of the National Association of REALTORS®, I commend you and the Financial Services Committee for holding today's hearing on factors that continue to contribute to inaccurate consumer credit reports and the adequacy of the consumer dispute process under the Fair Credit Reporting Act (FCRA).

As you know, NAR took an active role in helping enact the "Fair and Accurate Credit Transactions Act of 2003," which imposed stronger consumer safeguards on the accuracy of credit information. FCRA remains an important issue to REALTORS® because consumer reports are vital to a consumer's ability to finance a home purchase. We are particularly concerned that the system created to investigate and correct inaccurate information in a timely fashion is not working.

Today, consumer report information is typically furnished electronically. Users have the ability to obtain and review consumer reports to grant or deny credit, insurance and other products in a matter of hours, if not minutes. NAR believes that furnishers and the consumer reporting agencies should streamline the investigation and correction period to mimic the timeframe in which credit decisions are made. Thirty-days is too long for the vast majority of investigations as it may wrongly force some consumers to pay higher interest rates and insurance premiums.

Another concern to REALTORS® is the issue of incomplete or "thin" credit files. We agree with the consumer advocates' position that an accurate consumer report is one that at a minimum, has complete information and appropriately paints a full picture of a consumer's credit record and other history.

Borrowers with little or no credit history, as traditionally measured, usually have lower credit scores and must pay more every month for their mortgage than those with higher scores. Even if such a borrower is able to qualify for a mortgage, he or she may only be offered a subprime product. NAR supports ongoing efforts to take into account consumer payment history not typically considered, such as rent, utility, telephone, and other regular payments. Use of alternative credit histories will be especially beneficial for low- and moderate-income first-time

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homebuyers and borrowers with problematic loans that need to refinance their mortgage to avoid foreclosure.

A second issue associated with "thin" credit files is the failure of furnishers to report good payment histories to the consumer reporting agencies. We have heard reports that many problematic subprime lenders purposefully withhold information on timely mortgage payments from the credit bureaus in order to keep their customer defined as a subprime borrower. The result is obvious – the borrowers with no positive payment histories for their subprime loan keep treading the waters of high-interest rates and expensive credit products. NAR supports requiring all institutional mortgage lenders to the report payment history of borrowers on a monthly basis.

NAR stands ready to work with you and the full Committee on improving the accuracy of credit report information. We hope you consider our concerns relating to disputed information and incomplete credit files.

Sincerely,

Pat Vredevoogd Combs

Pat Vredevoogd Combs
2007 President, National Association of REALTORS®

cc: The Honorable Spencer Bachus

*Testimony before the*
**U.S. House of Representatives**
**Committee on Financial Services**

*Regarding*

# Credit Reports:
# Consumers' Ability to Dispute and Change Inaccurate Information

*Presented by:*

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**June 19, 2007**
**Rayburn House Office Building**
**Room 2128**

**Testimony before the**
**U.S. House of Representatives - Committee on Financial Services**
*Regarding*
**Credit Reports:**
**Consumers' Ability to Dispute and Change Inaccurate Information**
**June 19, 2007**

Chairman Frank, Ranking Member Bachus, and Distinguished Members of the Committee. I am Terry Clemans, Executive Director of the National Credit Reporting Association, Inc., (NCRA) in Bloomingdale, Illinois. I would like to thank you for inviting me to provide testimony today in the hearing regarding the American Consumers ability to dispute and change inaccurate information in their credit reports and to discuss a new policy change that will have a major impact on a this very issue.

NCRA is a non-profit trade association that represents the Consumer Reporting Industry and specifically "Mortgage Credit Reporting Agencies". Today there are approximately 120 businesses in the United States that specialize in Mortgage Credit Reports.[1] The NCRA represents about 90 of these 120 Credit Reporting Agencies (CRA'(s)) and our membership provides the mortgage lending community in excess of 3,000,000 mortgage credit reports per month. These are the specialized "Tri-Merged" credit reports which contain the data of all three national credit Repositories, (Equifax, Trans Union and Experian, the "Repositories") as required by the Department of Housing and Urban Development, (HUD) Fannie Mae and Freddie Mac for mortgage loan underwriting.

NCRA's membership consists of the majority of the ten largest independent credit reporting agencies in the country; however, our average member, and the majority of this industry is comprised of small business processing about 15,000 mortgage transactions per month. All of NCRA'S CRA members are highly specialized agents in the credit reporting industry providing mortgage credit reporting products and services to the originators of mortgage transactions. It is the CRA's responsibility to insure the accuracy of credit files used for the most critical purchase of an average American consumer's financial life...the purchase of a home. This includes providing the consumer with an efficient, expeditious alternative dispute resolution channel through the mortgage CRA that prepared the tri-merge report, as required by the Fair Credit Reporting Act.[2]

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[1] As calculated from the list of credit reporting partners published on the web site of Fannie Mae, after elimination of duplicate entries of the same company.

[2] 15 USC § 1681i (b)(f)

**Consumer Disputes – Current Problems and Future Nightmares**

There are two aspects of the consumer's ability to dispute and change inaccurate information I would like to discuss today. First, the issue of data quality being reported to the Repositories by the creditors, or information furnishers and the process in which it is handled. Second, an issue that will have a great impact on the future of processing consumer disputes, specifically within the mortgage application process that currently serves as an alternative consumer dispute channel.

**The Current Problem**

The current problems consumers encounter in the disputing and correction of inaccurate data in credit reports in an issue that NCRA members deal with on a daily basis. We offer consumers an alternative to the dispute process at the Repository level when they are in a mortgage transaction. One of the most common circumstances we deal with is that of previous consumer disputes that were processed in an incomplete fashion due to "Parroting" of the bad data by the creditors. "Parroting" is when a creditor confirms the disputed data as accurate and then the Repository closes the consumer's dispute with a confirmation of the incorrect data. To handle the massive volume of consumer disputes, many of which are frivolous, the Repositories have developed a system that interfaces with the majority of the lending community to expedite dispute processing. This process calls for the Repository to convert the dispute to a code, summarizing it into a preset list of standardized dispute reasons. This code is then forwarded to the source of the data, the credit furnisher with a request to confirm its accuracy or to correct the disputed data. This is most often done with a system developed by the Associated Credit Bureaus (now called Consumer Data Industry Association) called eOscar. This system makes the handling of consumer disputes very quick and technologically efficient. This efficiency, however, has a cost: the combination of the reduction of the dispute into a preset code, the reply coded answer to the dispute, and the very limited time the consumer and the Repository agent have together due to the quotas required of Repository employees, results in many key details of the dispute are lost in the coding. It seems this system almost encourages the lender to respond with the same bad information (parroting the original reply) that is being disputed by the consumer.

NCRA members have heard countless tales of this process going wrong while they perform their own reinvestigation of the consumer information without the strict confines of the Repository reinvestigation code systems and quotas. In the processing of previously disputed information, including a through review of all supporting documents, the mortgage credit reports can have a much more accurate and complete consumer history. It is impossible to convert every possible scenario of mishandled credit information into a code. For the majority of consumer disputes the automated process works very well. A large percentage of consumer disputes are nothing but an attempt to get out of a legitimate debt. However, the fact that this Committee is holding this hearing is a statement that the system should work better.

To get to the source on the problem on many legitimate disputes one must look deeper into the problem, often working with the creditor to discover that they may have already received payment, perhaps crediting it to another account, to another department, an outside collection service, or countless other possibilities can cause incorrect data to be reported in the system. For mortgage transactions, the consumer and the lender are both involved in working with the CRA to make sure that the consumer credit file gets quickly corrected. CRA's are required by their clients, the mortgage originator, to work in an expedited fashion and look into the dispute's supporting documents to find a resolution with 24-48 hours. By using simple investigation techniques without a strict reliance upon coded dispute reasoning, this is possible for the limited volume relating only to mortgage transactions. This alternative dispute process solves many problems that have been previously hindering the consumer, despite previous disputes.

Any attempts to resolve of the processes of consumer dispute resolution must include a better system in which the credit reporting industry at all levels (Resellers and Repositories) exchange the consumer's dispute data in a fashion as to not encourage the Parroting of inaccurate data for the sake of speed and efficiency. Being accurate is better that being fast, especially when the consumer's mortgage and mortgage payments are on the line.

**The Future Problem**

There is a risk of losing this alternative avenue for consumer disputes in the mortgage process. It is a vital consumer resource that is utilized by the tens of thousands of mortgage originators who choose to purchase mortgage credit reports from these non repository CRA's due to the value of the dispute resolutions service they offer their lending staff and the consumers they are financing. The reinvestigation provided is a value add that is also reinforced in the Fair and Accurate Credit Transactions Act of 2003, (FACTA), regulated by Federal Trade Commission, (FTC) via consent order[3], and recognized by consumer advocates[4]. This valuable consumer dispute option is vital in insuring that the credit information being used for underwriting a mortgage loan is as accurate as possible.

It is important to note that this added consumer benefit of having an alternative source to process consumer disputes for mortgage transactions is currently in jeopardy of being lost from the consumers' resource tools due to an arbitrary policy change on the part of the

[3] Order in the Matter of First American Real Estate Solutions, LLC, Docket no. C-3849, January 27, 1999

[4] In a combined publication to members of the House Financial Services Committee in July 2003 supporting the Frank/Carson amendments to HR2622 (which became FACTA) for the committee markup, the Consumer Federation of America, Consumers Union, and US Public Interest Research Group made the following statements regarding the mortgage credit reporting agencies referred to as "Resellers" in the FCRA and FACTA: "play an important role in mitigating the damage done by inaccurate credit reports", "Congress should be careful to preserve the ability of credit report resellers to reinvestigate errors in credit reports" and, specifically in regards to the Carson amendment that protected reseller rights to reinvestigate errors, "explicitly permits resellers to conduct reinvestigations on behalf of consumers".

three Repositories. The policy change in question is to charge CRA's (and ultimately consumers) multiple times for the sale of the same credit report in a single mortgage transaction. This practice, explained more fully below, charges for each "viewing" of the original credit report by each lender or other entity involved in the consumer's single mortgage transaction as a potential funding source. The Repositories began implementing the policy April 1, 2007, with the first stage currently billing twice for the same credit report on 6-9% of all mortgage volume depending upon the specific requirements of each repository.

Full implementation, involving charging multiple times for projections of up to 60% of all mortgage credit reports, will not be completed until the mortgage industry technology systems at Fannie Mae, Freddie Mac, and other major lenders are reprogrammed to accommodate the new policy compliance sometime in the 4th quarter of 2007. This new policy, creating the terms Reissue and Secondary use, is a unilateral change to the long standing "joint use" provisions of the Fair Credit Reporting Act, (FCRA).

Most ironically, these policies are being implemented in the name of consumer protection and prevention of identity theft. However, they are little more than an exploitation of the consumer to increase the Repositories' profits and drive out their competition in the retail mortgage credit report market. This is a market where the business models of the Repositories have failed to capture the majority of the retail mortgage credit report volume despite many advantages, including having monopoly power in the wholesale mortgage credit market created by the tri-merge report requirement.[5] The ability to charge a consumer multiple times for the same credit report in a single transaction allows the Repositories to leverage their current competitive advantage, into exponential new heights. They will move their current price advantage of 50-100% into price advantages of 200-500% or more. See attachment titled "The Economics of Reissue/Secondary Use".

As to be discussed more fully below, this new policy, which contradicts the FTC's long-standing interpretation of "joint use" in the FCRA, will adversely affect the mortgage lending market and injure consumers by increasing credit report costs that will be passed along to the consumer at closing, limiting access to affordable credit and the topic of this hearing, limiting their ability to dispute credit information during the mortgage process. This will be done through the additional damage to the mortgage credit reporting industry's delicate competitive balance, which will eliminate the majority of the independent mortgage CRA'S whose quality of service has provided the consumer with a viable option for disputing incorrect credit information during the mortgage lending process .

Three other negative consequences of the new Reissue/Secondary Use policies will impact the consumer and the mortgage lending community in addition to the loss of the dispute process. They are:

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[5] Washington Post, December 16, 2006, "Credit Fees on the Rise", by Ken Harney: "Unlike other segments of the economy, there's no price competition for credit in the mortgage arena. When the bureaus say they want more, you pay more".

1. The consumer will pay potentially 100% to greater than 500% higher fees for their mortgage credit report, while experiencing a tremendous reduction in the quality of services associated with those higher fees.

2. Many consumers will pay a higher interest rate on mortgage loans. This fact is evidenced in the two short months since the implementation of the Repositories new Reissue/Secondary Use policy by the 50% drop in the April Reissue/Secondary Use fees paid to the Repositories in May. It is already apparent that mortgage originators are reducing the number of funding sources they shop the loan to in search of the best loan terms. If the brokers reluctance to incur the charges associated with an all out effort to find the best rate results in even a slightly higher interest rate , the Reissue/Secondary use policy will ultimately cost the consumer thousands of dollars in added interest payments.

3. The consumers with less than perfect credit histories, first time homebuyers and minorities will pay the highest increases in the cost of the credit reports and are at the greatest risk of being placed into less than optimal loan products because of this new policy.[6]

**The FTC Has Long Recognized the Joint Use of Consumer Credit Reports in Connection with Residential Mortgage Transactions**

The FTC has long recognized that the use of the same tri-merged mortgage credit report by several end users in connection with a single credit-granting decision, so-called "joint use," is a permissible purpose under the FCRA. The FTC Commentary on the FCRA provides that "[e]ntities that share consumer reports with others that are jointly involved in decisions for which there are permissible purposes to obtain the report may be 'joint users'."[7] Joint use allows a tri-merged mortgage credit report to be viewed by multiple entities legitimately engaged in the origination of a single mortgage loan, enabling competition in mortgage loan financing and promoting the ability of mortgage originators (a mortgage broker, credit union, or any mortgage originator not closing the loan in their own name) to economically shop for the most suitable mortgage loan without incurring unnecessary and duplicative transaction costs.

The mortgage lending industry, consumers and the courts have relied upon this longstanding interpretation of joint use. Indeed, joint use is essential for the proper functioning of the mortgage banking, mortgage brokerage and financial services industries because in the absence of the joint use of mortgage credit reports the ability of

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[6] Washington Post, December 16, 2006, "Credit Fees on the Rise", by Ken Harney, quoting John Taylor, CEO of the National Community Reinvestment Coalition as denouncing the forthcoming fee increases as a "revenue grab" that "will be paid disproportionately by people of color".

[7] Appendix, FTC Commentary on the Fair Credit Reporting Act, 16 CFR Part 600, § 603(f) (8) ("FCRA Commentary").

consumers to shop for and obtain the most beneficial mortgage loan is artificially and unnecessarily constrained.

The importance of the joint use doctrine cannot be understated. To qualify for a mortgage loan, consumers routinely contact a mortgage broker, credit union or lender who does not close the loan in their own name. The mortgage originator then shares the information in a tri-merged mortgage credit report, along with the entire loan package with potential ultimate lenders or a secondary market investor who will buy the loan after origination (the joint user) to determine whether the consumer is eligible for a loan. The FCRA Commentary expressly permits the end user to share the credit report information to effectively serve the consumer, referring to the joint user as an "agent" of the user.[8] The courts have relied upon the FCRA Commentary to find that joint users who receive credit report information are acting as agents of the principal user, and not as independent users.[9]

**Repositories Are Ignoring the Joint Use Doctrine to the Detriment of Consumers And Competition in the Residential Mortgage Industry**

At the close of 2006, the Repositories, contrary to the FCRA, the FCRA Commentary, judicial precedent and staff guidance, announced their intention to prohibit the practice of joint use and require mortgage credit reporting agencies ("CRAs"), mortgage brokers, and others to follow a new policy of mortgage credit report "reissue." The Repositories announced new mandatory fees and burdensome requirements to accompany the new policy even though there has been no change in the FCRA, in the applicable regulations or in case law that would support or justify such a change in policy. In particular, the Repositories: 1) imposed an additional cost ranging from $1.05 to full price for each instance in which a previously generated mortgage credit report is shared with a joint user in connection with qualifying the consumer for a mortgage loan, and 2) required independent mortgage CRAs to independently verify that all joint users have a permissible purpose and are independently credentialed by the CRA.

There are two immediate practical effects of the Repositories' change to the joint use policy. First, the cost of the credit report component of mortgage underwriting will increase significantly, from 100% to 500%.[10] Moreover, independent CRAs (including the members of the NCRA), will have to pay for and obtain third-party credentialing of all joint users before such users may view the credit report already provided to a mortgage originator. This added credentialing is at best cost prohibitive and, more likely, impossible. Each CRA will have to obtain independent site inspections and obtain end user contracts for every potential wholesale lender or investor. For CRAs that operate on a national level, that would be more than 1,000 potential companies. The cost of these independent site inspections, which must be performed by a vendor on a Repository-

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[8] *See* FCRA Commentary, § 604(3) (E)(6).

[9] *Weidman v. Federal Home Loan Mortgage Corporation*, 338 F. Supp. 2d 571, 575 (E.D. Pa.2004)(Freddie Mac is "acting much like an employee who obtains a credit report, reviews it and passes it along with an evaluation to his employer").

[10] See Attachment, *The Economics of Reissue/Secondary Use.*

approved list of six companies, currently cost between $75.00 – $95.00. No consumer protection interest is served by requiring more than 120 companies each to hire an independent site inspector to repetitively inspect the same set of wholesale lenders and investors, many of which are publicly traded companies and/or FDIC insured and most if not all of which are already end users fully credentialed by the Repositories themselves.

What possible consumer benefit could be obtained from requiring more than 120 companies to simultaneously hire 120 independent site inspectors to each perform a due diligence inspection on companies like Bank of America, Wells Fargo, Citicorp, and Countrywide Funding and other wholesale lenders that provide mortgage brokers, credit unions, smaller banks and savings and loans the funds they need to close mortgage loans? Will the disclosure of these companies in the inquiry section make the consumer any less vulnerable to identity theft? Each of these potential secondary users are already obtaining much more highly sensitive consumer financial data in the loan package than the credit report. The location of, account numbers to, and the balances in the consumers checking, savings, retirement and other investment accounts are all routinely part of the loan package submitted to the wholesale lenders and investors to confirm the consumers' assets in the mortgage underwriting process. Each of these wholesale lenders and funding sources are regulated by the Federal Reserve as they are deemed Financial Institutions under the Gram Leach Bliley Act (GLB) Safeguard Rule for handling sensitive consumer data.[11]

Moreover, many of these firms will not be willing to sign a contract with a company with whom they do not directly deal. Their direct relationship is with the mortgage originator and, as a joint user; they act as an authorized agent of the originator. Indeed, the mortgage originator is responsible for determining that the joint user has a permissible purpose for receiving the credit report and is a legitimate lender on whom the mortgage originator can rely for funding the mortgage transaction. This chain of responsibility – the independent credit reporting agency verifying the end user and the end user verifying the joint user – has worked well since the beginning of modern mortgage banking in the 1970s and has allowed consumers to timely obtain multiple credit offers from a variety of mortgage lenders. The FTC and the banking agencies have approved of this chain of responsibility as FCRA-complaint and NCRA's members, in reliance thereon, have developed an exemplary record of complying with both the letter and the spirit of the FCRA. This arrangement is so deeply ingrained in the fabric of the mortgage underwriting process that when NCRA members attempt to obtain the direct agreements apparently required by the Repositories' new Reissue/Secondary Use program, the vast majority of mortgage wholesalers and investors simply do not respond.

**The Repositories' New Reissue/Secondary Use Policy Will Have Three Long-term Adverse Consequences that Will Cause Consumers to Pay More for Mortgage Credit or Be Denied Access to Credit and Impair Their Ability to Protect Themselves from Fraud and Identity Theft**

[11] 15 USC 6081 *et seq.*

In addition to the immediate detrimental effects on the residential mortgage lending market, the Repositories' new Reissue/Secondary Use policy will also have three dramatic deleterious effects in the long run:

1. The remaining mortgage credit reporting agencies, the continued existence of which is already threatened as the result of a decade-long pattern of anticompetitive conduct by the Repositories that has caused most mortgage CRAs to be purchased by larger CRA's, the Repositories themselves, or driven out of business, will face even increased pressure and, as a direct result of the increased costs and burdens imposed by the Repositories' new policies, will be far less able to compete with the Repositories' own mortgage credit reporting subsidiaries or affiliates and the few large mortgage CRA's they favor. Few of the independent mortgage CRAs that have survived to date will be able to support the additional contractual requirements imposed by the Repositories.

2. In addition to an increase in the cost of mortgage credit to consumers generally, minority and low-to-moderate income consumers will pay higher rates for their mortgage loans or be denied access to credit entirely because the increased costs and credentialing requirements that are difficult or impossible for CRAs to fulfill will economically constrain the ability of mortgage originators to fully shop a loan. Thus, the Repositories' new Reissue/Secondary Use policy will restrict access to credit to underserved communities which will, in turn, make consumers in these communities more vulnerable to predatory lending.

3. Consumers will be confused by an explosion of additional listings of financial institutions and other funding entities with which they have no commercial relationship (other than as a potential borrower) on their credit reports. In fact, every potential funding lender, government-sponsored entity, insurer or other service provider that views credit report information in connection with the same mortgage loan transaction will be listed in the credit report. These consumers, who did not have direct contact with these joint users, are likely to assume that these entities are either impermissibly obtaining access to their credit report or committing identity theft. This result contradicts not only the FCRA and the FCRA Commentary, but also FTC staff interpretation.[12] Consumers will not be able to determine if these additional joint users had a permissible purpose because the consumer has no direct contact with them. The additional list of inquiries will greatly limit a consumer's ability to determine from reviewing its credit report if their account has been impermissibly accessed or if they are the victim of identity theft.

**Consumers Will Lose the Important Benefits of Competition In the Mortgage Credit Reporting Industry**

[12] *See* Letter of November 20, 1998 from Helen G. Foster to Ms. Linda J. Throne (staff letter relying upon FCRA Commentary to find that a bank that forwards consumer information to another funding bank does not need to disclose the identify of the joint user to the consumer).

The Repositories' new Reissue/Secondary Use policy, in addition to injuring the consumer by undermining well-developed procedures in use in the residential mortgage underwriting process, will also eliminate important consumer benefits that the independent CRAs provide. The independent credit reporting agencies provide a high level of customer service to consumers. They are able to work with consumers to verify payment histories often missing or inaccurately reported in the credit reports produced by the Repositories. For many consumers, this assistance means the difference between a "thin credit file" (a credit file with few transactions) and a "full credit file" (a robust credit file with many credit transactions that allows a creditor to more effectively predict risk), or a file with unchecked errors or one that has been reviewed and updated with accurate information. Those consumers with thin or error-prone files have few or no mortgage loan choices compared with consumers with more robust, accurate, or full credit files that have greater choices.

Independent CRAs have close personal working relationships with the mortgage originators to whom they supply credit report information. They routinely authenticate mortgage originators as legitimate entities with a permissible purpose for obtaining credit reports. They do not, however, authenticate joint users, both because such practice has never been required by the FCRA and because it is difficult if not impossible to obtain a contract with a joint user with whom the CRA is usually not in privity.

By contrast, the Repositories, with their automated business model, do not regularly provide a high level of customer service. Their credit reports are often inaccurate or incomplete and the level of security and privacy protection they provide to consumers is inconsistent, at best. Concerns about the Repositories' record of accuracy, privacy and security have been well documented over the years in consumer complaints to the FTC and in litigation filed by consumers. The recent FTC ChoicePoint case is only the most recent example. The blatant lack of documentation which created the ChoicePoint data breach could have never happened at an average independent CRA. In contrast, the average NCRA member CRA has long been required by the Repositories to meet compliance and due diligence standard for their customers that far exceeds the end user practices of preferred CRAs like ChoicePoint, and at that time, the repository mortgage divisions themselves.

Ironically, the Repositories' new policies not only hobble the mortgage lending market and injure consumers, but they are inconsistent and extreme when compared with the Repositories own practices relating to the security of credit report information. For example, all the Repositories allow lead generation companies to offer "trigger reports," i.e., leads for mortgage lending and other financing that contain certain confidential consumer information. However, demands placed upon the lead generation firms by the Repositories to regulate or document the legitimacy of their potential customers differ greatly from those required of the mortgage credit reporting industry. There is a major difference between the interpretation of the same rules by the Repositories and their favored business partners, and that of those customers they deem competitors.

The elimination of the long time practice of allowing a mortgage originator to transfer the credit report with the loan package to the mortgage funding source for underwriting (joint use) through their new Reissue/Secondary Use policies create two major benefits for the Repositories:

1. A vast new revenue stream from one of its most profitable business units due to their market power in the mortgage industry created by the current three file merge requirement.
2. Further reduction of competition for the tri-merge mortgage credit reports. The mortgage credit reporting industry has been consolidating for years due to constantly increasing repository fees and other restrictive and anti-competitive business practices imposed by the Repositories. There were more than 1500 mortgage credit reporting companies at the start of the monopoly power era in mortgage credit about 12 years ago. Today there are less than 120. Chairman Frank, Ranking Member Bachus, and Distinguished Members of the Committee, that means the value added dispute process previously discussed are slowly being eliminated and less than 120 companies are left to provide this in depth, non coded research to assist more than 5 million consumers per month that apply for a mortgage loan of some type. If action is not taken and this alternative dispute resolution process is lost, the quality of disputes being reviewed here today will be the only dispute process a consumer will have, even in the mortgage process. Only the independent CRA's are equipped to and desire to provide this value added dispute resolution process.

When evaluating the consumer's ability to dispute and correct inaccurate data in their credit report files we urge this Committee to take a close look at these new policies by the Repositories and urge the FTC to look into them as well. There may be no greater positive impact on the consumer's behalf in regards to their ability to dispute data in their credit reports than by this Committee acting to stop this unilateral policy, by a monopolistic player, to reinterpret Federal law to increase profits, eliminate competition, and reduce the consumers ability to find alternative methods to process disputes on the data within their credit reports.