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AN OVERVIEW OF THE CREDIT REPORTING SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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AN OVERVIEW OF THE CREDIT REPORTING SYSTEM

Wednesday, September 10, 2014

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

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Duffy, Pearce, Posey, Fitzpatrick, Westmoreland, Luetkemeyer, Stutzman, Pittenger, Barr, Cotton, Rothfus; Meeks, Hinojosa, McCarthy of New York, Green, Ellison, Perlmutter, and Sinema.

Ex officio present: Representatives Hensarling and Waters.

Chairwoman CAPITO. The Subcommittee on Financial Institutions and Consumer Credit will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

I now recognize myself for 5 minutes for the purpose of making an opening statement.

Since the passage of the Fair Credit Reporting Act (FCRA) in 1970, our Nation's consumer credit markets have relied on the data compiled in a consumer's credit report. These reports serve as a comprehensive historical view of a consumer's financial decisions and actions. Depending on their credit history, a consumer's credit report can have a very real impact on their ability to access credit. One of the foundations of the Fair Credit Reporting Act is ensuring the accuracy of the data that appears on a consumer credit report. I think all of us have had experiences with our own consumer credit report. Many consumers diligently monitor their credit reports to ensure that inaccurate data is not on their report.

Since 2003, consumers have had the right to access a free credit report from each of the three main credit reporting bureaus. This access to free credit reports is a critical tool for consumers, especially in the wake of major data breaches that have occurred in the United States in the past year. According to the Federal Trade Commission (FTC), nearly 20 percent of Americans have errors on their credit report. Furthermore, 5 percent of Americans have errors that could expose them to higher interest rates or could cause them to lose access to consumer credit through no fault of their own. If the consumer does identify errors on their report, they should have those errors removed as quickly as possible.

Last year, an investigation by 60 Minutes raised significant concerns about the ability of consumers to have their errors removed. In one case, it took 6 years for a consumer to rectify inaccuracies on her credit report. Today, we will learn more about the systems that credit bureaus have in place to resolve discrepancies on a consumer credit report. We must work together to ensure that if consumers have legitimate discrepancies on their credit report, they can have them removed as quickly as possible.

Another area of concern—and I am very interested in this—is the impact that student loan debt has on young consumers just entering the workforce. It is estimated that the average student loan burden for the class of 2014 is approximately $33,000. While paying off this debt on time can certainly help improve a student's credit profile, going into default can have a lasting negative impact on their credit profile. We must find ways to help students find better paying jobs, but we must also provide them with the skills necessary to better understand the economic impact and risks associated with taking on large amounts of student loan debt.

I would like to thank our witnesses for joining us here today and for providing their perspectives on these issues. I will now yield time to the ranking member of the subcommittee, Mr. Meeks, for the purpose of making an opening statement.

Mr. MEEKS. Thank you, Madam Chairwoman, for conducting this important hearing on credit reporting. This hearing is especially important because credit reporting is an issue that affects most American consumers. The strength and resilience of our economy resides in consumer spending which has been sustained by the most effective consumer credit system of any nation.

However, as we note the progress of our credit reporting system in facilitating access to credit and enabling risk-based pricing which overall lowers the cost of credit for most Americans, we must also vigorously pursue reforms to address errors and inappropriate use of credit information which, in the most pervasive cases, results in denial of opportunities in jobs to a large segment of Americans. Therefore, there is no question that our credit reporting system needs to be reformed.

Our nationwide consumer reporting agencies receive close to 38 million disputed items for consumers every year. Millions more experience high frustration with the difficulty of getting errors removed. In 2013, a congressionally mandated FTC report noted that 40 million Americans have errors in their credit reports and that 26 million have lower scores as a result of such errors. And research conducted by the California Labor Federation revealed that only 25 percent of employers researched the credit history of job applicants in 1998. This practice had increased to 60 percent by 2011, and there is no scientific evidence which supports the notion that credit information can predict job performance or risk performance in the workplace.

Exacerbating this troubling trend are the lingering effects of the Great Recession. The foreclosure crisis and the ensuing job crisis resulted in millions of Americans having their credit history impaired, many through no fault of their own. Latino and African-American households were particularly targeted and steered into

high-cost mortgages, leading to the highest foreclosure rates and then unemployment rates.

And the problems don't stop there. Americans who have fallen sick, even those who have fully paid their medical debt, are being plainly being discriminated against because of their medical debt history. I therefore applaud Ranking Member Waters for her leadership on this issue and for coming forward with proposals to address these many shortcomings.

And lastly, I am also troubled by the growing student loan burden, as you mentioned, that young Americans are facing. The Fed, in a 2013 survey of consumer finances, revealed that the amount that families with student debt have incurred has nearly doubled since 2001, so we must pass some legislation that would ensure that private education loan borrowers get the same chance to rehabilitate their credit as Federal student borrowers. Thank you. I yield back.

Chairwoman CAPITO. Thank you, Mr. Meeks. I now recognize Mr. Fitzpatrick for 2 minutes.

Mr. FITZPATRICK. Thank you, Madam Chairwoman, and I appreciate you holding this hearing today. Congressman Ellison and I introduced the Credit Access and Inclusion Act last year to help those who are termed "credit-invisibles." These are individuals who have little or no traditional credit history and are therefore unscorable. Our bill would help nearly 100 million Americans establish a credit score or raise their existing score by removing barriers, including payment history.

While credit-invisibles have all manner of demographic and socioeconomic backgrounds, there is a particular impact on those who are young and those with lower incomes. Laws on the books already allow energy, utility, and telecom services to report payment data to credit bureaus, but those that do report, primarily report negative payment data, so right now, customers' credit scores are being punished for poor behavior but not recognized for their good behavior. The purpose of this hearing is to explore credit reporting and its impact on consumers and those that use credit scores. We are going to be hearing testimony about the importance of credit scores in the economy and how it can affect quality of life.

I look forward to that testimony, and I appreciate the opportunity to discuss the issues and to perhaps learn how Congress can help improve the lives of American families. Again, I appreciate the hearing, and with that, I yield back, Madam Chairwoman.

Chairwoman CAPITO. The gentleman yields back. Mr. Perlmutter for 1 minute.

Mr. PERLMUTTER. Thanks, Madam Chairwoman. I want to welcome my friend John Ikard to the Financial Services Committee today. He is a well-respected businessman and leader in the Denver area and throughout Colorado, and under his leadership, FirstBank, his bank has grown steadily and now has over $13 billion in assets in over 115 locations in Colorado, Arizona, and California.

FirstBank has grown because of its financial stability and its strong commitment to convenience, friendly and intelligent customer service, and loyalty to its employees. John has been with FirstBank for over 28 years and has been a great steward of the

bank. John now serves as the chairman of the American Bankers Association, and he sits on the boards of the Children's Hospital Colorado Foundation, the Denver Foundation, and the Federal Reserve Bank of Kansas City. And I thank him for being here today. I guess my only concern as it applies to reporting, credit reporting, is it is incumbent on anybody to get it right because this is the kind of situation where you are guilty until proven innocent, and given that situation, you have to get the reporting right the first time. With that, I yield back.

Chairwoman CAPITO. Thank you. Mr. Duffy for 2 minutes.

Mr. DUFFY. Thank you, Chairwoman Capito, for holding this important hearing. Credit reports are valuable tools to both consumer and lending institutions that can also be used to determine job placement and rental agreements. As America continues to move away from the community model where everyone knows each other, like when you buy your first car from the dealership that your best friend's dad owns or you get your first loan from your aunt who is a mortgage broker, and if you miss your payment, your mom will wring your neck, to a more standardized means of extending credit, these credit reports become your character assessment. That is why it is essential that they contain factual, accurate information and that they cannot be manipulated.

My bigger concern, however, is whether the proper protections are in place for consumers' data that is being collected. I am happy that we haven't heard of a data breach yet at one of our credit reporting agencies, but we also didn't hear of a data breach at Target until it actually happened, so I look forward to hearing from the witnesses today on how they are protecting consumers in their data collecting practices and credit reporting efforts, and I appreciate all of your time today. With that, Madam Chairwoman, I yield back.

Chairwoman CAPITO. Thank you. Mr. Green for 1 minute.

Mr. GREEN. Thank you, Madam Chairwoman. I thank you and the ranking member for this hearing. I am also grateful to the ranking member of the full Financial Services Committee, Ms. Waters, for the outstanding job that she has done in addressing this issue. It is indeed imperative that we look at this situation with student loans. We have a good many persons who unfortunately have loans at a time when they cannot acquire jobs, and those who do have jobs cannot make necessary payments. I think it is a good thing to look at the student loans. I am also pleased that we are going to look into the question of jobs being predicated upon a credit score. I, too, have difficulty making the connection between the job and the credit score.

And finally, we have language that passed the House to allow HUD to develop an alternative credit scoring system. I want to talk more about that at a later time. Thank you, Madam Chairwoman, and I will yield back.

Chairwoman CAPITO. Thank you. Mr. Pittenger for 2 minutes.

Mr. PITTENGER. Thank you, Madam Chairwoman, for having this hearing and allowing me to make an opening statement. We are here today to examine the credit reporting system and gain a better understanding of how this system impacts lenders, consumers, and the reporting agencies themselves. With recent changes made in the Dodd-Frank Act, it is important that we hear from those

who participate directly within the system and understand the challenges that they face facilitating access to credit. Given the amount of authority that the Consumer Financial Protection Bureau now has over our credit reporting system, I am interested to hear from our panel today on how this layer of regulation has affected reporting agencies and all of those who participate in this system.

As credit reports gain an increasingly significant role in the lives of the consumers, we must ensure that there are systems that provide accurate and effective reporting on their behalf. I do thank the panel for their participation and their duty today, and I yield back my time. Thank you.

Chairwoman CAPITO. Thank you. Mr. Ellison for 1½ minutes.

Mr. ELLISON. Thank you, Madam Chairwoman. I appreciate the time, and I will be quick. For those who are looking to improve our financial security in our country for our families and help small businesses start up and expand and help grow our economy, today's topic of credit reporting is vitally important. Dr. Beales, I think, said it well when he said, "Well-functioning credit markets are the essential component of economic prosperity." I quite agree, and I am eager to see this Congress take action to improve our system by making it more inclusive.

More than 50 million Americans have no credit score, are just credit-invisible. Another 50 million have scores that are lower than they should be because they do not have enough lines of debt to generate a score. The solution is simple. Mr. Fitzpatrick and I, in a bipartisan way, have a bill called the Credit Access and Inclusion Act, and this bill clarifies that current law does not prohibit utility and telecom firms from reporting their customers' on-time payments. The bill has 12 cosponsors, and we are looking for more, including a lot of people on this committee. Including alternative data such as utility, telecom, and rent helps consumers, lenders, and small businesses and the economy, and it is time for us to make this no-cost change to provide greater access to affordable credit for millions of Americans. I yield back. Thank you.

Chairwoman CAPITO. The gentleman yields back. I would now like to recognize the ranking member of the full Financial Services Committee, Ms. Waters, for 2½ minutes for an opening statement.

Ms. WATERS. Thank you very much, Chairwoman Capito. I would like to thank you and Chairman Hensarling for granting my request for this important meeting. Our Nation's credit reporting system impacts almost all Americans and their families. No longer are credit reports used exclusively by lenders in making credit decisions. Increasingly, they are used to determine whether a consumer is qualified to get a job, rent a home, buy a car, or obtain auto or homeowners insurance, but despite their growing significance, credit reports continue to contain inaccurate information. Some estimate serious errors affect up to 25 percent of reports. The Federal Trade Commission estimates 1 in 5, or roughly 40 million consumers have had an error on one of their credit reports, with 10 million facing increased costs as a result.

Sadly, the burden is too often placed on the consumers to prove information on their reports as false rather than on the consumer reporting agencies and furnishers. Errors on credit reports are very

difficult for consumers to dispute, and it is even harder to have these inaccuracies actually removed from reports, causing heartache and pain for millions across the country. It is time to change that paradigm and ensure that a bad credit score will no longer haunt a consumer for years on end.

That is why this morning I released a draft proposal that makes comprehensive and long overdue reforms that will protect consumers and bring much-needed accountability to the credit reporting system. My proposal would provide relief to millions of borrowers who were victimized by predatory mortgage lenders and servicers by removing adverse information about residential loans that are found to be unfair, deceptive, abusive, fraudulent, or illegal. It stops punishing consumers who pay off their debts by removing paid or settled debt from credit reports. It ends the unreasonably long time period that most adverse information can remain on credit reports by shortening such periods by 3 years.

It provides credit rehabilitation to distressed private education loan borrowers by giving them a chance to repair their credit, and it gives consumers the tools to truly verify the accuracy and completeness of their credit reports by requiring furnishers to maintain records for as long as the information remains on a person's credit report.

Finally, the draft proposal also restricts the use of credit reports for employment purposes. My proposal attempts to meet our obligations to ensure that consumers who have fallen victim or fallen on hard times are not deprived of the chance to achieve their American dream. I look forward to hearing feedback from my colleagues and advocates on this measure. Thank you, Madam Chairwoman. I yield back the balance of my time.

Chairwoman CAPITO. Thank you. I would like to thank the ranking member, and we are now ready to hear from our panelists. I do want to make Members and our witnesses aware that we are expecting two series of votes. It is my intent to finish this hearing before the second series would begin, so we may have to take a timeout here. I appreciate everybody's patience.

We welcome our panel of distinguished witnesses. Each of you will be recognized for 5 minutes to give an oral presentation of your testimony. And without objection, each of your written statements will be made a part of the record.

We will begin with Mr. Stuart Pratt, who is president and chief executive officer of the Consumer Data Industry Association. Welcome. And I would remind the witnesses that you need to pull the microphones close to your mouth so we can hear you. Some have had trouble picking up the sound. Thank you.

STATEMENT OF STUART K. PRATT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CONSUMER DATA INDUSTRY ASSOCIATION (CDIA)

Mr. PRATT. Chairwoman Capito, Ranking Member Meeks, thank you for this opportunity to appear before you today. I am Stuart Pratt with the Consumer Data Industry Association. So, today, let me just summarize some key points that are drawn from our written testimony. Thank you for including our full testimony in the record. And first of all, just maybe some basics about the industry.

A competitive private sector full-file nationwide credit reporting industry empowers economic opportunity for consumers and for the Nation as a whole. I think it was described very well that a credit report really serves as an advocate. It is a mechanism for a lender who doesn't know you to know you. It is a mechanism for that lender to approve a loan and to approve it at a price that is affordable and that makes sense for you as the consumer and makes sense for them as the lending institution.

Our members are the leading—decision sciences companies around the world, we are the leading world's best credit reporting system around the world, 200 million credit reports per database, 3 billion updates a month. 98 percent of the credit reports do not contain serious errors and yet our members are working to build on that success to push that percentage down even further. 95 percent of consumers that we have polled express satisfaction with the consumer relations process. That leaves us with 5 percent, and that is our homework, to continue to push that number down as we go forward.

Being best in class, however, hasn't caused our members to rest on their laurels. CDIA members are consistently proactive. They are ahead of the curve and ahead of law. For example, standards established even as far back as the 1960s, and again in the 1990s, preceded law, preceded amendments to law, and in fact, framed new laws and regulations which regulate our industry even today.

Data standards which materially contribute to the quality of data were pioneered by our members, rolled out voluntarily to more than 10,000 data furnishers, and it is a success story, and it is a story that shows our partnership with the lending community in terms of ensuring that consumer information is accurate, precise, and complete in credit reports.

Online dispute exchanges were stood up by our members as well. Fraud alerts and fraud alert exchanges were stood up as well. All of this with the intention of protecting consumers, serving consumers, simplifying the process for consumers, and ensuring that the credit reporting industry is accessible to consumers.

There is more work to be done. There are some actions which we think Congress could take to help consumers and in some cases help us help consumers as well. Let me just walk through a couple of those, and then we have provided additional detail in our testimony. First of all, we urge Congress to exempt financial literacy products which help consumers learn about and protect their credit standing from the Credit Repair Organizations Act, often know as CROA. The Act wasn't intended to cover these products because they didn't even exist at the time of the enactment of CROA, which ironically was Title 2 of the 1996 amendments to the Fair Credit Reporting Act. No State AT has attempted to apply CROA to our members products, nor has the Federal Trade Commission. It is unfair to consumers that they cannot have access to an even more robust set of products in the marketplace because of the risks posed by class action lawsuits and opportunistic private attorneys. We urge action on CROA reform, and we are happy to talk about that subsequent to this hearing.

Class actions are threatening our small and medium-sized enterprise members. Some are losing their errors and omissions insur-

ance coverage completely. For them, it is almost an existential risk. E&O providers are stepping back from providing coverage even through trade associations. Our own E&O program for small businesses, though 95 percent of our members in that program have not had a claim in the last 2 years, 80 percent in the last 4 years, they are going to pay 50 percent higher premiums next year as a result of litigation risks as perceived by the insurance industry.

We think reform in this area is important. We also urge Congress to act now. You don't even have to vote. Urge the financial housing finance authority to work with their GSEs and open the door for consumers through the use of automated alternative data sets and to credit score competition. There is no reason for secondary markets to impede the choices of the primary market when it comes to which score is best or which combination of predicted data should be used.

Ultimately, consumers who are new immigrants, unbanked and underbanked, are the beneficiaries. Even consumers who may have adjusted their use of credit due to the Great Recession could benefit from the use of the bills that they pay in everyday life and the assets they own. We really believe this is now the time to act. Let's push forward. Let's open that door today.

Finally, we believe that providing our members with access to the SSA's database would allow us to do additional cross-matching, validating of identifying information, and ensuring that the right information gets into the right file at the right time. We share those goals with all of you. We look forward to our dialogue today. Thank you for this opportunity to testify.

[The prepared statement of Mr. Pratt can be found on page 52 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness is Mr. J. Howard Beales, professor of strategic management and public policy at George Washington University. Welcome.

STATEMENT OF J. HOWARD BEALES III, PROFESSOR, STRATEGIC MANAGEMENT AND PUBLIC POLICY, THE GEORGE WASHINGTON SCHOOL OF BUSINESS, THE GEORGE WASHINGTON UNIVERSITY

Mr. BEALES. Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee, thank you very much for the opportunity to be here today. I want to make five key points. First, credit reporting is vital. The widespread credit availability that lubricates consumer spending and powers the American economy depends on an efficient system for credit reporting. Lenders can't economically make loans without understanding the risks they face, and credit reporting is an essential tool for objective risk assessments.

Efficient credit reporting makes possible the miracle of instant credit which enables the consumer to visit a car dealer and arrange financing for the transaction probably in less time than it takes to negotiate the price. Such arrangements offer significant benefits to both consumers and sellers, and they facilitate economic activity.

Our credit reporting system also facilitates competition among lenders to the benefit of consumers. Lenders can readily identify

consumers who deserve a better deal and offer credit on terms that lenders find profitable and consumers find more attractive. One study described credit report data as the jet fuel for an acceleration in competition that led to declines in annual fees and interest rates on credit cards as well as the introduction of new card features such as rewards.

Efficient credit reporting is also important to small businesses that are important job creators. The adoption of commercial scoring systems based on credit report data for evaluating small business loans led to an expanded volume of loans and a net increase in lending to relatively risky borrowers.

Second, risk-based pricing benefits consumers. A fundamental principle of economic efficiency requires that those who create cost must pay them. If not, they will create excessive cost. That is why it is both equitable and efficient that teenage males pay higher auto insurance premiums than teenage females or older men. They are higher-risk drivers. They should and do pay higher insurance premiums. The same principles apply in credit markets. There is no reason that good credit risk should be expected to subsidize the choices made by those who are less likely to repay their debts. Loans made based on objective risk assessments reduce the risk of default by 20 to 30 percent in some studies compared to using judgment to decide which consumers deserve a loan. Moreover, such judgmental decisions often rely on stereotypes about which borrowers are most likely to repay. They are, in short, discriminatory.

Risk-based pricing based on credit scores offers two important benefits. First, responsible borrowers, undoubtedly the vast majority, pay less for credit, as much as 8 percentage points less. Second, risk-based pricing substantially expanded credit availability. In the one-size-fits-all world of standardized plain vanilla credit products, the lender's only choice was yes or no. For marginal borrowers, the answer was often no.

In 1970, only 2 percent of the lowest income quintile had any credit cards. By 1998, after the introduction of risk-based pricing, the percentage had increased to 28 percent.

Third, more information in this system leads to better performance. Information in the credit reporting system is provided voluntarily by some 30,000 data furnishers in return for access to the credit report information. Indeed, an important dimension of competition for business among consumer reporting agencies is the breadth and robustness of the information about consumers in their database. Some 30 to 50 million Americans do not have sufficient credit information in their files to qualify for affordable mainstream credit. Instead, they are left to rely on high-cost credit sources such as overdraft protections, short-term loans, or pawn shops. Studies have shown that adding positive payment information from utilities and telecommunications providers in addition to the negative information that many now report can improve the credit scores of those within files that otherwise do not have sufficient information to support a reliable credit score. Such additional information can help to further reduce the differences in the accessibility of credit on reasonable terms.

Fourth, accuracy and completeness are both important. Credit reporting agencies face a difficult task of matching incoming informa-

tion to the right file when identifying information is incomplete, as it often is. It is obviously a mistake to include information in my file if it is not in fact about me, but it is also an error to leave out information that should be in my file, simply because there is some ambiguity about the match. Such errors of omission reduce the value of credit reports to lenders because a report that does not include all of the relevant information is less likely to be predictive of future behavior.

To be sure, ongoing efforts to improve accuracy and completeness are essential, and there are significant competitive pressures on consumer reporting agencies to do so, but all such efforts must recognize the voluntary nature of the reporting system. Regulatory requirements that require participation by furnishers may well be worse than the disease they are trying to cure.

Finally, different risks are different. The best prediction of risk depends on the particular risk involved. Different information may be especially valuable for certain kinds of risks. That is why there are specialized agencies that specialize, for example, in small dollar products, otherwise known as payday loans, because different information is predictive, different populations lead to different risk analytics. There are some real gains to specialization in the particular risks that have happened in the market. Thank you again for the opportunity to testify today, and I look forward to your questions.

[The prepared statement of Mr. Beales can be found on page 33 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness is Mr. John A. Ikard, president and chief executive officer, FirstBank, on behalf of the American Bankers Association. Welcome.

STATEMENT OF JOHN IKARD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FIRSTBANK, LAKEWOOD, COLORADO, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)

Mr. IKARD. Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee, my name is John Ikard, and I am president and CEO of FirstBank. We are based in Lakewood, Colorado. I am also the chair-elect of the American Bankers Association. I appreciate the opportunity to be here to represent the ABA and discuss the importance of accurate credit reporting and the banking industry's commitment to it. The availability of consistent accurate credit reports provides tremendous value to consumers and banks alike.

For consumers, credit reports provide a history of the performance on obligations which enables them to shop around for credit from any lender. Without these reports, consumers would have to provide extensive documentation, lender by lender, in order to receive credit. The credit report opened up options for consumers and ensures that they can shop around for the best loan or account that serves their needs. The greater efficiency in competition means better deals and lower prices for consumers.

For lenders, credit reports allow them to evaluate a borrower's creditworthiness even if they have not previously dealt with the customer. Banks benefit because an accurate understanding of a

credit applicant's history means they are better able to predict who is likely to repay a loan. This allows banks to make a better decision in order to grant credit and at what price.

Accuracy within the credit reports is critical, of course, to ensure that customers are evaluated based on their history of their individual performance. Inaccurate reports undermine the value of the system and could prevent a qualified borrower from getting the credit they deserve. A report that is missing negative information also makes a borrower eligible for credit that they are ill-prepared to handle. Thus, accurate credit reports ensure that credit is extended to deserving borrowers.

Because banks have a vested interest in ensuring that accurate credit histories are available, they invest heavily in systems and processes to ensure they can provide accurate credit data. Although the reporting system is very accurate, there is still the possibility of errors. That is why it is important to have a clear process for consumers to dispute their credit reports if they feel there are inaccuracies. There are multiple avenues consumers can use to dispute their credit reports. This dispute process is quick and effective with the average dispute resolved in about 14 days, at a satisfaction rate of over 95 percent.

Congress should be aware that this dispute process can be taken advantage of in an attempt to eliminate accurate but negative marks on an individual's credit history. For example, credit report scams often charge a large up-front fee and mislead the consumer into believing that accurate but negative information can easily be removed. These services operate by repeatedly sending disputes alleging the same issues in the hope that the data supplier will drop the ball and fail to respond within the mandated window, thereby triggering the expungement of the contested data.

To give you an example, at my bank, our main dispute handler handles about 100 to 150 disputes a month, many of which are repeated claims. Of the disputes we receive, less than 1 percent call for any type of corrective action. While amendments to the Fair Credit Reporting Act took a step forward in stopping this kind of abuse, that law should go further to allow the ability to truncate repetitive unfunded disputes. This would do nothing to prevent customers from pursuing legitimate claims and would save money from being wasted on these false claims.

In summary, credit reports are a public good, providing real tangible benefits to consumers and lenders alike. Banks invest in consumer resources to ensure that credit reporting is consistent and is accurate. When disputes arise, banks investigate them promptly and thoroughly. The dispute process, while effective, is susceptible to abuses by those who want to misrepresent past consumer credit experiences. Such abuses undermine the value provided by credit reports and hurt all borrowers. Thank you.

[The prepared statement of Mr. Ikard can be found on page 42 of the appendix.]

Chairwoman CAPITO. Thank you.

And our final witness is Ms. Chi Chi Wu, staff attorney at the National Consumer Law Center. Welcome.

STATEMENT OF CHI CHI WU, STAFF ATTORNEY, NATIONAL CONSUMER LAW CENTER (NCLC)

Ms. WU. Thank you. Chairwoman Capito, Ranking Member Meeks, and members of the subcommittee, thank you for inviting me here today and for holding this hearing on the American credit reporting system. Credit reports play a critical role in the economic lives of Americans. They are the gatekeeper for affordable credit for insurance, an apartment, and sometimes, unfortunately, even a job. As Congress stated when it passed the Fair Credit Reporting Act (FCRA), the banking system is dependent upon fair and accurate credit reporting. Yet, the credit reporting system in this country is neither fair nor completely accurate.

One of the most outrageous flaws is the negative marks from medical debts on the credit reports of millions of Americans. This is a huge issue. Medical debt makes up over half of the items on credit reports for debt collection, and one study estimated up to 41 million Americans could be suffering from this type of credit damage. Such negative marks are unfair because medical debt is often the result of insurance disputes or billing errors. A May 2014 study by the Consumer Financial Protection Bureau (CFPB) found that medical debt unfairly penalizes a credit score by up to 10 points, and for paid-off medical debt up to 22 points.

Now, there have been some changes. Last month, FICO announced that it would no longer consider paid collection items, both medical and non-medical, and VantageScore already had made a similar change last year. In addition, FICO has said it will give less weight to unpaid medical debts, potentially helping consumers up to 25 points. However, these changes will not completely eliminate the negative impact of medical debt on credit reports. They are voluntary, which means they can be reversed at any time. More importantly, they won't benefit mortgage applicants because the changes only affect VantageScore and FICO's latest scoring model, FICO 09. And apparently neither of these models is used by Fannie Mae or Freddie Mac, the mortgage giants.

Finally, they won't help job applicants with medical debt because employers generally don't use credit scores to evaluate applicants. They review the full report and so they will see the medical debt collection items. Thus, legislation that would remove paid or settled medical debts from credit reports is the effective solution to this problem.

Regarding the use of credit reports by employers, we again urge Congress to ban this practice. It creates a Catch-22. Job loss prevents workers from paying their bills, and the resulting damage to a credit report prevents them from getting a job. Yet, there is no evidence that credit history can predict job performance. Its use in hiring discriminates against African-American and Latino applicants. Despite these problems, about half of employers use credit reports to screen applicants. A Demos survey reported that 1 in 10 unemployed workers had been informed that they would not be hired for a job because of information in their credit report. Another survey reported that employers are examining credit reports for student loan debts and that two-thirds of surveyed employers had little to no interest in job applicants with student loan debts over $50,000.

Another problem with the credit reporting system is the high level of errors. As you heard, the FTC found that 21 percent of consumers had verified errors in their credit reports, 13 percent had errors that affected their credit scores, and 5 percent had errors serious enough to be denied credit or to be forced to pay more for credit. That 5 percent is unacceptable. It means 10 million Americans have seriously damaging errors in their credit reports. Yet, there are simple commonsense measures that could reduce this error rate such as using all of the digits in the Social Security number to match information from a creditor to a consumer's file.

Now, one of the most important safeguards for accuracy is the dispute system under the FCRA, yet the credit bureaus flagrantly violate their obligations to conduct a reasonable investigation when there is a dispute. Instead of conducting real investigations, they do nothing more than forward the dispute to the creditor or the provider of the information and then blindly accept or parrot whatever the information provider responds with, no matter how good the consumer's evidence. Now, maybe in some cases, like Mr. Ikard's bank, the information provider does do a good job in handling the dispute, but in some cases, it is not true. In 30 to 40 percent of cases, the information provider is a debt collector whose main goal is to get paid, not to get it right, or it could be a subprime auto lender like First Investors Financial Group against which the CFPB took enforcement action last month for systematic violations that harmed thousands of consumers.

So the credit bureau's automatic deference to debt collectors and creditors is outrageous. It is like a judge who finds in favor of the defendant in every single lawsuit. Yet, the industry is now saying it wants to be held less accountable by private enforcement under the FCRA for these errors and for its failure to conduct reasonable investigation.

Beyond errors and disputes, the credit reporting systems need reform to help the millions of consumers who lost their jobs or their homes during the Great Recession. Foreclosures were often not due to irresponsible borrowing but abuse by lenders and mortgage servicers. Defaults due to job loss or bad luck say nothing about a consumer's responsibility in handling credit, yet these black marks last for 7 years, or 10 years in the case of bankruptcies, shutting these consumers out of affordable credit, insurance, jobs, and apartments. Creating a class of consumers that are shut out of economic necessities creates a drag on our Nation's economy. For these reasons and others, the credit reporting system in the United States is in need of substantial reform. The CFPB has made substantial progress, which is great, given it has only had authority to supervise this industry for about 2 years, but congressional action is necessary.

I thank you for the opportunity to testify and look forward to your questions.

[The prepared statement of Ms. Wu can be found on page 77 of the appendix.]

Chairwoman CAPITO. Thank you.

I want to thank all the witnesses, and I will now recognize myself for 5 minutes for questions.

All of you addressed this issue of inaccuracies in credit reports. I can attest to having one on mine, so I have tried to get that undone, and sometimes it was difficult. So I would like to ask you, Mr. Pratt, what steps are available to consumers to remove inaccurate data from their report? How long does it take? Mr. Ikard said 20 days, but is that what is actually occurring, and can you tell me what your industry is doing to help that?

Mr. PRATT. Thank you for the opportunity to do that. Our members have done a couple of different things, even some steps just recently to try to ensure that the system works well for everyone. All of them have quality assurance processes, all of them are looking for monitoring and making sure that employees are well-trained. In fact, I will tell you that the CDIA has launched in partnership with our largest corporate members an entirely new training platform that will be used and that matches up with some of the examination experience that we are getting out of the CFPB as well, so that is a commitment we have made to further the training of employee bases to make sure that they are well-prepared to handle the needs that consumers have.

Mr. Ikard mentions the e-OSCAR system. The e-OSCAR system does allow us to resolve disputes. Going a long way back, everything was processed by mail. I am old enough to remember that. Not everybody is these days, but I am, and consumers would have to dispute credit bureau by credit bureau. The e-OSCAR system solved that problem. It is a one-stop shop. You dispute one time, it is distributed to the lender, the lender responds not just simply to the credit bureau that received the dispute but it responds to other credit bureaus and the data is corrected across-the-board one time, single stop. Fourteen days is accurate. On average, a dispute is processed in 14 days rather than the full 30 days that law allows. Law does—

Chairwoman CAPITO. Let me stop you there.

Mr. PRATT. Sure.

Chairwoman CAPITO. Let's say that after 14 days, the consumer is not satisfied with the result, still believes that it is accurate data. There is a grievance, I am sure, a secondary appeal?

Mr. PRATT. Normally a consumer will—they will normally call. Let's say they went online. They submitted their dispute online, ground one, and by the way, that was another step that the companies took voluntarily, drop-down menus, mechanisms so that you could look at your credit report online, dispute online, click on the dispute, submit it and get a return, but let's say you are happy with two out of the three results but not the third. You get another disclosure that tells you these are the results, this is what you—and this is by law. This is what you have, this is what we think is correct, call the toll-free number if you have a question, and this is where the consumer will then end up with a customer service person to then work through in more detail what is it that you think is wrong with this other report.

Chairwoman CAPITO. Out of the grievances that are filed, do you have the data for how many have to go to the secondary, to the toll-free line and all that, what percent is it?

Mr. PRATT. It has been awhile, but between 15 and—around 15 percent, I think, was the number that I had quite a while ago, so most are being resolved the first time through.

One of the challenges is that when consumers call again, it doesn't mean that they are—they may have all the right intentions in the world, but they may have misunderstood something. An example would be in divorce. We will have consumers call and say, the judge made my ex-spouse pay for that loan. That is her responsibility or his responsibility. Actually, judges in divorce courts can't do that. They can't abrogate a loan and sever the contract between a joint loan. So, in other words, the lender still has a claim against both of those consumers, and so the consumer's credit report will still reflect that.

So that is just a matter of law, but that is the kind of confusion. The consumer may not recognize that a retailer with whom they chose to do business and open up a credit card relationship, that there was a bank behind that relationship, and on the credit report, it may be the bank that is listed, not the name of the retailer, and so the consumer says, I don't think I ever opened up that account, that is wrong. On the phone, that is normally where that kind of thing is resolved. "Did you open up an account recently with a retailer?" "Yes, I did." "Well, this is the bank that works for that retailer." "Ah. Okay."

Chairwoman CAPITO. I am going to stop you here because I want to get into the student loan issue with Mr. Beales. A student loan—I talked about it in my report. Obviously, there is a lot of national concern about increasing student debt and then what kind of impact that is going to have on the long life of a student, in the positive or negative. If you pay off a student loan, does it come off your credit report? What kinds of things are positive or negative about a student loan? I only have 25 seconds left, so it is kind of a quick question.

Mr. BEALES. Like any loan, a student loan is an opportunity to build a history of responsible use of credit. If you make payments on time, that experience, like any other credit account, potentially increases your score and increases your attractiveness to lenders. People who have too much debt, whether it is student loan debt or any other kind of debt, and can't pay it, that is obviously going to be bad for your score. Students have had—certainly the amount of debt has increased, and to the extent that it is more than students can handle, that reduces their scores.

Chairwoman CAPITO. Right. I am going to stop you here because I am sure we are going to have more student loan discussion. I have exceeded my time, so I am going to yield to Mr. Meeks.

Mr. MEEKS. Thank you, Madam Chairwoman. Let me just start with Ms. Wu. Ms. Wu, you wrote in a report that to solve the credit conundrum, we need a system that can distinguish between consumers who are truly irresponsible and those who simply fell on hard times.

What recommendations do you have to ensure that our credit reporting system makes this distinction, and to what extent is it possible to do so?

Ms. WU. Thank you for the question, Congressman Meeks. I think one of the simplest measures in terms of trying to address

this problem is the proposal in Congresswoman Waters' bill to shorten the amount of time that negative information stays on a credit report from 7 years to 4 years. There is nothing magic about the 7-year time limit in the Fair Credit Reporting Act. There are other countries with much shorter time periods. In Sweden, it is 3 years. In Germany, it is 4 years, and the last I heard, the German economy is doing fairly well. So, one thing that could help consumers is just to shorten this time period.

Another thing is to exclude information such as medical debts and foreclosures as a result of abuse by lenders and servicers which Congresswoman Waters' bill also does.

Mr. MEEKS. Mr. Pratt, do you have any objection to reducing the time from 7 years to 4 years? Is there a magic formula for you with that 7 years?

Mr. PRATT. Thank you. We do, and for some reasons that I—and this is the beginning, probably not the end of a dialogue, and it will extend beyond the borders of this hearing today, but just a little bit of background: 82 percent of credit reporting systems around the world retain data for a period of time longer than the proposal to reduce the current 7 years to 4 years, so systems around the world are generally designed for more data, not less.

Systems around the world are also actually expanding data, not reducing data. For example, Australia and Brazil went to full-file positive systems within the last few years to adopt a system that looks very similar to ours. So, our system is often viewed as the best-in-class system that should be emulated by others. By the way, in Germany, if you don't pay your bill, that stays on your credit report forever, so in other words, it is not—

Mr. MEEKS. I am just wondering, why is 7 years—

Mr. PRATT. I can't go back to 1970 and go into Bill Proxmire's head and wonder how he came up with the 7 years at that time, but I can tell you that at this point, here is what I think is most important. We need data before the Great Recession, we need data coming out of the Great Recession, and we need data now extending from the Great Recession so that if we are going to build risk management tools, we see the same data cross all those tranches. If we change it now, we are erasing data that is really important to how we manage risk and how we make better lending decisions in the future.

Mr. MEEKS. Let me take my time back, because I don't see a magic 7-year formula or 4 years, especially with helping consumers. But let me ask Mr. Ikard a question.

Mr. IKARD. Yes, sir.

Mr. MEEKS. Really quick, going back to what Ms. Wu was talking about, that we need to distinguish between consumers who are truly irresponsible and those who simply fell on hard times, I understand that—and sometimes we have—when we were talking about, especially with small banks, that they say, and I think you found that they found that credit officers who know of an individual's personal circumstances provide more accurate and detailed information for credit reporting purposes. And that is why I am told by some members, especially small banks, they say, well, we don't want to be restricted in this sphere. We want some flexibility so

we can make a determination as to whether a person truly will pay this back. Do you find that to be true?

Mr. IKARD. Absolutely. I think the credit report is just one part of the underwriting process. The key is to sit down with the customer and hear their story. Some customers may have bad credit because it has been a lifelong pattern of just acting irresponsibly. Some might have had a catastrophic event at some point in their life, and I think it is up to us, incumbent on us to say, okay, let's look at this person in totality, what is their income potential, what has been their past behavior. If this is one catastrophic event that is out of the ordinary, I think you should have an obligation to set that aside; this person is still a good credit risk.

So I think that as a banker, all bankers, we have the obligation to sit down with our customers and get the complete story, not just run somebody out the door because of a bad credit report. You have an obligation to sit down and talk to them about their complete financial situation.

Mr. MEEKS. Now, is there a way, do you think—and I will direct this to Mr. Ikard or Ms. Wu—that we could have a system where you can truly determine whether someone is just not paying, they are a bad credit risk, they just won't pay their debt, as opposed to someone who has fallen on hard circumstances, they were paying all of their debt, and all of a sudden, because of the economy or because of their loss of jobs, now they are not paying, so that they are not stuck for 7 years or 10 years once they get a job again?

Mr. IKARD. Sure. I think the way you look at that is based on their pattern. Just talk to the customer. If they had a history of making all their payments as agreed and all of a sudden they have one blip, that is obviously not their normal operating position. They have obviously had some catastrophic event take place. Let's take a look. Ask them what happened, explain it to me, tell me your story. If it makes sense, let's move on. It is interesting, we have banks down in Arizona, and Arizona had—

Mr. DUFFY. Mr. Ikard, if I could just—

Mr. IKARD. —a huge problem with real estate, and what happened was is that we—

Mr. DUFFY [presiding]. Mr. Ikard, I am going to cut you off. The gentleman's time has expired. I am sure you will get more questions on that and have further opportunity to answer those questions. The Chair now recognizes himself for 5 minutes.

The Fair Credit Reporting Act requires consumer reporting agencies to provide credit reports to child support agencies to ascertain the ability of a father or mother's ability to pay child support, and it is required to give 10 days notice to that mother or father before their credit report is pulled. Mr. Pratt, do you believe that there are any issues with that 10-day notice requirement?

Mr. PRATT. That is probably a better question on the side of the child support enforcement agencies themselves. My understanding is some of them have concerns with that 10-day period because it might be the heads-up that some noncustodial parent needs to push and move some assets around to make sure that those don't show up and they either pay less or they don't pay child support that they might otherwise owe. I think that is the concern.

That was a set of language that was pushed into the FCRA 2003 maybe.

Mr. DUFFY. I am all about notice and making sure people understand when their credit is being pulled, but listen, I am going to look out for kids and make sure that children are being treated fairly, and if someone has a 10-day notice, they can liquidate assets, is that fair to say, or max out credit cords that could have an impact on their credit score?

Mr. PRATT. Clearly, that is going to have an impact on the financial profile of the consumer who is being evaluated in terms of the ability to then make child support payments.

Mr. DUFFY. And I believe in California there was a case that I found where the child support enforcement process was considered debt settlement and that 10-day notice wasn't required, but that is only for California. Do you think that the CFPB could or should give new guidance and extend it not just to California, but around the rest of the country?

Mr. PRATT. I guess first, I have to go look at the California law to see what that looks like. I think some dialogue post-hearing to figure this out, to make sure we understand in detail what it is that you think ought to be done and what it is that we think current law permits us to do would be a good dialogue to have.

Mr. DUFFY. I would ask for unanimous consent to insert a letter into the record from one of the consumer reporting agencies asking that the CFPB actually back this guidance change. Without objection, it is so ordered.

I guess maybe I would ask the panel, what steps are taken to protect the millions of bits of information that are collected in regard to people's credit history and personal information?

Mr. PRATT. I probably should start since we are the industry. CDIA's members, even before the enactment of the Gramm-Leach-Bliley Act, understood their obligation to secure the information and make sure that it was protected. Our members are—have the same risks posed for them that you would see with any U.S. business that has a valuable data set. We employ entire data security teams and audit processes, and I can tell you that the audit processes in the oversight includes on-site inspections of downstream users and on-site inspections of resellers in the process. I have had resellers sometimes complain about how robust those on-site inspections can be. We have IP address monitoring systems to make sure we understand when a company is in the normal cycle.

So, for example, if we have a bank in Colorado that normally orders credit reports during its normal business day, but that bank code seems to now be tied to orders that are showing up at 3 a.m., and oh, by the way, it is a Russian IP address and it is not one that is U.S.-based, those are the kinds of red flags that we are going to use to shut down that access, go back to that bank, and talk about it and find out what is going on.

I can tell you that we have gone to some very small users. One small financial institution had the codes for accessing the credit bureau's systems on a bulletin board. We suggested that wasn't a great idea. That is the kind of outreach we have on a regular basis, and we have remote learning information security training that we make available to customers as well as our members.

Mr. DUFFY. In regard to the information that you collect, do you collect information on—just to get a good read on someone's credit history—do you collect information on their religion?

Mr. PRATT. No.

Mr. DUFFY. How about the number of children they have?

Mr. PRATT. No.

Mr. DUFFY. How about the ages of their children?

Mr. PRATT. No.

Mr. DUFFY. How about the GPS coordinates of their home?

Mr. PRATT. No.

Mr. DUFFY. Okay. I am just checking to make sure.

Ms. Wu, listen, I share a concern about what happens with reporting of medical debt, but one concern that I have is if it isn't reported and maybe even weighted properly, do you have a concern that individuals may put that at the bottom of their payment list, there may be more delinquencies in regard to, or less incentive to pay off medical debt which rises costs for hospitals, clinics, and in turn, creates higher healthcare costs for the rest of us at a time when we are trying to reduce healthcare costs?

Ms. WU. One important thing to note about medical debt on credit reports is the vast majority are for small amounts. A 2003 Federal Reserve study found something like over 80 percent of medical debt collection items were under $500 or $644 in today's dollars, so these are usually things like copays, the ambulance bill that—

Mr. DUFFY. I am sorry for asking you a question when my time had expired, so my time has expired. And with that, I now recognize Mrs. McCarthy for 5 minutes.

Mrs. MCCARTHY OF NEW YORK. Thank you, Mr. Chairman.

Ms. Wu, I am going to let you finish the answer only because I am curious about it. Last year, unfortunately, I was ill and my medical expenses certainly were high, and then I had to have surgery at the beginning of this year, and had a great doctor. I have no complaints about the care I got, but I have to say that my medical bills were extraordinary, where I took money out of my savings account, and from my retirement to pay the bills, so they are way over $500, believe me.

What we are seeing with the, now looking at how we are going to be handling those who are in debt from medical bills that there is going to be a certain time where they are not going to count that against—am I correct in the legislation—not legislation, but the decision from FICO in August of 2014 that they are going to look at medical debt and not put it onto their FICO score?

Ms. WU. First of all, my sympathies toward your situation, Congresswoman McCarthy. Medical debt shows up on credit reports solely as a result of debt collection. Something like 97 percent of medical debts on credit reports are because they are referred to a debt collector, and often the reason it is referred to a debt collector is because there is an insurance dispute, a billing error, the provider doesn't get paid, and then it is automatically referred to a debt collector and they put it on a consumer's credit report. The CFPB's research found that kind of debt collection item unfairly penalized consumers' credit reports.

And so I think partly as a result of that research, and partly as a result of complaints, VantageScore, which is the other scoring

provider, had already stopped counting paid collection items. FICO also did, and so this helps consumers not be unfairly penalized by medical debt that has been paid off, or if it is the only item on their credit report. But it is not going to help mortgage applicants because Fannie Mae and Freddie Mac won't use these changes.

Mrs. MCCARTHY OF NEW YORK. I agree with you, because the surgery was in January, and I am certainly working with the insurance company to readjust the amount that they paid back to the doctor was over 4 months before it was able to be worked out. I was still left with a heavy bill but at least we got it cleared up to a certain extent, but I want to go back to Mr. Ikard. When someone comes to you in the bank and he is a customer and you know him, and you started to talk about that a little bit earlier, that he comes in whether it is a medical bill or maybe he just got laid off, and he might need a bridge loan, but he can't make the payments on what probably is more money than he has usually put down to pay off, you work with him, how often does that actually happen?

Mr. IKARD. It actually happens quite a bit because we see a lot of these small medical charge-offs Ms. Wu was talking about. And if the customer has relatively clean credit, and there is nothing in their behavior that would lead you to believe they had problems paying their debt, just give us a reasonable explanation of what surrounds that issue. And we'll say fine, and move on. For us, that is not a deal breaker because we do see that quite a bit.

Ms. MCCARTHY OF NEW YORK. Do a lot of consumers do that, or do they even know that—most of them are usually afraid to talk to the bankers, not because of the bankers, but they don't want anybody to know that financially they might be getting a little bit behind.

Mr. IKARD. I think that is a part of the process. I think a lot of the time, the first time they find out about it is when we run a credit report when they come in and ask for a mortgage loan. A lot of times they don't even know it is there. So we ask them to come in and just give us an explanation. If their whole credit report is bad, then we would assume that is probably just the way they do their business. But if they have clean credit and they have a good work history and they have a history of paying their bills, and they have this one medical charge-off, explain it to us, and we will document it, and we will move on. I think that is the reasonable way to do it.

Ms. MCCARTHY OF NEW YORK. I know, during the financial crisis, we saw an awful lot of people with their mortgages, and we offered to have seminars, brought in the experts. And hardly anybody ever showed up because they didn't want anybody to know that they were going under. It is very, very difficult. So I can understand where they might prefer going to the bank, or now that we have somewhere for our constituents to go to make a complaint and it is going to be hidden to a certain extent, but they can get the help they need, so I appreciate that part.

Going back to the student loans, that is a real problem. We actually talked about that this morning in the Education Committee and how we can do financial literacy to educate our young students on how to use their debit card, how to use a credit card. I think that is important, and I hope that we can do that because these

young people don't understand that you just can't do it. And I have to say I do love, even on my own bills, if I don't pay a certain amount, this is how long it is going to take for me to pay off, and it is a real eye-opener.

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

The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

Mr. Pratt, in light of the Dodd-Frank Act, I would just like to know, from your perspective, has this changed the credit reporting system? Are there any conflicts at all with that being the new governing body with the FTC? Have there been any differences in terms of mixed signals or different guidances that have been sent out or enforcement orders that have been in conflict? Have they worked together?

Mr. PRATT. It is a little early to get too deep into that question. I can tell you that we have had members who have been concurrently subject to an examination process and also a FTC CID, and they have had to negotiate between the two agencies to try to decide whether they had to produce the same data or different data and what the costs might be relative to one versus the other, and there are varying degrees of cooperation around that sort of thing. That is really anecdotal, though.

Overall, the CFPB has ruled out a larger participant rule. Many of our largest corporate members at CDIA are, in fact, larger participants. And they are subject to examination, and we are really in the middle of it, member by member, in terms of what these exams look like. And ultimately, the examination process will result in, in some cases, direction by the CFPB to make changes. A lot of that is still kind of forward-looking and not immediately in front of us, so it is hard to measure. So we are kind of midstream.

Mr. PITTENGER. Sure. Thank you. From your initial observation, do you feel like this is good prudent oversight and good management by the CFPB that they are providing?

Mr. PRATT. The examiners that my members report to me have been professional and have been on point, and it has been a dialogue, so I can't tell you that it is not an issue of the relationship. Measuring results, that is a harder thing, and I can't tell you yet whether all the money that is being spent to match the CFPB examination requirement is necessarily going to get you to where you want to be. That is kind of an opportunity cost. It is a sunk cost that is now being built into the companies. It is how they will do business going forward, and I just can't tell you yet.

Mr. PITTENGER. The compliance and reporting costs, it is just another burden for these reporting institutions. Is it warranted? Do you feel like they are headed in the right direction, that this is good, prudent management?

Mr. PRATT. If you look at our testimony, we feel like we were out in front on a lot of different issues without a regulator necessarily showing up at the door to tell us there was something else we ought to focus on. I don't think our culture has changed. We are never troubled by a dialogue about compliance and about getting it right, and to Chairwoman Capito's point, making sure the consumers are served properly. That is not a problem. It is really just

a question of whether, at the end of the day, direction given by the CFPB is going to result in a change which just imposes more costs but very, very small, if any, benefits. We just don't know.

Mr. PITTENGER. Mr. Beales, you have spoken a little bit to this, but speak relative to the credit reporting system of the United States vis-a-vis other countries in the world and why you believe this is a better credit reporting system. Is there any way to improve it?

Mr. BEALES. There are some studies actually that go a long way towards proving it. And what they really focus on is the positive information that is in the U.S. credit reporting system, as opposed to negative-only systems in a number of other countries. That has been the primary focal point of the academic research, and it is clear you get better risk predictions and better credit availability out of the U.S. full-file system than you do out of those other countries' negative information systems.

Mr. PITTENGER. Sure. Mr. Ikard, in the banking industry—and I was on a bank board for a decade, so I appreciate your good work—are there any existing areas of uncertainty that you found in attempting to comply with the Fair Credit Reporting Act that have become challenging?

Mr. IKARD. I think there are always issues about how credit should be reported, I think some of the enhanced reporting. I think, for us, we want to see a very accurate, predictive model. In order to do that, you need to get as much information as possible into the system that is relevant and that can actually be used to help a consumer actually reflect a proper score. So I think sometimes, Congressman, we are not always sure exactly what we should report.

The real challenge for us is bankruptcies. There are different stages of bankruptcies or foreclosures. At what point do we report? Is there a deed-in-lieu? Is there a short sale? Those type of things that might have an impact on a customer's credit score or at least allow the customer to tell a better story down the road. We are not exactly sure how those should be reported. Sometimes, we get confused on that.

Mr. PITTENGER. Thank you.

I yield back.

Mr. DUFFY. The gentleman yields back.

The Chair recognizes Mr. Meeks for a unanimous consent request.

Mr. MEEKS. I would like to ask unanimous consent to place in the record the opening statement from Representative Ruben Hinojosa.

Mr. DUFFY. Without objection, it is so ordered.

Mr. DUFFY. The Chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you so much, Mr. Chairman. It is good to be in your company again, and you are doing quite a job today. And I appreciate this hearing very much. I want to thank all the witnesses for appearing today, and I always have to give some credit to the staff for the outstanding work that they do in compiling intelligence for us.

I have information indicating that approximately 32 million people have files that are too thin to score, and 22 million people have no credit at all to be scored. I am concerned about persons who pay their light bills, their gas bills, their water bills, their phone bills, cable bills, tuition, and insurance, but they don't get scored, generally speaking. Perhaps they are scored sometimes when someone will make a special request and someone would bother to look.

And I know that there is the argument being made to be careful with this, because if a person fails to pay a utility payment timely for a couple of months but still maintains the lights, gas, water, and then continues to pay, that could be harmful. I understand that argument. But that argument aside, why would we not allow these portions of a person's credit history to become a part of the scoring process so that persons who don't have other opportunities will at least have the opportunity to be scored based upon this part of their credit history? Who would like to be the first to respond?

Ms. Wu, I know you have something to say on the topic, so I will start with you.

Ms. WU. Thank you, Congressman Green.

Yes, this is an issue on which we have testified before, before this very subcommittee. We do have concerns about promoting the practice of what is called full-file utility credit reporting. It is because of the unique nature of utility bills, for example, in Massachusetts, it kind of gets cold very often. We just came through the polar vortex, and so people had really high heating bills, but they catch up. They catch up in May. That is why, in Massachusetts, there is a winter moratorium. You can't shut off somebody's heat if they have an elder or infant in the house or they are sick between the months of November and May. People know that, and they rely on that. And so, we are concerned that full-file reporting might undermine those protections or that it might hurt the consumers who are late for 1 or 2 months but then do catch up.

Also just to make clear, there is nothing in the Fair Credit Reporting Act right now that prohibits a utility from engaging in full-file reporting. There is a bill filed, and some of our concerns over that bill actually have to do with the way it is written and the way it impacts the Fair Credit Reporting Act apart from utility credit reporting.

Mr. GREEN. Would anyone else care to comment?

Mr. IKARD. Congressman, one of the things that we look at is, our philosophy is that bad credit will hurt you, but no credit is neutral. So if you have no credit, we would like for you to sit down with one of our loan officers and just explain, what is going on in your life, where are you working, what bills have you been paying? We don't necessarily see that as a negative. Obviously, you can't get a credit score, but you are correct; that score means a lot. But in our world, bad credit is an obstacle, but no credit is simply an opportunity to start this discussion.

Mr. GREEN. I appreciate your willingness to sit and have that conversation, but on the large scale, when we look at the macro, it becomes very difficult.

Mr. IKARD. That is true.

Mr. GREEN. An automated process would be a much more viable means of getting a person's credit properly before you. We, in 2008,

had language in the Housing and Economic Recovery Act that called for an automated process. HUD was to develop a pilot program. I think that an automated process could factor in some of the things that Ms. Wu has called to our attention and still allow persons to be scored. I just know of too many circumstances where persons can afford to pay rent that exceeds a mortgage payment, and given the opportunity to have a mortgage, they would become homeowners and develop equity, build their equity. There must be some middle ground here for us so that we can help people who do pay their light bills, gas bills, and water bills timely, and don't have the opportunity to be scored in an automated fashion. To do it on a case-by-case basis probably is helpful to persons on a case-by-case basis but not to all of the persons we want to serve.

Thank you, Mr. Chairman. I yield back.

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

As we have all heard the magic bells ring, we do have a vote series which we do anticipate coming back after. So with that, the committee stands in recess subject to the call of the Chair, and the call of the Chair will be right after votes.

[recess].

Chairwoman CAPITO. The committee will come back to order.

And I will call on Mr. Fitzpatrick for 5 minutes for questions.

Mr. FITZPATRICK. I thank the Chair for calling the hearing, and I want to direct most of my questions to Professor Beales.

Professor, in his opening statement Representative Ellison referred to a bill that he and I have co-sponsored and introduced together, called the Credit Access and Inclusion Act. The substance of the bill pretty much comports with what you referred to in the third section of your remarks, that more information in the system leads to better performance. You said in your statement that an estimated 30 million to 50 million consumers do not have sufficient credit information in their files to qualify for affordable mainstream credit. Are you familiar, Professor, with the Act that Representative Ellison and I have introduced?

Mr. BEALES. I know about it as a general concept. I haven't actually read it, but I am familiar with it in general.

Mr. FITZPATRICK. The bills clarifies existing law under the Fair Credit Reporting Act to demonstrate or prevent utility and telecomm firms, current law prevents them, I think, from reporting accurate and enough information out of fear that it is not specifically authorized. So it specifically authorizes that utility payments, rent payments and the like can be reported without fear of being in violation of the Credit Reporting Act and without fear of the kind of lawsuits that might result. So, so-called thin file customers would have more robust information in their file and theoretically more access to credit. Would that be a good thing, in your view?

Mr. BEALES. Absolutely, that would be a good thing. That is what the academic research shows, is that it improves the predictiveness of who is a good risk and who is not, and by and large makes some people who look like really thin files, makes it clear that they are pretty responsible about managing their money. I think that would be a good thing. And it makes sense to remove anything that might be a statutory or regulatory barrier to letting that happen. I don't know whether the most efficient way for that information to get

into the system is through the main credit reporting agencies as opposed to through specialized agencies that specialize in that kind of information and are supplemental information sources. I think that is something the market would pretty clearly sort out if it is clear to everybody that they can provide the information.

Mr. FITZPATRICK. And there is nothing in the bill as it is written that would mandate the reporting of such information, so in other words, it would be instructive or permissive. Is that—

Mr. BEALES. I think that is the right way to go is to be permissive rather than mandatory, because it is, the whole structure of credit reporting is a voluntary furnisher system, and I think there is a lot at stake if you try to change that.

Mr. FITZPATRICK. Is there anything in particular you would like to add? What do you understand about the bill, because I am going to be asking—as Representative Ellison said, we have a good selection of co-sponsors already, but we are going to be asking other Members of Congress to co-sponsor this. Would you make any recommendations?

Mr. BEALES. Not without reading it in detail, no. I think the approach of removing barriers and leaving it voluntary, I think that is exactly the right way to go.

Mr. FITZPATRICK. Professor, there is a graph up on the screens on either side of the room, and I am not sure if you can see it, but it is a 2012 FERC report, and it seems to indicate credit score along the bottom and percentage of thinly filed or thinly reported consumers, what their credit score would be. And it seems to indicate that if you have more reporting of the kind of reporting that Representative Ellison and I are suggesting would be helpful and appropriate, that those who are helped, it goes from about 5 percent of the so-called credit-invisibles are able to get anything on the credit reporting scoring system, 2, 3, 4, maybe as much as 5 percent, but with more information, it goes up as high as 35 percent, interestingly enough, in an area of the credit graph which is really beneficial to some of these potential consumers. And I would think that these individuals who are currently credit-invisible, who currently don't have a credit score, if they are getting not only a credit score, but a pretty good credit score, when they go out to buy their first vehicle or whatever their consumer purchasing may be, they are going to be getting better rates. They are going to be able to purchase more and, frankly, have a better future for themselves. So I am not sure if you are familiar with that graph, but in your view, is that graph accurate?

Mr. BEALES. It is. That graph and the work behind it are the basis for—and I think I cited them in the testimony—saying more information is better. This is one of the primary pieces of evidence for that proposition. There is no piece of information that is good for everybody. We know that because risk assessment doesn't work like that. The idea is to better separate good risks from bad risks, but I think what this graph makes clear is that for this group of people as a whole, they are better off with this information in the system than not.

Mr. FITZPATRICK. I am sure there is another view. What is the downside of more robust reporting? Is there anybody in the system who would be hurt?

Ms. WU. We are concerned that a lot of consumers would be hurt if you started reporting every single late utility payment. There is data showing that sometimes 20 to 30 percent of energy consumers, especially consumers who receive low-income heating and energy assistance, do have 30- or 60-day late payments, and so you would end up adding a lot of negative data.

Mr. FITZPATRICK. I appreciate that. The question was actually to Professor Beales.

Mr. BEALES. And I think the question is, what is the predictive value of that information? It is going to be good information for some people. It is going to indicate problems for some other people, but that is why information is useful, is to sort between those good risks and bad risks.

And what I think you are seeing in the graph here is a much better sorting and a substantial benefit to most of the people, not everybody, because some people's bill paying history isn't so good, just like some people's credit history isn't so good, but where that information is more positive than not for this group of people.

Mr. FITZPATRICK. Thank you for the answer. I yield back.

Chairwoman CAPITO. I believe we are waiting for one more Member, Congressman Ellison. I don't know if he has questions. So while we are waiting—I guess we will wait a couple of minutes, and if he doesn't show, we will ring it down.

Is there anything that you all would like to add in the line of questioning that we have had that you think might be good to have on the record or any clarifications that anybody would like to make?

Ms. WU. I would like to address a couple of issues that came up earlier regarding data security breaches. Certainly, our organization is concerned about data security breaches and consumers' information being out there. Consumers should know that the good news is there are currently protections under Federal law when your existing credit card or bank account is used by a thief, and that for things like the Target data breach, we had said the most important thing is to monitor your existing bank or credit card accounts. And the thing not to do is to go out and buy credit monitoring products. These are expensive products, $15 to $20 a month, and they do nothing to prevent ID theft. They just detect it after it happens. For consumers who are actually concerned about identity theft, the most effective thing is the security freezes mandated by State law.

But we have great concerns about the way credit monitoring has been offered to consumers. And, in fact, three or four of CFPB's actions against credit card issues have been over the sale of products such as credit monitoring.

Chairwoman CAPITO. Yes, Mr. Pratt?

Mr. PRATT. I want to respond to that thought that credit monitoring is essentially useless, and I can't tell you how much we disagree with that idea. There are a whole range of financial literacy products that are out there today in the marketplace. Even the CFPB's report about the credit reporting ecosystem talks about the fact that not only do consumers get free file disclosures, which is important, through annualcreditreport.com. That is the free Web site. That is how you go and get it and exercise your right under

law. But an additional 30 million to 40 million file disclosures are in the hands of 30 million to 40 million consumers as a result of these products. The idea that I shouldn't, that it is not valuable for me to have a product that may notify me when changes to my file take place, the idea that I shouldn't be able to look at changes to my credit report and understand how that might affect a score, the idea that learning process is not valuable is just ludicrous.

So it is a significant disagreement between us and certain advocacy organizations, but I just want to make that point for the record, that this is a really important product. That is one of the reasons why we believe it should be exempted from CROA. That is why we believe that the Credit Repair Organizations Act, which was never written to regulate these products, is wrong. These products are regulated under the FTC's Section 5, the unfair, deceptive acts or practices. They are regulated under specific rules for advertising practices. It is a safe and sound product. Millions and millions and millions of consumers buy it, and they are okay with it.

Chairwoman CAPITO. With that, I am going to have extended a couple of minutes courtesy to Mr. Ellison, who has obviously gotten hung up. I don't want to be rude to my witnesses here because you all had to have a disruption, so he can submit questions for the record, and we can ask for your response.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, the hearing is adjourned, and again, I thank you for your patience.

[Whereupon, at 4:21 p.m., the hearing was adjourned.]

A P P E N D I X

September 10, 2014

Keith Ellison
Statement for the Record

I appreciate the witnesses being here today to discuss how to improve our credit reporting system. Our witnesses have made a strong case for why a comprehensive, inclusive and fair credit system is better for families, the economy and our nation.

I believe our credit system is vital but not perfect. I want to see improvements in limiting the inclusion of medical debt. I oppose using credit reports for employment decisions except in cases involving significant financial access or security clearances. I want to see the credit reporting agencies and furnishers avoid errors. If errors do occur, and I hope they occur rarely, I expect the CRAs and furnishers to address them quickly. It should be easy for consumers to remove inaccuracies from their reports.

Finally, I want a more inclusive and consumer-friendly system. I am very concerned that too many young people, the next generation of home buyers, college students and car buyers, lack a credit score that appropriately defines their ability and likelihood to repay a loan. A credit score affects if someone can rent a house, what they pay to buy and insure a car or if they can get a loan for a home or a business. A credit reporting system that leaves more than 50 million people without a credit score is a problem. A credit reporting system that provides people with scores that does not include existing information that could better reflect the ability and willingness to repay of these consumers is also harmful. Estimates from PERC, a nonpartisan independent research firm, find as many as 50 million people have scores that would be higher when other information, not widely available at the credit bureaus today, is considered.

In sum, despite the importance of our credit reporting system to family wealth and economic growth, the status quo is harmful.

Along with Mr. Fitzpatrick and other members, I introduced The Credit Access and Inclusion Act, (H.R. 2538). Our bill provides affirmative permission for utility and telecom firms to report on-time payments by their customers. Although there is nothing in federal law that prohibits the reporting of on-time payment, regulatory uncertainty has limited its adoption.

There is strong empirical evidence provided by PERC that utility and telecom payments are predictive of payment behavior. The inclusion of this data dramatically increases the inclusion of people currently without credit scores, the Credit Invisibles. It also improves the scores of people with thin files and those whose score is lower due to limited information. Empirical evidence shows that adding more data to credit reports enables tens of millions to get or improve a credit score. Adding more information about existing bills does not require consumers to access more debt in order to build a score. The primary beneficiaries of adding utility and telecom payments are low-income families, young people, immigrants and refugees, African Americans, Latino Americans, widows and returning prisoners. These people are underserved by our financial system. Improving their credit scores enables them to enter the financial mainstream and build wealth.

More robust credit scores enable financial institutions to lend more and manufacturing firms to sell more. Imagine if more people were able to demonstrate that they could afford to buy cars

and homes. How many more cars and homes could we sell? What if banks and credit unions could keep delinquencies low and still lend to 16 percent more potential borrowers? If people were only paying 6 percent interest instead of 12 or 14 percent interest, could they buy a more expensive car, or even a second car? With a lower interest rate, would people buy a more expensive home, or just buy more furniture for their house? Whatever they decide, lower interest rates and access to credit generate profits for businesses and economic growth.

During the hearing, Chi Chi Wu from the National Consumer Law Center asserted that many low-income consumers who pay their utility bills late could be harmed by H.R. 2538. Her assertion is wrong for three reasons:

- First, late utility payments are being reported to credit reporting agencies.
- Second, late utility payments have minimal impact on credit scores.
- Third, she dismisses the preponderance of evidence that thicker files and a more robust credit system that does not require consumers take on debt, that is inclusive of positive reporting and does not require participation in special programs is more consumer friendly.

First, in response to Ms. Wu's claims, I have included in the record, a letter from the National Consumer Telecom and Utility Exchange (NCTUE) and Equifax dated September 9, 2013. NCTUE's members are most of the large telecom and utility companies. NCTUE has billing statements on than 180 million customers. It is my understanding that for most of its existence, NCTUE members reported payments paid 30 days late. In recent years some on-time payments are being reported but not to the same extent as late payments. According to the letter, these payments are provided to aid in credit decisions including the creation of a blended score that includes utility data for at least 25 million thin-file consumers.

Unfortunately, this payment data is only available to NCTUE members and Equifax, which manages the database. My goal is to democratize the use of on-time utility and telecom payments by removing regulatory concerns that would then facilitate voluntary reporting.

Other utility and telecom firms report late payments as well. Most report late payments at 90 days, either themselves or by turning the payment over to a collection agency. In addition to NCTUE, about a dozen utility and telecom firms report on time payment to the CRAs. It is understandable that Equifax and NCTUE seek to preserve their near monopoly in this space but I do not think it serves consumers who benefit from a robust system with different choices.

Second, there is strong empirical evidence regarding the impact of late utility payments on credit scores. I insert for the record PERC's August 2012 report, *The Credit Impacts on Low-Income Americans from Reporting Moderately Late Payments*. PERC's analysis of more than 4 million people who had a late utility payment found that less than one percent had a material impact of a late payment. In other words, less than one percent of consumers saw their credit score move to a lower tranche, say from prime to non-prime or near-prime to sub-prime due to one or more moderately late payments. Yes, consumers pay bills late but it appears that those who pay a utility bill late probably pay other bills late which reaffirms their credit worthiness.

Finally, Ms. Wu dismisses the preponderance of evidence that our current system is harmful, especially to low-income people. I remain concerned that our credit reporting system remains nearly totally focused on debt instead of regular reoccurring credit payments. I appreciate Professor Beales discussing the PERC report at this hearing. PERC finds that the inclusion of utility and telecom bills increases the credit scores of millions of Americans. By using actual credit reporting data, PERC finds that 74% of thin-file consumers can be scored when utility and telecom data are added to their credit score. Mr. Fitzpatrick's chart showed that these new to credit consumers are distributed throughout the credit tranches greatly increasing their access to affordable credit.

Finally, as Professor Beales noted, "errors of omission in credit scores" harm consumers and the economy. When consumers have no credit score, or scores that do not accurately reflect their ability and willingness to repay they either cannot access credit or pay too much for that credit. This leads to less economic activity.

We need a consumer reporting system that is inclusive; That easily enables Americans payments be automatically submitted without them needing to join credit-builder lending programs or bring shoeboxes of receipts to a lender. We need a consumer reporting system that does not require consumers take on interest-bearing debt. We need a consumer reporting system that does not give equal consideration of on-time and delinquent payments. By excluding most on-time payments, consumers are stuck with a negative-biased system. There is not appropriate good credit behavior in reports to accurately reflect a consumer's ability and willingness to repay.

I hope that we will enact The Credit Access and Inclusion Act this Congress. Mr. Fitzpatrick and I have the support of many members of this Committee including Representatives Capuano, Hinojosa, Green and Duffy. We have support from previous members including Mr. Renacci and Mr. Jones. There is also an identical Senate companion bill, S. 1613 led by Senator Kirk. Today's hearing marks the third hearing on this topic including a legislative hearing on September 13, 2012.

Making it easier to report telecom and utility data to credit reporting agencies is the type of consequential, bipartisan legislation that strengthens families' economic security and improves our economic growth.

I want to see more lending, more buying and more economically secure families to strengthen our economy and our nation. We know that fees for pawn shops, payday loans and check cashiers cost low-income consumers more than $4 billion a year. H.R. 2538 enables families to enter the financial mainstream, keep more of those funds in their pockets thus allowing them to generate greater economic activity. When utility and telecom firms report on-time payment to credit reporting agencies its will strengthen families, create jobs and expand the economy. In this economy, credit is currency.

In closing, I agree with Professor Beales that well-functioning credit markets are an essential component of economic prosperity. I hope this Congress enacts H.R. 2538 to help families achieve financial self-reliance, increase jobs and strengthen our economy.

Statement of J. Howard Beales III
Professor, Strategic Management and Public Policy
The George Washington School of Business

Subcommittee on Financial Institutions and Consumer Credit
House Committee On Financial Services
Hearing on "An Overview of the Credit Reporting System"

September 10, 2014

Chairman Capito, Ranking member Meeks, and members of the Committee, thank you very much for the opportunity to be here today. I want to make five key points.

1. Credit reporting is vital.

Consumer spending accounts for over two-thirds of U.S. gross domestic product. The wide availability of affordable credit lubricates this spending: roughly $3.2 trillion in outstanding consumer credit enables numerous transactions that would not otherwise occur.[1]

In turn, widespread credit availability depends on an efficient system for credit reporting. Lenders cannot economically make loans without understanding the potential risks they face, and credit reporting is an essential tool for objective risk assessments. Efficient credit reporting makes possible the miracle of instant credit, which enables a consumer to visit a car dealer and arrange financing for the transaction, probably in less time than it takes to negotiate the price. It enables retailers to offer on the spot discounts for consumers who agree to open a new credit account with the retailer. Such arrangements offer significant benefits to both consumers and sellers, and they facilitate economic activity.

[1] http://www.federalreserve.gov/releases/g19/current/ (August 17, 2014).

Our credit reporting system also facilitates competition among lenders, to the benefit of consumers. Using credit reports, lenders can readily identify consumers who deserve a better deal, even those in remote locations who have no direct contact with the lender. The ability to offer credit on terms that lenders find profitable, and consumers find more attractive, obviously benefits everyone. One study described credit report data as "the jet fuel for an acceleration in card offerings and competition" in the late 1980s and 1990s.[2] Aggressive competition led to declines in annual fees and interest rates, as well as the introduction of new card features such as rewards cards.

Efficient credit reporting is also important to small businesses. Decisions to lend to a small business depend on the lender's assessment of the viability of the business, but they also depend on the personal creditworthiness of the owner of the business. The adoption of commercial scoring systems based on credit report data for evaluating small business loans led to an expanded volume of loans and a net increase in lending to relatively risky borrowers.[3] Thus, credit reporting is often critical to decisions about whether to lend to the small businesses that are important job creators.

2. Risk-Based Pricing Benefits Consumers

A fundamental principle of economic efficiency requires that those who create costs must pay them. If not, they will create excessive costs that impair economic performance. This is why it is both equitable, and efficient, that teenage males pay higher auto insurance premiums than teenage females or older men – teenage males are higher risk drivers. They should, and do, pay higher insurance premiums.

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[2] Thomas A. Durkin, Gregory Elliehausen, Michael E. Staten, and Todd J. Zywicki, *Consumer Credit and the American Economy*, Oxford University Press, 2014, at 249.

The same principles apply in credit markets. Some consumers manage their financial obligations responsibly, and pay their bills on time. Others borrow more than they can afford, and, in the end, default. There is no reason that good credit risks should be expected to subsidize the choices made by those who are less likely to repay their debts.

Risk-based pricing relies on statistically determined scores based on credit report data to assess the likelihood of default. Although many creditors rely on generic systems such as the well-known FICO score, many others develop their own risk assessment models to take into account the particular characteristics of their products or customers. A 2004 study identified 70 different generic scoring systems that were available at the time, with more than 100 different scoring models.[4] Risk assessment models based on credit bureau data have been shown to outperform assessments based on application data in the context of credit card applications.[5]

Importantly, making loans based on objective risk assessment reduces the risk of default. Some studies indicate that the delinquency risk when decisions are based on scoring algorithms from credit report data are 20 to 30 percent lower than the risk of delinquency when the lender uses "judgment" to decide which consumers deserve a

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[3] Allen N. Berger, W. Scott Frame, and Nathan H. Miller, Credit Scoring and Availability, Price and Risk of Small Business Credit, *Journal of Money, Credit, and Banking*, April, 2005.

[4] Gary G. Chandler, Generic and Customized Scoring Models: A Comparison, in *Credit Scoring for Risk Managers: The Handbook for Lenders*, Elizabeth Mays, Ed., (Mason, OH: Thomson/Southwestern, 2004).

[5] Gary G. Chandler and Lee E. Parker, Predictive Value of Credit Bureau Reports, *Journal of Retail Banking*, Winter, 1989.

loan.[6] Moreover, such judgmental decisions often rely on stereotypes about which borrowers are most likely to repay – they are, in short, discriminatory.

Risk-based pricing based on credit scores offers two important benefits. First, responsible borrowers – undoubtedly the vast majority – pay less for credit. The introduction of risk based pricing reduced interest rates for these borrowers by as much as 8 percentage points.[7]

Second, risk-based pricing substantially expanded credit availability. In the "one size fits all" world of standardized, plain vanilla credit products, the lender's only choice was yes or no. For marginal borrowers, the answer was often no. Risk based pricing introduces a new alternative: yes, but at a higher price, commensurate with the additional risk. The result was a substantial expansion in credit availability. In 1970, only 2% of the lowest income quintile had any credit card; by 1998, after the introduction of risk based pricing, the percentage had increased to 28%.[8] Moreover, risk-based pricing "led to a broader array of loan products available to all risk and income groups."[9]

In short, well-functioning credit markets are an essential component of economic prosperity. Consumer reporting has played a key role in providing U.S. consumers with rapid access to credit. The development of the consumer reporting system, with its sophisticated risk models and automated underwriting, has contributed greatly to making

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[6] Peter McCorkell, "The Impact of Credit Scoring and Automated Underwriting on Credit Availability," in Thomas A. Durkin and Michael E. Staten, eds., *The Impact of Public Policy on Consumer Credit* (2002).

[7] Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, Discussion Paper, Payment Cards Center, Federal Reserve Bank of Philadelphia (January 2003) at 8.

[8] Thomas A. Durkin, "Credit Cards: Use and Consumer Attitudes, 1970-2000," *Federal Reserve Bulletin*, September, 2000, at 626.

[9] See Durkin et al., supra note 2, at 227, citing Wendy Edelberg, Risk-Based Pricing of Interest Rates on Consumer Loans, *Journal of Monetary Economics*, November, 2006.

credit more widely, inexpensively, and rapidly available. The system also has narrowed the gap in credit availability between high and low income consumers.

3. More information in the system leads to better performance.

Information in the U.S. credit reporting system is provided voluntarily by roughly 30,000 data "furnishers," in return for access to the pooled information from other furnishers in the form of a credit report. Some furnishers provide information to all of the big three credit reporting agencies; others may only furnish to a single bureau. With more furnishers, a credit reporting agency can paint a more complete picture of a consumer's credit use decisions and obligations, enabling more accurate assessments of risk. As Durkin and his colleagues explain, "The predictive power of models built with the reported data is diminished, and the fog of uncertainty surrounding a given borrower is a little bit thicker when lenders know that the consumer may have an account (of unknown size and payment status) with a nonreporting creditor."[10]

When the stakes are high, as with decisions about mortgage loans, it is common for lenders to purchase credit reports from all three of the national CRAs. For smaller loans, lender may rely on a single credit report. Moreover, an important dimension of competition for business among CRAs is the breadth and robustness of the information about consumers in their databases. Each CRA tries to obtain as much information as possible from furnishers.

Even when furnishers participate in the system, they may not report all of the information they have about the consumer. Some, for example, may report only negative information, not a consumer's history of paying on time. Others may fear that

[10] Durkin et al., supra note 2, at 265-266.

competitors will seek to poach their best customers, and limit the information they report to minimize that risk.

An estimated 30 to 50 million consumers do not have sufficient credit information in their files to qualify for affordable mainstream credit.[11] Instead, they are left to rely on such high cost credit sources as overdraft protection, short term loans, or pawn shops. Studies have shown that adding positive payment information from utilities and telecommunications providers, in addition to the negative information that most now report, can improve the credit scores of those with thin files that otherwise do not have sufficient information to support a reliable credit score.[12] Such additional information can help to further reduce the differences in the accessibility of credit on reasonable terms.

4. Accuracy and completeness are both important.

Credit reporting agencies face a difficult task of matching incoming information to the right file when identifying information is incomplete, as it often is in a voluntary system. It is obviously a mistake to include information in my file that is not in fact about me. This is the kind of error that the FTC's 2012 report examines.[13] More subtly, it is also an error to leave out information that should be in my file simply because there is some ambiguity about the match. Such errors of omission obviously reduce the value of credit reports to lenders, because a report that does not include all of the relevant

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[11] PERC, Alternative Data Initiative, available at http://perc.net/content/alternative-data-initiative-adi (May 3, 2013).

[12] Michael A. Turner and Amita Agarwal, "Using non-traditional data for underwriting loans to thin-file borrowers: Evidence, tips and precautions," 1 *Journal of Risk Management in Financial Institutions* 165 (2008).

[13] Federal Trade Commission, Report to Congress under Section 319 of the Air and Accurate Credit Transactions Act of 2003, December, 2012.

information about a particular consumer is less likely to be predictive of future behavior. In some cases, the failure to include relevant information may leave a consumer with a thin file and limited access to conventional credit. Either mistake reduces the accuracy of risk assessments, which is the ultimate goal of the credit reporting system. Moreover, the risk of a mistake depends on the quality of the information voluntarily provided by data furnishers. Even the best matching algorithms cannot overcome bad data.

As noted above, the more accurate and robust the information about an individual, the more confident the user may be in judging the risk associated with a particular transaction. However, efforts to improve accuracy and completeness must confront the fact that furnishing data is voluntary, and, if the costs and risks of providing data are too high, some furnishers may choose not to provide information at all.

As the FTC has noted, "because data furnishers provide consumer information to the CRAs on a voluntary basis, the CRAs have only limited influence."[14] In particular, their ability to enforce reporting rules "is limited by competitive pressures; if a CRA refuses to sell consumer reports to a particular lender, that lender could simply turn to another CRA."[15]

The limitations of the CRAs' ability to influence furnishers are well illustrated by issues where CRAs have a clear self-interest in obtaining information but are not fully successful in doing so. For example, the Consumer Data Industry Association (CDIA) introduced the Metro 2 data reporting format in 1997. Eight years later, the Metro 2 format was used by only 31 percent of furnishers, accounting for approximately half of

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[14] FTC Report to Congress under Sections 318 and 319 of the FACT Act of 2003, at 42 (December 2004).

[15] Id. at 13.

the data reported to the repositories.[16] Similarly, CRAs have a clear interest in obtaining consumer identifying information from furnishers, to assure that furnished data are included in the proper consumer file. Identifying information that includes a Social Security number would improve matches. The FTC reports that 5 to 10 percent of user inquiries do not include a valid SSN, and "the SSN is even less prevalent in data sent by furnishers,"[17] despite efforts to encourage provision of SSNs.[18]

To be sure, ongoing efforts to improve accuracy and completeness are essential, and there are significant competitive pressures on credit reporting agencies to do so. But all such efforts must recognize the voluntary nature of the reporting system. Regulatory requirements that reduce participation by furnishers may well be worse than the disease they are trying to cure.

5. Different risks are different.

The best prediction of risk depends on the particular risk involved. Different information may be especially valuable for certain kinds of risks. Moreover, the population of consumers attracted to particular financial products is likely to differ, leading to differences in the best risk prediction model. It is for this reason that many users of credit reports develop their own scoring models. It is also for this reason that some CRAs specialize in particular types of risks, such as the risks involved in extending short term or liquidity credit. By specializing, they can build databases that contain the right information, enabling the right risk assessment analytics, to serve particular

[16] Federal Trade Commission and Federal Reserve Board, Report to Congress on the Fair Credit Reporting Act Dispute Process, August, 2006, at 10.

[17] FTC Report to Congress under Sections 318 and 319 of the FACT Act of 2003, at 38 (December 2004).

[18] Id. at 43.

markets. Almost inevitably, however, these CRAs are significantly smaller than the big three, and regulatory compliance costs may be more significant.

Thank you again for the opportunity to testify today. I look forward to your questions.

September 10, 2014

Testimony of

John Ikard

On behalf of the

American Bankers Association

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

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Chairman Capito, Ranking Member Meeks, and members of the Subcommittee, my name is John Ikard, President and CEO at FirstBank, based in Lakewood, Colorado. Founded in 1963, FirstBank currently has over $13 billion in assets, over 115 locations and 2,000 employees serving Colorado, Arizona, and California. In addition, I am the Chairman-Elect of the American Bankers Association.

I appreciate the opportunity to be here to represent the ABA and discuss the importance of accurate credit reporting and the banking industry's commitment to it. The ABA is the voice of the nation's $15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend over $8 trillion in loans.

The availability of consistent, accurate credit reports provides tremendous value to consumers and banks alike. For consumers, credit reports provide a compilation of their historical performance on obligations which enables them to shop around for credit from any lender knowing that all lenders have a similar base of detailed information. Without these reports, consumers would have to provide extensive documentation lender by lender or be limited to a financial institution that they had previously done business with. Thus, credit reports open up the options for consumers and ensure that they can shop around in a very competitive market—nationwide—for the best loan or

account that serves their needs. The greater efficiency and competition means better deals and lower prices for consumers.

For lenders, credit reports allow them to evaluate a borrower's creditworthiness even if they have not previously dealt with them. Banks benefit because an accurate understanding of a credit applicant's credit history means they are better able to predict who is likely and unlikely to repay a loan, allowing them to make better decisions on whether to grant credit and at what price. Credit reports have proven to be good predictors of how consumers will manage their finances in the future. The ability to make more accurate decisions helps lower their costs, which helps to lower prices for consumers. Accuracy within credit reports is critical, of course, to ensure that customers are evaluated and extended loans based on the history of their individual performance.

Inaccurate reports undermine the value of the system. An inaccurate report could prevent a qualified borrower from getting the credit that they deserve by making them look less creditworthy. An inaccurate report that is missing negative information could also make a borrower eligible for credit that they are ill prepared to handle. Thus, accurate credit reports ensure that credit is extended to deserving borrowers.

Banking is a relationship business, and banks like mine pride ourselves on our customer service. At their core, these customer relationships are built on trust. Banks must act as custodians of their customer's data and maintain the trust of their customers by accurately reporting their credit activities. Because banks have a vested interest in ensuring that accurate credit histories are available, they invest heavily in systems and processes to ensure they can provide accurate credit data.

Although the reporting system is very accurate, there is still the possibility for errors. This is why it is important to have a clear process for consumers to dispute their credit reports if they feel it is inaccurate. There are multiple avenues consumers can dispute their credit reports. This dispute process is quick (with the average dispute resolved in 14 days) and effective (with 95 percent satisfaction).

The dispute process, while effective, is open to abuses. Credit repair scams prey on consumers with derogatory marks on their credit histories, promising to remove these marks regardless of their accuracy. These scams often charge a large up-front fee and mislead the consumer into believing that accurate but negative information can easily be removed. Moreover, filing a dispute is something that a consumer can do themselves without resort to a credit repair service. These

services operate by repeatedly sending disputes, alleging the same issues in the hope that the data supplier drops the ball and fails to respond within the mandated window, which would result in negative (but accurate) data being expunged.

At my bank this is a real problem. Our main dispute handler addresses about 100 to 150 disputes per month. ***Of these, less than one percent call for corrective action.***

In my testimony today I would like to make the following three points:

- Accurate credit reports benefit consumers, banks, and the economy;
- Banks have robust systems and processes to ensure accurate credit reporting; and
- There is an efficient system by which consumers can dispute inaccurate credit reports.

Credit reports are a public good that provide real tangible benefits to consumers and lenders alike. Banks are invested in ensuring that credit reports are consistent and accurate. When disputes arise, banks investigate them promptly and thoroughly. Congress should be aware that this dispute process can be taken advantage of in a manner that undermines the value provided by credit reports and hurts all borrowers.

I. Accurate Credit Reports Benefit Consumers, Banks, and the Economy

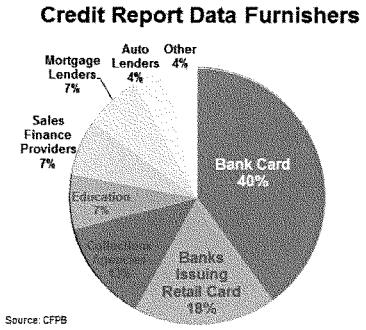
Credit Reports are an important tool allowing lenders to evaluate the creditworthiness of borrowers who they may not personally know or have dealt with in the past. They give lenders a detailed history of how individuals have managed their finances in the past and ensure that creditworthy borrowers across the country have access to the credit they deserve. As such maintaining comprehensive and accurate credit reports is in everyone's best interest. In particular, banks rely on accurate credit reporting to make credit available to consumers.

Put simply, a credit report is a list of credit actions that an individual has taken in the past. Whenever an individual takes out a loan—be it a credit card, mortgage or any other loan—their lender reports their payment activity to a nationwide credit reporting agency (NCRA). There are three key NCRAs in the United States, including Equifax Information Services, TransUnion and Experian Information Solutions. These NCRAs collect data from over 10,000 sources, compiling it into 200 million individual credit reports. These reports contain the following information:

- Personal Information – name, addresses, social security number and date of birth
- Credit History – a history of an individual's loan activity, including payments, credit limits, etc.
- Public Records – bankruptcies, tax liens, judgments
- Accounts placed into collections
- Credit inquiries

These detailed reports allow consumers to prove their creditworthiness to lenders who they have not dealt with before. Without credit reports there would be less competition and fewer choices for consumers. Without the reports, consumers would have to provide detailed payment information to any lender (which the lender would have to verify with each applicant's creditors) or rely on lenders who they had previous experience dealing with. Credit reports provide an efficient and cost-saving way to help analyze creditworthiness, thereby reducing the ultimate cost to consumers. Now, consumers can access credit almost instantly across the country as lenders have access to reliable, consistent reports to assess a borrower.

This accurate information promotes access to credit that a consumer can afford to repay. Credit access is an important driver of our economy, allowing consumers to buy goods and businesses to invest, hire and expand to meet that demand. Credit allows consumers to achieve life goals such as an education and home ownership.



Accuracy is an important component of these credit reports, ensuring that credit is properly distributed to borrowers that are mostly likely to pay back their debts. An inaccurate credit report can make a borrower appear less creditworthy than they are, limiting their access to credit. Alternatively, an inaccurate or incomplete credit report can also artificially boost their credit rating,

meaning some borrowers can gain access to credit that they may be unlikely to manage appropriately.

Banks are a key partner in the credit reporting process as both furnishers of data as well as end users. Banks have a vested interest in ensuring the accurate reporting of credit histories to the NCRAs. In fact, 58 percent of all trade lines in an NCRA's files come from bank cards or banks that issue retail cards. These banks are not required to submit credit history data, but each invests considerable resources to ensure that they can report accurate histories.

Most importantly, banking is a relationship business. Consumers are increasingly savvy about checking their credit scores regularly. A bank does not want to damage a customer relationship (and potentially lose customers) by making a mistake on something as fundamental as credit reporting. We need to get our credit reporting right so that our consumers can maintain an accurate credit history.

It is important to note that a credit report is just one of the factors that banks consider when extending credit. For most banks around the country, lending is not an automatic process. At my bank, and many others like it, we do not simply put credit report data into an automated formula that accepts or rejects a loan. We want to understand our customers from top to bottom and we take time to ask extra questions. At my bank, if there are issues or concerns that arise from the credit report, we want our customers to have a chance to explain it.

II. Banks Have Robust Systems and Processes to Ensure Accurate Credit Reporting

Banks have invested heavily to build systems and processes to ensure consistent and accurate data is provided to the credit reporting agencies. With a total of 1.3 billion consumer credit accounts reporting each month, there is an immense amount of data to manage. Primarily, banks rely on automated systems for routine reporting as these systems are tried, tested and accurate. This commitment is reflected in the overall level of accuracy in credit reports.

Banks—and all other furnishers—supply data to the NCRAs monthly as a batch of electronic files. These reports are all submitted on a standard form, the Metro 2. Banks will report updates on their customers across lines of business, for example mortgage loans and credit card loans. Each update typically includes the balance owed, whether or not payments were received, changes in credit lines, and the status of the account (i.e., current, 30+ days late, 60+ days late).

We rely primarily on automated systems to handle routine reporting, such as monthly statements and payment status. Each business line reports separately as there are different systems on the back end. For two of our lines of business, we have internal systems that handle the reporting. We outsource the reporting of our credit card portfolio to a third-party vendor. We take the integrity of these systems very seriously, and last year undertook a several month project to review and document all of our internal systems.

There are times when more detailed information needs to be included in the reports. This "enhanced reporting" often occurs in the case of a credit event such as a short sale or foreclosure. In these instances, the credit officer responsible for the loan must manually enter the codes into the reporting. At our bank, the credit officers who enter this information are the same officers that originated and service the loan. This is labor intensive, but we have found that because our officers know the customers and their individual situations, they will be providing accurate and detailed information.

The accuracy of credit reports speaks to the success of banks in credit reporting. Both the Political and Economic Research Council (PERC) and Federal Trade Commission (FTC) have conducted studies that attest to the general accuracy of credit reports. PERC's report found that just 1 percent of credit reports likely contained a material error that would cause a consumer to move from a lower priced tier to a higher priced one (thus making a material difference to the borrower). Similarly, the FTC's study found just 2 percent of accounts are likely to contain a material error.

III. There is an Efficient System For Consumers to Dispute Inaccurate Credit Reports

Despite the overall accuracy of credit reports, it is important that consumers have an avenue to address any inaccuracies that may arise. Although rare, a significant error on a credit report can have real consequences for a consumer. Banks are committed to ensuring that consumers have avenues to correct any inaccuracies in their report. In fact, there are multiple avenues a consumer can use to correct an error. Banks take these credit history disputes very seriously and dedicate significant resources to ensuring that all disputes are thoroughly investigated. The data show that these dispute resolution programs are extremely effective. Unfortunately, there are also abuses of

this dispute resolution system that undermine the system and take resources away from providing service to all our customers.

Under the FCRA, consumers have two options to dispute the accuracy of information within their credit report. First, they can directly contact the furnishers of the information, for example, the bank. Their other option is to contact the NCRAs directly via the electronic e-OSCAR portal. Generally, disputes have to be investigated and resolved within 30 days.

When banks receive notification of a credit report dispute—either directly from the customer or via e-OSCAR—an individual at the bank will investigate the claim. Every dispute is thoroughly researched. This is a labor-intensive review and is not a rubber-stamp exercise. This research may include an account history review, payments history review, and often will involve speaking directly with the loan officer handling the account. The bank will notify the reporting agency about its findings and ensure that the report is accurate. When my bank receives direct disputes, we reach out directly to our customers and inform them of the outcome of our investigation. Any corrections are shared with all NCRAs to whom the information was originally furnished.

We dedicate significant resources to ensuring that this system works. Currently we have three employees who are responsible for handling credit report disputes. There is one employee dedicated to disputes with mortgage loans, one dedicated to credit cards, and another who addresses all other disputes. Our main dispute handler spends 60 to 75 percent of her time just handling disputes. In a typical month, she will handle 40 to 50 direct disputes as well as 90 to 100 via e-OSCAR. As I mentioned above, ***less than one percent of these call for corrective action.***

This highlights the fact that while the system of dispute resolution is extremely important it is also susceptible to abuses by those who want to misrepresent past consumer credit experiences. Credit repair scams seek to take advantage of consumers who have negative marks on their credit reports. Sadly, the vast majority of disputes that we see at our bank come from such scams.

These scams promise to remove accurate, but negative and predictive data from a consumer's credit report. The Credit Repair Organizations often file illegitimate disputes on behalf of consumers, charging them a high price for a service that usually results in no benefit to the consumer as the negative—but accurate—information is not removed from the report. We often see disputes repeated month after month. These often come in a generic envelope, with mass produced address information, on standard form letters that come from a third party who is signing our

customer's name. These disputes allege the same issue that has already been researched and addressed.

The strategy employed by these credit repair scams is to bombard information providers with requests in the hope that those providers will drop the ball and fail to respond to a request within the 30-day window. If a dispute is not handled within this 30-day window, the derogatory mark is automatically removed from the consumer's report.

Just to give you further details on the example I provided above, in 2014, we already have one customer who has filed 7 direct disputes and an additional 5 via e-OSCAR. Another customer has filed 11 identical e-OSCAR disputes to date. It is not unusual to have multiple unfounded disputes from the same party.

While FCRA was amended to recognize this kind of abuse and not require re-investigation for repeated disputes of the same information, furnishers must still respond to each of those disputes. FCRA could further be amended to allow the ability to truncate repetitive unfounded dispute requests. This would stop at least some resources from being wasted on repetitive unsubstantiated requests and does nothing to prevent customers to invoke arbitration or to file for an independent review through the regulatory agency complaint process.

These credit repair scams undermine the efficacy of the dispute system that is in place. They take money from unsuspecting consumers making promises they cannot keep. It can also lead to providers deleting accurate predictive data, thereby undermining the value of the credit reporting system. These repeated unfounded claims also take resources away from serving our customers with their financial needs.

Conclusion

Credit reports are an important part of our modern, efficient financial system. They help to ensure that borrowers get the best loans at the best prices from any lender in the country. Having such an efficient system is critical to credit availability for all deserving borrowers and is a key driver of economic growth, competition, lower prices, and better deals for consumers.

Because the benefits to both customers and lenders are so large, it is in the best interests of both parties to ensure that credit reports are as accurate as possible. Banks have invested heavily in systems and processes to report accurate data and contribute to this important public good. The

system would be unworkable without accurate information that all parties can rely upon. Having an effective dispute mechanism is critical to this process. But any process can also be abused. Repeated unfounded disputes absorb resources that hurt everyone. Changes can be made that would help to stop such abuses without hurting legitimate claims to correct errors.

The good news is that the significant investment in the dispute resolution process made by banks and other reporters like us has paid off. Both the FTC and PERC have conducted surveys that show 95 percent of consumers who submit a dispute are satisfied with the results. While current law dictates that disputes must be processed within 30 days, the average time for a resolution is just 14 days. This level of success is possible only because consumers know that every request is individually and fully investigated.

STATEMENT OF

STUART K. PRATT

CONSUMER DATA INDUSTRY ASSOCIATION

WASHINGTON, D.C.

BEFORE THE

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

United States House of Representatives

ON

"An Overview of the Credit Reporting System"

September 10, 2014

Chairman Moore Capito, Ranking Member Meeks and members of the Subcommittee, thank you for this opportunity to appear before you. For the record my name is Stuart Pratt, president and CEO of the Consumer Data Industry Association (CDIA).

CDIA is an international trade association of more than 130 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

We commend you for holding this hearing, and welcome the opportunity to share our views.

Credit Reports Benefit Consumers and the Economy

Consumer Financial Protection Bureau Director Richard Cordray stated the following about credit reporting during a July 16, 2012 field hearing:

"Credit reporting is an important element in promoting access to credit that a consumer can afford to repay. Without credit reporting, consumers would not be able to get credit except from those who have already had direct experience with them, for example from local merchants who know whether or not they regularly pay their bills. This was the case fifty or a hundred years ago with "store credit," or when consumers really only had the option of going to their local bank. But now, consumers can instantly access credit because lenders everywhere can look to credit scores to provide a uniform benchmark for assessing risk. Conversely, credit reporting may also help reinforce consumer incentives to avoid falling behind on payments, or not paying back loans at all. After all, many consumers are aware that they should make efforts to build solid credit."

In its 2011 publication of Credit Reporting Principles the World Bank observed:

"Credit reporting systems are very important in today's financial system. Creditors consider information held by these systems as a primary factor when they evaluate the creditworthiness of data subjects and monitor the credit circumstances of consumers. This information flow enables credit markets to function more efficiently and at lower cost than would otherwise be possible."

Congressional findings in the Fair Credit Reporting Act reinforce the positive contribution of credit reporting to consumers and state that "consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers."

Ultimately credit reports benefit consumers most of all. Our members' systems tell the story of consumers' good choices and hard work. Credit reports speak for us as consumers when we apply for loans and lenders don't know who we are or how we've paid our bills in the past. Credit reports replace human bias and assumptions with a foundation of facts. They help ensure that we are treated fairly.

Our members are also leading decision sciences companies which help American businesses to manage risk and to prevent fraud. Decision sciences teams benefits from a competitive, private-sector, nationwide, full-file, credit reporting industry. They are comprised of statisticians, software architects and programmers, mathematicians and experts in the field of risk management. These teams work through terabytes of depersonalized data during the design of a new credit score, fraud prevention product or the update of an existing one. Credit scores, developed by decision sciences teams, are essential to how lenders manage risk across the entire account lifecycle (application approval, portfolio-level risk assessment, ongoing account-by-account monitoring and even identification of distressed accounts and likelihood of recovery of losses). A credit score rank orders a population of consumers in terms of the risk they pose to a lender. Credit scores are not data stored in a consumer's credit report. Fraud prevention products are also used across the account lifecycle and they frontline protection for consumers from the risks of identity theft and other forms of fraud. Credit scores and fraud prevention systems are strategically important intellectual property of the companies which invest tens of millions of dollars in research and development to create them.

Our members truly do "empower economic opportunity" for consumers and American businesses. They focus on consumers first, on ensuring fairness for them in the marketplace and on the accuracy and precisions of the data in their systems and the products they produce.

What's In a Credit Report?

Before we provide testimony on particular issues identified by the Committee, we thought it would be helpful to discuss what is and isn't in a "credit report." The term "credit report" is not defined by the Fair Credit Reporting Act (15 U.S.C. §1681 *et. seq.*) The FCRA defines the term "consumer report" and the traditional credit reports produced by nationwide consumer reporting agencies meet this definition. Credit reports include:

- Identifying Information – Name (first, last, middle), current and previous addresses, Social Security Number, date of birth.
- Credit History – History of managing various loans issued by retailers, banks, finance companies, mortgage companies and other types of lenders.
- Public Records – Judgments, bankruptcies, tax liens.
- Accounts Placed with a Collection Agency – Accounts reported by third-party debt collectors who attempt to collect delinquent debts owed to a service provider or lender.
- Inquiries – A record of all who have a permissible purpose under the law and have access to a consumer's report.

Credit reports do not contain information on an individual's medical condition, race, color, religion, marital status or national origin. It is important to note that our US credit reporting systems are full-file and thus they include both positive and negative payment history on a consumer. Studies show that full-file credit reporting is inherently fairer for consumers because it ensures that there is a clear record of not just missed payments but all of their on-time payments. This means greater access to credit at rates consumers can afford.

The Role of Data Furnishers and Accuracy

More than 10,000 data sources report more than 3 billion updates of data to nationwide consumer credit reporting agencies. As CFPB Director Cordray stated during a July 26, 2012 field hearing:

"First, our oversight of the credit reporting companies will help us make sure that the information provided to them is itself reliable. Lenders and others who furnish information to the credit reporting companies are legally required to have policies in place about the accuracy and integrity of the information they report – which includes identifying consumers accurately, correctly recounting their actual payment history, and keeping their information and recordkeeping in order. Otherwise, their sloppy work becomes the true source of harm to the consumer's overall creditworthiness".

Our members have procedures in place for both on-boarding new data furnishers and monitoring the data reported by the current community of data furnishers. This ongoing partnership has resulted in the Federal Trade Commission finding that 98% of credit reports do not contain a material error that would affect the price a consumer will pay in the marketplace.[1] We discuss below some of these practices:

New data furnishers – all of our members have 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.

The CFPB's 2012 report, "Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data", provides additional details on our members' efforts at Section 4.1 on pages 18-19.

[1] The FTC also found that 88% of the potential errors identified by consumers result from the reporting practices of their lenders. Many possible errors were in fact disputes regarding balances and thus are not likely errors at all, but rather timing issues in terms of a bill payment submitted by a consumer and the subsequent reporting of a new balance to the credit bureaus.

Ongoing oversight of furnishers – Our members employ 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 10,000 data sources which contribute to our members' databases. The latest iteration of this standard is titled Metro2®. Standardizing how data is reported to the consumer is a key strategy for improving data quality. Consumer advocates appear to agree. The National Consumer Law Center, writing on behalf of a range of consumer groups emphasized this point when it stated in its letter to the Federal Reserve Board[2]:

> *"However, the failure to report electronically or to use Metro2[®] creates even more inaccuracies."*

CDIA's Metro 2® Task Force is committed to supporting the efforts of lenders to properly report data regarding their customers using the Metro 2® data reporting format. These efforts include:

a. Providing free online access to a "Credit Reporting Resource Guide" which is the comprehensive overview of the Metro2® Format and which is updated each year to account for data furnisher

[2] 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.

questions, changes in law, regulatory inquiries, and government-sponsored programs.

b. Providing specific reporting 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.
c. Administering webinar-based training for data furnishers overall and for specific sectors in particular.
d. Running annual multiple in-person multi-day workshops with customized syllabi based on reporting trends over the course of the year. These workshops have been sold out in each of the last two years.
e. Launching a new 2014 online Metro 2® eLearning System which serves as both an ongoing online resource for data furnishers and a certificate-level remote-learning training tool for data furnisher data quality teams.
f. Launching a new remote-learning Fair Credit Reporting Act training system focused on the duties of data furnishers.

Beyond the accounting above, the CFPB's 2012 report[3] also discusses oversight of ongoing data furnishing at Section 4.2, page 19 and an outline of the Metro 2® Format (Section 3.1.2, page 15 and following).

Our members' efforts to audit incoming data and to work with both new and current data furnishers are well-documented. However, the Congress recognized that data furnishers have to have duties to ensure that accuracy of what they report which is why, in 1996, the FCRA was amended to create an accuracy duty for data furnishers and again in 2003, the Congress enacted new FCRA requirements on data furnishers via the issuance of regulations regarding the "accuracy and integrity" of information furnished to consumer reporting agencies.

Consumers and Credit Reports

A consumer's credit history starts with the very first relationship a consumer has with a lender. It may be when a parent adds a son or daughter as an authorized signatory on a credit card or when a young adult makes

[3] "Key Dimensions and Processes in the U.S. Credit Reporting System: http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf

application for his or her very first loan. Ensuring that consumers understand how lenders consider their management of credit is critical and certain fundamental principles are consistently true over time:

- Pay your bills on time.
- Don't run up your credit cards to their limits.

Never before in the history of our country has there been a greater degree of transparency when it comes to the information available to enable consumers to understand consumer credit reports and their rights under the FCRA. In particular, CDIA applauds its members for their market solutions which make available to consumers unlimited access to credit reports, credit scores, as well as providing additional information which improves a consumer's financial literacy. These market solutions, for example, push alerts to consumer's smart phones when data has changed on their report and also warn consumers when there's a risk of identity theft.

Under the Fair Credit Reporting Act, consumers also have a right to an annual free credit file disclosure from each of the nationwide consumer credit reporting agencies: Equifax, Experian and TransUnion. We estimate that more than 15 million consumers view at least one of their reports each year and an average of more than 30 million disclosures are issued annually. Since December of 2004, hundreds of millions of disclosure have been issued to consumers.

For some years, consumer advocates have been measuring the knowledge consumers have regarding their credit reports and how credit scores used by lenders analyze data. In particular VantageScore and the Consumer Federation of America have partnered on a project to reach consumers and measure their knowledge. The trends identified through this effort are very encouraging. Consider the following excerpts drawn from the CFA News Release:

"A large majority of consumers now know many of the most important facts about credit scores, for example:

- *Mortgage lenders and credit card issuers use credit scores (94% and 90% correct respectively).*

- *Many other service providers also use these scores -- landlords, home insurers, and cell phone companies (73%, 71%, and 66% correct respectively).*
- *Missed payments, personal bankruptcy, and high credit card balances influence scores (94%, 90%, and 89% correct respectively).*
- *The three main credit bureaus -- Experian, Equifax, and TransUnion -- collect the information on which credit scores are frequently based (75% correct).*
- *Consumers have more than one generic score (78% correct).*
- *Making all loan payments on time, keeping credit card balances under 25% of credit limits, and not opening several credit card accounts at the same time help raise a low score or maintain a high one (97%, 85%, and 83% correct respectively).*
- *It is very important for consumers to check the accuracy of their credit reports at the three main credit bureaus (82% correct).*

Somewhat surprising was the fact that most consumers understand new, and fairly complicated, consumer protections regarding credit score disclosures. When asked when lenders who use generic credit scores are required to inform borrowers of these scores, large majorities correctly identified three key conditions -- after a consumer applies for a mortgage (80% correct), whenever a consumer is turned down for a loan (79% correct), and on all consumer loans when a consumer does not receive the best terms including the lowest interest rate available (70% correct).

'Increases in consumer knowledge probably reflect in part the increased public attention given to credit scores because of the new protections,' noted CFA's Brobeck. 'The improvements may also be related to increased efforts of financial educators, including our creditscorequiz.org, to inform consumers about credit reports and scores," he added.'"

Our members are encouraged by the progress made. These data argue against the perception reported by some journalists and advocates that consumers are simply confused and unable to understand the credit reporting system. It's our view that journalists and advocates would serve consumers better by setting aside the rhetoric of confusion in favor of encouraging consumers to act on their rights and to learn how the credit

reporting system creates a marketplace that is fairer and more focused on their needs.

The Dispute Resolution Process for Consumers

A consumer's right to dispute information in his or her credit report is very clear under the FCRA. Below is an explanation of those rights prepared by the Federal Trade Commission:

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

- *a person has taken adverse action against you because of information in your credit report;*
- *you are the victim of identity theft and place a fraud alert in your file;*
- *your file contains inaccurate information as a result of fraud;*
- *you are on public assistance;*
- *you are unemployed but expect to apply for employment within 60 days.*

In addition, [since] September 2005 all consumers [have been] entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or

unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

The staff and systems used by our members to handle consumer requests for reinvestigations of data reported to them are first-class and this is not merely an opinion. The PERC data quality study discussed in this testimony measured consumer satisfaction with the reinvestigation process. Fully 95% of consumers were satisfied with the results. Clearly both the credit bureaus and consumers' lenders are doing their jobs well and are serving consumers effectively. This fact offers a compelling rebuttal to the unfounded and wholly unsupported accusations offered by consumer advocates that our members' systems fail to meet consumer expectations.

Further indication of our members' success in meeting consumers' needs can be found in a 2008 report to Congress regarding complaints submitted to the Federal Trade Commission. Note in the excerpt below that consumers appeared to be complaining to the FTC concurrent with the submission of a dispute directly to a consumer credit reporting agency. More than 90% of the disputes were resolved when submitted directly to the CRA, a percentage that is very consistent with the findings of PERC

The data indicate that a significant number of disputes were resolved in the consumer's favor (i.e., the disputed information was either removed from the file or modified as requested). The data further indicate, however, that in most cases, the favorable resolutions took place as part of the normal dispute process, and not as a result of the referral program. Specifically, the CRAs' reports show that over 90 percent of disputes that were resolved "as requested by the consumer" were resolved before the CRA processed the referral from the Commission.[4]

It is also important to note that in 2003 consumers were given the right to dispute information furnished

[4] See page 5 of the FTC Report to Congress Submitted on December 29, 2003: http://www.ftc.gov/os/2008/12/P044807fcracmpt.pdf

to a consumer reporting agency directly with the furnisher of the data (e.g., lender, etc.). A March 2012 FTC report on a survey of consumers indicated that 46% chose to dispute an item of information directly with the data furnisher rather than with a consumer credit reporting agency. It is our view that consumers will continue to grow in their understanding of this right and will more often dispute with the data furnisher since their lender is the true source of their dispute and is in the best position to resolve it.

Though the data discussed above confirms an error-correction system that is working very well for consumers, some consumer advocacy organizations have mischaracterized a key technology platform, called eOscar®, which contributes materially to this success. This platform connects the more than 10,000 data furnishers who supply data to the nationwide consumer credit reporting agencies so that disputes can be submitted quickly and consistently.

The FCRA requires nationwide credit bureaus to maintain an "automated reinvestigation system."[5] The FCRA also requires nationwide credit bureaus to transmit a consumer's dispute to the lender/data source within five business days.[6] This requirement of law makes sense when you consider that the FTC's credit report accuracy study found that 88% of the possible errors consumers identified in their credit reports were about how collection agencies and lenders reported data to credit bureaus (and not how credit bureaus loaded these data).[7]

In the interest of serving consumers, the industry built an automated system prior to law requiring it and it is a great success. While law requires disputes to be processed in no more than 30 days, this platform shortens the time frame to an average of 14 days and recent studies show that 95% of consumers are satisfied with the results.

Codes are used to transmit the consumer's dispute to a lender. Some have misunderstood these codes

[5] 15 U.S.C. § 1681i(a)(5)(D)
[6] 15 U.S.C. § 1681i(a)(2)(A)
[7] Note that a high percentage of possible errors identified by consumers were about balances. This suggests that consumers may be disputing an accurate balance reported by their lender, but the balance has not yet been updated as a result of a recent payment by the consumer. Consumer's lenders work hard to ensure the data they report is accurate and benefits their customer in future transactions.

to mean that they are a shortcut and result in an abridged version of the consumer's dispute being sent to the lender. This is not the case. Each code comes with a full and complete meaning that is also part of the system. Consider the following example:

E1 - "Claims paid original creditor before collection started or paid before charge-off. Verify account status, payment rating, current balance, amount past due, pay history".

This is a typical example of a code that is unambiguous and which encourages a thorough and complete investigation of all data regarding a consumer's account. Lenders and collection agencies take these directions seriously and conduct robust reinvestigations.

Finally, though the current coding system is working well in 2013 CDIA's members voluntarily launched a new version of the eOscar® system. With the new version of eOscar®, the documents that consumers submit to the nationwide consumer reporting agencies in support of their disputes will be made available to lenders investigating the dispute. The new eOscar® system requires the lender to look at the supporting document(s) before completing its investigation.[8] Initially, this change to eOscar® only applied to supporting documentation sent by mail. By the end of 2013, CDIA members had redesigned their online dispute portals so that consumers could upload validating documents.

CDIA's members remain committed to continuing to improve systems to serve consumers while also preserving the integrity of data in their databases which is threatened by fraudulent credit repair activities.

Credit Repair Scams

As discussed above, it is good news that consumers' knowledge of credit reports and how scores analyze credit report data is improving. It is also good news that the systems for submitting a dispute are

[8] CDIA's members were proactive and implemented this design feature prior to the CFPB's recent bulletin (CFPB Bulletin 2013-09) which states *"The furnisher, in turn, must 'conduct an investigation with respect to the disputed information,' 'review all relevant information' provided by the CRA, and respond appropriately based on the result of the investigation."*

working well for consumers. However, it is critical that consumers remain vigilant and do not fall prey to fraudulent credit repair schemes. Fraudulent credit repair agencies have a business model built around the premise of seeking to have accurate, predictive data deleted from a consumer's credit report and taking consumers' hard-earned money to do something that consumers can do for themselves or in some cases doing nothing at all. The quote from an October 13, 2011 FTC press release regarding a public investigation of a credit repair operator is illustrative of the problem and challenge our members face:

> *"The FTC alleges that the defendants made false statements to credit bureaus disputing the accuracy of negative information in consumers' credit reports. In letters to credit bureaus, which XXX did not show to consumers, the firm typically disputed all negative information in credit reports, regardless of the information's accuracy. XXX continued to send these deceptive dispute letters to credit bureaus, even after receiving detailed billing histories verifying the accuracy of the information, or signed contracts from creditors proving the validity of the accounts.*
>
> ***The complaint alleges that XXX misrepresented to consumers that federal law allows the company to dispute accurate credit report information**, and that credit bureaus must remove information from credit reports unless they can prove it is accurate. In the company's words, credit bureaus must "prove it or remove it." XXX charged a retainer fee of up to $2,000 before providing any service, and falsely told consumers that Texas law allows credit repair organizations that are registered and bonded to charge an advance fee."*

CDIA applauds the actions of the Federal Trade Commission and state attorneys general to protect consumers through their enforcement of the Credit Repair Organizations Act against companies engaged in fraudulent and deceptive practices. These enforcement efforts must continue. But the CFA survey of consumers speaks clearly to the need to also continue to educate consumers. Consider the following finding:

"Over half (51%) [of consumers] incorrectly believe that credit repair companies are "always" or "usually"

helpful in correcting credit report errors and improving scores. Experts agree that credit repair companies often overpromise, charge high prices, and perform services that consumers could do themselves."

Fraudulent credit repair activities remain a problem for consumers, for credit bureaus and for all data furnishers (credit unions, community banks, etc.). Our members estimate that as much as 43% of incoming mail is tied to credit repair schemes that take money from unsuspecting consumers, distract from processing valid disputes and tie up data furnisher resources leading some to give up and delete accurate, predictive data.

Repeated Studies Confirm that Credit Reports are Accurate

The accuracy of credit reports is at the center of our members' values and there is ample empirical evidence that their efforts are a success. Consider the findings of the following studies/reports:

In 2004 the Federal Reserve Board published a study of 300,000 credit reports and stated that ""....the proportion of individuals affected by any single type of data problem appears to be small..."

In February of 2013 the Federal Trade Commission released its comprehensive study of the accuracy of credit reports (see CDIA's full news release in Appendix I of this testimony). It focused on errors in reports that could adversely impact the price a consumer would pay. These errors were defined as "material errors." The study found that 98% of credit reports do not contain a material error.

Further, in December 2012, the Consumer Financial Protection Bureau (CFPB) published a white paper on credit reporting stated the following: "...the number of credit-active consumers who disputed one or more items with an NCRA [nationwide credit bureau] in 2011 ranges from 1.3% to 3.9%."

The federal government reports continue a consistent narrative about the integrity of the data contained in credit reports. In 2011, the Political and Economic Research Council study found that only 1 percent of credit reports contained a material error.

While these studies confirm that our members and data furnishers are extraordinarily successful in maintaining accurate data, CDIA's members are committed to continuing their internal quality assurance efforts, dialogue with regulators, dialogue with lenders and learning from reports such as FTC's latest report on

accuracy.

CDIA's Members are Proactive on Behalf of Consumers

CDIA's members have a deep history of being proactive on behalf of consumers and doing so without the imposition of new duties under law. Consider the following historical examples:

- CDIA's members established the first set of voluntary practices which became the framework for the enactment of the FCRA in 1970.
- CDIA's members again implemented voluntary practices in the early1990s which became the framing concepts for the 1996 amendments to the FCRA.
- The Metro 2® Format was voluntarily developed by CDIA and its members to improve the precision and consistency of the 3 billion updates of data reported by 10,000 data furnishers.
- Without a duty under law, CDIA's members pioneered the first online system (eOscar®) for processing disputes which solved the problem of consumers having to call multiple credit bureaus to seek the correction of data reported by their lender.
- Fraud-alert systems were developed voluntarily by CDIA members. These alerts protect consumers against identity theft.
- A voluntary fraud-alert data exchange was subsequently developed so consumers would have a one-stop shop for placing these alerts on their credit reports.
- Another voluntary initiative led to consumers who placed fraud alerts being allowed to access a copy of their credit report free of charge.
- Giving consumers online access to their credit reports were voluntary systems investments made by CDIA's members.

Though, in some cases discussed elsewhere in this testimony, immediately below is a summary of recent voluntary actions:

- 2013 – An Improved eOscar® System - Nationwide credit bureaus launch a new version of the eOscar® system (the system through which consumer disputes are transmitted to data furnishers). With the new version of eOscar®, the documents that consumers submit to the CRAs in support of their disputes will be made available to lenders investigating the dispute. The new eOscar® system requires the lender to look at the supporting document(s) before completing its investigation. Initially, this change to eOscar® only applied to supporting documentation sent by mail. By the end of 2013, CDIA members had redesigned their online dispute portals so that consumers could upload validating documents online.

- 2014 – A New Metro 2® Remote-Learning Training Platform and Online Resource - CDIA launched a new online training resource for the Metro 2® Format (the format for the data submitted to the CRAs by the data furnisher). Appendix E to Part 222 of the Code of Federal Regulations states that data must be furnished in a standardized and clearly understandable form and manner. However, the Consumer Financial Protection Bureau (CFPB) conducted examinations of data furnishers and observed that "...deficiencies have resulted in failure to communicate appropriate and accurate account information to credit bureaus..." The CFBP further states that "employees did not have sufficient training or familiarity with the requirements of the FCRA to implement it properly." The new eLearning system instituted by CDIA is an ongoing online resource for questions about Metro 2® and includes a certificate training component so that lenders can train their data furnishing teams. Further, CDIA has complemented this new Metro 2® training effort with a new FCRA data furnisher compliance training system that focuses on the law and regulations therein.

- 2013 – Encouraging Consumers to Access Free Reports – One academic who contributed to the FTC's accuracy study observed in a one-on-one debrief with CDIA that getting consumers connected with their credit report disclosure would be one of the best ideas in which nationwide credit bureaus could invest. CDIA members acted and provided CDIA with a grant to support this effort. CDIA conducted

a Public Service Announcement (PSA) campaign to encourage consumers to obtain their free credit reports.

- 2013 – Free Reports Improving Consumer Knowledge and Experience - Nationwide credit bureaus redesigned www.annualcreditreport.com. This redesign was based on several behavioral design labs housed at major universities. After testing a variety of possible designs, the new website for consumers to receive their annual three free credit reports is more effective both in terms of consumers' ability to complete requests for a free report and also in terms of accessing relevant information about their rights, etc. One measure of the success of this effort is measured by the 66% increase in the number of users who now choose to read newly-designed financial literacy information found on the site.

CDIA Views on Current Law and Policies

Improving the Quality of Data – CDIA's members believe that Congress could help contribute to the quality of data in our members' systems (a clear benefit for consumers and the economy) by allowing them access to the Social Security Administration's database for purposes of validating SSNs and the person associated with an SSN. Data matching is based on every data element provided by lenders, and other service providers. Lenders work hard to gather accurate identifying information. However, most identifying information changes over time. Approximately 40 million consumers move each year, which means addresses change. Millions of last names change each year due to marriage and divorce. Consumers may use their full name on one application and their nickname on another. They may also unintentionally transpose digits in the SSN when completing an application. There are millions of attempts to perpetrate identity theft which can tie a consumer's SSN to a false identity in a lender's portfolio. With all of these changes, the SSN remains an important part of how data is matched. Giving our members a chance to cross-match our data with the SSA wouldn't be definitive (there is an error rate in the SSA's database), but it would improve our members' already robust quality assurance processes.

Growing Problems with Aggressive Private Litigation/Class Actions - Under the Fair Credit Reporting

Act, CDIA's members are subject to enforcement actions by the Consumer Financial Protection Bureau, the Federal Trade Commission, state attorneys general and consumers through private rights of action. This committee should know that the class action risks, which arise from the private rights of action in current law (tied to statutory damages), are, for some members, posing near-existential risks. This year CDIA's small-business errors and omissions insurance program provider hiked up premiums by 50% for 2015. They did this though more than 80% of our members in the program had been loss-free for more than four years and 95% of members had been loss free for at least two years. Our current provider also "fired" some members by refusing them coverage going forward. CDIA sought to compete the current provider's bid for E&O insurance with six other insurance companies. All six declined to bid on the business. Some members of the CDIA have even had to sue their E&O provider to force them to provide coverage under a current policy. Even the mere threat of a class action is causing insurers to refuse or cancel coverage.

CDIA recognizes and does not question the importance and necessity of giving consumers their own right to enforce the FCRA. However we believe congress should reevaluate the broad application of private rights of action, the inclusion of statutory damages and the uncapped awards for class actions, particularly in the context of the creation of the Consumer Financial Protection Bureau. In addition to its enforcement powers the CFPB has supervisory and examination powers over all CDIA's members who are larger participants and all members who may pose a risk to consumers. The CFPB also has the power to write rules under the FCRA, as well as to issue bulletins and non-public memorandums of understanding.

Encourage FHFA to Support and Encourage GSE Efforts to Embrace Competition and Expand Opportunity for Consumers – On August 29, 2014, the Federal Housing Finance Authority issued a propose rule regarding new enterprise housing goals.[9] It states that "[t]he housing goals include separate categories for single-family and multifamily mortgages on housing that is affordable to low-income and very low-income families…" Regardless of which of the three proposed approaches for measuring the enterprises' success in meeting established housing goals is used, FHFA could expand the universe of credit-qualified consumers now

[9] https://www.fhfa.gov/SupervisionRegulation/Rules/RuleDocuments/Enterprise_Goals_Proposed_Rule_8-29-2014.pdf

by simply allowing the GSEs to invest in expanding the number of third-party-developed credit scores that may be used by primary-market lenders. Today the GSEs have created an unintended monopoly in terms of the credit score used for conforming mortgage loans because they have only approved one third-party credit score. VantageScore's product (VantageScore 3.0) is excluded and this disadvantages consumers, yet VantageScore 3.0 provides significant advantages for consumers and for lenders.[10] Most importantly, for consumers VantageScore 3.0 is essential because it is "[m]ore inclusive, scoring up to 35 million previously unscorable consumers." The GSEs are not permitted to make changes to their systems without FHFA's approval. Now is the time for FHFA to not merely establish new housing goals, but to embrace marketplace competition and indicate their strong support for the GSEs to validate and approve new third-party credit score models which can be used by primary-market lenders issuing conforming loans. Doing so expands opportunities for under-served consumers and at the same time improves loan quality.

On July 10, 2014, the Credit Builders Alliance[11], a leading consumer-focused organization with deep expertise in the intersection between the financial services industry and consumers, hosted a symposium which focused on how new advances in alternative data are critical to the mission of helping unbanked and under-banked consumers build credit and enter mainstream financial services marketplace. Alternative data comes in many forms. CDIA's members are at the forefront of this movement and it is private investment which is expanding the data sets available for lenders to use as they reach new communities of consumers. These data ensure expanded fairness and access. We believe, like opening the door to new credit scoring models, FHFA should also allow and in fact encourage the GSEs to expand the types of alternative data which can be scored and used in automated underwriting (and not merely processed through manual underwriting).

Exempt Credit Monitoring Services and Other Financial Literacy Products Which Help Consumers Learn About and Protect Their Credit Standing From the Credit Repair Organizations Act –Previously in this

[10] http://www.vantagescore.com/pdf/VS30-FactSheet.pdf

[11] http://creditbuildersalliance.org/

testimony we discuss the serious problems posed by fraudulent credit repair operators. Below we discuss the misapplication of federal law to credit monitoring products which help expand a consumer's financial literacy.

The Credit Repair Organizations Act:

By the middle 1980s, states recognized the problem of fraudulent credit repair and enacted laws that established a variety of approaches to addressing their concerns with fraudulent acts. In 1996, Congress enacted the Credit Repair Organizations Act.[12] Below are the findings and purposes sections of the act which are descriptive of the problem Congress intended to address through the enactment of CROA.

"(a) Findings

The Congress makes the following findings:

***(1)** Consumers have a vital interest in establishing and maintaining their credit worthiness and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers.*

***(2)** Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters.*

(b) Purposes

The purposes of this subchapter are—

***(1)** to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and*

***(2)** to protect the public from unfair or deceptive advertising and business practices by credit repair organizations."*

Administrative Enforcement of CROA:

[12] 15 U.S.C. Chapter 41, Subchapter II – A – CREDIT REPAIR ORGANIZATIONS

The Federal Trade Commission enforces CROA and often partners with state attorneys general on their enforcement sweeps. Click here for a recent example of their enforcement efforts. They also seek to educate consumers regarding credit repair. Click here for additional background on their efforts.

Private Enforcement of CROA:

CROA can also be enforced through private rights of action. The reason for including private litigation as an enforcement option was to ensure that consumers, themselves, could seek remedies where they had been harmed by fraudulent credit repair companies. However, more recently plaintiffs' attorneys have successfully litigated cases against CDIA members using CROA though these products were not in existence when CROA was enacted. Classes have been certified and expensive settlements have been reached. In contrast to these private-sector efforts which result in the misapplication of CROA to law-abiding companies and products which benefit consumers, no state attorney general or the Federal Trade Commission has tried to apply CROA to credit monitoring products.

The misapplication of CROA is unfair for consumers and the companies which provide financial literacy services which help consumers with their credit standing and which monitoring their credit reports. The misapplication of CROA retards innovation in terms of lowering costs for consumers (affordability is always relevant) and it reduces competition between providers on the basis of the features and benefits of such products, which means consumers don't have access to the product that would best meet their needs.

It is clear through the Congressional findings and purpose that CROA was not directed at our members' products and services. In fact, these products and services didn't exist in 1996. We believe that it should be made clear that companies that provide products and services proven to help consumer learn about and protect their credit standing should not be subject to CROA, particularly the number of CDIA members who are highly regulated and abide by the law.

Conclusion

I am grateful of this opportunity to testify and for your interest in our members. They are a vital and successful part of our U.S. economy. Though 95% of consumers are satisfied with the results of their reinvestigations and 98% of credit reports don't contain a material error, our members remain committed to always improving systems and learning from both anecdotes and from new research.

I am happy to answer any questions.

APPENDIX I – CDIA NEWS RELEASE – FTC ACCURACY STUDY

February 11, 2013 **FOR IMMEDIATE RELEASE**

Norm Magnuson

202-408-7406

FTC REPORT CONFIRMS CREDIT REPORTS ARE ACCURATE

CDIA Says Consumers Should Take Advantage of Free Credit Reports

The Federal Trade Commission (FTC) released its latest study on credit reports today and reconfirmed the findings of several recent studies that conclude that credit reports are highly accurate and play a critical role in facilitating access to fair and affordable consumer credit. The FTC's research determined that 2.2 percent of all credit reports have an error that would increase the price a consumer would pay in the marketplace and that fully 88% of errors were the result of inaccurate information reported by lenders and other data sources to nationwide credit bureaus. The study also showed that 95 percent of consumers are unaffected by errors in their credit report.

Stuart Pratt, president and CEO of the Consumer Data Industry Association (CDIA), said, "Most consumers are well aware that their credit report is a fundamental reflection of their discipline and responsibility when accessing and using consumer credit. This additional study from the US government's chief consumer protection agency should reassure consumers that they can depend upon the accuracy of their credit history."

"While the overall number of errors and their impact on consumers' creditworthiness is small, maintaining accurate credit reporting data is essential to both lenders and credit bureaus. We will continue to work with lenders and others who provide data to the credit bureaus to make sure the percentage of material errors impacting consumers is even lower", Pratt said.

This is the third study in just over a year that addresses factors associated with the accuracy of credit reports. In December 2013, the Consumer Financial Protection Bureau (CFPB) published a white paper on credit reporting and found only 1.3 percent to 3.9 percent of all consumers file a dispute about information in their credit report. In 2011, the Policy and Economic Research Council (PERC) also undertook a peer-reviewed study of credit report accuracy and found that consumer credit scores were negatively affected less than one percent of the time by an error in a credit report.

The CDIA encourages consumers to take advantage of their right to free credit reports from nationwide credit reporting agencies by going to www.annualcreditreport.com. To convince more consumers to look at their credit reports, CDIA's nationwide credit reporting companies have given the Association a grant to fund new public service announcements focused on connecting them with their credit reports.
"Confirmation that credit reports are accurate is a good thing," said Pratt, "but all consumers should be aware that checking credit reports every year is fundamental to accuracy.'"

About CDIA

Founded in 1906, CDIA is the international trade association that represents 170 consumer data companies. CDIA members represent the nation's leading institutions in the credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening, and collection services businesses.

Testimony before the

U.S. HOUSE OF REPRESENTATIVE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

regarding

"An Overview of the Credit Reporting System"

September 10, 2014

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Attachment - Report: *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession*

Testimony of Chi Chi Wu, National Consumer Law Center

Before the Subcommittee on Financial Institutions and Consumer Credit

of the U.S. House of Representative Committee on Financial Services

regarding

"An Overview of the Credit Reporting System"

September 10, 2014

INTRODUCTION AND SUMMARY

Madame Chair, Ranking Member Meeks, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding consumer credit reporting and the need for reform. We offer our testimony here on behalf of our low income clients.[1]

Credit reports play a critical role in the economic health and well-being of consumers and their families. A good credit history (and its corollary, a good credit score) enables consumers to obtain credit, and to have that credit be fairly priced. Credit reports are also used by other important decisionmakers, such as insurers, landlords, utility providers, and unfortunately, as we discuss below, even employers. Thus, it is no exaggeration to say that a credit history can make or break a consumer's finances.

[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* (8th ed. 2013) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, with assistance from Deanne Loonin, Persis Yu, and Carolyn Carter of NCLC.

As Congress stated when it passed the Fair Credit Reporting Act (FCRA), "[t]he banking system is dependent upon fair and accurate credit reporting." 15 U.S.C. § 1681(a)(1). Yet the credit reporting system in this country is neither fair nor completely accurate. As a result, tens of millions of consumers suffer from poor credit histories and low scores that result from unfair practices, inaccuracies, and fundamental flaws in the system. Poor credit histories and scores means these consumers are shut out from fairly priced credit, affordable insurance, and even jobs and apartments. Having millions of economically marginalized consumers, in turn, acts as a drag on our economy. The problems discussed in this testimony include:

- Medical debts that create negative marks on the credit reports of millions of Americans, even when the debt is the result of insurance disputes or billing errors by providers, or is ultimately settled or paid off. While recent industry changes provide a modicum of relief, more reform is necessary to adequately protect consumers from the unfair impact of medical debts on their credit reports. We strongly support H.R. 1767, the Medical Debt Responsibility Act, which would remove paid or settled medical debts from credit reports. This approach will tremendously benefit consumers, and indeed is probably the simplest and easiest "quick fix" out there to improve the credit records of an enormous number of consumers.
- The use of credit reports by nearly half of employers. Credit checks create a fundamental "Catch-22" for job applicants – a job loss prevents a worker from paying his/her bills, and the resulting damage to a credit report prevents him/her from getting a job. Yet there is no evidence that credit history can predict job performance. Its use in hiring discriminates against African American and Latino job applicants. We urge Congress to ban the use of credit reports in employment, with very limited exceptions.

- The foreclosure crisis of the late 2000s damaged the credit reports of millions of consumers, shutting them out of affordable credit, insurance, jobs and apartments. Creating a class of consumers that are shut out of so many economic benefits and necessities created a drag on the nation's economy and slowed our recovery. Helping these consumers fix the credit reporting harms caused by the foreclosure crisis would enable them to move on economically, and would in turn, would help with the nation's recovery from the Great Recession.
- The current credit reporting and scoring system is fundamentally flawed. It is an overly blunt instrument that treats consumers who have fallen on bad luck or hard times as being the same as consumers who are truly irresponsible. Many consumers have low scores because of job loss, illness, other "extraordinary life circumstances" - as well as abuse by lenders, debt collectors and others. Some of these consumers could be good borrowers after their misfortune, and would certainly be good workers.
- Credit reports are plagued by inaccuracies, such as files that mix the identities of different consumers; errors caused by debt collectors, creditors and other providers of information; and the fallout caused by identity theft. The Federal Trade Commission found that 21% of consumers had verified errors in their credit reports, 13% had errors that affected their credit scores, and 5% had errors serious enough to be denied or pay more for credit. Simple, common-sense measures could reduce this error rate.
- The nationwide consumer reporting agencies (CRAs) – Equifax, Experian, and TransUnion -- are in gross violation of the FCRA's requirements to conduct "reasonable" investigations when consumers dispute errors in their credit reports. Instead of hiring trained personnel to conduct real investigations, the nationwide CRAs do nothing more

than forwarding the dispute to the creditor, debt collector or other provider of the information – called the "furnisher" – and then automatically accepting whatever the furnisher states in response. The nationwide CRAs' automatic deference to furnishers is like a judge who finds in favor of the defendant in every single lawsuit.

For these reasons and others, the credit reporting system in the United States is in need of substantial reform. The Consumer Financial Protection Bureau (CFPB) has made significant progress on some of these problems, much to its credit for an agency that has only had authority to supervise this industry for two years. However, Congressional action is necessary for the reforms that are necessary to truly protect consumers and ensure that all Americans can fairly participate in our nation's economic system.

I. MEDICAL DEBT UNFAIRLY PENALIZES CONSUMERS

The National Consumer Law Center, on behalf of its low-income clients, is pleased to support the Medical Debt Responsibility Act, H.R. 1767. Millions of Americans struggle with overwhelming medical debts that they cannot afford to pay because they do not have health insurance. Even consumers with health insurance coverage can find that their credit histories are damaged due to medical bills, because of problems with unaffordable co-pays and deductibles, out-of-network charges, and disputes with insurance companies. While the Affordable Care Act helped by expanding insurance coverage for millions of Americans, medical debt will still remain a problem because it often afflicts consumers with insurance in the form of uncovered expenses, insurance denials, co-pays, deductibles and even billing errors.

The collective scope and impact on medical debt on the credit histories of American consumers is enormous and cannot be overstated. Nearly 75 million working age adults (or

about 41%) experienced problems with medical bills in 2012.[2] In addition, 41 million adults (or about 22%) were contacted by a collection agency for unpaid medical bills.[3] Many of these collection agencies provide information about the debts that they collect to the credit reporting agencies. Thus, tens of millions of consumers are likely to have negative information about the existence of medical debt collection account on their credit reports.

Medical debt represents an enormous portion of debt that is collected by debt collectors. A number of studies indicate that the amount of medical debt that is turned over to debt collectors -- and then in turn is reported to the nationwide CRAs (Equifax, Experian, and TransUnion) -- is enormous:

- A 2003 Federal Reserve study found that over ***half*** of entries (52%) on credit reports for collection items are for medical debts.[4]
- An Ernst & Young study published in 2012 confirmed the Federal Reserve's study, finding that medical debts constituted more than ***half*** (52.2%) of the debt collected by debt collection agencies – more than twice as much as credit card and other financial debt.[5]

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[2] Sara R. Collins, et al., The Commonwealth Fund, *Insuring the Future: Current Trends in Health Coverage and the Effects of Implementing the Affordable Care Act*, April 2013, at 6, *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Fund%20Report/2013/Apr/1681_Collins_insuring_future_biennial_survey_2012_FINAL.pdf (hereinafter "*Commonwealth Fund 2012 Biennial Report*").
[3] *Id.*
[4] Robert Avery, et al., *An Overview of Consumer Data and Credit Reporting*, Fed. Reserve Bulletin, at 69 (Feb. 2003).
[5] Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, Feb. 2012, at 8, *available at* www.acainternational.org/files.aspx?p=/images/21594/2011acaeconomicimpactreport.pdf.

- A 2007 study by Federal Reserve researchers found that that "health-care providers represented the most important group of customers [for debt collectors], accounting for more than a quarter of all revenues."[6]
- A 2013 Federal Trade Commission report on debt buyers found that one-third of debt purchased by debt buyers from original creditors (i.e., excluding resales) is medical debt.[7]

The vast majority of these medical debts are for small amounts. The Federal Reserve study discussed in the first bullet found that over 85% of medical debts on credit reports were for bills under $500 (about $644 adjusted for inflation).[8]

The tremendous amount of medical debt on credit reports is troubling, because unlike collections for credit accounts, medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which prices quotes are rarely provided. Medical debt is different than other types of consumer debt for a number of reasons, including:

- **The presence of a third party payor, *i.e.*, the insurance company.** A medical bill may be turned over to a debt collector as a result of a bill being unpaid due to a dispute between the insurance company and the provider, a provider's failure to properly bill the insurer, or the insurer's failure to properly reimburse the provider. Even when errors are eventually fixed, they result in long delays during which bills

[6] Robert M. Hunt, Fed. Reserve Bank of Philadelphia, Collecting Consumer Debt in America, Bus. Rev., at 13 (2d Quarter 2007), *available at* http://www.phil.frb.org/research-and-data/publications/business-review/2007/q2/hunt_collecting-consumer-debt.pdf.
[7] Federal Trade Comm'n, Structure of Practices of the Debt Buying Industry, at T-4, T-7 (Jan. 2013), available at www.ftc.gov/os/2013/01/debtbuyingreport.pdf.
[8] Avery, et al., *supra* n. 4, at 69 (Feb. 2003).

may be sent to debt collectors. An estimated seven million Americans reported that their medical bills had been sent to a debt collector because of a billing mistake.[9]

- **Consumer confusion over the complexities of health insurance and medical billing.** One study found that nearly 40% of Americans do not understand their medical bills.[10] Some of these consumers will let a medical bill go to a collection agency because of this confusion, or they believe that their insurer will pay it.
- **The availability of insurance coverage or charity care for low-income consumers.** Low-income consumers are sometimes eligible for programs to pay their bills, including government programs (Medicaid, Children's Health Insurance Program or "CHIP," worker's compensation) or charity care.

Moreover, negative marks for medical debt remain on a consumer's credit report even after the medical debt has been fully paid or settled. Even after the bill has a balance of zero, its mere presence as a collection matter remains on the consumer's credit records for seven years and may in some cases adversely impact a consumer's credit score. Previously, medical debt would harm a consumer's credit score in all cases. A May 2014 study by the CFPB found that the presence of medical debt on a credit report unfairly penalized a consumer's credit score, resulting in a credit score that is typically lower by ten points than it should be. For consumers who have medical debt on their credit reports that were paid off, their scores were up to 22 points lower than they should be.[11]

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[9] Collins, *supra* note 2, at 6.
[10] Press Release, *Intuit Financial Healthcare Check-Up Shows Americans Confused about Medical Statements*, Apr. 27, 2010, at http://about.intuit.com/about_intuit/press_room/press_release/articles/2010/AmericansConfusedAboutMedicalStatements.html..
[11] Consumer Financial Protection Bureau, Data point: Medical debt and credit scores, May 2014, available at http://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.

In response to the CFPB study and general criticism over the impact of medical debt, the providers of credit scoring models have made changes to reduce the unfair penalty caused by such debt. Last month, FICO announced that it would no longer consider paid collection items (both medical and non-medical) in the latest version of its scoring model.[12] A second provider of credit scoring models, VantageScore, had already made a similar change to its scoring system in March 2013.[13] In addition, FICO has said it will give less weight to unpaid medical debts; consumers whose only negative item is unpaid medical debt can expect their score to increase up to 25 points.[14]

The changes by FICO and VantageScore will not completely eliminate the negative impact of medical debt on credit reports. The changes are voluntary and non-binding, which means they could be reversed at any time. They probably will not benefit mortgage applicants, because the changes only affect FICO's latest scoring model, FICO 09. Apparently, neither FICO 09 nor VantageScore is used by mortgage industry giants Fannie Mae and Freddie Mac.[15] Finally, they will not help job applicants with medical debt, because employers generally do not use credit scores to evaluate applicants, but review the full credit report, and thus will see the medical debt collection item.

Instead, what consumers need is for Congress to pass the Medical Debt Responsibility Act, H.R. 1767, which will fix this problem by amending the FCRA to exclude fully paid and settled medical debt from a consumer's credit report. It is a sensible and straightforward

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[12] Tara Seigel Bernard, Credit Scores Could Rise With FICO's New Model, *N.Y. Times*, Aug. 8, 2014, B3.
[13] Kevin Wack, Credit Scoring Model Bucks the Industry Line on Paid Debts, *Am. Banker*, Mar. 11, 2013 (VantageScore removing paid collection accounts from its latest scoring model).
[14] Seigel Bernard, *supra* note 12, at B3.
[15] *Id.*

approach that will prevent the credit records of millions of consumers from being unfairly tarnished.

II. USE OF CREDIT REPORTS IN EMPLOYMENT IS UNREASONABLE AND DISCRIMINATORY

The use of credit reports in employment is a practice that is harmful and unfair to American workers. Despite many good reasons to avoid engaging in this practice, about half of employers (47%) do so today,[16] a dramatic increase from only 19% in 1996.[17] One survey reported that 1 in 10 respondents who were unemployed had been informed that they would not be hired for a job because of the information in their credit reports.[18]

The use of credit reports in employment should be severely restricted for the following reasons.

- **Credit checks create a fundamental "Catch-22" for job applicants.** A simple reason to oppose the use of credit history for job applications is the sheer, profound absurdity of the practice. Using credit history creates a grotesque conundrum. Simply put, a worker who loses her job is likely fall behind on paying her bills due to lack of income. With the increasing use of credit reports, this worker now finds herself shut out of the job market because she's behind on her bills. This leads to financial spiraling effect: the worse the impact of unemployment on their debts, the harder it is to get a job to pay them off.

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[16] Society for Human Resource Management, Background Checking—The Use of Credit Background Checks in Hiring Decisions, July 19, 2012, at http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx..

[17] Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006 at n.3 (citing 1996 data from the Society for Human Resource Management).

[18] Amy Traub, Discredited: Employment Credit Checks Keep Qualified Workers Out of a Job, 2012, available at www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job.

- **Use of credit checks in hiring prevents economic recovery for millions of Americans.** The use of credit history for job applicants is especially absurd after the massive job losses of the Great Recession, which resulted in unemployment rates at times of nearly 10%. For the many workers who have suffered damage from their credit reports because of unemployment or underemployment, the use of credit histories presents yet another barrier for their economic recovery – representing the proverbial practice of "kicking someone when they are down" for millions of job seekers.
- **The use of credit checks in hiring discriminates against African American and Latino job applicants.** There is no question that African American and Latino applicants fare worse than white applicants when credit histories are considered for job applications. For one thing, these groups are already disproportionately affected by predatory credit practices, such as the marketing of subprime mortgages and overpriced auto loans targeted at these populations. As a result, these groups have suffered higher foreclosure rates. Study after study has documented how, as a group, African Americans and Latinos have lower credit scores than whites.[19] Since credit scores are a translation of the information in credit reports, that means these groups fare worse when their credit reports are considered in employment.
- **Credit history does not predict job performance.** Credit reports were designed to predict the likelihood that a consumer will make payments on a loan, not whether he or she will steal or behave irresponsibly in the workplace. The overwhelming weight of evidence is that people with impaired credit histories are ***not*** more likely to be bad employees or to steal from their employers. The earliest study on this issue concluded

[19] See Appendix A - List of Studies Showing Racial Disparities in Credit Scores.

there is no correlation between credit history and an employee's job performance,[20] while a more recent study from 2011 also failed to find a link between low credit scores and theft or deviant behavior at work.[21]

- **As discussed in Section V, credit reports suffer from unacceptable rates of inaccuracy, especially for a purpose as important as use in employment.**

Fundamentally, the issue at stake is whether workers are fairly judged based on their ability to perform a job or whether they're discriminated against because of their credit history. Congress should ban the use of credit reports for employment purposes, with only very limited exceptions for a few specific job positions.

III. THE FORECLOSURE CRISIS AND GREAT RECESSION CAUSED ENORMOUS HARM TO CONSUMERS' CREDIT HISTORIES

The foreclosure crisis and the massive unemployment caused by the Great Recession saddled millions of consumers with poor credit histories. These include the over 8 million workers who lost their jobs,[22] as well as the 4.5 million families whose homes were foreclosed upon. Many of these 4.5 million foreclosures were not due to irresponsible borrowing, but phenomena such as:

- Abusive and predatory lending, such as mortgage brokers and lenders who targeted low-income and minority consumers for expensive subprime loans that they could not afford.

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[20] Jerry K. Palmer and Laura L. Koppes, *Further Investigation of Credit History as a Predictor of Employee Turnover*. Presentation to the American Psychological Society, 2003. *See also* Press Release, Society for Industrial and Organizational Psychology, Credit History Not a Good Predictor of Job Performance or Turnover, January 16, 2004, *available at* http://www.newswise.com/articles/credit-history-not-a-good-predictor-of-job-performance-or-turnover (summarizing study by Drs. Palmer and Koppes).

[21] Jeremy B. Bernerth et al, *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, Journal of Applied Psychology, Oct. 24, 2011.

[22] Economic Policy Institute, The Great Recession – Job Loss, at http://stateofworkingamerica.org/great-recession/.

- The combination of exploding Adjustable Rate Mortgages (ARMs), negatively amortizing mortgage loans, and the collapse of the housing market, which left many mortgages "underwater," with the homeowner owing more than the home was worth.
- Inability to pay mortgage payments due to unemployment or underemployment caused by the Great Recession.
- Abusive servicing practices, including cramming accounts with illegal fees, failing to process loan modification requests, and gross accounting errors.

These negative impacts of a foreclosure or other mortgage-related event will last for seven years, or ten years in the case of bankruptcies, as these are the current time limits under the Fair Credit Reporting Act for adverse information to remain on a credit report. Thus, consumers who have gone through a foreclosure or other adverse mortgage event are shut out of affordable credit markets for seven years (or ten years, in the case of bankruptcies), and unable to obtain reasonably priced auto loans or credit cards. The damage from a foreclosure or other adverse mortgage-related event could cause a consumer to be denied a job, lose out on a rental apartment after losing his or her home, and pay hundreds of dollars more in auto insurance premiums. The cumulative impact of these financial calamities could strand a consumer economically for years after the foreclosure itself. It could create a self-fulfilling downward spiral in a consumer's economic life.

The depressed credit scores from the foreclosure crisis and the Great Recession also impeded the country's economic recovery. According to some analysts, the Federal Reserve's effort to stimulate the economy with low interest rates has been less than effective because many of the consumers who could most benefit from these rates do not qualify for loans due to low

credit scores.[23] In turn, the lack of ability to access low rates means these consumers have less ability to open small businesses or engage in household spending, the very steps needed to help our economy. In an ironic way, credit scoring and reporting have created a vicious cycle – economic harm causes low scores, low scores prevent recovery by shutting out the consumer from benefits that require a high score, and the consumer's lack of recovery drags down the economy as a whole.

The drag on recovery by consumers' low scores is exacerbated by lenders that currently require even higher credit scores to qualify for mortgage loans. The average credit scores required for Fannie Mae/Freddie Mac/Federal Housing Administration (FHA) home-purchase mortgages appears to be 50 points higher than it was before the foreclosure crisis and Great Recession,[24] putting affordable credit even more out of the reach of consumers who were most harmed by these events.

The credit reporting damage from the foreclosure crisis was bad enough, creating an economic blacklist affecting millions of consumers. This damage is exacerbated and compounded by the errors, problems, and anomalies caused by servicers and lenders and the credit reporting industry. Examples of errors and anomalies include:

[23] Jon Hilsenrath, Fed Wrestles with How Best to Bridge U.S. Credit Divide, Wall St. J., June 19, 2012.
[24] Jim Parrott and Mark Zandi, Moody's Analytics and Urban Institute, Opening the Credit Box, Sept. 30, 2013, *available at* www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf.

- Reporting short sales as foreclosures. This error is caused because there is no specific code in the standardized format for credit reporting (called the "Metro 2 format") for a short sale.
- Servicers and lenders that seek to collect deficiencies after a short sale or a foreclosure. These collection activities include reporting the deficiency as a collection item on the consumer's credit report, with the resulting harm to the consumer's credit score.
- Credit reports not reflecting the terms of a loan modification. Some servicers and lenders continue to report the mortgage as delinquent, per the original terms, even though the consumer is paying in compliance with the terms of the new modified loan terms.
- Issues regarding loan modification reporting. The code used for loan medications, code AC - "Paying under a partial payment agreement"[25] results in a significant lowering of the consumer's credit score.[26]

These issues are discussed in depth in our report, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession*, which is attached to this testimony.

Congress should act to protect consumers and jump start the economy. In particular, Congress should:

1. Require that adverse information be removed earlier than seven years. The FCRA should be amended to shorten the time periods for negative information to three or four years. There is nothing special about the current seven-year time limit for negative information under the FCRA. It is certainly not universal. For example, the time limits

[25] Consumer Data Industry Association, Credit Reporting Resources Guide (2012), at 5-21 (a.k.a. the Metro 2 Manual).
[26] Experian, *Ask Max Credit Advice--Negotiating Reduced Payments Can Hurt Credit Scores*, Oct. 28, 2009, *available at* www.experian.com/ask_max/max102809a.html.

in Sweden and Germany – countries that are as economically vibrant and prosperous as the United States – are three and four years, respectively.

2. Require that adverse mortgage information be completely removed in certain circumstances. Negative mortgage-related information should be removed even before a three- or four-year period if the consumer was the victim of lender abuse, or has taken steps to mitigate the loss to the lender, such as a short sale, a deed-in-lieu of foreclosure, or a loan modification. Negative information should also be removed if the mortgage is eligible for relief under settlements negotiated by government agencies with mortgage servicers or lenders, such as the National Mortgage Settlement and the Independent Foreclosure Review (IFR) Payment Agreement. These settlements address abuses by servicers and lenders that resulted in foreclosures, and the borrowers who are entitled to relief should not have their credit reports marred by negative information caused by the servicer or lender.

IV. NEGATIVE CREDIT REPORTS MORE OFTEN REFLECT BAD LUCK, NOT BAD CHARACTER

One of the most pernicious aspects of the use of credit reporting is its use as a proxy for "character." There is a popular conception, not just in the credit industry, but also among employers and the average layperson, that a poor credit score means that the consumer is irresponsible, a deadbeat, lazy, dishonest, or just plain sloppy. However, this stereotype is far from the truth. A bad credit record is often the result of circumstances beyond a consumer's control, such as a job loss, illness, divorce, or death of a spouse, or a local or nationwide economic collapse.

The current credit reporting and scoring system is fundamentally flawed because it is an overly blunt instrument that lumps together defaults and negative events that are caused by very different triggers. Credit scores assume that a foreclosure due to illness resulting in job loss and crippling medical bills should be treated the same, and has the same predictive value, as a foreclosure because the borrower was a real estate investor who abandoned the property. Yet these are two fundamentally different phenomena, and likely two very different consumers.

Indeed, many foreclosures were not caused by bad decisions that borrowers made. Going back more than a decade, origination fraud and abuse by the mortgage industry was endemic – mortgages brokers falsified applications, obtained inflated appraisals, and sold unaffordable products to unsuspecting homeowners, such as adjustable rate mortgages in which the interest rate skyrocketed after the initial "teaser" period. When a loan is abusive, the failure to repay it tells nothing about the borrower's creditworthiness. Another problem is that during the foreclosure crisis, many homeowners who should have been processed for a loan modification were not provided with one. If two homeowners are identically situated, and one gets a loan modification but the other does not, it's hardly fair or useful to reflect that arbitrary result in their credit scores.

The overly crude lumping together of very different consumers makes credit scores less than optimally predictive. This is reflected in, and probably responsible, for the fact that scores are actually quite inaccurate and unpredictive on an individual level. While they can predict the probability that as a group, low-scoring consumers will have a certain percentage of defaults, they cannot predict if any particular person will actually engage in the behavior. *In fact, often the probability is greater that a particular low-scoring person will not engage in the negative behavior.*

For example, a score of between 500 and 600 is generally considered to be a poor score. Yet at the beginning of the foreclosure crisis in 2007, only about 20% of mortgage borrowers with a credit score in that range were seriously delinquent.[27] Thus, if a score of 600 is used as a cut-off in determining whether to grant a loan, the vast majority of applicants who are denied credit would probably *not* have become seriously delinquent.

A study by a Federal Reserve researcher and a Swedish scientist, based on consumers in Sweden, similarly found that most consumers with impaired credit did not engage in negative behavior again. The study found that, from the population of consumers with negative information in their credit reports who received credit after the mark was removed, only 27% defaulted again within two years.[28] The researchers reached a conclusion that the reason for this low level of default is that many of the consumers with impaired credit ended up with negative marks due to circumstances outside of their control. The researchers noted that their results suggested:

> the possibility that for some proportion of the borrowers, the credit arrear may have been due to some temporary factor or tremble – illness, accident, or mistake – that was not reflective of their underlying type, and that [a] fresh start may improve the accuracy with which these borrower types are reflected. It is possible that, in this case, lenders punish trembles that they cannot easily differentiate from the behavior of bad types.[29]

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[27] Yuliya Demyanyk, *Did Credit Scores Predict the Subprime Crisis*, The Regional Economist (Federal Reserve Bank of St. Louis Oct. 2008), *available at* www.stlouisfed.org/publications/re/articles/?id=963. *See also* VantageScore Solutions, L.L.C., VantageScore 2.0: A New Version for a New World, 2011 (consumers with VantageScore of 690 - 710, or borderline between "C" and "D" grade, have about a 9% risk of default).

[28] Marieke Bos and Leonard Nakamura, Federal Reserve Bank of Philadelphia, Working Paper No. 12-19/R, Should Defaults Be Forgotten? Evidence from Quasi-Experimental Variation in Removal of Negative Consumer Credit Information, Apr. 2013, at 1, *available at* www.philadelphiafed.org/research-and-data/publications/working-papers/2012/wp12-29R.pdf

[29] *Id* at 4.

Thus, it is such "extraordinary life circumstances" within a consumer's life that are often responsible for the delinquencies, defaults, and foreclosures – *not* bad character, but bad luck. The problem with scoring and reporting is that it exacerbates and entrenches the harm from such circumstances, perpetuating the consumer's decline for at least another seven years. Not only might a consumer lose her home due to these events, but the foreclosure notation will hinder her recovery by denying her future credit, an apartment, and perhaps even a job. Even if the consumer gets a new job, the black marks from the foreclosure will follow her and result in higher prices for credit and insurance, costing hundreds or thousands more. This will, in turn, make it harder for her to pay those insurance or credit bills, and strain her economic recovery.

Furthermore, the credit reporting system, especially foreclosure and adverse mortgage-related information, perpetuate and exacerbate the income and wealth gaps between whites and minority groups. Because African American and Latinos were disproportionately targeted for predatory credit practices, such as the marketing of subprime mortgages and overpriced auto loans targeted at these populations, these groups have suffered higher foreclosure rates.[30] In addition, numerous studies have documented how, as a group, African Americans and Latinos have lower credit scores than whites.[31]

We need a better way to judge consumers. We need a system that can distinguish between consumers who are truly irresponsible and those who simply fell on hard times. We need a system that can take into account both economic factors and extraordinary life circumstances particular to an individual consumer. And, we need a system that does not further widen the huge economic chasm between whites and minorities.

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[30] Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, June 18, 2010, *available at* www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.
[31] *See* Appendix A - List of Studies Showing Racial Disparities in Credit Scores.

V. HIGH STUDENT LOAN DEBT DAMAGES BORROWERS' CREDIT REPORTS

The amount of student loan debt in this country is exploding, burdening millions of consumers. Currently, there are more than 39 million borrowers carrying over $1 trillion in federal student loan debt, and there are billions more in private student loan debt. All of these loans show up on the credit reports of these borrowers.

Large debt loads can be harmful, especially for young graduates who are unemployed or employed in low-paying jobs. Their inability to make payments will damage their credit records, creating negative marks that will follow them for seven years or – in the case of some federal student loans – much longer. Unmanageable student loan debts can cause also financial distress that affects the borrower's ability to pay other loans, such as credit cards and auto loans. These issues are especially pronounced for students who obtained little benefit from their "education," such as victims of trade school fraud or other abuse.

Even when the borrower is able to make payments, large debt loads can also be harmful. High debt loads could lower a credit scores, since one of the factors in a credit score is how "maxed out" a consumer is. Large amounts of student loan debt will make the borrower appear very maxed out, especially if the debt exceeds the original loan amount as in the case of student loan deferments. Also, employers use credit reports in hiring, and some may look disfavorably upon high student loan debt loads in their employment decisions. Indeed, one survey reported that 67% of surveyed employers had "little-to-no interest" in job applicants with student loan debts over $50,000.[32] The same survey found that nine out of ten hiring employers reported they are reviewing the credit reports of job applicants to get an idea of applicants' total student loan debt.

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[32] Press Release, Black Book Research Releases 2014 Student Loan Data: Fewer Major Companies Hiring High Debt College Grads, More Grads Expect Government Loan Bailout to Erase Debts, June 13, 2014, available at http://www.prweb.com/releases/2014/06/prweb11928115.htm.

VI. COMMON ERRORS IN CREDIT REPORTING

Despite the importance of accurate credit reports and the purpose of the FCRA to promote accuracy, systematic errors are unfortunately common in the credit reporting system. In December 2012, the Federal Trade Commission (FTC) released the definitive study on the level of inaccuracies in credit reports.[33] The study, found that about 21% of consumers had verified errors in their credit reports, 13% had errors that affected their credit scores, and 5% had errors serious enough to be denied or pay more for credit.

The rate of inaccuracy found by the FTC study is unacceptable. It translates into 40 million American who have errors in their credit reports, 26 million of whom have lower scores as a result, and 10 million of whom have errors seriously damaging enough to cause them to be denied or charged more for credit or insurance or even be denied a job.

There are many types of errors in credit reports; we focus on a few of the most egregious. Most importantly, these errors are entirely preventable with some common-sense measures.

A. Mixed Files

One of the most intractable and damaging types of credit reporting errors are mixed or mismerged files. Mixed files occur when credit information relating to one consumer is placed in the file of another. 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 are unfortunately not an uncommon problem. When the *Columbus Dispatch* conducted a year-long investigation of credit reporting errors that included a review of credit reporting complaints to the FTC and state Attorneys General during a 30 month period, the

[33] Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

reporters found that about 6% of the 21,600 complaints to the FTC and 8% of 1842 complaints to state Attorneys General involved mixed files.[34]

Mixed files occur largely because the nationwide CRAs do not use sufficiently rigorous criteria to match consumer data precisely. Mostly importantly, they do not match information based on all nine (9) digits of the consumer's SSN. Instead, they will match information based on seven of nine (7 of 9) digits of an SSN if the consumers' names are also similar.

Mixed files could be prevented by requiring the nationwide CRAs to use stricter matching criteria when placing information into a consumer's credit report, most critically an exact match of SSNs. However, the nationwide CRAs have chosen to be excessively and unreasonably over-inclusive because, as the FTC once 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 credit bureaus an incentive to design algorithms that are tolerant of mixed files."[35]

The nationwide CRAs have been aware of mixed file errors for decades. In the early to mid-1990s, the FTC reached consent orders with the nationwide CRAs requiring them to improve their procedures to prevent mixed files.[36] However, nearly two decades later, mixed files remain a significant problem.

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[34] Michael Wagner and Jill Reipenhoff, *Credit Scars: Mixed and Marred*, Columbus Dispatch, May 7, 2012.

[35] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 47 (Dec. 2004).

[36] 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).

B. Identity Theft

With an estimated eleven million consumers victimized by some form of the crime every year,[37] identity theft itself presents a serious source of inaccuracies in the credit reporting system. The identity thief, however, is not the only culprit. The nationwide CRAs and furnishers bear a share of the blame as well.

The nationwide CRAs' loose matching procedures, discussed above, contribute to identity theft problems. For example, if a thief has only adopted the victim's first name and SSN but not his or her last name or address, the algorithm used by nationwide CRAs to "merge" information often will incorporate the thief's information into the victim's file at the time the bureau 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" can be characterized as a special type of mixed file problem.

C. Furnisher errors

Furnishers can often be the source of errors in credit reports. A furnisher might report the consumer's account with an incorrect payment history, current payment status, or balance. The error might be due to a misapplied payment or data entry error. In the most egregious cases, furnishers will identify the incorrect consumer as owing a debt.

A recent CFPB enforcement action demonstrates how furnishers can cause errors. In that case, a subprime auto lender systematically made errors over about a two-year period that affected thousands of consumers. The lender over-reported the number of late payments, over-reported the amount of delinquencies, and under-reported the amount of payments actually made

[37] Javelin Strategy & Research, 2010 Identity Fraud Survey Report: Consumer Version 5 (2010) .

by consumers. It also erroneously reported instances in which a consumer voluntarily surrendered a vehicle as "involuntary repossessions."[38]

Another type of common error is the failure to mark accounts as disputed when the consumer has a legitimate bona fide dispute with the furnisher. Marking an account as disputed is required both under the FCRA as well as numerous federal consumer protection laws, such as the Fair Credit Billing Act, the Fair Debt Collection Practices Act and the Real Estate Settlement Procedures Act. One of the CFPB's first enforcement actions (conducted jointly with the FDIC) involved allegations that American Express failed to report disputes about credit accounts to the nationwide CRAs, in violation of Section 623(a) of the FCRA, 15 U.S.C. § 1681s-2(a).[39]

Debt collectors and debt buyers present their own special types of credit reporting errors. These include errors created by the fact that debt buyers and collectors often obtain nothing more than a list of names and SSNs of alleged debtors. Typically, the debt buyer or debt collector does not get any of the critical supporting documentation to establish that the consumer actually owes the debt, it is the correct amount, whether there are any disputes, or even if the collector is dunning the correct consumer. Another problem is the "re-aging" of old accounts so that they stay on the credit report past the FCRA's seven year limit. [40]

A report issued by the CFPB indicates that a disproportionate number of credit reporting errors involve debt collectors. This December 2012 CFPB Report finds that debt collectors

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[38] *See* Consent Order, In the Matter of First Investors Financial Services Group, Inc., Administrative Proceeding File No. 2014-CFPB-00012 (CFPB Aug. 20, 2014), *available at* http://files.consumerfinance.gov/f/201408_cfpb_consent-order_first-investors.pdf.

[39] CFPB/FDIC Consent Order with American Express subsidiaries (*In Re: American Express Centurion Bank*, File No. 2012-CFPB-0002; *In Re: American Express Bank, FSB*, File No. 2012-CFPB-0003; and *In Re: American Express Travel Related Services Co. Inc.*, File No. 2012-CFPB-0004, all issued Oct. 1, 2012) *available at* http://www.consumerfinance.gov/pressreleases/cfpb-orders-american-express-to-pay-85-million-refund-to-consumers-harmed-by-illegal-credit-card-practices/.

[40] The CFPB enforcement action, *supra* note 38, involved re-aging. In that case, the furnisher reported an incorrect "Date of First Delinquency," which is the operative date that starts the FCRA time limits for obsolete information, for up to 7,000 accounts.

generate 40% of disputes to the nationwide CRAs, despite providing only 13% of the account tradeline information in credit reports.[41] The FTC study on errors in credit reports similarly found that 32.2% of disputed items were collection accounts.[42]

D. Solutions

The solutions necessary to solve some of the above problems and to ensure "maximum possible accuracy" for credit reports are simple and straightforward. They include:

1. Requiring the nationwide CRAs to use stricter matching criteria, including matching information based on all nine digits of the consumer's SSN. At a minimum, the CFPB should engage in a rulemaking that considers imposing such a requirement.

2. In general, the CFPB should establish certain minimum procedures required of the nationwide CRAs to maintain the "maximum possible accuracy" required by the FCRA.

3. The nationwide CRAs should be required to screen and audit data from furnishers, including analyzing whether certain furnishers are significant sources of errors. They should be required to stop accepting data from furnishers with excessively high numbers of errors.

Finally, one of the most important safeguards for accuracy is the dispute system mandated by the FCRA. Yet as discussed in the next section, this dispute system is broken, and needs significant reform.

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[41] Consumer Financial Protection Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus manage consumer data*, December 2012, at 14, 29, available at http://www.consumerfinance.gov/reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system.

[42] Federal Trade Commission, *supra* note 33, at 51.

VII. THE FCRA-MANDATED CREDIT REPORTING DISPUTE SYSTEM IS A TRAVESTY OF JUSTICE

The FCRA dispute system developed by the credit reporting industry is a travesty of justice. The FCRA requires both CRAs and furnishers to conduct "reasonable" investigations when a consumer disputes an item in his or her credit report as inaccurate or incomplete. However, the system created by the nationwide CRAs to handle disputes is anything but reasonable. Instead, it is a perfunctory process that consists of nothing more than forwarding the consumer's dispute to the furnisher, and parroting whatever the furnisher states in response.

Indeed, prior to mid-2013, the nationwide CRAs did not even bother to send the entire dispute to the furnisher. Instead, the CRA's offshore vendor[43] merely reduced the dispute to a two or three digit code and sent that code alone and without supporting documentation provided by the consumer - documents such as account applications, billing statements, letters, payoff statements and even court judgments that showed overwhelming and even conclusive proof.

After over a decade of criticism by consumer groups and courts, the nationwide CRAs finally began to send the entire dispute to the furnisher in the middle of 2013 – coincidentally the year after the CFPB began supervising the nationwide CRAs. However, this change is a necessary, but not a sufficient, measure to reform the credit reporting dispute system.

The fundamental problem with the credit reporting dispute process is the utter and complete bias against consumers by the nationwide CRAs. After a furnisher responds to an FCRA dispute, the nationwide CRAs' main response is to parrot whatever the furnisher says. The CRAs will accept the results of the furnisher's "investigation" even when a simple check would reveal inconsistent information. In other words, the nationwide CRAs' policies are that what the furnisher says is gospel, even when that furnisher is a bad actor with a history of

[43] Usually located in India, the Philippines, Chile, or Costa Rica.

violations. We believe this absolute bias in favor of the furnisher in dispute investigation violates the FCRA.

In fact, a number of courts have chastised the nationwide CRAs for this parroting, and their general failure to do no more than send an ACDV to the furnisher and accept its response. In *Saindon v. Equifax Information Services*,[44] the Northern District of California noted in 2009 that:

> ...the monitoring and reinvestigation procedures could be seen as quite limited. The procedures could be seen by a jury as merely basic automated checks that catch missing data fields on submitted forms, which do not go to the heart of whether a source of information is trustworthy. For example, when a consumer files a complaint contesting the accuracy of an item on his or her credit report, the sole action taken by Equifax is to contact the source of the information to verify if it is accurate. If the source says that it is, the inquiry ends (Rittelmeyer Decl. ¶ 8.). This does virtually nothing to determine the actual credibility of the source--which is what plaintiff asserts is lacking--or so a jury could reasonabl[y] conclude.

Another judge in this same district noted in 2010 that Equifax's history of deferring to furnishers rather than performing independent investigations, along with consent agreements with FTC and state Attorneys General, provided sufficient evidence for jury to find that the CRA ran an unjustifiably high risk of violating the FCRA.[45] In *Dixon-Rollins v. Experian Info.*

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[44] 608 F. Supp. 2d 1212, 1217 (N.D. Cal. 2009).

[45] Drew v. Equifax Info. Serv., 2010 WL 5022466 (N.D. Cal. Dec. 3, 2010), *aff'd*, 690 F.3d 1100 (9th Cir. 2012). *See also* Gorman v. Experian Info. Solutions, Inc., 2008 WL 4934047, at *6 (S.D.N.Y. Nov. 19, 2008)("Given the standard articulated in *Cushman* and Experian's claimed sole reliance on the information it received from HSBC, a jury could conclude that Experian did not reinvestigate Plaintiff's dispute in accordance with the requirements of the 15 U.S.C. § 1681" and acted in reckless disregard of the law).

Solutions,[46] the Eastern District of Pennsylvania noted that "the Third Circuit had already warned Trans Union that its reinvestigation procedures were deficient. The *Cushman* decision clearly instructs consumer reporting agencies that they must go beyond the original source in certain circumstances." The District Court characterized Trans Union's behavior as reprehensible, stating "because Trans Union has been warned of its inadequate reinvestigation practices in prior cases, it may be considered a repeat FCRA offender."[47]

The nationwide CRAs' bias in favor of furnishers – their unquestioning acceptance of the furnisher's response despite being presented with evidence and documentation by the consumer – violates the FCRA's protection for consumers. The FCRA places the burden of proof in a dispute investigation *on the furnisher*, not the consumer, as the Act provides that if disputed information is inaccurate *or cannot be verified*, it should be deleted. *See* 15 U.S.C. § 1681i(a)(5)(A). Thus, if a consumer provides evidence and documentation that she is correct, and the furnisher responds without such evidence, the disputed information is "unverifiable" by nature, and should be deleted. Yet the nationwide CRAs not only illegally place the burden of proof on the consumer, they go further by always siding with the furnisher and automatically accepting the furnisher's position – even when, in 40% of the cases, the furnisher is a debt collector or debt buyer.

For their part, some furnishers also conduct non-substantive and perfunctory "investigations." These procedures 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. For example, in its enforcement action against debt buyer Asset Acceptance, the FTC also noted that Asset only employs 14 to 20 "ACDV specialists" despite receiving half a

[46] 753 F. Supp.2d 452, 464 (E.D. Pa. Sept. 23, 2010)
[47] Id. at 465.

million credit reporting disputes each year, and expects each each specialist to process at least 18-20 ACDVs per hour – ***or one dispute every 3.33 minutes***.[48]

Unsurprisingly, this last example involves a debt collector. As the CFPB's December 2012 report noted, and as mentioned above, debt collectors represent 40% of all credit reporting dispute, a disproportionate share given that they only provide 13% of the account tradelines on credit reports. Furthermore, debt collectors have little incentive to correct errors in response to a dispute, especially since removing negative information may mean losing the opportunity to collect the debt, which is their main objective. Unlike with a creditor, the consumer is not the debt collector's customer, and has no reason to maintain a good relationship with the consumer. To a debt collector or buyer, it does not matter if the amount is wrong, there is a dispute as to liability, or they have the wrong consumer – so long as they can use the credit report to pressure the consumer to pay up.

It is well past time for the credit reporting dispute system to be reformed. For too long, consumers with the misfortune of being plagued by errors have suffered under an illegal, illogical, and unjust system. Reforming the system will take the efforts of both the CFPB and Congress.

First, the nationwide CRAs must be required to have sufficient trained personnel to actually review and conduct real, independent investigations of consumer disputes. They must be required – as the FCRA and court decisions mandate – to undertake "reasonable" investigations that consist of a "detailed inquiry or systematic examination"[49] of the evidence. This means talking to consumers and furnishers, examining documents in a meaningful manner,

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[48] Complaint, United States v. Asset Acceptance, LLC, Case No. 8:12-cv-182-T-27 (M.D. Fla. Jan 30, 2012), at ¶¶44 and 45.
[49] Johnson v. MBNA, 357 F.3d 426, 430-431 (4th Cir. 2004).

using human judgment to analyze a dispute, and making independent decisions. Thus, the nationwide CRAs must provide skilled trained personnel with the discretion to make decisions.

This will require a significant investment of resources by the nationwide CRAs, especially in terms of personnel. But as the court in the Eastern District of Virginia noted:

> While this obligation to conduct a reasonable investigation may increase the cost and expense to a CRA, it is the necessary cost associated with discharging the congressionally mandated duties placed upon a company choosing to engage in a business that can have such a profound and lasting impact on consumers,...[50]

The credit reporting industry will complain, as it often does, that it is not a tribunal or a small claims court. But a CRA need not act as a small claims court to simply determine that information that a consumer owes a debt is inaccurate when the consumer has a bank statement, an executed loan modification, or even a judgment showing that he or she does not owe the debt. Furthermore, in those circumstances where the CRA personnel truly cannot determine whether the consumer or the furnisher is correct, the information should be deleted. After all, the FCRA requires information to be deleted if it "cannot be verified." *See* 15 U.S.C. § 1681i(a)(5)(A).

Another measure to protect consumers when they have a good faith dispute with the furnisher is to mark the debt as such, and exclude it from the credit score. Currently, only some types of disputed debt are excluded from a credit score, and the dividing line is unclear and shifting. Furthermore, exclusion of some disputed debts from the credit score is entire voluntary and the industry could change its mind any time and start scoring all disputes. Congress should require that all debts that are the subject of a dispute on a credit report must be excluded from a credit score, unless the furnisher or CRA can prove that the dispute is frivolous or irrelevant. Lenders should be prohibited from using disputed information adversely.

[50] Burke v. Experian Info. Solutions, 2011 WL 1085874 (E.D. Va. Mar. 18, 2011).

Debt collectors must be subject to even stricter screening and oversight. When a debt collector is involved, it is even more critical to have independent review, given the incentives discussed above for the debt collector to ignore disputes and leave errors uncorrected. And there should be a flat-out prohibition against the nationwide CRAs to engage in parroting when a debt collector is involved. It is simply outrageous and unacceptable for the nationwide CRAs to take the unsupported, unsubstantiated word of a debt collector over a consumer, given the incentives that exist and the well-documented abuses of debt buyers.[51]

Finally, we urge Congress to give consumers the right to ask a judge to tell a furnisher or a CRA: "fix that error." With one minor exception, the FCRA does not provide for declaratory or injunctive relief in actions by private parties. Providing courts with explicit authority to issue injunctive relief would further the purpose of the FCRA to "assure maximum possible accuracy."

VIII. OTHER ISSUES

Beyond the issues addressed above, there are other areas where Congressional action is necessary to ensure that our nation's credit reporting system works fairly for consumers and the general marketplace. They include:

A. Free Credit Scores

Currently, consumers do not have the legal right to a free credit score, unless they are denied credit, must pay a higher price, or after they apply for a mortgage. Consumers should have the right under the FCRA to a free credit score on an annual basis. Ideally, they should

[51] See Federal Trade Commission, Repairing a Broken System: Protecting Consumers in Debt Collection and Arbitration (July 2010), *available at* http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf; Robert Hobbs and Rick Jurgens, National Consumer Law Center, The Debt Machine (July 2010), *available at* http://www.nclc.org/images/pdf/debt_collection/debt-machine.pdf; Claudia Wilner and Nasoan Sheftel-Gomes, Neighborhood Econ. Dev. Advocacy Project and Urban Justice Center, Debt Deception: How Debt Buyers Abuse The System To Prey On Lower-Income New Yorkers 1 (May 2010), *available at* http://www.nedap.org/pressroom/documents/DEBT_DECEPTION_FINAL_WEB.pdf.

have the right to obtain a copy of the credit score most commonly used by lenders. Consumers should also have the right to obtain other types of scores based on their credit or consumer reports, such as insurance credit scores, tenant screening scores, or healthcare scores.

B. Credit Monitoring

The nationwide CRAs and other companies market "free" consumer reports that are not free at all, but are only introductory teasers that convert to an expensive "credit monitoring" subscription. The nationwide CRAs heavily promote these products, including on their websites, in effect steering consumers away from the centralized source for federally-mandated free credit reports, annualcreditreport.com. As a result, more consumers actually ended up obtaining their credit reports through these products than through annualcreditreport.com. According to the CFPB, 15.9 million consumers obtained free annual credit reports through annualcreditreport.com, but 26 million obtained them through various credit monitoring services.[52]

These credit monitoring services are often marketed as a way to prevent identity theft, but they can be ineffective in detecting certain forms, such as when a thief uses the consumer's Social Security number, but not the consumer's name, to obtain credit. Also, the manner in which these credit monitoring products are sold has been questionable at best. The CFPB has taken four enforcement actions over the sale of credit monitoring and other add-on products by credit card companies.[53]

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[52] Consumer Fin. Prot. Bureau, Key Dimensions and Processes, *supra* note 41, at 27 (2012).
[53] *See* Consent Order, In the Matter of Bank of America, N.A., Administrative Proceeding File No. 2014-CFPB-0004 (CFPB Apr. 9, 2014), *available at* http://files.consumerfinance.gov/f/201404_cfpb_bankofamerica_consent-order.pdf; Consent Order, In the Matter of JPMorgan Chase Bank, N.A., Administrative Proceeding File No. 2013-CFPB-0007 (CFPB Sept. 18, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_jpmc_consent-order.pdf; Stipulation and Consent Order, In re Capital One Bank, Admin. Proc. File No. 2012-CFPB-0001 (CFPB July 17, 2012), *available at* http://files.consumerfinance.gov/f/201207_cfpb_consent_order_0001.pdf;

C. Utility Data

We remain concerned about efforts to encourage utility companies to report payment information on a monthly or regular basis to credit reporting agencies without adequate consumer protections. A discussion of our concerns is set forth in detail in our prior testimony to this subcommittee.[54]

IX. CONCLUSION

American consumers deserve a credit reporting system that is accurate, fair and just. Helping consumers obtain such a system also helps the American economy. To achieve these goals, Congress should:

- Pass the Medical Debt Responsibility Act, H.R. 1767, which would exclude fully paid and settled medical debt from a consumer's credit report.
- Ban the use of credit reports for employment purposes, with very limited exceptions for only a few specific job positions.
- Shorten the time periods that negative information stays on a credit report to three or four years.
- Require that adverse mortgage information be completely removed in certain circumstances, including if the consumer was the victim of lender or servicer abuse, or the mortgage is eligible for relief under government settlements.

Joint Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty, In re Discover Bank, Greenwood, DE, Docket Nos. FDIC-11-548b, FDIC-11-551k, and 2012-CFPB-0005 (FDIC/CFPB Sept. 24, 2012), *available at* http://files.consumerfinance.gov/f/201209_cfpb_consent_order_0005.pdf.

[54] Examining the Uses of Consumer Credit Data, Hearing Before U.S. House Comm. on Fin. Serv, Subcomm. on Fin. Institutions and Consumer Credit , 113th Congr. (2012)(testimony of Chi Chi Wu, National Consumer Law Center).

- Require the nationwide CRAs to use stricter matching criteria, including matching information based on all nine digits of the consumer's SSN, or require the CFPB to engage in a rulemaking that considers imposing such a requirement and in general establishing minimum procedures to ensure "maximum possible accuracy."
- Require the nationwide CRAs to have sufficient trained personnel to actually review and conduct real, independent investigations of consumer disputes.
- Require that all debts that are the subject of a dispute on a credit report be excluded from a credit score, unless the furnisher or CRA can prove that the dispute is frivolous or irrelevant, and prohibit lenders from considering disputed debts adversely.
- Provide consumers with the right to seek injunctive and declaratory relief.
- Provide consumers with a free annual credit score.

Appendix A

List of Studies Showing Racial Disparities in Credit Scores

- A 2012 study by the CFPB examining credit scores for about 200,000 consumers found that the median FICO score for consumers in majority minority zip codes was in the 34th percentile, while it was in the 52nd percentile for zip codes with low minority populations. Cite: Consumer Financial Protection Bureau, Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores, at 18, Sept. 2012.

- A 2010 study by the Woodstock Institute found that in predominately African American zip codes in Illinois, over 54.2% of the individuals had a credit score of less than 620. In comparison, 20.3% of Illinois residents statewide had a credit score of less than 620, and only 16.8% of individuals in predominately white zip codes had a credit score of less than 620. In white zip codes, 67.3% of residents had a better than a 700 credit score, while 25% of individuals in predominantly African-American zip codes had credit scores above 700. In zip codes that were majority Latino, 31.4% of individuals had a credit score of less than 620, and only 47.3% had credit scores greater than 700. Cite: Sarah Duda & Geoff Smith, Woodstock Institute, Bridging the Gap: Credit Scores and Economic Opportunity in Illinois Communities of Color 8 (Sept. 2010).

- A 2007 Federal Reserve Board report to Congress on credit scoring and racial disparities, which was mandated by the 2003 Fair and Accurate Credit Transactions Act of 2003 (FACTA). This study analyzed 300,000 credit files matched with Social Security records to provide racial and demographic information. While the Federal Reserve's ultimate conclusion was to support credit scoring, its study found significant racial disparities. In one of the two models used by the Federal Reserve, the mean score of African Americans was approximately half that of white non-Hispanics (54.0 out of 100 for white non-Hispanics versus 25.6 for African Americans) with Hispanics fairing only slightly better (38.2). Cite: Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit* 80-81 (Aug. 2007).

- A 2007 study by the Federal Trade Commission on racial disparities in the use of credit scores for auto insurance, also mandated by the 2003 FACTA amendments. The FTC study found substantial racial disparities, with African Americans and Hispanics strongly over-represented in the lowest scoring categories. Cite: Federal Trade Commission, *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance* 3 (July 2007).

- A 2006 study from the Brookings Institution which found that counties with high minority populations are more likely to have lower average credit scores than predominately white counties. In the counties with a very low typical score (scores of 560 to 619), Brookings found that about 19% of the population is Hispanic and another 28% is African American. On the other hand, the counties that have higher typical credit scores tend to be essentially all-white counties. Cite: Matt Fellowes, Brookings Inst.,

Credit Scores, Reports, and Getting Ahead in America 9-10 (May 2006).

- A 2004 study by Federal Reserve researchers finding that fewer than 40% of consumers who lived in high-minority neighborhoods had credit scores over 701, while nearly 70% of consumers who lived in mostly white neighborhoods had scores over 701. Cite: Robert B. Avery, Paul S. Calem, & Glenn B. Canner, *Credit Report Accuracy and Access to Credit,* Federal Reserve Bulletin (Summer 2004).

- A 2004 study published by Harvard's Joint Center for Housing Studies finding that the median credit score for whites in 2001 was 738, but the median credit score for African Americans was 676 and for Hispanics was 670. Cite: Raphael W. Bostic, Paul S. Calem, & Susan M. Wachter, Joint Ctr. for Hous. Studies of Harvard Univ., *Hitting the Wall: Credit As an Impediment to Homeownership* (Feb. 2004).

- A 2004 study conducted by the Texas Department of Insurance on insurance scoring finding that African-American and Hispanic consumers constituted over 60% of the consumers having the worst credit scores but less than 10% of the consumers having the best scores. Cite: Tex. Dep't of Ins., *Report to the 79th Legislature--Use of Credit Information by Insurers in Texas* (Dec. 30, 2004).

- A 2004 study conducted by the Missouri Department of Insurance found insurance credit scores were significantly worse for residents of high-minority zip codes. The average consumer in an "all minority" neighborhood had a credit score that fell into the 18.4th percentile, while the average consumer in a "no minority" neighborhood had a credit score that fell into the 57.3th percentile. Cite: Brent Kabler, Missouri Dep't of Ins., Insurance-Based Credit Scores: Impact on Minority and Low Income Populations in Missouri (Jan. 2004).

- A 1997 analysis by Fair Isaac itself showing that consumers living in minority neighborhoods had lower overall credit scores. Cite: Fair, Isaac & Co., *The Effectiveness of Scoring on Low-to-Moderate Income and High-Minority Area Populations* 22, Fig. 9 (Aug. 1997).

- A 1996 Freddie Mac study which found that African-Americans were three times as likely to have FICO scores below 620 as whites. The same study showed that Hispanics are twice as likely as whites to have FICO scores under 620. Cite: *See* Freddie Mac, *Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families* (Sept. 1996).

ATTACHMENT 1

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Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession

December 2013

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National Consumer Law Center®

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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"There are no second acts in American lives."
— F. Scott Fitzgerald

"Forgiveness is the attribute of the strong."
— Mahatma Gandhi

I. INTRODUCTION

The foreclosure crisis of the late 2000s left an enormous trail of economic destruction in its wake. Most Americans are familiar with the obvious damage -- the crisis cost nearly $200 billion in lost wealth,[1] resulted in over 4.5 million Americans losing their homes,[2] and triggered the worst recession since the Great Depression. One long-term result of the foreclosure crisis, however, is less familiar to many Americans – the impact on the credit reports of millions of consumers.

The most obvious credit reporting impact to consumers was the damage caused by foreclosure entries on millions of credit reports. These black marks can cause a decrease of 100 to 150 points to a consumer's credit score. The impact also includes the damage wrought by adverse mortgage-related events other than foreclosure, such as short sales or loan modifications. As discussed in Section II.A on page 3, many of these foreclosures and other adverse mortgage events were not caused by bad decisions made by the borrowers, but both economic forces out of their control and fraud or abuse by servicers/lenders.

Damaged credit reports and plunging credit scores means, of course, reduced access to credit. Even if the consumer can obtain credit, it will be at a much higher cost – a practice called "risk-based pricing" which ironically can cause defaults because the high cost of the credit makes it harder to repay. However, the credit reporting damage from the foreclosure crisis extends beyond the immediate impact on the availability and price of credit. Impaired credit reports also affect the ability of consumers to obtain employment, rental housing, and insurance. On a broader macro-level, the credit reporting harm from the crisis slowed the nation's economic recovery and created a class of consumers shut out of mainstream financial services.

Some of these consumers could be good borrowers after their foreclosure, and would certainly be good workers. They are not bad or irresponsible people, but simply unlucky. Helping these consumers rectify the credit reporting harms caused by the foreclosure crisis would enable them

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[1] Ben Henry, Jill Reese, and Angel Torres, Alliance for a Just Society, Wasted Wealth: How the Wall Street Crash Continues to Stall Recovery and Deepened Racial Inequity in America, May 2013, p.8.
[2] CoreLogic, CoreLogic National Foreclosure Report, May 2013, p.2, *available at* www.corelogic.com/research/foreclosure-report/national-foreclosure-report-may-2013.pdf (visited Dec. 2013).

to move on economically. Their recovery, in turn, would help with the nation's economic recovery from the Great Recession.

This white paper explores the scope of the credit reporting harms caused by the foreclosure crisis and the Great Recession. It reviews both the harm to individual consumers and the wider impact on economic recovery. It also documents the credit reporting problems caused by inaccuracies and anomalies in the system. This paper discusses the broader problem of relying on past credit history to judge future performance, arguing that such a broad-brush approach fails to distinguish between consumers who are simply unlucky and those who are truly irresponsible. Finally, it suggests a number of solutions to assist consumers whose credit reports have been damaged by the foreclosure crisis and Great Recession.

II. SCOPE OF THE PROBLEM

A. Credit Harms from the Foreclosure Crisis and Great Recession

Credit reporting has become the determining factor for many essentials in a consumer's financial life – not only credit (mortgages, auto loans, credit cards) but insurance, employment and rental housing. It is no exaggeration to say that a credit history can make or break a family's finances. The Big Three credit bureaus (Equifax, Experian, and TransUnion) stand as gatekeepers – and solely profit-motivated ones at that – to many economic essentials in the lives of Americans.

The foreclosure crisis and the massive unemployment caused by the Great Recession saddled millions of consumers with poor credit histories. These include the over 8 million workers who lost their jobs,[3] as well as the 4.5 million families whose homes were foreclosed upon. Many of these 4.5 million foreclosures were not due to irresponsible borrowing, but phenomena such as:

- Abusive and predatory lending, such as mortgage brokers and lenders who targeted low-income and minority consumers for expensive subprime loans that they could not afford.
- The combination of exploding Adjustable Rate Mortgages (ARMs), negatively amortizing mortgage loans, and the collapse of the housing market, which left many mortgages "underwater," with the homeowner owing more than the home was worth.
- Inability to pay mortgage payments due to unemployment or underemployment caused by the Great Recession.
- Abusive servicing practices, including cramming accounts with illegal fees, failing to process loan modification requests, and gross accounting errors.

[3] Economic Policy Institute, The Great Recession – Job Loss, at http://stateofworkingamerica.org/great-recession/ (visited Dec. 2013).

Millions of other families did not have a foreclosure completed, but still have undergone adverse mortgage-related events, such as:

- **A short sale**, which is when a mortgage servicer or lender agrees to let the homeowner sell the home and release the mortgage lien, even if the proceeds of the sale will not cover the amount due on the mortgage.

- **A deed-in-lieu of foreclosure**, which is when the mortgage servicer or lender accepts a voluntary surrender of the property by the homeowner as an alternative to foreclosure.

- **A loan modification**, which is an agreement between the servicer or lender and the homeowner to change the terms of the mortgage so that it is easier for the homeowner to make timely mortgage payments. Changes may include reducing the interest rate or principal amount, changing the mortgage product (for example, from an adjustable to a fixed rate mortgage), extending the loan term, or adding delinquent payments to the loan principal.

- **A Chapter 13 bankruptcy** to prevent or slow a foreclosure.

Foreclosures, short sales, loan modifications, and other mortgage-related events cause significant damage to the credit reports of consumers. The impact varies based upon what credit score the consumer originally had prior to the event. According to FICO, the developer of most-often used credit scoring model, the following events lower a credit score by these amounts:

Starting FICO Score	**680**	**720**	**780**
30 days late on mortgage	600-620	630-650	670-690
90 days late on mortgage	600-620	610-630	650-670
Short sale/deed-in-lieu/settlement (no deficiency)	610-630	605-625	655-675
Short sale (with deficiency balance)	575-595	570-590	620-640
Foreclosure	575-595	570-590	620-640
Bankruptcy	530-550	525-545	540-560

Source: FICO (r) Banking Analtyics Blog. (c) 2011 Fair Isaac Corp.

VantageScore, which is a joint venture of the Big Three credit bureaus that sells a competing credit scoring model, provides similar information:

	All accounts in good standing	1st Mortgage in good standing; other accounts delinquent	1st Mortgage delinquent; other accounts in good standing	1st Mortgage delinquent; other accounts delinquent
VantageScore Starting Score	862	830	722	625
Loan Modification (various circumstances)	842-892	815-860	710-742	620-643
Short Sale	732-742	720-730	672-682	600-610
Foreclosure	722-732	710-720	667-677	605-615
Foreclosure initiated, payment made	737-747	715-725	682-692	615-620
Bankruptcy – mortgage only	687-697	670-680	652-662	595-605
Bankruptcy – all accounts	497-507	500-510	502-512	505-515

Source: VantageScore, Impact on Consumer VantageScore Credit Scores Due To Various Mortgage Loan Restructuring Options, January 2010, at p. 9 (Note that this chart was based on the prior VantageScore scoring range of 501 to 990. VantageScore has since revised its scoring range to match that of FICO, from 300 to 850).

These negative impacts of a foreclosure or other mortgage-related event will last for seven years, or ten years in the case of bankruptcies, as these are the time limits under the Fair Credit Reporting Act for adverse information to remain on a credit report. Thus, consumers who have gone through a foreclosure or other adverse mortgage event are shut out of affordable credit markets for seven years (or ten years, in the case of bankruptcies), unable to obtain reasonably priced auto loans or credit cards. They may end up paying exorbitant amounts for fringe credit, such as payday loans with APRs of 400% or more, or "buy here, pay here" subprime auto loans.

More disturbingly, credit reports are used for other purposes, such as employment, rental housing, and insurance. Thus, the damage from a foreclosure or other adverse mortgage-related event could cause a consumer to be denied a job, lose out on a rental apartment after losing his or her home, and pay hundreds of dollars more in auto insurance premiums. The cumulative impact of these financial calamities could strand a consumer economically for years after the foreclosure itself. It could create a self-fulfilling downward spiral in a consumer's economic life.

Indeed, there are indications that the negative impact of a foreclosure or other adverse mortgage event has a ripple effect even after the black mark is removed after seven years, continuing to weigh down the consumer. One study found that only 30% of foreclosed homeowners return to mortgage market within 10 years.[4] Furthermore, some studies show that it takes even longer for African Americans and Latinos to recover homeownership after a foreclosure.[5]

Another study found that, for many previously-prime homeowners, their scores did not return to pre-foreclosure levels even after seven years had passed.[6] In the years after a foreclosure, these consumers had persistently higher levels of delinquency on auto, credit card, and other loans. The authors speculate that this phenomenon could be caused by several reasons, including lingering effects of the economic difficulties that caused the foreclosure or a change in the consumer's behaviors toward delinquency due to reduced stigma associated with default. A third potential reason would be subsequent difficulties attributable to having a poor credit record, such as inability to access jobs, apartments, credit, or insurance, or being required to pay exorbitant prices for the latter two.

Finally, it appears the depressed credit scores from the foreclosure crisis and the Great Recession have impeded the country's economic recovery. According to some analysts, the Federal Reserve's effort to stimulate the economy with low interest rates has been less than effective because many of the consumers who could most benefit from these rates do not qualify for loans due to low credit scores.[7] In turn, the lack of ability to access low rates means these consumers have less ability to open small businesses or engage in household spending, the very steps needed to jump start the economy. In an ironic way, credit scoring and reporting have created a vicious cycle – economic harm causes low scores, low scores prevent recovery by shutting out

[4] William Hedberg and John Krainer, Credit Access Following a Mortgage Default, FRBSF Economic Letter 2012-32, Oct. 29, 2012.

[5] Donald R. Haurin and Stuart S. Rosenthal, Dept. of Housing and Urban Development, Sustainability of Homeownership: Factors Affecting the Duration of Homeownership and Rental Spells, Dec. 2004.

[6] Kenneth P. Brevoort and Cheryl R. Cooper, Federal Reserve Board and Urban Institute, Foreclosure's Wake: The Credit Experiences of Individuals Following Foreclosure," Nov. 18, 2010, *available at* www.federalreserve.gov/pubs/feds/2010/201059/201059abs.html.

[7] Jon Hilsenrath, Fed Wrestles with How Best to Bridge U.S. Credit Divide, Wall St. J., June 19, 2012.

the consumer from benefits that require a high score, and the consumer's lack of recovery drags down the economy as a whole.

The drag on recovery by consumers' low scores is exacerbated by lenders that currently require even higher credit scores to qualify for mortgage loans. The average credit scores required for Fannie Mae/Freddie Mac/Federal Housing Administration (FHA) home-purchase mortgages appears to be 50 points higher than it was before the foreclosure crisis and Great Recession,[8] putting affordable credit even more out of the reach of consumers who were most harmed by these events.

B. Errors, Problems, and Anomalies

The credit reporting damage from the foreclosure crisis was bad enough, creating an economic blacklist affecting millions of consumers. This damage is exacerbated and compounded by the errors, problems, and anomalies caused by servicers and lenders and the credit reporting industry. Examples of errors and anomalies include:

1. Reporting short sales as foreclosures

This error is caused because there is no specific code in the standardized format for credit reporting (called the "Metro 2 format") for a short sale. Instead, a short sale is reported under the Metro 2 format as a loan that is "settled for less than full amount," and in many cases also as "foreclosure started." The courts have differed as to whether such reporting is inaccurate because it is misleading or incomplete.[9] While reporting a short sale as a foreclosure might not make a significant difference in terms of a credit score,[10] it can cause problems when a user views the full credit report. For example, until recently, Fannie Mae guidelines prevented consumers who had an incorrect foreclosure notation from obtaining another Fannie-backed mortgage for seven years (versus two to four years for a short sale).[11]

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[8] Jim Parrott and Mark Zandi, Moody's Analytics and Urban Institute, Opening the Credit Box, Sept. 30, 2013, *available at* www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf (visited Dec. 2013).
[9] *Compare* Williams v. Wells Fargo Bank, 2012 WL 5510747 (N.D. Tex. Nov. 14, 2012) *with* Co v. JP Morgan Chase Bank, 2013 WL 1788061 (N.D. Cal. Apr. 26, 2013).
[10] Frederic Huynh, Are Short Sales Really That Bad? FICO Banking Analytics Blog, August 28, 2012, at http://bankinganalyticsblog.fico.com/2012/08/are-short-sales-really-that-bad.html (visited Dec. 2013).
[11] Fannie Mae Selling Guide, B3-5.3-07, Significant Derogatory Credit Events — Waiting Periods and Re-establishing Credit, October 22, 2013, p. 485, *available at* www.fanniemae.com/content/guide/sel102213.pdf (visited Dec, 2013).

2. Servicers and lenders that seek to collect deficiencies after a short sale or a foreclosure.

Some servicers and lenders attempt to collect the "deficiency," which is the difference between the amount realized at the short sale or foreclosure sale and the balance due on the mortgage. This tactic is arguably an unfair practice in a short sale where the lender has agreed to accept the sale proceeds knowing they are less than the mortgage, or in the many jurisdictions that prohibit a lender from recovering a deficiency after a foreclosure. Collection activities include reporting the deficiency as a collection item on the consumer's credit report, with the resulting harm to the consumer's credit score.[12] These deficiencies are also often sold to third-party debt buyers, which are notorious for abuses they commit against consumers.[13]

3. Reporting the entire balance of a mortgage as unpaid after foreclosure.

When a home is foreclosed upon, it is usually sold at auction. Some servicers and lenders apparently have failed to credit the proceeds of the auction against the amount owed. Instead, they have reported the entire balance of the mortgage as unpaid, even though a portion of it was satisfied from the auction sale proceeds.[14]

4. Credit reports not reflecting the terms of a loan modification.

This problem occurs after a servicer or lender has agreed to a loan modification with the homeowner. The servicer or lender continues to report the mortgage as delinquent, per the original terms, even though the consumer is paying in compliance with the terms of the new modified loan terms.[15]

5. Issues regarding loan modification reporting.

Loan modifications are reported under the Metro 2 format using the code AC, which stands for "Paying under a partial payment agreement."[16] The AC code will result in a

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[12] *See, e.g.,* Rex v. Chase Home Fin. LLC, 905 F. Supp. 2d 1111 (C.D. Cal. 2012) (class action against lenders that attempted to collect short sale deficiency and reported plaintiffs' failure to pay to credit reporting agencies).

[13] *See* National Consumer Law Center, Fair Debt Collection § 1.5.4 (7th ed. 2011 and Supp.).

[14] *See, e.g.,* Abdelfattah v. Carrington Mortgage Servs. L.L.C., 2013 WL 495358 (N.D. Cal. Feb. 7, 2013).

[15] *See, e.g.,* Henderson v. Chase Home Finance, LLC, 2012 WL 4006686 (D. Ariz. Sept. 12, 2012)(servicer promised no negative reporting); Bourdelais v. JPMorgan Chase Bank, N.A., 2012 WL 5404084 (E.D. Va. Nov. 5, 2012); Bradshaw v. BAC Home Loans Servicing, Ltd. P'ship, 816 F. Supp. 2d 1066 (D. Or. 2011); Darrin v. Bank of America, N.A., 2013 WL 877087 (E.D.Cal. Mar. 7, 2013); Pundt v. Select Portfolio Service, Inc., 2012 WL 2312074 (N.D. Iowa June 18, 2012).

[16] Consumer Data Industry Association, Credit Reporting Resources Guide (2012), at 5-21 (a.k.a. the Metro 2 Manual).

lowering of the consumer's credit score.[17] In at least one case, even asking about a loan modification resulted in a drop to the homeowner's credit score of 125 points.[18] The practice of using the AC code for loan modifications has been criticized as unfairly burdening consumers.

Under pressure, the credit reporting industry did change this coding for modifications of mortgages under the federal government's Home Affordable Modification Program (HAMP) by adding a new Metro 2 code.[19] It is unclear whether the FICO algorithms were adjusted to treat this "HAMP" code as a negative factor. Furthermore, while HAMP involves two stages—temporary or trial modifications and permanent modifications--only permanent modifications are reported using the special HAMP modification code.[20] This is especially problematic given that some HAMP trial modifications have lasted more than a year, even though they are only supposed to last three to four months.

C. The Trembles

"Character - From your credit history, the lender attempts to determine if you possess the honesty and reliability to repay the debt." [21]

— Visa's website

"When wealth is passed off as merit, bad luck is seen as bad character. This is how ideologues justify punishing the sick and the poor."[22]

— Sarah Kendzior

One of the most pernicious aspects of the use of credit reporting is its use as a proxy for "character." There is a popular conception, not just in the credit industry, but also among employers and the average layperson, that a poor credit score means that the consumer is irresponsible, a deadbeat, lazy, dishonest, or just plain sloppy. However, this stereotype is far from the truth. A bad credit record is often the result of circumstances beyond a consumer's control, such as a job loss, illness, divorce, or death of a spouse, or a local or nationwide economic collapse.

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[17] Experian, *Ask Max Credit Advice--Negotiating Reduced Payments Can Hurt Credit Scores*, Oct. 28, 2009, *available at* www.experian.com/ask_max/max102809a.html (visited Dec. 2013).
[18] Loomis v. U.S. Bank Home Mortgage, 912 F. Supp. 2d 848 (D. Ariz. 2012).
[19] Consumer Data Industry Association, *Mortgage & Home Equity Reporting Guidelines In Response to Current Financial Conditions*, June 2010.
[20] *Id.*
[21] Visa, *Credit Reports - The 3 C's of credit: character, capital, and capacity*, undated, at http://usa.visa.com/personal/using_visa/personal_finance/credit_reports.html (visited Dec. 2013)
[22] Sarah Kendzior, A government shutdown, a social breakdown, Al Jazeera English, Oct. 4, 2103, at www.aljazeera.com/indepth/opinion/2013/10/a-government-shutdown-a-social-breakdown-20131049101576477 9.html (visited Dec. 2013).

The current credit reporting and scoring system is fundamentally flawed because it is an overly blunt instrument that lumps together defaults and negative events that are caused by very different triggers. Credit scores assume that a foreclosure due to illness resulting in job loss and crippling medical bills should be treated the same, and has the same predictive value, as a foreclosure because the borrower was a real estate investor who abandoned the property. Yet these are two fundamentally different phenomena, and likely two very different consumers.

Indeed, many foreclosures were not caused by bad decisions that borrowers made. Going back more than a decade, origination fraud and abuse by the mortgage industry was endemic – mortgages brokers falsified applications, obtained inflated appraisals, and sold unaffordable products to unsuspecting homeowners, such as adjustable rate mortgages in which the interest rate skyrocketed after the initial "teaser" period. When a loan is abusive, the failure to repay it tells nothing about the borrower's creditworthiness. Another problem is that during the foreclosure crisis, many homeowners who should have been processed for a loan modification were not provided with one. If two homeowners are identically situated, and one gets a loan modification but the other does not, it's hardly fair or useful to reflect that arbitrary result in credit scores.

The overly crude lumping together of very different consumers makes credit scores less than optimally predictive. This is reflected in, and probably responsible, for the fact that scores are actually quite inaccurate and unpredictive on an individual level. While they can predict the probability that as a group, low-scoring consumers will have a certain percentage of defaults, they cannot predict if any particular person will actually engage in the behavior. *In fact, often the probability is greater that a particular low-scoring person will not engage in the negative behavior.*

For example, a score of between 500 and 600 is generally considered to be a poor score.[23] Yet at the beginning of the foreclosure crisis in 2007, only about 20% of mortgage borrowers with a credit score in that range were seriously delinquent.[24] Thus, if a score of 600 is used as a cut-off in determining whether to grant a loan, the vast majority of applicants who are denied credit would probably *not* have become seriously delinquent.

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[23] FICO, myFICO Insider's Guide to 2010 Credit Card Reform and New FHA Mortgage Rules (2010), (noting that under the Federal Housing Administration rules, "it may be difficult for a borrower to even begin the process [of getting a mortgage] with FICO scores below 600."), *available at* www.myfico.com/Downloads/Files/myFICO_Guide_CCFHA.pdf (visited Sept. 29, 2013).

[24] Yuliya Demyanyk, *Did Credit Scores Predict the Subprime Crisis*, The Regional Economist (Federal Reserve Bank of St. Louis Oct. 2008), *available at* www.stlouisfed.org/publications/re/articles/?id=963. *See also* VantageScore Solutions, L.L.C., VantageScore 2.0: A New Version for a New World, 2011 (consumers with VantageScore of 690 - 710, or borderline between "C" and "D" grade, have about a 9% risk of default).

A study by a Federal Reserve researcher and a Swedish scientist, based on consumers in Sweden, similarly found that most consumers with impaired credit did not engage in negative behavior again.[25] The study found that, from the population of consumers with negative information in their credit reports who received credit after the mark was removed, only 27% defaulted again within two years.[26] The researchers reached a conclusion very similar to our thesis, which is that the reason for this low level of default is that many of the consumers with impaired credit ended up with negative marks due to circumstances outside of their control. The researchers noted that their results suggested:

> the possibility that for some proportion of the borrowers, the credit arrear may have been due to some temporary factor or tremble – illness, accident, or mistake – that was not reflective of their underlying type, and that [a] fresh start may improve the accuracy with which these borrower types are reflected. It is possible that, in this case, lenders punish trembles that they cannot easily differentiate from the behavior of bad types.[27]

An earlier Federal Reserve study similarly found that local economic factors, such as unemployment rates, have a significant impact on the ability of credit scores to predict risk. The researchers pointed to the omission of these factors in credit scoring as a possible flaw, stating:

> failure to consider situational circumstances raises important statistical issues that may affect the ability of scoring systems to accurately quantify an individual's credit risk. Evidence from a national sample of credit reporting agency records suggests that failure to consider measures of local economic circumstances and individual trigger events when developing credit history scores can diminish the potential effectiveness of such models.[28]

Thus, it is such situational circumstances or "trembles" within a consumer's life that are often responsible for the delinquencies, defaults, and foreclosures – *not* bad character, but bad luck. The problem with scoring and reporting is that it exacerbates and entrenches the harm from such circumstances, perpetuating the consumer's decline for at least another seven years. Not only might a consumer lose her home due to these events, but the foreclosure notation will hinder her recovery by denying her future credit, an

Situational circumstances or "trembles" within a consumer's life that are often responsible for the delinquencies, defaults, and foreclosures – not bad character, but bad luck.

[25] Marieke Bos and Leonard Nakamura, Federal Reserve Bank of Philadelphia, Working Paper No. 12-19/R, Should Defaults Be Forgotten? Evidence from Quasi-Experimental Variation in Removal of Negative Consumer Credit Information, Apr. 2013, at 1, *available at* www.philadelphiafed.org/research-and-data/publications/working-papers/2012/wp12-29R.pdf (visited Dec. 2013).

[26] *Id.* at 1.

[27] *Id.* at 4.

[28] Robert B Avery, Paul S Calem, and Glenn B Canner, Consumer Credit Scoring: Do Situational Circumstances Matter? BIS Working Papers No 146 (Jan. 2004).

apartment, and perhaps even a job. Even if the consumer gets a new job, the black marks from the foreclosure will follow her and result in higher prices for credit and insurance, costing hundreds or thousands more. This will, in turn, make it harder for her to pay those insurance or credit bills, and strain her economic recovery.

Furthermore, the credit reporting system, especially foreclosure and adverse mortgage-related information, perpetuate and exacerbate the income and wealth gaps between whites and minority groups.[29] For one thing, African American and Latinos are disproportionately targeted for predatory credit practices, such as the marketing of subprime mortgages and overpriced auto loans targeted at these populations.[30] As a result, these groups have suffered higher foreclosure rates.[31] In addition, numerous studies have documented how, as a group, African Americans and Latinos have lower credit scores than whites.[32]

We need a better way to judge consumers. We need a system that can distinguish between consumers who are truly irresponsible and those who simply fell on hard times. We need a system that can take into account both economic factors and extraordinary life circumstances particular to an individual consumer. And, we need a system that does not further widen the huge economic chasm between whites and minorities.

III. POLICY RECOMMENDATIONS

The solutions to the issues discussed are not easy or simple. They require a fundamental rethinking about how credit reports are structured and how we judge creditworthiness in the United States. The following are ideas about how to help consumers impacted by the foreclosure crisis and the Great Recession, as well as helping the nation's economy recovery.

These ideas vary in terms of their developmental stage and how much they have been fleshed out. Some of these ideas were previously proposed, extensively discussed, advocated for, and even implemented on the state level (such as banning the use of credit reports/scores for employment and insurance). Others may benefit from more exploration and refinement.

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[29] *See* Chi Chi Wu & Birny Birnbaum, National Consumer Law Center & Center for Economic Justice, Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide (June 2007).

[30] *See* National Consumer Law Center, Credit Discrimination §§ 1.1.1 and 8.4 (6th ed. 2013) (summarizing studies).

[31] Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, June 18, 2010, *available at* www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.

[32] *See* National Consumer Law Center, Credit Discrimination § 6.4.1 (6th ed. 2013).

A. Recommendations to Lessen the Negative Impact of Foreclosures and Other Adverse Mortgage Events

1. Remove adverse mortgage information earlier than seven years.

The FCRA should be amended to shorten the time periods for adverse mortgage-related events – and other negative information -- to three years. There is nothing special about the current seven-year time limit for negative information under the FCRA. It is certainly not universal. For example, the time limits in Sweden and Germany – countries that are as economically vibrant and prosperous as the United States – are three and four years, respectively.[33]

Negative mortgage-related information should be removed even before a three-year period if the consumer has taken steps to mitigate the loss to the lender, such as a short sale, a deed-in-lieu of foreclosure, or a loan modification. Negative information should also be removed if the mortgage is eligible for relief under settlements negotiated by government agencies with mortgage servicers or lenders, such as the National Mortgage Settlement[34] and the Independent Foreclosure Review (IFR) Payment Agreement. These settlements address abuses by servicers and lenders that resulted in foreclosures, and the borrowers who are entitled to relief should not have their credit reports marred by negative information caused by the servicer or lender.

2. Prohibit insurers, employers, and landlords from considering credit reports at all, and particularly a foreclosure or other adverse mortgage event.

The use of credit reports or credit scores has been a controversial practice for these purposes. Negative credit information has no clear relationship with work performance or driving history, and is often caused by economic forces outside of a consumer's control. For rental housing, denying a consumer who has lost his or her home to foreclosure from the ability to find an apartment contributes to the already appalling amount of homelessness in our country. Furthermore, as discussed in Section II.C on page 12, there are significant racial disparities in credit scores. The use of credit reports and scores for employment, insurance, and rental housing likely causes a disparate impact on minority groups.

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[33] Marieke Bos and Leonard Nakamura, Federal Reserve Bank of Philadelphia, Working Paper No. 12-19/R, Should Defaults Be Forgotten? Evidence from Quasi-Experimental Variation in Removal of Negative Consumer Credit Information, Apr. 2013, at 21, *available at* www.philadelphiafed.org/research-and-data/publications/working-papers/2012/wp12-29R.pdf (visited Dec. 2013).
[34] http://www.nationalmortgagesettlement.com/

In general, employers, insurers, and lenders should not be permitted to consider credit reports or scores at all (with perhaps some very limited some exceptions). Prohibiting them from considering foreclosures or other adverse mortgage-related events is a first step toward protecting consumers from unfair harm.

3. Create exceptions or models to consider extraordinary life circumstances.

The rules for credit reporting, as well as the algorithms for credit scoring models, should be revised to lessen or eliminate the impact of situational or "extraordinary life circumstances," by minimizing or excluding negative information that can be attributed to job loss, medical causes, or other similar causes. Creditors should be required to make allowances for extraordinary life circumstances, or even prohibited from denying credit based on negative information caused by such circumstances.

There is precedent for special consideration of extraordinary life circumstances. A number of state laws governing the use of credit information for insurance require insurers to consider or grant reasonable exceptions based on the impact of extraordinary life circumstances.[35] Even Fannie Mae recognizes their presence, by acknowledging the existence of "extenuating circumstances," which it defines as "nonrecurring events that are beyond the borrower's control that result in a sudden, significant, and prolonged reduction in income or a catastrophic increase in financial obligations."[36] However, Fannie Mae primarily uses these extenuating circumstances to shorten certain waiting periods before a consumer can seek another mortgage. It does not *require* lenders to take these circumstances into account, much less mandate that the lender exclude negative information that the consumer can show was the result of extraordinary life circumstances. The FHA similarly recognizes "extenuating circumstances" but uses them mostly to shorten certain waiting periods.[37]

B. Fixing Errors, Problems, and Anomalies

There are a number of measures that the industry or regulators can take to prevent the errors, problems, and anomalies discussed in Section II.B on pages 7-9.

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[35] *See, e.g.,* Conn Gen. Stat. § 38a-686; 215 Ill. Comp. Stat. § 157/22; Iowa Code § 515.103; Kan. Stat. Ann. §40-5115; Ky. Rev. Stat. Ann. § 304.20-040; La. Rev. Stat. Ann. § 22:1507; Mich. Comp. Laws § 500.2154; Minn. Stat. § 72A.20, subd. 36; Mont. Code Ann. § 33-18-605 ; Nev. Rev. Stat. § 686A.685; N.M. Stat. § 59A-17A-5.

[36] Fannie Mae Selling Guide, B3-5.3-08, Extenuating Circumstances for Derogatory Credit, October 22, 2013, p. 488, *available at* www.fanniemae.com/content/guide/sel102213.pdf (visited Dec, 2013).

[37] *See* HUD Mortgagee Letter 2013-26: Back to Work - Extenuating Circumstances, August 15, 2013, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee (visited Dec. 2013).

1. **The credit reporting industry should revise the Metro 2 reporting format to include:**

   - A special code for short sales.
   - Requirements that borrowers who are complying with the terms of a modification be reported as "paying as agreed," and not reported using the AC code or any code that results in significant harm to their credit score.
   - More detailed reporting regarding the terms of loans, including the annual percentage rate (APR), so that users of a credit report can tell whether the terms were reasonable or were so abusive that they actually led to the default.

2. **Lenders and servicers should have better compliance and audit procedures to ensure that they are properly follow the Metro 2 format, including filling out all applicable fields and using the proper codes, to avoid erroneous reporting.**

C. Make Lending More Available

The following reforms would address the larger economic problems caused by the inability of consumers with impaired credit records to access reasonably-priced credit:

1. **Capacity should count more than credit score.**

Lenders should be required to place more emphasis on capacity, *i.e.*, residual income and debt-to-income ratio, instead of so-called "character" (credit score). The touchstone of all lending should be the consumer's ability to pay, not his or her credit score. Ironically, such a reform would constitute a return to traditional underwriting standards. It would also prevent future foreclosures and other adverse mortgage-events. For example, Veteran Administration (VA) loans have significantly lower default rates than FHA loans given the same credit scores —and FHA loans in turn are significantly better performing than other loans.[38] The big difference is underwriting, because the VA is the only one of the three that currently requires analysis of residual income.[39]

New requirements established by the Dodd-Frank Act represent an important step forward. These requirements institute a minimum ability-to-pay standard, which should result in less reliance on credit scores for *approvals* on mortgage lending. However, lenders will probably continue to *deny* applicants for too-low scores.

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[38] *See* National Consumer Law Center, Comments to the Department of Housing and Urban Development- Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages, Oct. 30, 2013, pp 12-14, *available at* www.nclc.org/images/pdf/foreclosure_mortgage/dodd-frank/comments-fha-oct2013.pdf (visited Dec. 2013).

[39] The FHA is in the processing of adding a residual income option for its underwriting.

Applicants with sufficient residual incomes but low credit scores should not be automatically denied or sent to a manual underwriting process that is effectively a denial.

2. While ability-to-pay requirements should be tightened, credit score requirements should be loosened.

The trend toward requiring higher credit scores for mortgages and other loans should be reversed. Some lenders, particularly auto lenders, are moving in this direction by loosening requirements for consumers who have experienced adverse mortgage events.[40] In contrast, Fannie Mae, Freddie Mac and the FHA still rely heavily on credit scores.[41] And a step in the wrong direction is the recent increase of fees by Fannie Mae and Freddie Mac for borrowers with credit scores below 780.

There may be some types of credit for which credit reports and scores should not be used at all. For example, a credit history analysis should not be used to deny seniors the ability to obtain reverse mortgages under the Home Equity Conversion Mortgage (HECM) program proposed by the Department of Housing and Urban Development (HUD).

3. Alternatives to traditional credit scores should be considered.

The credit industry should be encouraged to consider alternatives to the traditional credit score. Some potential ideas for exploration include:

- Alternative scoring systems, such as the Credit Capacity Score offered by the RDR Institute, which focuses on a net cash-flow analysis.[42]

- Some subprime lenders use alternative criteria to differentiate among low-scoring consumers to determine who is more likely to pay. While we

[40] Ruth Simon, Auto Lenders Speeding Past Mortgage Troubles, Wall St. J., Jan 5, 2012.

[41] *See* 75 Fed. Reg. 54,020 (Sept. 3, 2010) (FHA setting a minimum FICO score of 500, as well as requiring a higher loan-to-value threshold for borrowers with scores of 500 to 590). Fannie Mae generally will not buy mortgages when the borrower has a FICO scores under 620. *See* Consumer Fin. Prot. Bureau, Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores, p. 6 (Sept. 2012), *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf (visited Dec. 2013).

[42] Press Release, Responsible Debt Relief Announces Pathbreaking Housing Counseling and Mortgage Modification Assessment System, October 31, 2011, *available* at www.prweb.com/releases/2011/10/prweb8919333.htm (visited Dec. 2013) (key features include "net cash-flow algorithm/software that calculates net, after-tax household income based on such factors as federal, state and local taxes, household structure, tax filing status, regional cost of living, home ownership status, federal approved deductions such as retirement and charitable contributions, and court-mandated payments such as child support and garnishments").

certainly believe the products offered by these lenders are bad for consumers and should be banned, the criteria that these lenders use to differentiate consumers are worth exploring, albeit with a skeptical eye.

- Requiring lenders to use information that is voluntarily submitted by consumers regarding payments that are not typically reported to the credit bureaus. Lenders should be required to do more than just "consider" this voluntarily-submitted information, which is actually already required by federal regulation.[43] Lenders should be required to treat voluntarily-submitted information in the same manner as traditional credit reporting information, if it is certified as accurate by a trusted third-party verification company.

D. More Research

Finally, we need more research on how to improve the methods we as a society use to judge who is worthy of reasonably-priced credit. Our society has made great strides in information technology in the last few decades, with the explosion of the Internet and ever-more powerful computer hardware and software. Yet our assessment of creditworthiness is still stuck in methodologies invented in the last century.

Our nation devotes billions of dollars every year for medical research. We should be willing to devote a fraction of that amount into research to ensure that consumers are treated fairly in credit decisions and to promote economic growth that is dependent on this fair treatment. It's time for a new paradigm to judge consumers so that they are not unfairly penalized by economic and life circumstances outside of their control.

[43] Under Regulation B, which implements the Equal Credit Opportunity Act, lenders are already required to consider "[o]n the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness." 12 C.F.R. 1002.6(b)(6)(ii).

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January 14, 2014

Mr. Thomas Oscherwitz
Office of Supervision Policy
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Tom:

The child support enforcement community has brought to our attention a significant issue that state agencies currently face in assisting families establish and collect child support payments. We bring this to your attention with the hopes that you and the Bureau will provide clarity to various stakeholders.

The Fair Credit Reporting Act (FCRA) gives consumer reporting agencies (CRAs) at least three potential legal bases on which to furnish a consumer report for child support purposes. As discussed below, only one of these legal bases is effective and practical.

FCRA Section 604(a)(4) authorizes consumer reporting agencies to furnish a consumer report in response to a request by a head of a state or local child support enforcement agency for the purpose of assisting that agency in establishing an individual's capacity to make child support payments or determining the appropriate level of payments. Using this permissible purpose, however, is generally impractical because the provision requires at least ten days prior notice to the consumer who is the subject of the consumer report. Ten days is a lot of time and gives a delinquent parent an opportunity to evade their child support obligations.

FCRA Section 604(a)(5) authorizes a CRA to furnish a consumer report to an agency in order to set an initial or modified child support award. Although this provision does not require notifying the delinquent parent, the provision is of limited utility because it applies only to a requesting agency that is administering a state plan and only to set a child support award. It is unclear how this provision differs from the language in Section 604(a)(4)(A) covering the use of a consumer report to determine an individual's capacity to make child support payments or the appropriate level of those payments. As a result, many state and local child support enforcement agencies avoid using Section 604(a)(5) out of a concern that they will still be required to provide the ten day notice.

There is one provision in the FCRA, however, that is viable and appropriate for authorizing the furnishing of a consumer report in connection with child support enforcement. FCRA Section 604(a)(3)(A) permits a CRA to furnish a report to an entity where the CRA believes that the entity will use the report to review or collect on an account (*i.e.,* on a debt). Under this provision, no notice is required to the party subject to a collection, such as a delinquent parent.

Recently, the U.S. Department of Health and Human Services' Office of Child Support Enforcement concluded that a consumer credit report may be provided by a CRA, under Section 604(a)(3)(A), "for the purpose of enforcing a court ordered child support" judgment (HHS Letter of September 20, 2013)[1]. The HHS Letter goes on to say, "since debts that accrue based on administrative orders have the same force and effect as judicial orders, we believe that this interpretation may also apply to administrative orders."

The HHS Letter is consistent with and is based on a 9th Circuit court decision, Pintos v. Pacific Creditors Association, 565 F.3d 1106, 1113 (9th Cir. 2009). HHS limits its opinion letter to child support agencies located in California and elsewhere in the 9th Circuit's jurisdiction. The Pintos court, relying on Federal Trade Commission commentary, opined that once a transaction has matured into a court ordered debt and, therefore, is judicially defined as a debt, the requirements of Section 604(a)(3)(A) are satisfied: "We explicitly adopted and quoted extensively from a Federal Trade Commission commentary which made repeated reference to the permissible purpose of a 'judgment creditor' to obtain a credit report...If a debt has been judicially established, there is a credit transaction involving the consumer no matter how it arose. The obligation is established as a matter of law and the statute is satisfied." 565 F.3d at 1113-14.

As a matter of public policy, this opinion is beneficial and, indeed critical, in order to facilitate the accomplishment of an important public policy goal -- assuring that parents meet their child support obligations. It would be very helpful to the child support community if the CFPB made clear that the HHS Letter and the Pintos opinion are a correct interpretation of FCRA Section 604(a)(3)(A) and thus apply on a nationwide basis.

Thank you for your attention to this matter and the Bureau's consideration.

Sincerely,

Paul Zurawski

Paul Zurawski
Senior Vice President, Government Relations & Regulatory Management

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[1] Letter to MaryAnn Miller, Assistant Director, Office of Executive Programs, California Department of Child Support Services from Vicki Turetsky, Commissioner, Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services, September 20, 2013.

September 9, 2013

The Honorable Keith Ellison
2244 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Representative Ellison:

We are writing to you today on behalf of Equifax Inc. and the National Consumer Telecom & Utilities Exchange ("NCTUE" or "Exchange") in regards to the *Credit Access and Inclusion Act* (HR 2538), which was recently introduced by Representatives Michael Fitzpatrick (R-PA) and Keith Ellison (D-MN). As you consider HR 2538, we would like to make you aware of a service offered by NCTUE that already exists in today's marketplace that provides an opportunity to expand credit access to millions of consumers who in the past have had limited, if any, access to traditional credit as a result of their lack of credit history.

NCTUE is a nationwide, member-owned and operated, FCRA-compliant data exchange that houses both positive and negative alternative payment data (i.e., non-traditional financial payment reporting data, such as telecom and utility payments) on consumers, which is then available to NCTUE's members on a blind basis to aid in their credit decisioning and risk management. This service allows consumers to establish and build a credit profile based on their payment history for the use of NCTUE members. Membership in NCTUE is open to a wide range of companies, including the nation's leading pay television, utility and telecom services providers. These member companies currently report and share industry-specific payment data on more than 180 million consumers throughout the United States, providing the opportunity for these companies to offer relevant services to underbanked or unbanked consumers, outside of the traditional credit reporting system.

The Exchange benefits underbanked and unbanked consumers through the use of non-traditional payment information that can provide a basis for evaluating risks of individuals who were previously unscoreable using traditional credit data alone. Twenty-five million consumers not found in traditional credit files are included in the NCTUE database. If a consumer has little or no traditional credit history, but has responsibly paid his or her phone or utility bills, that payment history may have a positive effect when applying for new services or credit with other providers or lenders who are members of NCTUE.

Other credit grantors may use scores that combine the NCTUE data with traditional credit scores or utilize their own custom risk scores. Through these blended scores, NCTUE provides the opportunity for non-utility and telecom credit grantors with their own proprietary scores that serve account acquisition underwriting needs in retail banking, auto and insurance. If a credit grantor utilizes alternative data sources like NCTUE when a traditional file has insufficient information, the NCTUE data may allow that credit grantor to offer a consumer better terms and credit, leveling the playing field in the credit market, for consumers who apply for credit from those credit grantors with access to NCTUE data.

Currently, some state regulators and public utility commissions restrict sharing of certain utility account information. By providing information into an industry-specific exchange and participating in the governance of its use consistent with the FCRA, NCTUE members maintain ownership and control over such data and its use by others.

Reporting data to multiple credit bureaus and managing disputes from several sources may be expensive time-consuming, and could give rise to the potential of errors, thus harming consumers. Choosing to contribute data to a credit reporting agency like NCTUE can also limit dispute volume and result in consistent and manageable reporting.

While we do not object to the intentions of HR 2538 - helping consumers build their credit profile using alternative payment data - we believe there is already a solution in the marketplace to address most, if not all, of the needs of these consumers. That is NCTUE. Using both positive and negative data from the NCTUE database allows credit grantors who have access to NCTUE data as described above to better serve the credit needs of all consumers, especially those who have little or no traditional credit history. The NCTUE has a proven track record. In the end, the decision as to where and how to report credit information should be left to the businesses that must rely on it in ways that vary from industry to industry. A one-size fits all solution may lead to adverse, unintended consequences.

For questions or to request additional information, please contact Nick Stowell, Equifax Government Relations, at (404) 885-8742 or Alan Moore, NCTUE – Executive Director, at (972) 518-0019.

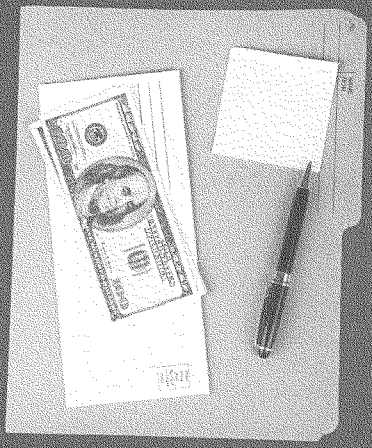
Sincerely,

Buddy Flake
NCTUE – Board President

Michael Gardner
Senior Vice President – Equifax

The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments

Michael Turner, Ph.D., Patrick Walker, M.A.,
Robin Varghese, Ph.D., Sukanya Chaudhuri, Ph.D.



August 2012

PERC
RESULTS AND SOLUTIONS

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The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments

Michael Turner, Ph.D., Patrick Walker, M.A.,
Robin Varghese, Ph.D., Sukanya Chaudhuri, Ph.D.

August 2012

Acknowledgments

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In addition, we would like to thank a number of people who shaped our thinking and influenced our approach to examining this topic—directly and indirectly—including Carol Wayman, Michael Nathans, Joseph Duncan, and Birny Birnbaum.

Helpful comments and edits were also received from Whytney Pickens.

Ultimately, however, despite the contributions of those referenced above, the views and opinions presented in this study are exclusively those of the authors.

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Background

For 8 years, PERC has been championing the inclusion of fully reported energy utility, telecoms, media, and other non-financial credit payment data into consumer credit reports. Currently, a vast majority of utilities only report late payments either directly or indirectly to nationwide credit bureaus, punishing consumers for late payments but not rewarding them for timely payments.

We have conducted pioneering empirical research establishing that the best way for consumers to build a credit history is by adding tradelines—credit accounts reported to a credit bureau.[1] By "thickening" a thin credit file, a lender has more data for underwriting purposes. The result is a more inclusive, fairer, more responsible national credit system. This is especially helpful for lower-income persons, most notably members of minority communities, recent immigrants, younger, and elderly Americans.[2]

Despite a considerable amount of incontrovertible evidence of the value of including fully reported utility accounts (tradelines) in credit reports—and the support of over 60 organizations—a small handful of skeptics have recently ramped up an opposition campaign to stymie legislative efforts to clarify that full-file utility reporting is already permitted under federal law.

Table 1: PERC and Skeptics Positions on Utilities Reporting Late Payment Data to Credit Bureaus (with Current Industry Practice)

	30-days late	60-days late	90-days late	120-days late	150-days late	Non-payment	Charge off	Collection
PERC	Not recommended	Recommended	Favors	Favors	Favors	Favors	Favors	Favors
Skeptics	Opposed	Opposed	Unopposed	Unopposed	Unopposed	Unopposed	Unopposed	Unopposed
Industry Practice**	Minority practice	Majority practice	Majority practice	Majority Practice	Majority Practice	Universal Practice	Universal Practice	Universal Practice

*Skeptics positions were gleaned from publicly available documents or public comments by staff of skeptical organization(s). Skeptics positions may shift, preferences may cycle, or other changes occur that render the above table inaccurate. These are inferred positions in some cases based upon the lack of a coherent and consistently stated position by the skeptics.

**Practice as established by those firms that fully report to one or more nationwide consumer reporting agencies. This is currently a small minority of all such firms.

[1] See Turner et al., "Giving Underserved Consumers Better Access to the Credit System: The Promise of Non-traditional Data." PERC, 2005; Turner et al., "Give Credit Where Credit is Due: Increasing Access to Affordable Mainstream Credit Using Alternative Data." PERC, 2006; Turner et al., "You Score You Win: The Consequences of Giving Credit Where Credit is Due." PERC, 2008; Turner et al., "Roadmap to Reform: Lessons from around the world to guide consumer credit reporting reform in Australia." PERC, 2008; Turner et al., "New to Credit from Alternative Data." PERC, 2009; Turner et al., "Credit Reporting Customer Payment Data." PERC, 2009; Turner et al., "The Consequences of Prohibiting Credit Inquiry Data in Chilean Credit Files." PERC, 2010; Turner et al., "Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand." PERC, 2012; and Turner et al., "A New Pathway to Financial Inclusion." PERC, 2012.

[2] Turner et al., "Give Credit Where Credit is Due: Increasing Access to Affordable Mainstream Credit Using Alternative Data." PERC, 2006.

A recent release by the National Consumer Law Center (NCLC) offers many assertions about harms that "could" befall low-income persons without direct evidence, relying instead on anecdotes and hypotheticals.[3] The respective positions of PERC and the NCLC on what utility payment data should and shouldn't be included in consumer credit reports is listed in the Table 1, as is the current industry practice.

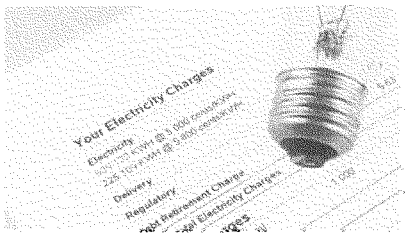
It should be noted that for the most, there is a high level of agreement. Both groups agree that very late payment data—120 days or later—should be reported to nationwide credit bureaus, as should collections, non-payments, and charge-offs. Both groups also agree that consumers should be given a grace period of sorts, and that 30-day late payments should not be included. Happily for both, industry practices generally adhere to these preferences, with the sole exception being that a minority of those utility firms that currently fully report customer payment data to one or more nationwide credit bureaus do report 30-day late payment information.

While we cannot confirm this, we believe that the NCLC—the most prominent skeptic—would be unopposed to having timely payment data included in consumer credit files. PERC wholeheartedly endorses that practice, making this another area of likely common ground.

The sole area of disagreement, then, is upon those who are 60-days or later in making payments. PERC believes that a 60-day grace period represents a consumer friendly reporting regime, and that anyone who cannot pay a utility bill within 60 days, or enter into a payment plan agreement with their utility, is highly likely to represent a credit risk.

The NCLC has represented that should energy utility firms fully report customer payment data, then active duty military personnel defending America from overseas threats will be punished, that elderly persons won't take their prescription drugs, and that low-income families won't feed their children.[4] Their logic hinges on the supposed use of non-payments to utility firms as a cushion during cash flow disruptions, with the implication that these late payments tell lenders nothing useful about the credit risk of a potential borrower. That is, energy utility firms are to provide a social safety net for low-income persons by providing a 90-day grace period for payment on services rendered. Taking away this safety net—as would allegedly happen by fully reporting utility payment data—would be catastrophic for low-income persons, according to the NCLC, ostensibly as they would be falsely seen as higher risk for credit that they could afford.

Of course measuring the credit impacts upon low-income or any group of Americans is achievable given the right data. In this case, the right data are millions of credit files with fully reported utility payment information. This report presents the results from our analysis of data from millions of credit files that were provided for the PERC 2012 study, "A New Pathway to Financial Inclusion."



[3] See NCLC report at: http://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/ib_risks_of_full_utility_credit_reporting_july2012.pdf

Data from one of the two CRAs allowed us to examine credit score changes for individuals who had delinquencies (to various degrees) on alternative data accounts when that alternative data was added and removed from their credit files. This data was used in this paper.

Credit Reporting Moderately Late Utility Payments: Issues to Consider

Measuring the Credit Impacts

Excluding fully reported utility data (both timely and late payments) from consumer credit reports would negatively impact the credit scores of far more low-income consumers than would including the data. Contrary to the assertion that fully reporting utility payment data to nationwide credit bureaus presents risks to low-income consumers, we find that far more low-income consumers witness credit score increases than decreases with full utility credit reporting. That is, more consumers have lower scores *without* full-file reporting than with full-file reporting.

But this misses an important point. Assessing whether an action "harms" or "helps" a particular group of people's credit standing—their ability to qualify for affordable sources of mainstream credit and the terms they receive—cannot be accomplished simply by examining the distribution of credit score changes by income tier or any other socio-demographic variable.

The fact is that a 1-point change could improve a person's credit standing while a 110-point change may have no affect at all. As such, any discussion about the merits of the social and economic value of fully reporting utility payment data (and other non-financial credit data) to credit bureaus is meaningless. Instead, as will be explained in detail below, such impact and value assessments can only be made through an examination of the "material" impacts of including or excluding utility payment data.

PERC's most recent report on this matter undertakes this analysis. The results clearly demonstrate the measurable material benefits to low-income borrowers, especially those with little or no credit history, and the minuscule number who experience a diminished credit standing. This report directly addresses the core fears of skeptics to fully reporting utility payment data to nationwide credit bureaus. It uses data from the most comprehensive analysis ever of the credit impacts of including fully reported utility data in credit reports. These are facts based upon the actual experiences of low-income Americans.

What is "harm" anyway?

Nothing is more fundamental to understanding the value of fully reporting energy utility and other non-financial payment data than how this question is answered. In the context of consumer credit markets, PERC would include any of the following in the definition of consumer credit harm:

- **Denial of credit owing to insufficient information in credit report;**
- **Having a credit score that does not reflect credit risk as accurately as is reasonably possible;**
- **Being granted more credit than you can afford;**
- **Receiving less credit than you want, need and/or deserve;**
- **Paying more for credit than is warranted or necessary;**

Conspicuously absent from this list are:

- **Receiving a lower than prime credit score when none previously existed; and,**
- **Receiving a lower credit score as a result of including new predictive data in a credit report.**

There are good reasons for excluding these two criteria from the definition of consumer credit harm. **First**, in the context of a credit market, it is generally better to have a credit score than to be Credit Invisible. (The exceptions generally are if a consumer has severe derogatories such as bankruptcies and/or multiple collections.) In today's retail credit market, nearly every lender uses automated underwriting solutions to assess a person's credit risk, determine whether to grant credit and what terms to offer. If an applicant either does not have a credit report (the so-called "no-file" applicant), or has insufficient information in their credit report to generate a credit score (the so-called "thin-file" applicant,") then they are almost always denied credit. Thus, having a credit score is essential to accessing mainstream credit, which is, in turn, is critical for building assets and creating wealth.

These Credit Invisible Americans, estimated at between 35 and 54 million adults, are forced to have their credit needs met by check cashing services, payday lenders, pawnshops, and other predatory lenders. Those with very low scores face a similar situation, and are often no worse off than those with no scores when seeking credit. Very few people will have deep subprime scores as a consequence of moderate late payments. And those who do will be better able to rebuild a good credit history with positive data being included in their credit reports than they would be if only very late and strongly negative data were included.

Thickening thin-files, and creating reports where none previously existed is always in the best interest of a person. If one is able to meet basic payments on time, then a credit history can rapidly be built—or rebuilt when one's circumstances improve—without the need to take on a high cost credit building loan, as is often recommended by different advocacy groups.[5]

Second, with fully reported utility payment data, lower scores can be improved by meeting non-financial payment obligations in a timely manner. This is especially true for those who have only ever been moderately late in meeting their credit obligations. Having additional tradelines (open credit accounts including utility and media accounts) raises a credit score—in some cases dramatically so—and countervails the effects of moderate late payments. The ability to rapidly build or re-build good credit standing will be a borrower's ticket to mainstream credit access.

Third, a low score only ever constitutes a consumer credit harm if it inaccurately depicts a person's actual credit risk. The NCLC's argument seems to imply that no one should ever have a low credit score, even as they insist that lenders should be made to assess whether a consumer can afford a loan. A worsening of the ability to assess the risk associated with a borrower threatens one of two outcomes: (1) low-income persons would be entirely shut out of mainstream credit markets as credit becomes rationed [6]; or (2) all borrowers would be granted credit they couldn't afford, leading often to overindebtedness. Neither outcome is desirable.

The fact is that some low-income Americans struggle to pay utility bills, while many, many others pay their bills on time all the time. Reporting utility payments would indicate that the former are high credit risks and the latter are low credit risks. Not reporting this data would indicate that the latter are high credit risks, in effect punishing those who are able to pay their bills in order to keep those who cannot from having a credit report and a low credit score. The latter group, those who pay on time, are a far larger number than the former, those who don't pay on time.

[5] The average cost of a $150 credit builder loan is $50. While it's unclear that such a small loan would be of much value to a low-income consumer, it is clear that this loan comes with a heavy price tag. Using fully reported utility payments—that a person already makes—is a more expeditious, accurate, and cost-effective means of building a credit history and accessing mainstream credit.

[6] See Joseph Stiglitz and Andrew Weiss. "Credit Rationing in Markets with Imperfect Information," American Economic Review. 71 (1981): 393-410.

But are those low-income persons who cannot pay their utility bills being helped by not having a credit score? Specifically, are the consumers themselves being helped by an indication that they are not risky and can afford a loan, or by being kept out of the system altogether with those who can afford a loan? First, those who cannot pay their utility bills, and who require financial assistance, most likely face chronic cash flow problems and frequently struggle to pay bills and are often very late in paying. Many who share this profile already have delinquencies, charge offs and collections reported on a credit report. For this group, including fully reported utility payments can only help. Should their circumstances change, and they are able to make payments on time, they will receive lift from having the timely payment data in their credit file.

They are not harmed by the low score, however, as a low score accurately reflects their credit risk. Indeed, the low score is a powerful protection against over-extension and irresponsible lending. New regulations reasonably mandate or recommend stronger affordability checks. Affordability checks require whether a potential borrower can meet existing obligations and thereby take on new ones. It stands to reason that if a person struggles to make basic utility payments, they are in a poor position to take on new debt. *Denying credit to a person who demonstrably cannot afford to take on further debt does not constitute a credit harm—it is in fact a consumer protection, and reflects a healthy and responsible lending practice.*

Tying this in with the arc of the report, then, this again underscores the fallacy with arguing that a reduced score is a harm. To reiterate, a score change may not have any material impact—a person's credit standing could remain unaffected—and a lower score, if accurate, can help protect a person from taking on debt they cannot afford. One needn't look back too far in our history to understand the devastating consequences resulting from widespread irresponsible lending—with many Americans having taken on far more mortgage debt than they could afford, and more Americans still having to pay for the recklessness.

Regulatory action in response has consisted of strengthening affordability checks and underwriting standards that require lenders to make sure that potential borrowers can service their debt. For underwriting, examining how a potential borrower is able to service their existing obligations is a crucial part of assessing whether a consumer can afford a new loan. More accessible data on these obligations allows lenders to make an affordability check. When that check reveals that a borrower is high risk, through an index that provides the likelihood of default, i.e., a credit score, it helps lenders better practice responsible lending. Moreover, it also helps regulators monitor whether lenders are adhering to stricter underwriting guidelines.

At the heart of disagreement between PERC and NCLC is the question of what constitutes a "consumer credit harm;" this disagreement has led two organizations that are committed to helping lower-income Americans to take opposite positions on this issue. We hope that other concerned parties invest the time necessary to carefully review the facts, and make an informed decision about which position to support. We are confident that if the facts are considered, there is only one position a reasonable person could take, and that is to fully support PERC's Alternative Data Initiative (ADI).

Whether low-income persons will be disproportionately harmed should energy utilities report 30- or 60-day late payment to nationwide credit bureaus is an empirical question that can be answered empirically. PERC has done just that, the results of which are highlighted in this paper and in two previous generations of research on the topic dating back to 2005.

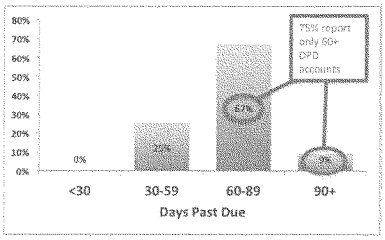
Before we present the empirical facts, it is worth noting that the NCLC ignores the fact that utilities do not need to report 30-day late payments to credit bureaus. Utilities also have the latitude to report scheduled payments that may be less than what is fully owed but have been rescheduled by agreement as on time payments without special notation. Moreover, they can (and do) exclude

late payments below a certain amount as determined by the utility firm. That is, as is discussed below in greater detail, the utility industry can and does make choices about what to report, when to report it, and how to report it. And by and large, its reporting practices are sensitive to challenges faced by and agreements made with customers.

Structuring a Consumer Friendly Reporting Regime

One nationwide credit bureau indicted that utilities that fully reported to them used different criteria for reporting late payments, some reported late payment at 30 days, some at 60 days and others at 90+ days. As Figure 1 shows, over three-quarters of firms that currently fully report customer payment data wait until bills were at least 60+ days late.

Figure 1: When Full-File Utilities Begin Reporting Delinquencies



Source: Experian

Given this industry trend, the probability of a large segment of consumers who are just moderately late paying utility bills suffering from reduced credit scores is mathematically impossible. In fact, as will be established below, very few persons who are moderately late in paying their utility bills—30 and 60 days late—actually experience either a dramatic score reduction or materially, that is, experience a reduced credit standing.

Advocating for consumer friendly approaches to fully reporting utility payment data—as PERC has consistently done for years—might enable most of the benefits to be accrued while minimizing feared harms. For instance, if utility firms reported only after 60-days late, did not report outstanding balances below $100 on closed accounts, and reported discounted or negotiated installment payments as "on-time" most of the feared sources of alleged "harm" to low-income persons would be mitigated.

PERC fully supports such pro-consumer measures, and states unequivocally that the Metro2 reporting standard permits sufficient flexibility to implement such a reporting regime. We know this because it is already being done by utilities that fully report to nationwide credit bureaus.

Moderate Late Payments a Non-Issue?

It is most likely the case that nearly all would support the full file payment reporting for those who pay on-time. And it seems broadly tolerable (if not strongly supported) that CRAs are notified when a consumer's account is charged off or otherwise very delinquent (though there may be difference of opinions as to when a consumer is considered very delinquent). The controversy regarding full file reporting, therefore, surrounds the reporting of moderately late payments.

Overall the estimated increase in access to credit from full utility credit reporting is greater for lower-income consumer than for higher income consumers. If we look at score changes alone, of consumers with incomes under $20,000 36% had score increases, 16% had score decreases, and 29% had no change, while 15% became scoreable *with* full utility credit reporting.

The idea that many with moderately late utility payments would see large (60 to 110 point) declines in their credit scores is not seen. Of all of those in the lowest income category, only 3% saw declines of more than 50+ points (on the other hand 4% saw increase of

greater than 50+ points). Of those with such declines, over three-fourths had one or more 90+ days delinquencies reported for the alternative accounts.

Table 2 shows the distribution of credit reports with a single 30-day late utility payment reported over a year by income tier. This speaks directly to the assertions that many low-income Americans would be harmed with the reporting of moderately late (30 days and 60 days) payments.

Table 2: Consumers with only one 30-day late utility payment reported in a year by income:

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	2%	5,671	19.1%	0.15%
$20,000 to $29,999	1.4%	2,641	8.9%	0.07%
$30,000 to $49,999	1.2%	6,963	23.5%	0.19%
$50,000 to $99,999	0.8%	10,994	37.1%	0.29%
$100,000+	0.4%	3,414	11.5%	0.09%

Though highly suggestive, the paucity of low-income persons with a single late utility payment reported during a one-year observation period is only part of the picture. To accurately assess the impact of including fully reported utility payments in consumer credit reports, it is necessary to also examine the distribution of single 60-day late utility payments by income tier. In this scenario, multiple 30-day late payments are permitted. If the magnitude of lower income Americans with a smattering of late payments were the norm, then it would be depicted here.

Most tellingly, less than 3% of those earning $50,000 or less per annum have just a single 60-day late utility payment reported during the one-year period. This is attributable to the fact that most people pay their bills on time regardless of income tier, and that those low-income persons who struggle to pay utility bills are frequently late, and often very late. Those who are more than 90-days late are generally reported to nationwide credit bureaus. Moreover, reporting these very late payments provides the lending system that these consumers cannot afford a loan and is designed to help consumer from getting overindebted.

As such, fully reporting utility payments yields the positive effect of providing lenders with a more accurate picture of a person's credit risk and capacity. By far, more lower-income Americans experience improved credit standing and therefore greater access to affordable mainstream sources of credit and improved terms (lower price of credit).

Table 3: Consumers with only one 60-day utility delinquency in a year by income:

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	2.6%	7,498	12%	0.20%
$20,000 to $29,999	2.3%	4,541	7.3%	0.12%
$30,000 to $49,999	2.3%	12,948	20.7%	0.35%
$50,000 to $99,999	1.9%	27,739	44.4%	0.74%
$100,000+	1.3%	9,782	15.6%	0.26%

*Number of persons with 30-day late / number of persons in income tier from scoreable sample.

Skeptics may take issue with Table 2 and Table 3 and argue that few will have just a single 30-day or 60-day late payment, but many more are likely to have multiple moderately late payments over the span of a year—

especially when times are tough. Table 4 analyzes that assumption, and while a broader definition of "moderately late" will generate a larger group, it is still a quite modest population. In this case, of the 3.7+ million persons in the sample who could be scored with and without utility payment data, just 3.1% have moderate late payments of any sort in any quantity—even up to 6 or more 30- and/or 60-day late payments during the one-year observation period.

Even in the lowest income tier, just under 5% of persons have moderately late payments reported when their account is fully reported. Simply put, most people pay their bills on time all the time, a small minority pay very late, and an even smaller minority pay late some of the time.

Table 4: Consumers with 30-day and/or 60-day Utility Delinquencies (all)* by Income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	4.7%	13,309	14.3%	0.35%
$20,000 to $29,999	3.7%	7,269	7.8%	0.19%
$30,000 to $49,999	3.6%	20,138	21.6%	0.54%
$50,000 to $99,999	2.7%	39,205	42%	1.05%
$100,000+	1.7%	13,356	14.3%	0.36%

*Includes all consumers with one or more 30-day and/or 60-day utility delinquencies during the one-year observation period used in this analysis.

The data also helps us to evaluate NCLC's claim that a single moderately late utility payment alone will slam a person's credit score by over 60 or even over 100 points—taken seemingly out of context from www.myFICO.com. It is of course possible that a single moderate late utility payment can reduce a credit score by 100 points, but the data allows us to see the likelihood of such a decline. The data shows that the probability of this being the case for low-income earners is exceedingly small, with just 0.006% of the entire population being those who earn less than $50,000 per annum and have a single 30-day late utility payment that reduces their score by 100 points or more.

Policymakers of course have to measure these declines in this tiny sub-population against the increase in scores and the very fact of becoming scoreable for a much, much larger number of persons. Furthermore, policymakers also have to consider that for many of this group within the wider population, this data will not be even reported as many utility providers currently do not and will not report 30-day late payments. They are not required to do so, Metro2 (the credit reporting industry standard for furnishing payment data to credit bureaus) permits flexibility, and most utilities that fully report have made the decision to report only after a payment is 60+ days past due.

Table 5: Consumers with 60+ point decline as a result of only one 30-day late utility payment by income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.15%	412	14.4%	0.01%
$20,000 to $29,999	0.11%	221	7.7%	0.01%
$30,000 to $49,999	0.10%	582	20.4%	0.02%
$50,000 to $99,999	0.08%	1104	38.6%	0.03%
$100,000+	0.07%	539	18.9%	0.01%

Table 6: Consumers with 100+ point decline as a result of one 30-day late utility payment by income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.03%	87	13%	0.002%
$20,000 to $29,999	0.02%	40	6%	0.001%
$30,000 to $49,999	0.02%	122	18.3%	0.003%
$50,000 to $99,999	0.02%	255	38.2%	0.007%
$100,000+	0.02%	164	24.6%	0.004%

*Number of persons with 30-day late / number of persons in income tier from scoreable sample

While it is possible that a sole moderate late payment on a utility account *could* lower scores over 100 points, as Table 6 shows it is far from typical. The median score change for those with a single 30 days late payment in the last twelve months on an alternative/utility account was a decline of 9 points. By comparison, close to a quarter even had score increase due to the positive impact of adding an account. The extreme cases of scores declining 100+ points as a result of a single 30-day late utility payment represented just under two-one-hundreths of one-percent (0.017%) of those who are scoreable without utility payment data.

The same pattern holds true for those consumers who have just a single 60-day late utility payment during the one-year observation period. In this scenario, multiple 30-day late utility payments are permitted. Thus, if the inclusion of moderate late payments were to have a broad and negative affect upon the credit scores and, more importantly, the credit standing of low-income persons, then it should show up here. However, as Table 7 and Table 8 show as before, only a small minority of lower income persons have a score decline of 60+ or 100+ points, and an even smaller few experience a reduced credit standing.

Table 7: Consumers with 60+ point decline as a result of one 60-day late utility payment by income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.32%	920	11.4%	0.02%
$20,000 to $29,999	0.29%	553	6.9%	0.01%
$30,000 to $49,999	0.27%	1,534	19.1%	0.04%
$50,000 to $99,999	0.24%	3,388	42.1%	0.09%
$100,000+	0.21%	1,657	20.6%	0.04%

Table 8: Consumers with 100+ point decline as a result of one 60-day late utility payment by income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.09%	248	11.1%	0.007%
$20,000 to $29,999	0.07%	140	6.2%	0.004%
$30,000 to $49,999	0.07%	389	17.4%	0.010%
$50,000 to $99,999	0.06%	903	40.3%	0.024%
$100,000+	0.07%	562	25.1%	0.015%

*Number of persons with 30-day late / number of persons in income tier from scoreable sample

This is the crux of the policy debate. The 100+ point score reduction for 0.09% of those with household incomes of $20,000 per annum or less; a single 60-day late bill must be weighed against the 21% of that income group who would qualify for mainstream credit with these tradelines fully reported but not otherwise.

PERC's steadfast position has been that while a decline in score does not constitute "harm" if that decline accurately reflects whether a consumer can afford a loan, we do strenuously argue that denying someone access to credit even though they can afford it is a harm, especially if the source of the assessment is insufficient or incomplete information.

As discussed above, however, a simple examination of how many people's scores change, and by how much, can be misleading if it is grounded within the context of credit standing. The following section examines the material impacts of including moderately late payment data in consumer credit reports.

The Material Impact of Fully Reported Utility Payment Data

Skeptics often fail to realize that preserving the status quo—as they seek to—materially harms many, many of the credit underserved in this country. In fact, the issue of materiality is often entirely overlooked by skeptics. A narrow focus on credit score changes fully misses the fact that borrowers are grouped into risk tiers—such as super-prime, prime, non-prime, near-prime, and sub-prime—by credit score bands. Such risk bands are relatively wide, often in excess of 100 points, so that a score increase or reduction of even 100 points may not have any affect upon a person's credit status. By the same token, if a person is near a cut-off point—say a score of 619, where a score of 620 would move them out of subprime and into the less-risky non-prime tier—then a score increase of just a single point could affect their credit standing. As such, one of the best measures of whether including a specific data element (fully reported utility tradelines in this case) in a consumer's credit report is net beneficial is how many persons migrate across score tiers.

The over 4 million persons in the analytic sample--those with one or more fully reported alternative data tradelines--were scored using the VantageScore credit scoring model. The most commonly referenced set of score tiers for the VantageScore model are the so-called ABC or report card tiers. A simple report card methodology is used to describe each score tier with an "A" being assigned to the lowest-risk (those with scores above 900), a "B" assigned to modest risk persons (score between 800-899), a "C" to those with moderate risk (700-799), a "D" to those with high risk (600-699), and an "F" to those with the highest risk (600-699). Using these cut-off points, PERC quantifies the material impacts of including moderate late payments (all 30-day and 60-day late payments) upon a person's credit standing (which score tier they populate).

The results are telling. Just over six-tenths of one-percent (0.62%) of the scoreable population experience a reduced credit standing from moderate late payments. In fact, over one-tenth of one-percent (0.11%) experience a material benefit from having an additional tradeline. So the net impact is upon just around one-half of one-percent of the scoreable sample. This number is even small for those with either a single 30-day or 60-day late utility payment (0.23% and 0.41% respectively),

The fact is that given current industry practices, less than one-half of one percent of persons would have diminished credit standing as a consequence of fully reporting moderately late payments to nationwide credit bureaus. There is simply no truth to the claim that many people's scores, or credit standing, would be negatively impacted from the reporting of moderately late payments.

Table 8: Material Impact of Single 30-day Utility Delinquency:

Material Impact	Distribution	Share of total scoreable population
Fall in credit score by two risk tiers	0.48%	0.005%
Fall in credit score by one risk tier	17.26%	0.18%
No change	76.95%	0.8%
Rise in credit score by one risk tier	5.30%	0.06%

Table 9: Material Impact of Single 60-day utility delinquency

Material Impact	Distribution	Share of total scoreable population
Fall in credit score by two risk tiers	0.7%	0.01%
Fall in credit score by one risk tier	20.7%	0.4%
No change	76%	1.5%
Rise in credit score by one risk tier	2.6%	0.05%

Table 10: Material Impact of Single 60-day utility delinquency *

Material Impact	Distribution	Share of total scoreable population
Fall in credit score by two risk tiers	0.6%	0.02%
Fall in credit score by one risk tier	19.6%	0.6%
No change	76.3%	2.34%
Rise in credit score by one risk tier	3.5%	0.11%

* Includes all consumers with one or more 30-day and/or 60-day utility delinquencies during the one-year observation period used in this analysis.

Table 11: Fall in Credit Score Tier from a single 30-day delinquency, by Income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.27%	776	16.3%	0.02%
$20,000 to $29,999	0.19%	377	7.9%	0.01%
$30,000 to $49,999	0.18%	1,032	21.6%	0.03%
$50,000 to $99,999	0.13%	1,833	38.4%	0.05%
$100,000+	0.10%	750	15.7%	0.02%

Table 12: Fall in Credit Score Tier from a single 60-day delinquency, by Income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.50%	1,410	10.9%	0.04%
$20,000 to $29,999	0.48%	927	7.2%	0.02%
$30,000 to $49,999	0.46%	2,596	20.1%	0.07%
$50,000 to $99,999	0.40%	5,683	43.9%	0.15%
$100,000+	0.30%	2,322	17.9%	0.06%

Table 13: Fall in Credit Score Tier from any 30-day and/or 60-day delinquency, by Income

Household Income	Rate	Number	Distribution	Share of total scoreable population
Less than $20,000	0.79%	2,231	12.3%	0.06%
$20,000 to $29,999	0.68%	1,324	7.3%	0.04%
$30,000 to $49,999	0.66%	3,701	20.4%	0.10%
$50,000 to $99,999	0.54%	7,702	42.6%	0.21%
$100,000+	0.41%	3,140	17.3%	0.08%

While the overall rate of a moderately late payment resulting in movement to a higher credit risk tier is 0.62%, it is only somewhat higher for consumers from lower income households. All groups have rates under 1% with lowest income group having a rate of 0.79%. This represents just small fraction of those that would benefit in this income group. For instance, it is estimated that for this lowest household income group, there would be a 21% increase in access to mainstream credit with the full file reporting of utility data. That is, roughly 15 Americans in the lowest income tier would gain access to affordable sources of mainstream credit for each such person who experienced a reduced change in credit status due to a moderately late payment.

Rebutting Other Misconceptions

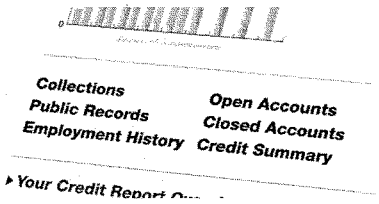
▶ **Increase in Late Payments Owing to Macro-economy Not Reason to Oppose Fully Reporting Alternative Data:** The fact that consumers were delinquent on accounts does not mean that fully reporting those accounts negatively and meaningfully impacts consumers. First, of the around 20% cited from the NARUC report that were delinquent, most were likely not late enough to have had a delinquency reported to a CRA. For instance, Pacific Gas and Electric reported that in 2010, of delinquent accounts, 54% were 30 to 60 days in arrears and a further 23% were between 61 and 90 days in arrears. The remaining 23% were 91+ days in arrears.[9] And in the NARUC report, around 5% had their service terminated, and around 3% were written off. It is likely many of these very late accounts were already reported directly or indirectly to CRAs via collections. Of those that weren't written off and reported and were either 60+ or 90+ days late, many likely would have other payments that were also late and are reported to CRAs. As such a reported late utility may not have a large negative impact if a credit card or other account is also reported late. Also, as has been noted by FICO and others, the average credit score changed very little during the recession, with average FICO score falling from 689 to 686 between 2007 and 2009.[10]

▶ **Metro2 is Flexible** — Consumer Friendly Reporting Possible: If consumers start to fall behind on their utility bills (or believe they will) and make payment arrangements with the utility, the payments that are made can simply be reported as the consumer paying as agreed. It does not need and it should not be reported that the consumer is paying less than was due for a particular month. And the fact that there are differences in utility costs between consumers should not hinder utilities from fully reporting. There are also differences

[10] Annamaria Andriotis "Recession's Surprise Impact on Credit Scores" SmartMoney. July 17, 2012. Available at: http://www.smartmoney.com/borrow/credit-cards/recessions-surprise-impact-on-credit-scores-1342532155897/

in the cost of credit between consumers and differences in the cost of homes between regions. There are also regional variation in rules pertaining to homes, credit, and collections.

▶ **Geographic Differences in Utility Rates Don't Matter:** Assessing poverty and any income level has always been a tricky and hotly debated issue. Being low income requires a different threshold for a family than it does for an individual, and what this income level is will vary greatly across regions. Earning $30,000 per year while living in Manhattan is very different than earning the same income in Fargo, North Dakota. Different utility rates is just one of many factors generating dramatic differences in the cost of living across the country (and around the world, for the fact of the matter). To account for this, income and wages tend to reflect these differences, with a person in a higher cost of living area receiving higher compensation than someone conducting similar work in a lower cost of living area. Arguing that energy utility data should not be fully reported owing to differences in prices makes little sense. Homes cost more in certain high-demand areas than in others (compare northern Virginia to northern Wisconsin). Automobiles are priced differently owing to differences in sales tax rates—with citizens of Delaware paying no sales tax while those residing in New Jersey must pay 7 percent (on a $20,000 sticker price, this is a difference of $1,400 in total cost). And prices vary for other reasons—such as prolonged rate freezes that result in dramatic spikes in prices such as occurred in Illinois after a 10-year price freeze on electricity expired. Consumers there recently experienced 400%-600% price hikes as a consequence of this politically popular to economically misguided and purblind policy.



Conclusion

If one accepts that providing a lender with a more comprehensive picture of a borrower's capacity to take on debt and likelihood that they will repay it in a timely fashion is not a harm, that it better enables lenders to engage in responsible lending and allows regulators to better monitor that they are doing so, then the contents of this report will seem trivially true. We have documented the following facts:

▶ Including fully reported utility payments in consumer credit reports results in dramatic improvements in credit access for lower-income Americans;
▶ Including fully reported utility payments in consumer credit reports makes lending fairer, more inclusive, and more responsible;
▶ It can be misleading to examine only credit score impacts without examining the impact on a person's credit standing (e.g. a 1-point change could have an impact while a 100 point change may not);
▶ Given current industry practices, the number of lower-income people who would either experience a dramatic score reduction, or a reduced credit standing, is miniscule (less than 0.5%).

When weighing the evidence, the promise of alternative data is self-evident. Despite this, one further point warrants consideration. Currently, most utility firms do not fully report customer payment data to nationwide consumer credit bureaus. Instead, they report—directly or indirectly through collections agencies—only when a payment is very late or in collection.

When such information alone is included in a credit report, for those with little or no credit history, there is no ability to offset the affect of a serious delinquency or derogatory like a collection. Including only negative data is akin to creating a black list, and it is a very unforgiving approach to risk assessment that is especially hard on lower income Americans.

To be clear, those who oppose fully reporting utility payment data while tolerating collections are in effect endorsing the use of black lists for credit underwriting. Without the inclusion of timely payment data, a thin-file or no-file person (this group is overwhelmingly comprised of lower-income persons, members of minority communities, younger and older Americans, and immigrants) has very little recourse and will be forced to have their credit needs met by high cost lenders such as pawn shops, payday lenders, and check cashing services.[11]

Opposing the inclusion of fully reported utility payment data is supporting a status quo that is harming an estimated 35 to 54 million thin-file and no-file Americans. For this group, when life takes a turn for the worse and they cannot make ends meet, their credit reports will be populated with stains, tarnishes, and black marks that will follow them around like a storm cloud for 7 to 10 years.

The most effective, time-tested, and proven method is to build and re-build consumer credit history by thickening credit reports with utility payment data.
The timely data offsets the negative data and puts a person back on a path to healthy credit in order to build assets and create wealth.

[11] Turner, "NCLC Supports the "3 Ps" of Lending: Pawn Shops, Predatory Lenders and Pay Day Lenders." PERC, 2009.

PERC

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QUESTION
REP. RUBÉN HINOJOSA
FINANCIAL INSTITUTIONS SUBCOMMITTEE
SEPTEMBER 10TH, 2014 2:00PM

"AN OVERVIEW OF THE CREDIT REPORTING SYSTEM"

CHAIR CAPITO AND RANKING MEMBER MEEKS, THANK YOU FOR HOLDING THIS HEARING ON CREDIT REPORTING. AS THIS COMMITTEE KNOWS, I HAVE A LONG RUNNING INTEREST IN FINANCIAL LITERACY AND HELPING CONSUMERS TAKE CONTROL OF THEIR CREDIT. I AM ENCOURAGED THAT WE HAVE SEEN CONSUMER UNDERSTANDING OF CREDIT REPORTING AND CREDIT SCORING INCREASE SIGNIFICANTLY SINCE CONGRESS PASSED THE FACT ACT AND THE DODD-FRANK ACT.

HOWEVER, THERE IS IMPORTANT INFORMATION THAT CONSUMERS ARE NOT GETTING TODAY. IT IS NOW POSSIBLE FOR CONSUMERS TO LEARN WHAT SPECIFIC STEPS THEY NEED TO TAKE TO GET THEIR CREDIT WORTHINESS TO A LEVEL THAT THEY WANT AS QUICKLY AS POSSIBLE. CREDIT

REPORTING AGENCIES AND THEIR AFFILIATES CAN MAKE PRODUCTS THAT PROVIDE CONSUMERS WITH INDIVIDUALIZED CREDIT ADVICE INSTEAD OF THE GENERALIZED INFORMATION THAT IS AVAILABLE TODAY.

UNFORTUNATELY, WE HAVE SEEN THAT AN IMPORTANT CONSUMER PROTECTION LAW HAS ACTUALLY BEEN TURNED INTO A BARRIER FOR CONSUMERS. THE CREDIT REPAIR ORGANIZATIONS ACT OR CROA (RHYMES WITH "BOA") IS SUPPOSED TO PROTECT CONSUMERS FROM THOSE BAD ACTORS WHO MAKE FRAUDULENT PROMISES THAT THEY CAN "FIX" SOMEONE'S CREDIT BY REMOVING DEROGATORY BUT ACCURATE INFORMATION FROM THE CREDIT REPORT. I SEE THE YARD SIGNS IN MY DISTRICT THAT SAY TO CALL A TOLL FREE NUMBER TO REMOVE BAD CREDIT. WE NEED CROA TO GO AFTER THOSE BAD ACTORS.

ON THE OTHER HAND, THE DEFINITION OF WHAT IS A CREDIT REPAIR ORGANIZATION HAS BEEN INTERPRETED BY THE COURTS TO APPLY VERY BROADLY.

IN FACT, THERE ARE CASES THAT HAVE FOUND THAT ADVERTISING FOR CREDIT MONITORING PRODUCTS CAN TRIGGER CROA. THIS MEANS THAT CONSUMERS WHO WANT INDIVIDUALIZED CREDIT ADVICE HAVE TO WAIT THREE DAYS AND AGREE TO A SERIES OF STATEMENTS THAT WERE NEVER INTENDED TO APPLY TO A CREDIT BUREAU – BEFORE THEY CAN GET THIS ADVICE.

SO THAT CONSUMERS CAN HAVE ACCESS TO THIS INDIVIDUALIZED CREDIT INFORMATION, I HAVE JOINED WITH MY COLLEAGUE ED ROYCE IN INTRODUCING THE FACILITATING ACCESS TO CREDIT ACT. THIS BILL WILL CLARIFY THAT CREDIT REPORTING AGENCIES AND THEIR AFFILIATES THAT ARE SUBJECT TO CFPB SUPERVISION ARE EXEMPT FROM CROA. THIS WILL ALLOW FOR A TRUSTED SOURCE TO PROVIDE INDIVIDUALIZED CREDIT ADVICE TO A CONSUMER. I HOPE MY COLLEAGUES WILL JOIN ME.

ConsumersUnion

POLICY & ACTION FROM CONSUMER REPORTS

September 10, 2014

Honorable Maxine Waters
Ranking Member
House Financial Services Committee
B301C Russell House Office Building
Washington, D.C. 20515

Honorable Gregory Meeks
Ranking Member, Subcommittee
Financial Institutions and Consumer Credit
House Financial Services Committee
2234 RHOB
Washington, D.C. 20515

Re: Written Statement for the Financial Institutions and Consumer Credit Subcommittee Hearing on Credit Reporting Practices

Dear Ranking Member Waters and Ranking Member Meeks:

Consumers Union, the advocacy and policy arm of Consumer Reports, respectfully asks that the attached letter supporting the Medical Debt Responsibility Act, H.R.1767, be included in the record for the hearing, "An Overview of the Credit Reporting System."

We further ask that the attached Consumers Union report, "Errors and Gotchas: How Credit Report Errors and Unreliable Credit Reports Hurt Consumers," also be included in the record. The report documents the kinds of problems consumers experience with credit report errors and obtaining fair and accurate credit scores. Among other things, the report recommends that paid or settled medical debt must be promptly removed from credit reports.

If you have any questions, please feel free to contact Pamela Banks, Senior Policy Counsel, Consumers Union at (202)462-6262 or pbanks@consumer.org.

Sincerely,

Pamela Banks
Senior Policy Counsel

ConsumersUnion®
POLICY & ACTION FROM CONSUMER REPORTS

ERRORS AND GOTCHAS: How Credit Report Errors and Unreliable Credit Scores Hurt Consumers

Maureen Mahoney
Public Policy Fellow
Consumers Union of U.S., Inc.

April 9, 2014

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Finally, thanks to the consumers who shared their stories with us.

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POLICY & ACTION FROM CONSUMER REPORTS

ERRORS AND GOTCHAS: How Credit Report Errors and Unreliable Credit Scores Hurt Consumers

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POLICY & ACTION FROM CONSUMER REPORTS

ERRORS AND GOTCHAS: How Credit Report Errors and Unreliable Credit Scores Hurt Consumers

Executive Summary

In today's economy, it's especially important to have a good credit record. In addition to lenders, potential employers, landlords, and insurance companies also may check credit reports when evaluating applicants.[1] Credit scores, derived from information provided on credit reports, are used by mortgage and auto lenders, and by credit card companies to set the terms and interest rates they're willing to offer consumers applying for credit.

Unfortunately, a consumer's good credit record can be undermined when credit reports contain errors, and the damage can be serious. Consumers Union wanted to find out what kinds of problems consumers have experienced with credit report errors and obtaining fair and accurate credit scores. We asked consumers to share their experiences and collected over 1,000 stories from around the country.[2] Based on our review of these stories along with other recent research on this topic, we came to the following conclusions:

Key Findings

- Credit report errors are all too common. A recent Federal Trade Commission (FTC) study found that about one in five, or an estimated 40 million consumers, had an error on one of their credit reports. Over 5 percent—or

[1] The term used by the Fair Credit Reporting Act is "consumer reports." 15 U.S.C. § 1681a(d) (2012 & Supp. I). The consumer reports issued by Equifax, Experian and TransUnion that focus on creditworthiness are commonly called "credit reports." CONSUMER FIN. PROTECTION BUREAU, THE IMPACT OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES 3 (2011) [hereinafter IMPACT OF DIFFERENCES], *available at* http://files.consumerfinance.gov/f/2011/07/Report_20110719_CreditScores.pdf.

[2] Stories were submitted to Consumers Union's Stori.es database by website visitors. This does not constitute a nationally-representative survey. Stories have been reprinted exactly as provided to Consumers Union, though small corrections for grammar, punctuation, and capitalization have been made. More significant edits have been indicated with brackets and ellipses. First name or first initial, city, and state have been listed; last names have been withheld. In one case, the county rather than city was identified to further protect consumer identities.

about 10 million consumers—had an error that would likely lead to them paying more for interest for a loan.

- Consumers reported to us that they found a variety of errors on their credit reports, such as the inclusion of information that doesn't belong to them or that has not been properly updated. Errors are commonly caused by the ways that the consumer reporting agencies (CRAs) match files, in addition to incorrect information reported by creditors and other data "furnishers," and as a result of identity theft.

- Consumers told us that getting the CRAs to correct credit report errors can be a very difficult and frustrating process. CRAs often fail to effectively address error complaints because of fundamental problems with the way they investigate disputes. The CRAs devote limited resources to addressing errors and the investigations conducted by furnishers are often inadequate. Unfortunately, the CRAs typically accept the word of the furnisher in disputes, even if the furnisher has not provided evidence to validate the disputed information.

- Consumers can purchase their credit scores, but they have a hard time obtaining the same credit scores used by their lenders for evaluating creditworthiness. The CRAs typically sell "educational" scores to consumers that lenders rarely use.

- Credit scores sold to consumers and those used by lenders can vary significantly. A recent analysis by the Consumer Financial Protection Bureau (CFPB) found that the credit scores most often used by lenders compared to the scores consumers most often buy from the CRAs would put consumers in "credit-quality categories that are off by one category 19-24% of the time."*

- Consumers sometimes are tricked by marketing pitches promising a "free" credit score and sign up for costly credit-monitoring services unwittingly. Often the scores provided through these services are different from the scores that lenders review.

Policy Reform Recommendations

Consumers Union calls on policymakers and regulators to rein in the worst abuses of the credit reporting industry by updating regulations to ensure that credit reporting by all CRAs is fair and accurate, and to require the CRAs to give consumers their credit scores at no charge when they request their free annual credit reports. The CFPB has rulemaking authority under the Fair Credit Reporting Act (FCRA) to address credit reporting accuracy, and we urge the Bureau to take action. The CFPB and the

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* CONSUMER FIN. PROTECTION BUREAU, ANALYSIS OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES 2, 17 (2012), *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf. This has been updated from an earlier version of the report, which incorrectly indicated that the CFPB's analysis was based on a comparison between educational scores consumers buy from the CRAs and the scores most often used by lenders. It has also been updated to specify that the scores differ by one credit category 19 to 24 percent of the time.

FTC should use their supervisory and enforcement authority to police the marketplace and ensure CRA and furnisher compliance with FCRA. We urge Congress to move forward on these issues as appropriate.

Below are several of the reforms that policymakers and regulators should consider. For a full list of policy reform recommendations, please see page 27.

- Hold CRAs Accountable for Accuracy: New rules are needed to define more clearly the "reasonable procedures" CRAs are required to have in place to ensure credit reports are accurate. This could include requiring CRAs to match first and last name, date of birth, and other relevant information, where appropriate.

- Hold Furnishers Accountable for Accuracy: To ensure that information about consumers is accurate, creditors and other furnishers should be required to keep supporting information and documentation about an account that appears on a credit report, unless directed otherwise by law.

- Improve the Dispute Investigation Process: Furnishers should not be able to dismiss disputes as "frivolous" if consumers provide new information that is relevant to their complaints. Furnishers should delete disputed information from a credit report if they cannot offer documents to support it.

- Provide Consumers with Access to Free Annual Credit Scores: The CRAs should be required to provide consumers with their credit scores for free when consumers request their annual credit reports. These scores should be the same ones that are most often used by lenders to make credit decisions.

- Stop Deceptive Marketing of Credit Reports and Scores: Regulators should crack down on deceptive marketing of credit reports and scores to protect consumers from unknowingly registering for unwanted credit monitoring or other expensive services.

Background

The credit reporting system includes a number of different consumer reporting agencies (CRAs), also known as "credit bureaus."[3] Experian, Equifax, and TransUnion are the three biggest, nationwide CRAs.[4] These three collect the most credit information about consumers, meaning that they hold the most credit files—an estimated 200 million files each.[5] Each of the credit bureaus is a global corporation that has profited handsomely from collecting and selling consumer data. In the fiscal year ending in March 2013, Experian reported over $4 billion in revenue, while in 2013 Equifax made over $2 billion, and TransUnion earned over $1 billion.[6] While the credit reports prepared by the three largest CRAs are the most widely used, there are also a number of smaller "specialty" CRAs that report a wide variety of consumer information, including checking account history, information on rent payments, and even wage information.[7]

Lenders typically consult one or more of the three major CRAs when evaluating a consumer's creditworthiness, for example, when a consumer applies for a car loan or mortgage. In recent years, other actors have consulted credit reports for purposes other than lending, including employers conducting background checks on applicants; auto and homeowners insurance companies establishing rates; utility companies when evaluating whether to ask new customers to pay a deposit; and landlords evaluating prospective tenants.[8]

CRAs develop their consumer databases by collecting information provided by data "furnishers," such as credit card companies and mortgage lenders. While the largest furnishers generally report to each of the three major CRAs, not every furnisher does so.[9] This can account for some of the differences between the credit reports

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[3] 15 U.S.C. § 1681a(f) (definition of "consumer reporting agency"); CONSUMER FIN. PROTECTION BUREAU, KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM 7 (2012) [hereinafter KEY DIMENSIONS], *available at* http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf (discussing historical rise of three largest CRAs).

[4] 15 U.S.C. § 1681a(p) (definition of CRAs operating on a "nationwide basis").

[5] *See* KEY DIMENSIONS, *supra* note 3, at 21; FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 2 (2012) [hereinafter 2012 ACCURACY REPORT], *available at* http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fifth-interim-federal-trade (citing industry figures estimating over 200 million active files).

[6] Experian, Financial Highlights, http://www.experianplc.com/investor-centre/key-financial-data.aspx (last visited Mar. 17, 2014); Equifax, Inc., Annual Report (Form 10-K), at 26 (Jan. 31, 2014), *available at* http://www.sec.gov/Archives/edgar/data/33185/000114420414012238/v368092_10k.htm; TransUnion Corp., Annual Report (Form 10-K), at 30 (Jan. 31, 2014), *available at* http://www.sec.gov/Archives/edgar/data/1513514/000155203314000018/transunion-20131231x10k.htm.

[7] *See Big Brother is watching*, CONSUMER REPORTS MONEY ADVISER, Oct. 2009, *available at* http://www.consumerreports.org/cro/money/consumer-protection/big-brother-is-watching/overview/index.htm. For more on specialty CRAs, *see* NAT'L CONSUMER LAW CTR., FAIR CREDIT REPORTING 67-68 (8th ed. 2013) [hereinafter FAIR CREDIT REPORTING].

[8] KEY DIMENSIONS, *supra* note 3, at 5; DĒMOS, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION'S CREDIT REPORTING INDUSTRY 4 (2011), *available at* http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf.

[9] KEY DIMENSIONS, *supra* note 3, at 15.

produced by the different CRAs. Credit reports may also differ because they include credit inquiries from lenders, who do not always check reports from each of the three major bureaus.[10] Finally, most furnishers send their information to the three major CRAs in a single monthly transmission using a format adopted by much of the industry to help standardize information, known as Metro 2.[11]

CRAs collect and report information such as payment history on debts like mortgages, student loans, and credit cards.[12] Credit reports also show any bills that have gone into delinquency or collection, and public records such as bankruptcies.[13] Once negative information appears on a credit report, it typically remains there for seven years, though if successfully disputed, an entry can be removed earlier.[14] Certain public records can remain on a report even longer than seven years, depending on the statute of limitations.[15] Bankruptcies can stay on credit reports for up to ten years, and criminal convictions can stay indefinitely.[16]

Credit scores are calculated from information provided on credit reports, often using highly secretive, proprietary algorithms and are designed to indicate the likelihood that a consumer will go into delinquency on a loan.[17] As a result, errors on credit reports can have a negative impact on the consumer's resulting credit score. While the CRAs produce their own credit scores, including the VantageScore, Fair Isaac Corporation (FICO)[18] is perhaps the most well-known credit scoring company. According to the CFPB, in 2010, over 90 percent of lenders bought FICO scores to make decisions about consumers.[19]

Since the 1970s, federal legislation and rules have aimed to guarantee important consumer protections and encourage credit reporting accuracy.[20] Under the Fair Credit Reporting Act of 1970 (FCRA),[21] all consumer reporting agencies must ensure that they establish and follow "reasonable procedures to assure maximum possible accuracy."[22] Furnishers cannot report information if they "[know] or have reasonable cause to believe that the information is inaccurate."[23] New rules established by federal regulators in 2009 declared that furnishers must develop "reasonable written

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[10] IMPACT OF DIFFERENCES, *supra* note 1, at 4.
[11] KEY DIMENSIONS, *supra* note 3, at 14.
[12] *Id.*
[13] *Id. at* 8-9.
[14] 15 U.S.C. §§ 1681c(a)(2-5) (2012 & Supp. I) (listing types of adverse information to be removed after seven years); 15 U.S.C. § 1681i(a)(5)(A) (requiring removal of inaccurate and unverifiable information disputed by consumer).
[15] 15 U.S.C. § 1681c(a)(2).
[16] § 1681c(a)(1) (bankruptcies); § 1681c(a)(5) (criminal convictions).
[17] FAIR CREDIT REPORTING, *supra* note 7, at 621.
[18] On the FICO name, *see* Fair Isaac Corporation, Annual Report (Form 10-K), at 3 (Feb. 11, 2014), *available at* http://www.sec.gov/Archives/edgar/data/814547/000119312513438562/d591009d10k.htm.
[19] IMPACT OF DIFFERENCES, *supra* note 1, at 6 (citing estimates from TowerGroup).
[20] For general discussion of FCRA's legislative history, *see* FAIR CREDIT REPORTING, *supra* note 7, at 6.
[21] 15 U.S.C. §§ 1681—1681x (2012 & Supp. I).
[22] 15 U.S.C. § 1681e(b).
[23] 15 U.S.C. § 1681s-2(a)(1)(A).

policies and procedures concerning the accuracy and integrity" of their data.[24] Moreover, CRAs must conduct a "reasonable reinvestigation" when a consumer files a complaint about errors, and the CRAs must remove incorrect information from a consumer's report within a limited period of time.[25] Other important rights guaranteed by FCRA include the ability to request a free credit report once a year from each of the three major bureaus, to dispute errors, and to purchase a credit score.[26]

Credit Reporting Errors Are Too Common

Despite these protections, many consumers find that their credit reports do not correctly depict their creditworthiness. Too many consumers continue to find errors on their reports and have problems getting them corrected. For example, Lisa, from Lancaster County, Pennsylvania, told us:

> "For a long time, our scores included information about another guy who—ironically—lived in the other side of our duplex with a similar mailing address and the same name as my husband—only his middle initial was different, and he wasn't a junior. When we tried to get the problem cleared up, we were treated as if we were lying and had done bad things. We ended up having to wait a number of years for those things to fall off our credit [reports] because it was such a hassle to get it corrected. We only knew there were problems when we went to apply for credit."

Unfortunately, Lisa's story is hardly unique. A 2012 Federal Trade Commission (FTC) investigation estimated that almost 20 percent of consumers had at least one credit report that contained errors.[27] Over 5 percent had errors significant enough to place them in an inferior credit category for FICO's car loan specialty score, making it more likely they would pay more for a loan.[28] Further, many Americans are spending valuable time working, sometimes fruitlessly, to correct the errors in their credit files. In 2011, consumers contacted the big three CRAs about eight million times with their accuracy concerns.[29] Consumers have also taken their concerns to the CFPB. In 2013, the agency collected about 24,200 complaints about credit reporting issues, and 73 percent of those complaints cited "incorrect information" in relation to credit reports.[30]

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[24] 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, 74 Fed. Reg. 31484 (July 1, 2009).
[25] 15 U.S.C. § 1681i(a)(5)(A).
[26] 15 U.S.C. §§ 1681g(c)(1)(B)(iii-v).
[27] 2012 ACCURACY REPORT, *supra* note 5, at 38. The FTC estimates that 200 million consumers have credit files. *Id.* at 2. As a result, it can be estimated that about 40 million consumers have a credit report error.
[28] *Id.* at 47. Based on the FTC's estimate that the credit reporting industry has files on 200 million consumers, it can be concluded that about 10 million consumers would be put into the more expensive credit category due to credit reporting errors. *See supra* text accompanying note 27.
[29] KEY DIMENSIONS, *supra* note 3, at 27.
[30] CONSUMER FIN. PROTECTION BUREAU, CONSUMER RESPONSE ANNUAL REPORT: JANUARY 1-DECEMBER 31, 2013 19 (2014), *available at* http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf. The CFPB began collecting complaints about credit reporting issues in October 2012. Consumer Fin.

The high rate of credit reporting errors shows that the CRAs and furnishers should do a better job at ensuring that consumers' information is correct and in correcting errors. To that end, it is critical to develop and enforce additional guidelines for CRAs and furnishers. Further reforms are needed to ensure the CRAs and furnishers thoroughly investigate all credit disputes and take seriously consumers' records and documentation in the process.

Errors Caused By CRA Mistakes and Procedures

Credit reporting errors can occur in a variety of ways, but many of them concern the methods the CRAs use to put together credit reports.[31] CRAs sometimes mix together records from two different people who share similar identification information, creating a "mixed file."[32] The CRAs use loose matching requirements when creating a credit report for a lender to make sure they do not omit data that might be important to that lender. According to the FTC, "the CRAs do not rely exclusively on SSNs [Social Security numbers] in their matching procedures[,]" noting that CRAs will place the information in a consumer's report if their personal information is similar, even without an exact match on the Social Security number.[33] For example, the case *Reeves v. Equifax Information Services, LLC, and Medical Data Systems, Inc.* revealed that Equifax mixed the files of two men who shared seven out of nine digits of the Social Security number and had similar names.[34]

Mixed files can have a devastating effect on a consumer's ability to get credit. For example, Frank, from Pitman, New Jersey, explains that his credit history was combined with his son's, and as a result, he couldn't get a good deal when he tried to refinance his mortgage. His story also illustrates how difficult it can be to correct a mixed file:

> "My son and I have the same first and middle names. . . . So all of my son's good and bad credit [information] always show[s] up on my report even though we obviously have different Social Security numbers. Many times I have tried to get these errors fixed, through the mail, phone and online, but to no avail. Recently I attempted to refinance my mortgage, same problem, low credit score due to erroneous data."

Protection Bureau, Credit Reporting Complaint Snapshot 2 (2014), *available at* http://files.consumerfinance.gov/f/201402_cfpb_snapshot_credit-reporting-complaints.pdf.

[31] The National Consumer Law Center identifies the four common categories of error as: "Mixed files," "Identity theft," "Furnisher errors," and "Re-aging of obsolete debts." *See* NAT'L CONSUMER LAW CTR., AUTOMATED INJUSTICE: HOW A MECHANIZED DISPUTE SYSTEM FRUSTRATES CONSUMERS SEEKING TO FIX ERRORS IN THEIR CREDIT REPORTS 7-12 (2009) [hereinafter AUTOMATED INJUSTICE], *available at* http://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf. For a description of common credit reporting errors, *see also* KEY DIMENSIONS, *supra* note 3, at 24-26.

[32] *See* KEY DIMENSIONS, *supra* note 3, at 24-25; AUTOMATED INJUSTICE, *supra* note 31, at 7.

[33] FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTIONS 318 AND 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 40 (2004), *available at* http://www.ftc.gov/sites/default/files/documents/reports/under-section-318-and-319-fair-and-accurate-credit-transaction-act-2003/041209factarpt.pdf.

[34] Reeves v. Equifax Information Servs., LLC, No. 09-43, 2010 U.S. Dist. LEXIS 50241, at *2 (S.D. Miss. May 20, 2010).

Tom, from Boston, Massachusetts, found that a mixed file problem compromised his ability to buy a house. Like Frank, Tom discovered that it's not easy to correct a mixed file problem, and had to devote considerable time and effort to fixing it:

> "If I only [k]new my credit score before attempting to purchase a home. Someone else, with the same name as myself, had a really terrible score. The [consumer reporting agency] had mixed up his [credit record] with mine and this resulted in ruining my score. It took almost a year to get everything straightened out."

A similar, but more subtle matching issue occurs when good information belonging to one consumer gets associated with another—which could unfairly damage the original consumer's credit score, though it will help the other consumer.[35] Matching problems can also lead to incorrect public records entries. Often, one's Social Security number is not used in a court record. CRAs have to use other personal information to place the record with a consumer, potentially resulting in errors.[36]

Sometimes, the report the CRA gives to a consumer will not include mixed data, but the CRA will send a report on the same consumer to a lender that includes the mixed data. This is because CRAs maintain stricter matching requirements for reports for consumers than they do for lenders.[37] Therefore, mixed files can be particularly difficult to detect, and some consumers may not be aware of the problem until they are turned down for credit.

Consumer credit report accuracy can also be compromised when CRAs neglect to regularly update public records information.[38] Additionally, problems can be introduced due to Metro 2, the standardized reporting method that the CRAs use. While the National Consumer Law Center (NCLC) argues that errors may be caused by furnishers' failure to comply with the Metro 2 format,[39] it also notes that the format itself has limitations that can create misleading entries.[40] For example, since there is currently no way to report a short sale of a property through Metro 2, the sale is translated as "settled for less than full amount," or "foreclosure started."[41] This

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[35] *See* KEY DIMENSIONS, *supra* note 3, at 23.

[36] FAIR CREDIT REPORTING, *supra* note 7, at 130; *see also* Mary Spector, *Where the FCRA Meets the FDCPA: The Impact of Unfair Collection Practices on the Credit Report*, 20 GEO. J. ON POVERTY L. & POL'Y 479, 486 (2013) (discussing sources of public records errors).

[37] FAIR CREDIT REPORTING, *supra* note 7, at 137; KEY DIMENSIONS, *supra* note 3, at 37.

[38] FAIR CREDIT REPORTING, *supra* note 7, at 130; Spector, *supra* note 36, at 486.

[39] *Making Sense of Consumer Credit Reports: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the Sen. Comm. On Banking, Housing and Urban Affairs*, 112th Cong. (2012) (statement of Chi Chi Wu, NCLC), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b5d9716-9a48-4757-90d8-7a69d33af0ca (*see* 6-7 of PDF).

[40] *See, e.g.*, NAT'L CONSUMER LAW CTR., SOLVING THE CREDIT CONUNDRUM: HELPING CONSUMERS' CREDIT RECORDS IMPAIRED BY THE FORECLOSURE CRISIS AND GREAT RECESSION 7 (2013) [hereinafter SOLVING THE CREDIT CONUNDRUM], *available at* http://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf; FAIR CREDIT REPORTING, *supra* note 7, at 119.

[41] SOLVING THE CREDIT CONUNDRUM, *supra* note 40, at 7. Moreover, this issue could affect one's credit score. According to FICO analyst Frederic Huynh, "In general, foreclosures, short sales, and

inaccurate characterization may cause a potential lender or employer to believe that the consumer had actually gone into foreclosure.[42]

To address these problems, new rules must make clear the "reasonable procedures" CRAs must pursue in order to ensure credit report accuracy. For example, require credit bureaus to consistently match both the first and last name of the consumer, their date of birth, as well as other relevant information as appropriate.

Errors Caused by Furnisher Mistakes and Procedures

Credit report mistakes can also occur when data furnishers report incorrect information to the CRA. This can be the result of a simple mistake, such as a typographical or computer error, or a broader systemic problem.[43] The CRAs, too, sometimes fail to thoroughly investigate information to make sure it is correct. The CRAs do investigate a company before they begin accepting its information, and make sure that it can report information according to the Metro 2 format. Once a new furnisher successfully completes the CRAs' introductory period, the CRAs' computers look for—and reject—information that is logically inconsistent or clearly erroneous. Still, the CRAs do not try to independently verify the information reported by furnishers.[44]

Failing to independently verify information reported by furnishers can leave consumers vulnerable to errors as a result of furnisher mistakes. Aleta, from Mena, Arkansas, told us about the frustration she felt as a result of a simple computer error:

> "A bill was mistakenly issued to me because of a computer glitch. I tried to resolve it and was told everything had been taken care of. Then I was turned over to a collection agency. I called again and told everything had been taken care of. Instead it turned up on my credit report. I went thr[ough] the investigation process. That was useless! Then I asked and eventually got a letter from the creditor stating it was THEIR fault and it never should have been turned over to a collection agency in the first place. They also contacted the collection agency and told them it was a mistake. The collection agency contacted the credit bureaus and told them I did not and never had owed the bill. It was all a mistake. Well that was 7 months ago and IT IS STILL ON MY CREDIT REPORT!"

Aleta's story shows how small mistakes on the part of a creditor can end up hurting a consumer, and how much time it can take for the CRAs to correct errors. Communication problems between the creditor, collection agency, and the CRA can make it challenging for the consumer to fix the problem—even if the creditor and collection agency are in agreement that a mistake has been made.

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deeds in lieu are all treated in a similar manner by the FICO Score." Frederic Huynh, *Adapting Credit Scores to Evolving Consumer Behavior and Data*, 46 SUFFOLK U. L. REV. 829, 839 (2013).

[42] According to NCLC, however, there is currently no judicial consensus that this should be considered an inaccuracy. *See* SOLVING THE CREDIT CONUNDRUM, *supra* note 40, at 7.

[43] KEY DIMENSIONS, *supra* note 3, at 24; AUTOMATED INJUSTICE, *supra* note 31, at 10.

[44] KEY DIMENSIONS, *supra* note 3, at 18-19.

Mike, from Dunwoody, Georgia, also found inaccurate information on his credit report because of a furnisher error, which made it impossible for him to obtain new credit. In this case, the furnisher did not believe it had erred, and Mike sued the furnisher and the three nationwide CRAs to address the problem. He explains:

> "A creditor claimed I was delinquent in my payments and I claimed I was not based on the conditions of my account. Creditor persisted and put a negative in my report causing other creditors to cancel my accounts, new creditors would not give me credit because of the negative. At the checkout counter of a store where I wanted to take advantage of an offer I was refused in front of other customers because of the negative in my report. I finally had to file suit against the creditor and the three reporting agencies to get all this corrected. It took over two years to get this resolved."

Broader procedural problems can also lead to furnisher errors. For example, furnishers sometimes provide inaccurate information when they fail to correct an error that had already been successfully disputed by a consumer. If the error is not corrected fully in the system, the information can reappear on the consumer's report a few months later.[45] Furnishers may also incorrectly claim that a consumer is legally responsible for a credit card account when, in fact, he or she is simply an authorized user on the card.[46]

In addition, many credit report errors are due to mistakes in medical billing. The Commonwealth Fund estimates that in 2012, seven million working-aged adults had an incorrect medical bill that was sent to a collection agency.[47] Furthermore, Commonwealth found that 41 million adults of working age—22%—had a medical debt in collections in 2012.[48] Of the millions of Americans with medical collections on their credit reports, over three million have paid or settled medical debt in collections that remains on their credit reports and continues to harm their credit scores.[49] All of these instances can have serious consequences for consumers, as a bill in collections can lead to a 100-point drop in a consumer's FICO score.[50]

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[45] FAIR CREDIT REPORTING, *supra* note 7, at 205. CRAs are also responsible for making sure this information isn't included on credit reports. 15 U.S.C. § 1681i(a)(5)(A) (2012 & Supp. I).

[46] KEY DIMENSIONS, *supra* note 3, at 25; AUTOMATED INJUSTICE, *supra* note 31, at 10-11.

[47] THE COMMONWEALTH FUND, INSURING THE FUTURE: CURRENT TRENDS IN HEALTH COVERAGE AND THE EFFECTS OF IMPLEMENTING THE AFFORDABLE CARE ACT 6 (2013) [hereinafter INSURING THE FUTURE], *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Fund%20Report/2013/Apr/1681_Collins_insuring_future_biennial_survey_2012_FINAL.pdf. For more on medical billing errors, *see Check medical bills for errors*, CONSUMER REPORTS MONEY ADVISOR, Aug. 2009, *available at* http://www.consumerreports.org/cro/money/personal-investing/check-medical-bills-for-errors/overview/index.htm.

[48] INSURING THE FUTURE, *supra* note 47, at 6.

[49] Carla K. Johnson, *Small, paid-off debt can mar credit, upend financing for unknowing Americans*, DAILY JOURNAL, Mar. 4, 2012, *available at* http://www.accessproject.org/adobe/press/March4%20DailyJournal.pdf.

[50] Jessica Silver-Greenberg, *How to Fight a Bogus Bill*, WALL ST. J., Feb. 19, 2011, *available at* http://online.wsj.com/news/articles/SB10001424052748703312904576146371931841968 (citing FICO estimates).

Furnishers should do more to ensure that they are providing "accurate, timely, up to date, and fully substantiated"[51] information. For example, unless it conflicts with an existing law, they should hold on to documentation regarding an account as long as that account is included in a consumer's credit history. Moreover, to alleviate the impact of errors in medical billing on consumers, all paid or settled medical debt should be immediately removed from credit reports.

Debt Collection Issues

Debt collectors can also contribute to credit reporting mistakes when they report the incorrect starting date or "date of delinquency" for the seven-year period that negative information may be included in a credit report.[52] This date of delinquency is 180 days after the first missed payment for accounts that are sent to collections or charged off.[53] This date should not change even if the account is sold, placed with a new collector, or if there is a partial payment to the account.[54] Debt collectors sometimes instead report the date they received the account.[55] This practice, known as "re-aging," is a violation of FCRA.[56] Richard, from Swanton, Ohio, experienced repeated problems with re-aged debt on his credit report. He told us:

> "I have fought with the big three credit reporting agencies for almost 20 years, continuously attempting to correct mistakes. This experience has so jaded me, that I no longer attempt to resolve these issues. . . . **I have had (recently) continuous re-listing of debts from 2000 on my current reports, because legal collectors refile them as NEW debts, and the agencies DO NOT remove them.** I have sent literally an average of one or more letters a year to each agency expressing my disappointment. Their inaccuracies have cost me business loans, personal loans, and ruined our credit from the 1990s to present."[57]

As Richard's story illustrates, collectors do not always report the correct date of delinquency to the CRAs, and they in turn may not adequately check to make sure the furnishers are providing accurate information. Furnishers must uphold their legal responsibilities to report the correct date relating to the account, and compliance must be enforced.

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[51] Consumers Union and other advocacy groups have recommended this language in previous FCRA rulemakings. *See infra* note 163.

[52] *See* 15 U.S.C. § 1681s-2(a)(5)(A) (2012 & Supp. I) (setting reporting requirements for furnishers, such as debt collectors).

[53] 15 U.S.C. § 1681c(c)(1).

[54] FED. TRADE COMM'N, 40 YEARS OF EXPERIENCE WITH THE FAIR CREDIT REPORTING ACT: AN FTC STAFF REPORT WITH SUMMARY OF INTERPRETATIONS 94 (2011) [hereinafter 40 YEARS OF EXPERIENCE], *available at* http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf (stating that FCRA Section 623(a)(5)(A) requires a "firm date" for start of delinquency).

[55] FAIR CREDIT REPORTING, *supra* note 7, at 220.

[56] *See* 15 U.S.C. § 1681c(c)(1) (setting reporting period for delinquencies); FAIR CREDIT REPORTING, *supra* note 7, at 220-22 (description of "re-aging" practice and its effects); EVAN HENDRICKS, CREDIT SCORES & CREDIT REPORTS: HOW THE SYSTEM REALLY WORKS, WHAT YOU CAN DO 198-201 (2004) (discussing lawsuits brought against debt collectors for re-aging debts on credit reports).

[57] Emphasis added.

Errors Caused By Identity Theft

The prevalence of identity theft also leaves consumers vulnerable to credit report errors.[58] Identity theft can occur when a thief obtains personal financial information sufficient to open credit accounts in someone else's name.[59] This type of identity theft affected over one million consumers in 2012.[60] Moreover, it can take a long time to identify and address the problem. A report published by the FTC in 2007 showed that 24 percent of consumers who experienced this type of theft failed to discover it for at least six months.[61]

Furthermore, these identity theft cases can be difficult to resolve with the CRAs. Sam, of Brookline, Massachusetts, shared how he struggled to correct the information on his account because of identity theft. Sam was turned down for credit while he worked to address the problem:

> "Dealing with credit rating agencies can be a nightmare. Someone with access to my Social Security number opened a credit card account in my name and with his/her address (in another state where I had never lived)—and then made purchases before allowing the account to become delinquent. I learned about this fraud months later when applying for credit. A review of my credit report provided by one rating agency (Experian) made clear what had happened. I went thru all the hoops set up by the agency to correct my report—even tracking down the names of the people responsible for the fraud. I obtained a letter from the bank that had issued the fraudulently-obtained card, indicating that I had never been issued a credit card by the bank, and I filed a police report. Months later, the agency corrected my report. When I provided the same information to the other two major rating agencies (Equifax and Transunion)—including the corrected report from Experian and other documentation—each said it had to independently verify my case. **It took months more to have all three reports corrected—during which time I was denied credit twice and my credit score (over 800) fell by more than 200 points.**"[62]

Sam's story demonstrates that once information about fraudulent accounts is included in a credit file, it can be a challenge for consumers to get the CRAs to remove it. Sam is not alone when it comes to the frustrations he has experienced. In 2012, the *Columbus Dispatch* examined almost 30,000 credit reporting complaints sent by consumers to the FTC and 24 state attorneys general and found that over half of the consumers who registered complaints with the FTC were unable to get the

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[58] KEY DIMENSIONS, *supra* note 3, at 25; AUTOMATED INJUSTICE, *supra* note 31, at 9-10.
[59] Gail Hillebrand, *After the FACTA: State Power to Prevent Identity Theft*, 17 LOY. CONSUMER L. REV. 53, 55-56 (2004); FAIR CREDIT REPORTING, *supra* note 7, at 403.
[60] U.S. DEP'T OF JUSTICE, VICTIMS OF IDENTITY THEFT, 2012 2 (2013), *available at* http://www.bjs.gov/content/pub/pdf/vit12.pdf.
[61] SYNOVATE, FEDERAL TRADE COMMISSION – 2006 IDENTITY THEFT SURVEY REPORT 24 (2007), *available at* http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-2006-identity-theft-survey-report-prepared-commission-synovate/synovatereport.pdf.
[62] Emphasis added.

credit bureaus to fix the mistakes on their credit reports.[63] Since October 2012, over 2,600 consumers have complained to the CFPB about the problems they have experienced with the CRAs' credit report error investigation process.[64]

As these consumer stories illustrate above, fixing errors can be a complicated and often fruitless endeavor, despite laws requiring furnishers and CRAs to correct them.

Credit Reporting Agencies Fail to Conduct Adequate Investigations of Errors

Why is it so difficult to get CRAs to correct credit reporting errors? When a consumer reports an error, the CRAs have a legal responsibility to investigate the issue fully—but Congress and federal regulators have not explicitly laid out the standards that should be followed to conduct a "reasonable reinvestigation" as required by law.[65] It's also clear that the automated system developed by the CRAs to resolve disputes may not adequately address consumer complaints. The dispute investigation system places all of the power to adjudicate the dispute into the hands of the furnisher, which often performs just a cursory investigation.[66]

The CRAs and furnishers primarily rely on an automated online system, known as e-OSCAR, to transmit information about disputes to one another, and to resolve them.[67] Use of this system allows the CRAs to complete reinvestigations very quickly. According to industry data from 2004, over half of all disputes transferred to a furnisher by a CRA are returned within a week.[68]

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[63] Jill Riepenhoff & Mike Wagner, *Credit Scars,* THE COLUMBUS DISPATCH, May 6, 2012, *available at* http://www.dispatch.com/content/stories/local/2012/05/06/credit-scars.html#channel=f1f6be9f35dbe1a&origin=http%3A%2F%2Fwww.dispatch.com.

[64] Consumer Fin. Protection Bureau, Consumer Complaint Database, http://www.consumerfinance.gov/complaintdatabase/ (2,630 entries as of Feb. 19, 2014) (click on "Credit Reporting Complaints" and filter for "credit reporting company's investigation").

[65] For descriptions of how the reinvestigation process currently operates, *see, e.g.*, FED. TRADE COMM'N, REPORT TO CONGRESS ON THE FAIR CREDIT REPORTING ACT DISPUTE PROCESS 6-7 (2006), *available at* http://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-and-board-governors-federal-reserve-system-report-congress-fair-credit/p044808fcradisputeprocessreporttocongress.pdf [hereinafter FTC DISPUTE PROCESS REPORT]; AUTOMATED INJUSTICE, *supra* note 31, at 14-20; Spector, *supra* note 36, at 487-88.

[66] *See, e.g.*, AUTOMATED INJUSTICE, *supra* note 31, at 21-25; KEY DIMENSIONS, *supra* note 3, at 35.

[67] FTC DISPUTE PROCESS REPORT, *supra* note 65, at 15; e-OSCAR, Home, www.e-oscar.org, (last visited Mar. 18, 2014). Complaints about public records errors are handled differently. CRAs do not use the e-OSCAR system for handling public records disputes; instead, they either obtain the public record in dispute and check it, or they have an agent check the public record on their behalf. KEY DIMENSIONS, *supra* note 3, at 35; *see also* Spector, *supra* note 36, at 488.

[68] FTC DISPUTE PROCESS REPORT, *supra* note 65, at 22.

The dispute process works as follows:

- After the consumer submits a complaint with the CRA, the agency conducts a quick investigation against their system to check for easily verified errors or duplicate disputes. About 15 percent of the complaints are addressed or dismissed during this process.[69]

- The CRAs send the remaining 85 percent of complaints to the furnisher through e-OSCAR.[70] The CRA distills the complaint information supplied by the consumer into a standardized document known as an Automated Consumer Dispute Verification form (ACDV).[71] On this form, the complaint is translated into a code or codes, and sometimes with additional text.[72] For example, according to an industry lobbyist, a code might read: "E1–'Claims paid original creditor before collection started or paid before charge-off. Verify account status, payment rating, current balance, amount past due, pay history.'"[73] CRAs are also required to send "all relevant information" to the furnisher for review,[74] and furnishers must examine it.[75] Consumers can now submit supporting documentation by mail, fax, or online for furnishers to view.[76]

- The data furnisher then investigates the error by checking the complaint against the information on file, before sending a determination back to the CRA.[77]

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[69] KEY DIMENSIONS, *supra* note 3, at 32.
[70] *Id.*
[71] FTC DISPUTE PROCESS REPORT, *supra* note 65, at 14.
[72] KEY DIMENSIONS, *supra* note 3, at 32.
[73] *Credit Reports: What Accuracy and Errors Mean for Consumers: Hearing Before the Subcomm. on Consumer Protection, Product Safety and Insurance of the Sen. Comm. on Commerce*, 113th Cong. (2013) (statement of Stuart K. Pratt, Consumer Data Industry Association), *available at* http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=f5e66411-e2e4-41c1-8380-add209111034 (*see* 13 of PDF).
[74] 15 U.S.C. § 1681i(a)(2)(A)(2012 & Supp. I).
[75] 15 U.S.C. § 1681s-2(b)(1)(B).
[76] Gail Hillebrand, *Now you have better options to dispute a credit report error*, CFPB BLOG, Feb. 27, 2014, http://www.consumerfinance.gov/blog/now-you-have-better-options-to-dispute-a-credit-report-error/. Until recently, the e-OSCAR system used by the three biggest CRAs did not even have the capability to forward documents submitted by consumers to the furnishers as they conduct their investigations into credit errors. *See* KEY DIMENSIONS, *supra* note 3, at 34. Within the last year, however, the e-OSCAR system has become equipped to forward consumer-provided documents to the furnisher, enabling a more thorough investigation process. *See* Press Release, Consumer Fin. Protection Bureau, CFPB Puts Companies on Notice About Duty to Investigate Consumer Credit Report Disputes (Sept. 4, 2013), *available at* http://www.consumerfinance.gov/newsroom/cfpb-puts-companies-on-notice-about-duty-to-investigate-consumer-credit-report-disputes/. In February 2014, the CFPB announced the new e-OSCAR capability to handle documents submitted online by consumers. Richard Cordray, Director, Consumer Fin. Protection Bureau, Remarks at the Consumer Advisory Board Meeting (Feb. 27, 2014), *available at* http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-advisory-board-meeting/.
[77] KEY DIMENSIONS, *supra* note 3, at 32; FTC DISPUTE PROCESS REPORT, *supra* note 65, at 19-21.

- Consumers are also permitted to submit complaints right to the furnisher, instead of, or in addition to, the CRA.[78] Furnishers consider the information submitted to them and send a correction through the e-OSCAR system to the CRA if they believe it is warranted.[79]

While this process for investigating errors sounds straightforward, it does not always serve the best interests of consumers. First, CRA call center agents often are not equipped to provide consumers with the help they need. According to testimony provided by consumer advocates, the CRAs have outsourced many of their call centers overseas to cut costs,[80] and some call center agents have been instructed to handle consumer complaint calls in four to six minutes.[81] But as reporter Steve Kroft of *60 Minutes* notes, "[R]egardless of where they are or who you talk to, they won't be much help."[82] Kroft interviewed former Experian call center agents in Santiago, Chile, who revealed that they had no power to actually investigate error complaints, but merely to code the disputes, and accept the account of the furnisher.[83]

Clearly, the CRAs rely on the furnishers to conduct the investigations and determine whether or not an error has occurred. The CRAs usually take the word of the furnisher in handling these complaints. Greg from Broadview Heights, Ohio, illustrates this in describing how the CRA accepted the data furnisher's word over his in a dispute over an account:

> "Creditor erroneously reported account as delinquent. Disputed account with credit bureau. Creditor 'verified' report by repeating same erroneous information. Credit bureau refused to accept second dispute, referring to creditor. Creditor refused to discuss case, referring to attorney."

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[78] FTC DISPUTE PROCESS REPORT, *supra* note 65, at 25.
[79] *Id.* at 26.
[80] *Credit Reports: Consumers' Ability to Dispute and Change Information: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007) (statement of Evan Hendricks, Privacy Times), *available at* http://archives.financialservices.house.gov/hearing110/oshendricks061907.pdf (*see* 3 of PDF); *Fair Credit Reporting Act: How it Functions for Consumers and the Economy: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007) (statement of Leonard A. Bennett, Nat'l Ass'n. of Consumer Advocates) *available at* http://democrats.financialservices.house.gov/hearing110/osbennett061907.pdf (*see* 30 of PDF).
[81] AUTOMATED INJUSTICE, *supra* note 31, at 32. For more on the limited resources devoted to the investigation process, *see* Kelly Dilworth, *Why the Consumer Dispute Process is Broken*, CREDITCARDS.COM, Oct. 17, 2012, http://www.creditcards.com/credit-card-news/credit_report_dispute-process-broken-1270.php?a_aid=9fc4cb60; Anne Kadet, *Why the Credit Bureaus Can't Get It Right*, THE NETWORK J., Mar. 25, 2009, *available at* http://www.tnj.com/why-the-credit-bureaus-cant-get-it-right. Inadequate customer service at the CRAs has been a concern for many years, prompting FTC investigations in the mid-1990s and enforcement actions in the early 2000s. *See* NAT'L ASS'N. OF STATE PIRGS, MISTAKES DO HAPPEN: A LOOK AT ERRORS IN CONSUMER CREDIT REPORTS 9 (2004), *available at* http://www.uspirg.org/sites/pirg/files/reports/Mistakes_Do_Happen_2004_USPIRG.pdf.
[82] Steve Kroft, *40 Million Mistakes: Is Your Credit Report Accurate?*, CBS NEWS, Aug. 25, 2013, *available at* http://www.cbsnews.com/news/40-million-mistakes-is-your-credit-report-accurate-25-08-2013/ (60 Minutes broadcast originally aired on Feb. 10, 2013) (*see* 2 of transcript).
[83] *Id.* (*see* 4 of transcript).

This is problematic for consumers for two reasons. First, this unfairly places the burden on the consumer to show that the furnisher has made a mistake.[84] FCRA requires CRAs to remove any information from a report that "cannot be verified," thus furnishers have the responsibility to prove the consumer wrong.[85] Second, furnishers often fail to conduct a thorough investigation into the problem, which raises questions about the veracity of their claims in some cases.

Furnisher investigations are inadequate to correct many types of errors. According to an industry source, attorney Anne P. Fortney, a typical furnisher investigation has the employee "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."[86] These investigations can be lacking, especially when the errors were already caused by or reflected in the furnisher's computer records. In other cases, it is clear that the employees in charge of the reinvestigation fail to uphold even these minimum standards.

Many courts have found that the existing procedures CRAs and furnishers use fall short of what constitutes a "reasonable" investigation as required by FCRA. For example, in *Dickman v. Verizon Communications, Inc.* (2012), the court refused to dismiss the case against Verizon and found that there were questions about the adequacy of their investigation process in part because, as the plaintiff argued, Verizon informed the CRAs "that he had become delinquent on the [n]ew [a]ccount three months *before* he actually opened it."[87] This error revealed that Verizon had not fully investigated the error complaint, since it supplied information that information that was clearly false. Verizon claimed that it followed a similar procedure as described by Fortney to investigate errors —checking the account, verifying the name and other identifiers, and looking at the record of past payments.[88]

In *Boggio v. USAA Federal Savings Bank* (2012), USAA employees responded to an error complaint by simply reconfirming the plaintiff's identity, and did not review any underlying documentation in his file.[89] The court denied USAA's motion for summary judgment in their favor because it could not conclude that USAA's investigation was "reasonable" as a matter of law.[90] The plaintiff sued because he believed he was incorrectly listed as a "co-obligor" on his ex-wife's loan—information that had been forwarded to the CRAs.[91] Deposition testimony revealed that USAA employees are "not permitted to make any phone calls to anyone" or review any documents submitted by paper.[92]

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[84] AUTOMATED INJUSTICE, *supra* note 31, at 28.
[85] 15 U.S.C. § 1681i(a)(5)(A) (2012 & Supp. I).
[86] *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. (2007) (statement of Anne P. Fortney), *available at* http://archives.financialservices.house.gov/hearing110/osfortney061907.pdf (*see* 9 of PDF).
[87] 876 F.Supp.2d 166, 174 (E.D.N.Y. 2012).
[88] *Id.* at 173.
[89] 696 F.3d 611, 619 (6th Cir. 2012).
[90] *Id.* at 619-20.
[91] *Id.* at 613.
[92] Brief for Appellant, Boggio v. USAA Fed. Sav. Bank, 696 F.3d 611, 2012 WL 248111, at *8 (6th Cir. 2012) (No. 11-4040.).

Dixon-Rollins v. Experian Information Solutions, Inc. (2010) revealed that TransUnion and furnishers did not conduct a reasonable investigation of the plaintiff's dispute as required by law.[93] The court upheld the judgment and award for the plaintiff, finding that TransUnion had not fulfilled its duty to investigate in part because it did not forward any of the documentation that plaintiff Dixon-Rollins provided to the debt collector during the reinvestigation, and simply accepted the debt collector's word.[94] Although Dixon-Rollins had paid off the debt, her four attempts to have the incorrect information altered on her credit report were in vain.[95] The debt collector simply checked its records and reconfirmed to the CRA—incorrectly—that the debt had not been paid.[96]

Problems can also occur when CRAs do not follow their own procedures to resolve errors. The case of *Miller v. Equifax Information Services LLC* (2013)[97] highlighted some of these lapses in the CRA investigation system, especially when trying to correct a mixed file. In this case, the court upheld the judgment and granted Julie Miller $1.8 million in both punitive and compensatory damages after Equifax ignored her efforts to remove errors from her credit report.[98] Over the course of two years, Miller challenged a number of collections entries on her credit report that did not belong to her, but Equifax failed to remove them.[99] Equifax's representative testified that while she couldn't conclusively explain the reason for this lapse, Equifax employees may have let the marks remain because they couldn't verify the plaintiff as the owner of the credit file.[100] Although Equifax maintained that it established special procedures to deal with a mixed file, in this case, standard procedures were not followed.[101]

In February 2014, the CFPB put furnishers on notice that they must fully investigate all error disputes. It had found that many furnishers simply asked the CRA to erase the disputed account from the consumer's credit report, without looking into complaint at all.[102] The CFPB expressed its concern that by choosing not to investigate an error, the furnishers might overlook broader problems that could lead to repeated mistakes, and might lead them to fall short of their legal responsibilities to correct the erroneous information involved in the consumer dispute with each of the CRAs.[103]

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[93] Dixon-Rollins v. Experian Info. Solutions, Inc., 753 F. Supp. 2d 452, 465 (E.D. Pa. 2010) (defendant "repeatedly failed to carry out its statutory duty" under FCRA). The plaintiff sued both Experian and TransUnion, but reached a settlement with Experian. *Id.* at 456.
[94] *Id.* at 456-7, 459. The award was reduced, however. *Id.* at 456.
[95] *Id.* at 457.
[96] *Id.*
[97] No. 11-1231 (D. Or. Jan. 29, 2014).
[98] *Miller*, No. 11-1231, slip. op. at 2. At trial, the jury had granted $18 million. *Id.*
[99] Complaint at 6, Miller v. Equifax Info. Servs., No. 11-1231 (D. Or. Jan. 29, 2014); *see also* Laura Gunderson, *Equifax must pay $18.6 million after failing to fix Oregon woman's credit report,* THE OREGONIAN, July 26, 2013, *available at* http://www.oregonlive.com/business/index.ssf/2013/07/equifax_must_pay_186_million_a.html (noting that the *Miller* judgment would be the largest award ever obtained in a case against a major CRA).
[100] Transcript of Record at 278-84, Miller v. Equifax Info. Servs., No. 11-1231 (D. Or. Jan. 29, 2014).
[101] *Id.* at 442-47.
[102] Consumer Fin. Protection Bureau, CFPB BULLETIN 2014-01 1 (2014), *available at* http://files.consumerfinance.gov/f/201402_cfpb_bulletin_fair-credit-reporting-act.pdf.
[103] *Id.*

These examples help to demonstrate how minimal steps taken by CRAs and furnishers do not properly address or even clarify the underlying dispute. In many cases, CRAs are accepting the word of the furnisher, even when they don't have evidence to back up their case. This is true even for disputes from furnishers who are debt collectors. A CRA will accept the furnisher's response to the dispute, even if the consumer is actually correct, has documentation that she is correct, and the furnisher has sent nothing to back up its response. NCLC notes that this not only places the burden of proof on the consumer, it unfairly gives the furnisher the role of being the judge in the dispute against it.[104]

Consumers need additional protections so that credit reporting disputes are settled fairly. Most importantly, CRAs should not simply accept the word of the furnisher in a dispute without any evidence. Disputed information should be removed from a consumer's credit record if the furnisher cannot provide documentation to corroborate its claims following the consumer dispute. Also, consumers should be permitted to submit additional documents or evidence in support of their dispute, without having to worry that the dispute will be marked "frivolous" and dismissed.[105]

Credit Report Errors Can Impact Many Aspects of Consumers' Lives

Credit report mistakes can have dire consequences for consumers. Consumers may pay thousands of dollars more in interest over the lifetime of their mortgages due to errors that place them in a lower credit-rating category,[106] and hundreds of dollars more in auto insurance per year. An error on a credit report can even mean losing out on a job, and can leave a consumer unable to perform simple online identity verifications.

Higher Interest Rates on Loans

Accurate credit reports are essential for consumers who are looking to get the best deal on credit such as a car loan or mortgage, since errors can lead to lower credit scores. For example, an erroneous 30-day "bank card" delinquency placed on a consumer's credit report could potentially lead to a 100-point drop in their FICO score.[107] If the consumer's FICO score fell 100 points from 780 to 680, he or she could end up paying $456 more per year on a $25,000, 36-month auto loan[108] and $840 more per year for a $300,000 fixed-rate, 30-year mortgage—or $25,200 over

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[104] *Making Sense of Consumer Credit Reports: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the Sen. Comm. On Banking, Housing and Urban Affairs*, 112th Cong. (2012) (statement of Chi Chi Wu, NCLC), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b5d9716-9a48-4757-90d8-7a69d33af0ca (*see* 22-24 of PDF).

[105] 15 U.S.C. § 1681i(3)(A) (2012 & Supp. I) (CRAs are allowed to reject disputes they have found are "frivolous or irrelevant"); *see also* 40 YEARS OF EXPERIENCE, *supra* note 54, at 77 (noting that CRAs can reject duplicative disputes that do not offer new evidence).

[106] KEY DIMENSIONS, *supra* note 3, at 11.

[107] KEY DIMENSIONS, *supra* note 3, at 12.

[108] Myfico.com, Save Money With FICO, http://www.myfico.com/Products/Products.aspx (last visited Mar. 20, 2013) (click on "36 month auto loan" tab to see current rates).

the entire loan.[109] In a 2002 joint report, the Consumer Federation of America (CFA) and the National Credit Reporting Association (NCRA) estimated that a consumer whose score fell from the "prime" to the "subprime" credit category would end up paying over $124,000 more on a 30-year mortgage loan.[110] CFA and NCRA estimated that eight million consumers would be misclassified as "subprime" as a result of credit reporting errors.[111]

Financial expert Liz Weston claims that, in her own estimation, a consumer with a 650 score, compared to a consumer with a score of 750, could pay $8,000 more in interest on a $20,000 private student loan over the course of 10 years, and $720 more per year in credit card interest.[112] All told, Weston estimates that the 100-point credit score drop could cause a consumer taking out a variety of loans to pay about $200,000 more in interest over a lifetime.[113]

Furthermore, if a credit reporting error is not corrected, it can take a long time for one's credit score to return to its previous heights. For example, FICO estimates that it will take about three years for a consumer with a credit score of 780 to return to his or her previous score after being marked 30 days late on a mortgage payment.[114] Clearly, credit reporting errors can have significant, life-altering financial consequences for consumers.

Difficulty Getting Hired

Credit reporting errors can be particularly damaging for consumers seeking jobs—an unusually high percentage in this time of high unemployment.[115] According to a Society for Human Resource Management (SHRM) survey published in 2012, almost half of employers report that they check credit reports in hiring decisions related to at least one of their positions.[116] A recent Dēmos survey showed that a quarter of unemployed respondents were asked to authorize a credit check during a job

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[109] Myfico.com, Home Purchase Center, http://www.myfico.com/LoanCenter/Mortgage/ (last visited Mar. 20, 2014) (click on "30-year fixed" to see current rates).
[110] CONSUMER FDN. OF AMERICA & NAT'L CREDIT REPORTING ASS'N., CREDIT SCORE ACCURACY AND IMPLICATIONS FOR CONSUMERS 39 (2002), *available at* http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf.
[111] *Id.*
[112] Liz Weston, *Lifetime cost of bad credit: $201,712*, MSN MONEY, Oct. 13, 2011, http://money.msn.com/credit-rating/lifetime-cost-of-bad-credit-201712-dollars-weston.aspx.
[113] *Id.*
[114] *Research looks at how mortgage delinquencies affect scores*, FICO BANKING ANALYTICS BLOG, Mar. 2011, http://bankinganalyticsblog.fico.com/2011/03/research-looks-at-how-mortgage-delinquencies-affect-scores.html.
[115] As of February 2014, the unemployment rate was 6.7%. U.S. Dep't of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, http://data.bls.gov/timeseries/LNS14000000 (last visited Mar. 20, 2014). A look at the unemployment rate for the last ten years shows that the unemployment rate was 5.7% at the start of 2004, dipping to lows on or around 4.4% in late 2006-early 2007, and hitting a high of 10% in October 2009.
[116] Soc'y for Human Resource Mgmt., Background Checking – The Use of Background Checks in Hiring Decisions 2 (2012), *available at* https://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx (click link at bottom of page to access full presentation).

application process, with one in ten applicants denied because of their credit record.[117]

For example, Tammy, of Fort Myers, Florida, told us that inaccurate information on her credit report is preventing her from obtaining employment:

> "I believe most credit reports are inaccurate. Meaning the credit score will be incorrect as well. In my case, I have been denied job after job because of my credit score. This is very serious to me. I have been out of work for seven months now. I have no income and no one to depend on for help."

While credit reports, not credit scores, are consulted in employment decisions, Tammy's story illustrates how a credit history can compromise one's ability to find employment.[118] Although ten states now restrict the use of credit reports for employment purposes,[119] the practice remains prevalent and current federal law does permit it.[120] Because employers may check credit reports during the hiring process, it is especially important that CRAs maintain accurate credit reports and do a better job of correcting errors.

Higher Insurance Costs

Credit report errors can lead to higher insurance rates. In most states, insurance companies are allowed to use credit reports and scores in setting rates.[121] The top auto insurance companies use credit scores for this purpose,[122] and several major insurance companies use credit scores in setting homeowners' insurance rates.[123] Consumers Union has long opposed this practice, in part because of the unreliable nature of credit reports, and also because the practice can be discriminatory. Consumers with lower credit scores often pay more for insurance despite having

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[117] DĒMOS, DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB 3-4 (2013) *available at* http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf.

[118] For more information on the use of credit reports in employments decisions, *see* KEY DIMENSIONS, *supra* note 3, at 10; FAIR CREDIT REPORTING, *supra* note 7, at 318.

[119] CAL. CIV. CODE §1780.20.5, CAL. LAB. CODE §§ 1024.5—1024.6 (Deering 2013) (California); Colo. Rev. Stat. § 8-2-126 (2013) (Colorado); CONN. GEN. STAT. § 31-51tt (2013) (Connecticut); HAW. REV. STAT. § 378-2.7 (2013) (Hawaii); 820 ILL. COMP. STAT. 70/1-30 (2013) (Illinois); MD. CODE. ANN., LAB. & EMPL. § 3-711 (LexisNexis 2013) (Maryland); NEV. REV. STAT. §§ 613.520—613.600 (2013) (Nevada); OR. REV. STAT. § 659A.320 (2013) (Oregon); VT. STAT. ANN. tit. 21, § 495i (2013) (Vermont); WASH. REV. CODE § 19.182.020 (2013) (Washington).

[120] 15 U.S.C. § 1681b(a)(3)(B) (2012 & Supp. I).

[121] For more information on credit scores and insurance, *see* FAIR CREDIT REPORTING, *supra* note 7, at 320-21, 646-47.

[122] FED. TRADE COMM'N, CREDIT-BASED INSURANCE SCORES: IMPACTS ON CONSUMERS OF AUTOMOBILE INSURANCE 11 (2007), *available at* http://www.ftc.gov/sites/default/files/documents/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal-trade/p044804facta_report_credit-based_insurance_scores.pdf.

[123] NAT'L CONSUMER LAW CTR. & CTR. FOR ECON. JUSTICE, CREDIT SCORING AND INSURANCE: COSTING CONSUMERS BILLIONS AND PERPETUATING THE ECONOMIC RACIAL DIVIDE 4 (2007), *available at* http://www.cej-online.org/NCLC_CEJ_Insurance_Scoring_Racial_Divide_0706.pdf.

good driving records and being responsible homeowners.[124] The impact of such pricing practices disproportionately falls on low-income consumers who have the most difficulty making ends meet.[125]

Judy, of New York, New York, told us about her struggle, due to errors on her credit report, to get affordable car insurance:

> "Based upon erroneous information [on my credit report] and assumptions made hastily, my car insurance company with which I had worked for several decades doubled my insurance rates overnight. I have not been able to get copies of my credit scores from the three credit companies or to get them to remove the erroneous information to date."

As Judy's story demonstrates, lowered credit scores can have a significant impact on auto insurance rates—in certain cases costing hundreds of dollars more per year. According to the CFA, in Baltimore, a customer with State Farm Insurance, F&C will pay $632 more per year for dropping from an "excellent" to an "average" credit score.[126]

Errors Can Make It Difficult to Verify Identity

Credit reporting errors can also cause problems when trying to confirm one's identity online. Each of the three major CRAs offers identity verification services for purchase.[127] If the identity verification service relies on a credit report that contains errors, it can be difficult to perform simple, but essential, online activities, For example, L. from Lake Jackson, Texas, reported to us:

> "I've had repeated problems with the credit bureaus mixing up me and my sister-in-law. It hasn't prevented me from getting loans, but it does prevent me from passing identity verification online. . . .
> "I can't even access an electronic document signing system I'm supposed to use at work because I can't get past the identity verification [one of the credit reporting agencies] does for [document verification company]."

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[124] CONSUMERS UNION, SCORE WARS: CONSUMERS CAUGHT IN THE CROSSFIRE: THE CASE FOR BANNING THE USE OF CREDIT INFORMATION IN INSURANCE 3 (2006) *available at* http://consumersunion.org/pdf/ScoreWars.pdf.

[125] *Id.* at 2-3; *see also* CONSUMER FDN. OF AMERICA, THE USE OF CREDIT SCORES BY AUTO INSURERS: ADVERSE IMPACTS ON LOW- AND MODERATE-INCOME DRIVERS 1 (2013), *available at* http://www.consumerfed.org/pdfs/useofcreditscoresbyautoinsurers_dec2013_cfa.pdf.

[126] *Id.* at 5.

[127] Equifax.com, Identity Proofing, http://www.equifax.com/technology/anakam/products/identity_proofing/en_tas (last visited Mar. 20, 2014); Experian.com, Authenticate, Secure and Protect, http://www.experian.com/public-sector/authenticate-identities.html (last visited Mar. 20, 2014); TransUnion.com, Identity Manager Authentication, http://www.transunion.com/direct/servicesolutions/fraudIdentityMgmt/identityAuthentication.page (last visited Mar. 20, 2014).

By correcting credit reporting mistakes, the CRAs can help ensure that consumers are judged fairly based on their true financial history and not on erroneous information.

The Difficulty of Getting a Reliable Credit Score

Like credit reports, credit scores are often used by lenders, insurers, and others to make important decisions about consumers. Many consumers have reported to us that they have difficulty obtaining credit score information that is consistent with the information lenders get to see. The scores sold to consumers may differ from the scores sold to a potential creditor, even if both parties bought the scores from the same CRA.[128]

The differences between the scores available to lenders and those available to consumers can be significant. A recent analysis by the CFPB found that the credit scores most often used by lenders compared to the scores consumers most often buy from the CRAs would put consumers in "credit-quality categories that are off by one category 19-24% of the time."[129] That's why consumers deserve access to free yearly credit scores with their annual credit reports, the same scores that most lenders and others use when evaluating a consumer's credit history.[130]

There Are Many Different Credit Scores

There are many scores available for purchase by consumers and by lenders, but consumers have limited access to the scores viewed by lenders. The wide variety of scores also means that the score purchased by a consumer may not be the one that the lender uses. Most consumers are familiar with FICO scores, the "generic" or all-purpose scores they can purchase at myfico.com. Consumers have one score for each of the big three CRAs: Experian, Equifax, and TransUnion.[131] A consumer's generic FICO score can vary from one CRA to the next, for at least two reasons. First, each CRA may have different information in the credit report used as a basis

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[128] IMPACT OF DIFFERENCES, *supra* note 1, at 5-7, 14; *see also Don't Buy Useless Credit Scores: Your FICO score isn't what car dealers, mortgage lenders, and others use*, CONSUMER REPORTS, July 2013, *available at* http://www.consumerreports.org/cro/magazine/2013/07/don-t-buy-useless-credit-scores/index.htm?loginMethod=auto; DEMOS, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION'S CREDIT REPORTING INDUSTRY 14-15 (2011), *available at* http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf.

[129] CONSUMER FIN. PROTECTION BUREAU, ANALYSIS OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES 2, 17 (2012) [hereinafter ANALYSIS OF DIFFERENCES], *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf. This has been updated from an earlier version of the report, which incorrectly indicated that the CFPB's analysis was based on a comparison between educational scores consumers buy from the CRAs and the scores most often used by lenders. It has also been updated to specify that the scores differ by one credit category 19 to 24 percent of the time.

[130] Consumers Union has long advocated for free access to one's credit score. *See* Memorandum, Nat'l Consumer Law Ctr. et al. to Interested Parties re: Consumer Group Analysis of House FCRA Legislation, H.R. 2622 (Aug. 20, 2003), *available at* http://defendyourdollars.org/posts/1051-fixing_the_credit_reporting_system.

[131] *See* Myfico.com, Products at a Glance, http://www.myfico.com/Products/Products.aspx (last visited Mar. 20, 2014).

for calculating the consumer's credit score.[132] Second, FICO uses a different algorithm for each CRA when calculating the consumer's score.[133]

A few years ago, the big three CRAs created a company to introduce an alternative score, called the VantageScore, that could compete with FICO scores.[134] Both consumers and lenders can purchase VantageScores.[135] They are calculated based on each of the three major CRA reports, and there are several generations of VantageScores as well.[136] VantageScore uses the same algorithm to calculate a score from the three credit reports of each of the CRAs.[137] Still, only about 1,300 lenders currently use the VantageScore.[138]

The CRAs typically create educational scores that are rarely used by lenders, and that are often sold to consumers through credit-monitoring services.[139] Experian, for example, has a disclaimer noting that its PLUS score "is not the score used by lenders."[140]

In contrast, lenders often consult scores that are not available for sale to consumers. For example, some lenders use "industry" scores that are calibrated specifically for that lending purpose, such as purchasing a car or taking out a mortgage loan.[141] Scores created by "specialty" CRAs, like those based on rental data, are considered specialty scores.[142] Lenders create their own credit-scoring systems, known as "custom" scores, and may even crunch several different scores together in their calculations.[143] Finally, FICO and VantageScore have different "generations" of scores, meaning that the companies revise and release new algorithms every few years.[144]

Credit Score Discrepancies Can Harm Consumers

Free scores are available to consumers through websites such as CreditKarma.com, Quizzle.com, and CreditSesame.com.[145] Scores can also be obtained as a part of a

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[132] IMPACT OF DIFFERENCES, *supra* note 1, at 6.
[133] *Id.*
[134] *Id.* at 7.
[135] ANALYSIS OF DIFFERENCES, *supra* note 129, at 4.
[136] IMPACT OF DIFFERENCES, *supra* note 1, at 7-8.
[137] *Id.* at 7-8.
[138] *See* CONSUMER REPORTS, *supra* note 128.
[139] IMPACT OF DIFFERENCES, *supra* note 1, at 7.
[140] Experian, What's Your Experian Credit Score?, www.experian.com (last visited Mar. 20, 2014); *see also* CONSUMER REPORTS, *supra* note 128.
[141] IMPACT OF DIFFERENCES, *supra* note 1, at 5; *see also Secret Scores You Need to Know About*, CONSUMER REPORTS MONEY ADVISOR, Jan. 2014, at 13.
[142] FAIR CREDIT REPORTING, *supra* note 7, at 623.
[143] KEY DIMENSIONS, *supra* note 3, at 10; IMPACT OF DIFFERENCES, *supra* note 1, at 5.
[144] IMPACT OF DIFFERENCES, *supra* note 1, at 6, 8; *see also Credit Scores: Which Ones do Lenders Use?*, CONSUMER REPORTS, June 2009, *available at* http://www.consumerreports.org/cro/money/credit-loan/credit-scores/overview/credit-scores-ov.htm.
[145] Through CreditKarma.com, consumers can obtain a TransRisk New Account Score, and TransUnion VantageScores and Auto Insurance Scores. CreditKarma.com, Frequently Asked Questions, https://www.creditkarma.com/about/faq (last visited Mar. 20, 2014) (click on "What is the difference between the credit scores offered on Credit Karma?" under "Credit Scores"). Quizzle offers

credit monitoring package. However, these scores are often educational scores and thus do not always accurately capture a consumer's creditworthiness.[146] A number of consumers reported to us that they were unpleasantly surprised to find that the scores they obtained for free on the Internet or purchased through a credit monitoring service were more favorable than the scores used by lenders. For example, Brandi, of Cranberry Township, Pennsylvania, wrote:

> "I prepared myself for my car search by reviewing my credit scores (where I could without offering up my credit card!) and was surprised when I went to get approved for my loan and received a much higher interest rate than expected. If I had the opportunity to see the credit score that the bank saw, I could have lined up a loan with an institution with better interest rates before I even picked my perfect car."

These score discrepancies can give consumers the false hope that they qualify for credit or low interest rates when they do not. Consumers can face higher interest rates than expected, or be denied credit.[147] Inconsistent scores can also lead to the loss of application fees upon denial. For example, Sheryl, from Murrieta, California, lost out on a refinance because of the difference between the credit score that she had viewed online and the score used by the lender:

> "This last November, my husband got a credit score from a free site online and we went to our credit union to refinance our home loan which required a $300 application fee which we paid without trepidation because of my husband's much improved credit score. "A week and a half into the process, we were informed that the actual credit score and the one we were quoted online differed enough to disqualify us for the loan and we had to forfeit the application fee as well as our hopes of consolidating and lowering our bills."

Chris, from Opelika, Alabama, found that the score he got along with a credit monitoring service he purchased was useless and confusing to him when looking to buy a house:

> "I actually purchased creditscore.com monthly monitor service. [I was] going through process of purchasing house and noticed the huge difference in score from lender and my purchased service. I questioned it, but I didn't get an answer suitable for the difference."

Jimmy, of Wellington, Florida, lost out on a low-interest rate for a car loan after obtaining deceptively high credit scores:

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consumers "a free VantageScore® credit score with your Equifax® credit report." Quizzle.com, What Is Quizzle, Free Credit Score, https://www.quizzle.com/what-is-quizzle/free-credit-score (last visited Mar. 20, 2014). Credit Sesame provides consumers with an Experian National Equivalency Score. CreditSesame.com, Frequently Asked Questions, http://www.creditsesame.com/about/faqs/ (last visited Mar. 20, 2014) (click on and "What is a credit score and where did you get it?" under "Credit Questions").

[146] *See* ANALYSIS OF DIFFERENCES, *supra* note 129, at 2, 17.

[147] IMPACT OF DIFFERENCES, *supra* note 1, at 15.

> "After paying for a credit report monitoring service, I was going by the score the service was showing me I had, only to be offered a higher rate on a car loan because the score they had for me was lower than what I had printed on my monitoring report."

As these stories reveal, the scores that can be purchased through credit monitoring services or obtained for free over the Internet aren't usually the ones consulted by lenders. This can lead consumers to believe their credit is different from how a lender might view it, and sometimes lose money spent on loan application fees. Consumers deserve better access to scores that lenders actually use.

Deceptive Marketing of Credit Scores and Credit Reports

Consumers also told us that they thought they were getting a "free" credit score, or a score for $1 from the CRAs, only to find that they had unknowingly signed up for a credit-monitoring service that assessed them a monthly fee. Experian and TransUnion boldly advertise free credit scores on their main websites if the consumer agrees to check a credit report for $1—with an explanation of the actual cost in smaller letters elsewhere on the page.[148]

For example, Amber and her husband, from Paducah, Kentucky, signed up for a "free" credit score, and then found that their bank account was being debited $40 each month for it. To make matters worse, these unexpected debits triggered overdraft fees, and the CRA was reluctant to cancel the service upon request:

> "A couple years ago my husband and I were looking into buying a new vehicle and he was curious as to what his credit score actually was! He had found a free credit score ad and it was free until about 30 days later when they withdrew $40 out of his checking account. **At the time he was unemployed and it made our bank account go into the negatives, which of course then charged us a $35 fee on top of our negative checking account!** My husband would call and we would think it was all okay but then it would withdraw more money from our account. This happened several times until finally it took my husband having to get a little ugly and then the issue was resolved!"[149]

Gerry, from Honolulu, Hawaii, experienced a similar problem when he tried to get his credit score for $1:

> "I fell for a FREE check of my credit score for $1.00—so not free. Checked my credit card the next day and the same crooks added $39.95 to my credit card. I called them and told them to reverse that

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[148] *See* Experian, Home, http://www.experian.com/; TransUnion, Home http://www.transunion.com/ (last visited Mar. 20, 2014). Experian and TransUnion both advertise that the consumer can pay $1 to check a credit report and receive a free score, as part of a 7-day trial period. After the trial period is over, a monthly fee kicks in. Equifax does not make similar offers on its homepage. *See* Equifax, Home, http://www.equifax.com/home/en_us (last visited Mar. 20, 2014).

[149] Emphasis added.

> charge. I was told that they could not do that since I had agreed to daily credit checking through them. I never did. Called the credit card company and told them that I put the $39.95 in dispute, something the bank could do but not those other crooks. End of the $39.95 story."

In the past ten years, the FTC and Congress have taken strong action to stop these deceptive marketing practices in relation to credit reports—though not credit scores. For example, ConsumerInfo.com, which is affiliated with Experian, agreed to settlements with the FTC in 2005 and 2007 for featuring "free" credit report promotions that led consumers to sign up for expensive credit monitoring services unwittingly.[150] The CARD Act of 2009 required anyone selling credit reports to point consumers to AnnualCreditReport.com specifically, the site established by federal law, to receive their free annual credit reports.[151]

More needs to be done to stop the deceptive marketing of credit scores. Consumers should be safeguarded from being tricked into paying for credit scores and credit reports. Moreover, consumers should be provided a yearly disclosure on a secure government website where they can access the same credit scores used by lenders.

Consumers Have Limited Rights to Free Credit Scores Used by Lenders

Only under certain circumstances do consumers have the guaranteed right to view the scores that are actually used by lenders, and even then, lenders are often given leeway to keep secret the actual scores that they consulted. For example, under FCRA, a consumer applying for a mortgage must also receive a free credit score.[152] In some circumstances, lenders are permitted to supply consumers with educational scores purchased from a CRA instead of the scores actually used in the lending decision.[153] Second, reforms to FCRA under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) require lenders and insurers to provide the credit score they used if applicants receive a higher interest rate or are turned down for credit because of their credit score.[154] However, the FTC and Federal Reserve Board have determined that the lender or insurer does not have to provide the consumer with a "specialized score"—meaning one not typically available

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[150] Complaint at 3, 7, Fed. Trade Comm'n v. ConsumerInfo.com, Inc., No. 05-801 (C.D. Cal. filed Aug. 15, 2005); Stipulated Final Judgment and Order for Permanent Injunction, No. 05-801 (C.D. Cal. filed Aug. 15, 2005); Supplemental Stipulated Judgment and Order for Permanent Injunction and Monetary Relief, No. 05-801 (C.D. Cal. filed Jan. 8, 2007) (resolving allegations that ConsumerInfo.com had violated previous Stipulated Permanent Injunction).

[151] Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734, 1747 (2009) (codified at 15 U.S.C. § 1681j), 12 C.F.R. § 1022.138(b)).

[152] 15 U.S.C. § 1681g(g)(1) (2012 & Supp. I).

[153] § 1681g(g)(1)(B)(i).

[154] *See* Pub. L. No. 111-203, 124 Stat. 1376, 2112 (2010). As credit reports rather than credit scores are used in employment decisions, this does not apply to consumers who are rejected for jobs. *See* DEMOS, DISCREDITED: HOW EMPLOYMENT CREDIT CHECKS KEEP QUALIFIED WORKERS OUT OF A JOB 10 (2013), *available at* http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf. Insurers must also provide a free copy of a consumer's credit report and credit score after an adverse determination. *See* 15 U.S.C. § 1681m(a).

for sale to consumers—in these disclosures.[155] If the lender purchases a generic score and another type of score during the credit review process, the lender can choose which score to give to the consumer.[156]

Credit scores should be available to all consumers for free, once a year, so that they know how their credit stacks up. A story shared by Greg, of Essex Junction, Vermont, highlights this:

> "I recently found out what my true credit score was when I purchased a new car. The number that my car dealer had was not the credit score that I obtained privately. That is not only an expensive way to find out your true credit score, but also extremely unhelpful."

The CFPB has recently taken steps to try to improve access to the credit scores used by banks. In February 2014, CFPB director Richard Cordray sent letters to major banks, asking them to voluntarily provide consumers with the credit scores used to make decisions about them.[157] It noted that a handful of financial institutions had recently done so.[158] While this is a promising development, it is strictly voluntary. Only a limited number of banks are currently providing free credit scores to their customers.

All consumers deserve access to their free, reliable credit scores. The CRAs are making hundreds of millions of dollars per year off of consumers' financial information. It's only fair that consumers have the right to obtain this information based on their personal data for free.

Policy Reform Recommendations

Consumers Union calls on policymakers and regulators to rein in the worst abuses of the credit reporting industry by updating regulations to ensure that credit reporting by the CRAs is fair and accurate, and by guaranteeing consumers access to their credit scores each year for free when they request their annual credit reports. The CFPB has rulemaking authority under FCRA to address credit reporting accuracy,[159] and we urge the Bureau to take action. The CFPB and the FTC should use their supervisory and enforcement authority to police the marketplace and ensure CRA and furnisher compliance with FCRA regarding credit reports and credit scores.[160] We urge Congress to move forward on these issues as appropriate.

Ensure Credit Reports Are Accurate

Hold CRAs Accountable for Accuracy: Clearly define the "reasonable procedures" that CRAs must follow in order to "assure maximum possible accuracy" of

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[155] Fair Credit Reporting Risk-Based Pricing Regulations, 76 Fed. Reg. 41602, 41605-06 (July 15, 2011) (codified at 12 C.F.R. § 222, 16 C.F.R. §§ 640, 698).
[156] *Id.* at 41606.
[157] Letter from Richard Cordray, Director, Consumer Fin. Protection Bureau (Feb. 10, 2014), available at http://files.consumerfinance.gov/f/201402_cfpb_letters_credit-scores.pdf.
[158] *Id.*
[159] 15 U.S.C. § 1681s(e)(1) (2012 & Supp. I).
[160] § 1681s(a)(1) (FTC enforcement authority); § 1681s(b)(1)(H) (CFPB enforcement authority).

information entered into credit reports as required under the Fair Credit Reporting Act.[161] For example, require CRAs to match first and last name, date of birth, and other relevant information as appropriate.[162]

Hold Furnishers Accountable for Accuracy: Establish that information provided by furnishers is accurate only if it is "timely, up to date, complete, and fully substantiated."[163] To ensure accuracy, furnishers should be required to retain supporting information and documentation relating to an account for as long as it appears on the credit report, unless otherwise required by law.[164] Current law requiring collectors to correctly report the "date of delinquency" on items in collections should be enforced.[165] To address incorrect medical billing, paid or settled medical debts must be promptly removed from credit reports.[166]

Improve the Reinvestigation Process: To improve the error dispute process, furnishers should not be allowed to dismiss a dispute as "frivolous" if the consumer submits new information that is relevant to the complaint.[167] Furnishers should be required to delete disputed information from a credit report if it cannot provide documentation to back it up.[168]

Assure Consumers Rights to Injunctive Relief: Consumers should have the power to seek injunctive relief against CRAs and furnishers to correct inaccurate files and to prohibit other violations of the FCRA.[169]

Provide Consumers Access to Free, Reliable Credit Scores

Provide Consumers Access to Free Annual Credit Scores: Each of the three major CRAs should provide consumers with their credit scores at no charge when consumers request their free annual credit reports.[170]

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[161] § 1681e(b). On April 9, 2014, legislation was introduced in Congress to address this issue. *See* Stop Errors in Credit Use and Reporting Act of 2014, 113th Cong. (2014) (bill text on file with author).
[162] *See* Stop Errors in Credit Use and Reporting Act of 2014, 113th Cong. (2014). Consumers Union and other consumer advocacy organizations have long supported the position that furnishers should provide this information to CRAs to prevent mixed files. *See* Letter from Consumers Union et al. to Fed. Trade Comm'n et. al, Notice of Proposed Rulemaking Pursuant to Section 312 of the Fair and Accurate Credit Transactions Act 36 (Feb. 11, 2008), *available at* http://consumersunion.org/pdf/CreditReportsComm2-08.pdf.
[163] *See id.* at 2-3.
[164] *See id.* at 4.
[165] *See id.* at 35.
[166] Congress has considered legislation to address this issue. *See* Medical Debt Responsibility Act of 2013, S. 160, 113th Cong. (2013). Consumers Union and other consumer groups strongly support the bill. *See* Letter from Consumers Union et. al to Senators Tim Johnson and Michael Crapo (May 13, 2013), *available at* https://www.nclc.org/images/pdf/legislation/mdra_coalition_letter05132013.pdf.
[167] *See supra* note 105. The Stop Errors in Credit Use and Reporting Act of 2014 will also address this issue.
[168] *See, e.g.*, *Making Sense of Consumer Credit Reports: Hearing Before the Subcomm. on Fin. Inst. and Consumer Protection of the Sen. Comm. On Banking, Housing and Urban Affairs*, 112th Cong. (2012) (statement of Chi Chi Wu, NCLC), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=1b5d9716-9a48-4757-90d8-7a69d33af0ca (*see* 31-32 of PDF) (advocating similarly that disputed debts should be deleted from credit reports unless furnisher or CRA can prove that dispute is invalid).
[169] *See* Stop Errors in Credit Use and Reporting Act of 2014, 113th Cong. (2014).

Provide Consumers with the Credit Scores Lenders Use: The CRAs should provide consumers with the same credit score most lenders use in making lending decisions.[171]

Greater Transparency: The CRAs should be required to provide consumers with credit reports and credit scores that are easily understood by consumers. They should offer up-to-date information about the specific factors or predictors that contribute to the consumer's credit score, where the score falls in the range of scores, and advice about how the score can be improved.[172]

Stop Deceptive and Misleading Marketing of Credit Scores: Regulators should crack down on deceptive marketing of credit reports and scores to protect consumers from unknowingly registering for unwanted credit monitoring or other expensive services.[173]

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[170] Congress has considered legislation more than once to address this issue. *See* Stop Errors in Credit Use and Reporting Act of 2014, 113th Cong. (2014); Fair Access to Credit Scores Act of 2013, S. 471, 113th Cong. (2013).
[171] *Id.*
[172] *Id.*
[173] *See supra* note 148.

How to Access Your Credit Information and Correct Errors

Credit reports offer a summary of a consumer's credit history and are often used by lenders and others, such as insurers, potential landlords, and employers, when making financial decisions. It's important to check each of your credit reports once a year to make sure they don't contain any errors and to check for signs of identity theft. **Credit scores** are calculated from information in your credit report and are used to quickly evaluate a consumer's creditworthiness.

How Do I Access my Free Credit Reports?

- You have the right to one free credit report from each of the consumer reporting agencies (CRAs) every 12 months.

- The three major, nationwide CRAs—Equifax, Experian, and TransUnion—are required by law to maintain a single website where consumers can obtain their free yearly credit reports from each of these three companies.

  - Go to www.AnnualCreditReport.com;
  - Call 1-877-322-8228; or
  - Mail the following form https://www.annualcreditreport.com/manualRequestForm.action to
    Annual Credit Report Request Service
    P.O. Box 105281
    Atlanta, GA 30348-5281

- Smaller CRAs must also provide consumers with a free report once every 12 months. Examples of these bureaus include First Advantage SafeRent, which collects your rental payment history, and Chex Systems, which gathers checking account information.

  - Consumers can contact each of these smaller, or "specialty" CRAs directly. Please see Consumer Reports, "Big Brother Is Watching" for full information on how to contact many of these different bureaus and obtain your specialty reports.

How Do I Check My Report For Errors?

- Once you have your report, carefully check your personal information for accuracy.

- Check that all of the accounts and debts on your report are correctly listed in your name, and are accurate.

- Ensure that all bankruptcies, tax liens, or court judgments listed on the report are accurate. For example, if you have paid a tax lien, it should be noted in the report.

- Check for outdated information. Negative information typically should be removed after seven years. Bankruptcies should be removed after ten years.

How Do I Correct Errors on my Credit Report?

- File a dispute by mail with each of the CRAs that is reporting incorrect information about you. You may also file a complaint online or by phone, but you can easily document your dispute if you send it through the mail.

  - The Federal Trade Commission (FTC) has provided a sample letter that you can use as you write your own dispute letter: https://www.consumer.ftc.gov/articles/0384-sample-letter-disputing-errors-your-credit-report

- Equifax and TransUnion require you to submit a dispute form with your letter:

  - Equifax: http://www.equifax.com/cp/MailInDislcosureRequest.pdf
  - TransUnion:http://www.transunion.com/docs/rev/personal/InvestigationRequest.pdf

- Make sure to document and keep track of everything you send to the CRAs:

  - Mail your complaint "return receipt requested."
  - Keep copies of everything you send to the CRAs and that they send you.
  - Only send copies. Hold onto your original documents.

- To contact the CRAs:

  TransUnion Consumer Solutions
  P.O. Box 2000
  Chester, PA 19022-2000
  Phone disputes: 800-916-8800
  Online disputes: http://www.transunion.com/personal-credit/credit-disputes/credit-disputes.page

  Experian
  P.O. Box 4500
  Allen, TX 75013
  Phone disputes: The phone number is located on your credit report.
  Online disputes: http://www.experian.com/disputes/how-to-dispute.html

  Equifax Information Services LLC
  P.O. Box 740256
  Atlanta, GA 30374
  Phone disputes: The phone number is located on your credit report.
  Online disputes: https://www.ai.equifax.com/CreditInvestigation/home.action

- In addition to filing a complaint with the CRA, you may also file a complaint with the company that is sending the incorrect information to them. They are called "furnishers." You also should do this through the mail.

- Note that you shouldn't just complain to the furnisher. Be sure to also file a complaint with the CRA. If you only file a dispute with the furnisher, you will have fewer legal protections.

- Do not use credit repair companies. They can be expensive, and you can correct errors on your credit report yourself for free. And some credit repair offers are outright scams that will do more harm than good.

To learn more about reading credit reports and correcting errors, please see Consumers Union's site, "Your Credit Matters."

What About Identity Theft on my Credit Report?

- If you become the victim of identity theft or if sensitive information such as your Social Security number has been compromised, consider placing a fraud alert or security freeze on your file.

  - Fraud alerts let creditors know that you were a victim of identity theft, and you can re-file every 90 days. This will warn creditors to more carefully verify the identity of anyone opening an account in your name, including both you and a thief opening a credit account in your name. We recommend that you place 90-day fraud alerts, rather than an extended 7-year fraud alert on your credit file. You are entitled to free credit reports each time you file a fraud alert.
  - A security freeze obstructs new lenders from accessing your credit history, which makes it more difficult for them to open new credit accounts in your name.
  - Some consumers consider using a credit-monitoring service to alert them to potentially fraudulent activity on their credit reports. These services provide little or nothing that you cannot do for yourself at no fee, but may provide some consumers peace of mind.

Be warned that some states may charge fees for placing and lifting security freezes under certain circumstances. To learn more about security freezes, including any fees in your state charged for them, please see the "Consumers Union's Guide to Security Freeze Protection."

How Can I Get my Credit Score?

- Credit scores are not included in the free yearly credit report. You usually have to purchase them, and when you do, you most likely will not be able to buy the score that is actually used by your lender. The score you purchase may not accurately tell you whether you'll qualify for a particular loan.

- When you apply for credit, ask your lender for your credit scores actually used in making the credit decision. They do not have to give it to you, but sometimes they will if you ask.

- If you use First National Bank of Omaha, Barclaycard US, Discover or Merrick Bank credit cards, you should be able to take advantage of FICO's "Open Access" program to get the credit scores they purchased to grant you a card and monitor how well you handle your account. Other cardholders, including Walmart credit card customers, may also be able to obtain FICO scores for no additional charges.

- Don't fall for "free" or $1 credit score advertisements. You may end up signing up for a credit-monitoring program that charges monthly fees.

Do you have complaints about credit reporting or getting your credit score?

Notify the Consumer Financial Protection Bureau (CFPB) by filing a complaint at http://www.consumerfinance.gov/complaint/.

They will send your complaint directly to the CRA and check on it until you hear back from them.

Glossary

ACDV	Automated Consumer Dispute Verification. Form used to transmit consumer reporting dispute information between the consumer reporting agency and the furnisher.
CFA	Consumer Federation of America
CFPB	Consumer Financial Protection Bureau
CRA	Consumer reporting agency
e-OSCAR	Online system used by the CRAs to process reporting disputes.
FCRA	Fair Credit Reporting Act
FICO	Fair Isaac Corporation
FRB	Federal Reserve Board
FTC	Federal Trade Commission
Furnishers	Individuals or companies that report information to the CRAs.
Metro 2	Format furnishers use when reporting information to the CRAs.
Mixed file	Credit reporting error that occurs when a consumer's report includes information belonging to another consumer.
NCLC	National Consumer Law Center
NCRA	National Credit Reporting Association, Inc., now known as the National Consumer Reporting Association.
Re-aging	Credit reporting error that occurs when debt collectors or other furnishers report the incorrect "date of delinquency" of a debt, so that it remains on the credit report longer than directed by law.
SHRM	Society for Human Resource Management
SSN	Social Security number

September 10, 2014

The Honorable Shelly Capito
Chairman, Subcommittee
Financial Institutions and Consumer Credit
House Financial Services Committee
2129 RHOB
Washington, D.C. 20515

The Honorable Gregory Meeks
Ranking Member, Subcommittee
Financial Institutions and Consumer Credit
House Financial Services Committee
2234 RHOB
Washington, D.C. 20515

Re: Support for the passage of the Medical Debt Responsibility Act, H.R.1767

Dear Chairman Capito and Ranking Member Meeks:

Thank you for holding the hearing entitled "An Overview of the Credit reporting System. Consumers Union, the policy and advocacy arm of Consumer Reports®, strongly supports the Medical Debt Responsibility Act, H.R. 1767, that restores fairness to the credit reporting system by requiring that paid or settled medical debt be removed from a consumer's credit report.

Over 73 million Americans have experienced medical billing problems or have been overwhelmed by medical debt. Even after the debt has been paid or settled and has a zero balance, it often continues to appear on a consumer's credit report. This could have a significant impact on a consumer's credit score and ability to access credit. The Medical Debt Responsibility Act will prevent the credit records of millions of consumers from being unfairly tarnished by inaccurate credit reports. H.R. 1767 will help millions of Americans regain their financial footing.

We urge the swift mark-up and floor consideration of this important legislation.

Sincerely,

Pamela Banks
Senior Policy Counsel

Demos

United States House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

"An Overview of the Credit Reporting System"

Statement for the record by Amy Traub, Senior Policy Analyst, Demos

September 10, 2014

Chairman Capito, Ranking Member Meeks, and members of the subcommittee, thank you for the opportunity to submit the following statement for the record as part of today's hearing.

Demos is pleased that the subcommittee is taking the time today to discuss the impact of our credit reporting system on Americans. Today credit reports and scores have a direct and growing impact on Americans' economic security and opportunity. Having poor credit can mean a consumer will end up paying a higher interest rate for a loan or a higher premium for car or homeowner's insurance; have their application for a loan or insurance denied; be turned down for a job, or even be terminated from their current one. Credit history can affect the way Americans are treated by landlords, utility companies, and hospitals.

In particular, we would like to focus on what we see as the inappropriate use of credit checks as an employment screening tool by employers.

In the midst of continuing high unemployment, millions of Americans are out of work and struggling to keep up with bills for even the most basic expenses. What they need more than anything is a job. But for too many people, access to employment is blocked by the growing practice of employment credit checks. Employers in the public and private sectors now routinely check the credit histories of prospective employees and may use the information to deny them jobs.

Credit checks exclude qualified applicants – including people whose credit was damaged as a result of medical debt, divorce, layoffs, predatory lending, identity theft, or other events beyond their control – from the employment they desperately need. Credit checks also discriminate against low-income people and people of color, who have been disproportionately impacted by the economic downturn.

The campaign to end employment credit checks, which is widely supported by dozens of national civil rights organizations, is fundamentally about economic justice. It's about putting qualified people back to work and ensuring that all job seekers be given a fair shot at gainful employment.

Credit reports were developed to predict loan repayment, but are increasingly used to deny employment

Credit reports were developed as a tool for *lenders* to evaluate whether someone would be a good credit risk based on their past payment history. These reports detail whether someone has fallen behind on their bills, whether they have had to declare bankruptcy, and if they've faced foreclosure. Yet over the past few years, the credit reporting industry, which is dominated by three large multinational corporations, has reaped profits from

selling this personal consumer information to employers. According to a poll by the Society for Human Resources Management, *close to 50 percent of employers now conduct employment credit checks* for some or all positions when they are hiring.[2]

Credit checks are not reliable for employment

Credit reports are marketed to employers as a means to gauge an applicant's character or likelihood to commit theft or fraud. Yet no empirical evidence has demonstrated that reviewing a job applicant's personal credit history prevents crime. In fact, several studies have failed to find a correlation between credit history and criminal behavior. [3] A spokesperson for TransUnion, one of the major credit reporting companies, even admitted: *"we don't have any research to show any statistical correlation between what's in somebody's credit report... and their likelihood to commit fraud."*[4] Credit reports can be a good indicator of the tremendous economic stresses that are facing households, including whether they have had to incur debts to pay for basic expenses or medical care, but they are not a crystal ball revealing who will be a reliable employee.

Employment credit checks are discriminatory

The Equal Employment Opportunity Commission has repeatedly warned that employment credit checks have a discriminatory impact on African American and Latino applicants, whose credit histories have suffered from discrimination in lending, housing and employment itself.[5] Studies by the Federal Reserve Board, the Federal Trade Commission and others have consistently found that average credit scores of African Americans are lower than those of whites.[6] In addition, credit continues to be offered on discriminatory terms: in the last decade predatory lending schemes targeting communities of color compounded historic disparities in wealth and assets, leaving African-Americans, Latinos, and other people of color at greater risk of foreclosure and default on loans. Employment credit checks can perpetuate and amplify this injustice, translating a legacy of unfair lending into another subtle means of employment discrimination. Numerous civil rights organizations including the NAACP, the National Council of La Raza, and the Leadership Conference on Civil and Human Rights, have publicly opposed the use of employment credit checks.

Credit reporting errors are common and impact employment decisions in unpredictable ways

A comprehensive 2013 study by the Federal Trade Commission found that one in five American consumers had a material error (an error that negatively impacted their credit history) on a credit report from one of three major credit reporting companies.[7] While not all of these errors are serious enough to affect consumer borrowing, the impact on employment is far broader because what employers look for in a credit report—and how much they weigh different factors like late bills, foreclosures, or accounts in collection—is entirely subjective. A credit reporting mistake that is too small to make a difference in applying for credit might nevertheless stand out to an employer and cost someone a job. At the same time, credit reporting errors are notoriously difficult for consumers to resolve.

Employment credit checks are a violation of privacy

Americans should not have to expose a painful divorce or past medical condition just to get a job. Yet because family break-up and medical problems are among the leading reasons that Americans become unable to pay their debts, these deeply personal concerns are often revealed in an employment credit check, particularly if an applicant is asked to "explain" an imperfect credit history. Medical confidentiality and long-standing protections against disability discrimination may fall by the wayside when a prospective employer scrutinizes a job applicant's personal credit history.

States and cities are taking action to end this unjust practice

Political leaders are waking up to the need to remove this unfair barrier to employment. Ten states – Washington, Connecticut, Hawaii, Illinois, California, Maryland, Oregon, Vermont, Nevada, and Colorado – have recently passed laws restricting the use of credit reports in employment. Many additional states are considering legislation on employment credit checks this legislative session. The city of Hartford, Connecticut has also acted to end the use of credit checks for its own municipal hiring. A federal bill, the Equal Employment for All Act, is currently pending before both the U.S. Senate and the House. Yet much work remains to be done. Today, too many Americans are trapped in an untenable Catch-22: they are unable to secure a job because of damaged credit and unable to escape debt and improve their credit because they cannot find work. At a time when so many are confronting economic hardship, we must act to lower barriers to employment and give people the opportunity to work their way out of debt.

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[1] See for example: Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (December 23, 2008); Robert Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, Summer 2004; Testimony of Chi Chi Wu, National Consumer Law Center before the U.S. House Committee on Financial Services, "Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information," June 19, 2007.

[2] Society of Human Resources Management, Background Checking: Conducting Credit Background Checks, January 22, 2012, http://www.shrm.org/Research/SurveyFindings/pages/creditbackgroundchecks.aspx

[3] Laura Koppes Bryan and Jerry K. Palmer, "Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?" The Psychologist-Manager Journal, 2012. J.B. Bernerth, et. al. "An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores," Journal of Applied Psychology, October 2011.

[4] Andrew Martin, "As a Hiring Filter, Credit Checks Draw Questions," New York Times, April 9, 2010. http://www.nytimes.com/2010/04/10/business/10credit.html.

[5] See for example, Equal Employment Opportunity Commission, "Pre-Employment Inquiries and Credit Rating or Economic Status," http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.

[6] Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit," 2007; Federal Trade Commission, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance," 2007; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, 2004; Matt Fellowes, "Credit Scores, Reports, and Getting Ahead in America," Brooking Institution, 2006.

[7] "Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003," Federal Trade Commission, December 2012. Released to the public February 2013.

Statement for the record
Terry W. Clemans – Executive Director
National Consumer Reporting Association

For the

House Financial Services Subcommittee on Financial Institutions and Consumer Credit
Hearing Entitled: "An Overview of the Credit Reporting System"
September 10, 2014

Chairwoman Capito, Ranking Member Meeks, and Members of the Subcommittee on Financial Institutions and Consumer Credit:

Thank you for the opportunity to submit written testimony with regard to the September 10, 2014 hearing entitled "An Overview of the Credit Reporting System." The National Consumer Reporting Association (NCRA) has considerable expertise and interest in the issues before the Subcommittee and in how our nation's credit reporting system serves both consumers and financial institutions alike.

About the National Consumer Reporting Association

Founded in 1992, the National Consumer Reporting Association (NCRA) is a national trade organization of consumer reporting agencies and associated professionals that provide products and services to hundreds of thousands of mortgage lenders and property managers who use consumer reports for housing decisions.

Headquartered in suburban Chicago, NCRA's membership includes 70% of the mortgage credit reporting agencies in the United States that produce a credit report that meets the requirements of Fannie Mae, Freddie Mac, and HUD for mortgage lending.

NCRA's fastest growing membership category is tenant screening firms due to NCRA's focus on housing issues and the educational programs designed for multifamily housing needs. All NCRA members can obtain FCRA certification programs for both employees and their clients, the end-user of the consumer credit information. NCRA's end-user programs are specifically focused on supporting the needs of mortgage lenders and the multifamily housing industry. NCRA's Education and Compliance committee supports continuing education through NCRA's Annual Conference and regular webinars covering ever-changing industry dynamics. Additionally, NCRA offers educational materials in its weekly newsletter covering both mortgage and multifamily issues, along with a complete economic recap and forecast for the week ahead.

Credit Reports Used for America's Housing Market are Unique

At the outset, it is important to note that credit reports used for housing purposes differ from other types of credit reports. Data from one or more (Federal requirements mandate the use of all three national credit repositories' data in mortgage reports[1]) of the national credit repositories is included in a housing credit report; however, this is only part of the report.

Mortgage reports require the merging of data from all three repositories into one report as a minimum standard, and resident screening reports typically include other data sources not found in the national credit repositories. Property managers often require public record sources for evictions and criminal histories under HUD guidelines for housing assistance and in addition to local regulations for the promotion of safe rental housing. Credit reports for housing purposes also require a much higher level of customer service. Anxious renters or buyers, invested property managers or real estate agents, and the mortgage lender funding the transaction all demand higher levels of customer service than the benchmarks set by the Fair Credit Reporting Act (FCRA).

These differences may seem minor but actually are so significant that only one of the three national credit repositories offers mortgage credit reports on a retail level to the mortgage industry[2]. While all three national repositories have divisions that offer resident screening reports to the multifamily housing industry, there are about 300 other consumer reporting agencies that specialize in resident

[1] Fannie Mae's Single Family Selling Guide 9/24/2013 https://www.fanniemae.com/content/guide/sel092413.pdf
Freddie Mac's Single-Family Seller/Servicer Guide, Vol. 1; Chapter 37, 9/24/2013 http://www.freddiemac.com/sell/guide/
HUD 4155.1, Mortgage Credit Analysis for Mortgage Insurance, Section 4155.1 1.C.2b
http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4155.1/41551HSGH.pdf

[2] Equifax via Equifax http://www.equifax.com/business/mortgage Trans Union and Experian have both been in the retail mortgage credit reporting industry previously, however neither are currently in the industry and have been out of the market for more than six years.

screening reports for the multifamily rental housing industry. NCRA has provided much more detailed information about these differences in the forward of the Suffolk University Law Review's special edition for the June, 2012 Credit Reporting and Score Symposium held in partnership with the National Consumer Law Center[3].

NCRA Supports H.R. 1767, The Medical Debt Responsibility Act

An issue debated in this Congress, as well as in both the 110th and 111th Congresses is the impact of paid medical collection accounts on a consumer's ability to obtain credit. Medical collection accounts can lower a consumer's credit score in most credit scoring models for up to seven years, even after the debt has been paid. This adverse impact hinders the consumer's ability to obtain reasonable interest rates, insurance rates, and other financial services. H.R.1767, The Medical Debt Responsibility Act, addresses this issue with a simple fix that requires the removal of medical debts from a consumer's credit history within 45 days of payment.

In May, 2014, the Consumer Financial Protection Bureau (CFPB) released a report that found consumers' credit scores may be overly penalized for medical debt that goes into collections and shows up on their credit report. According to the CFPB's study, credit scoring models may underestimate the creditworthiness of consumers who owe medical debt in collections. Many credit scoring models also may not be crediting consumers who repay medical debt that has gone to collections.[4]

NCRA members routinely witness the inflated negative impact of medical collections in America's credit reporting system and in the process of correcting consumer disputes on inaccurate medical collections for both mortgage loans and resident screening reports. We have supported legislation to resolve this issue in all three Congresses as we believe that medical debts are distinct from all other debts and therefore, should be treated differently for credit reporting purposes. Medical debt is not applied for like other traditional credit accounts as it stems from services required to support life, with the most extreme debts often incurred during extreme medical situations. We agree with CFPB Director Richard Cordray, who during the press conference announcing the CFPB study said, "Getting sick or injured can put all sorts of burdens on a family, including unexpected medical costs. Those costs should not be compounded by overly penalizing a consumer's credit score".[5]

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[3] Suffolk University Law Review, Volume XLVI 2013 Number 3, Symposium – Credit Reporting and Credit Scoring, http://suffolklawreview.org/wp-content/uploads/2014/01/Clemans_Lead.pdf

[4] Consumer Financial Protection Bureau, CFPB Study Finds Medical Debt Overly Penalizes Consumer Credit Scores, May 20, 2014 http://www.consumerfinance.gov/newsroom/cfpb-study-finds-medical-debt-overly-penalizes-consumer-credit-scores/

[5] Ibid

Another problem related to medical debt is the complex and often dysfunctional billing process for medical services that frequently pins consumers between medical providers, medical billing companies, insurance companies, and collection agencies. NCRA members have heard from many consumers who had their credit reports harmed by medical collection accounts that had not been previously billed to the consumer. Other consumers have had medical collection accounts harm their credit reports that were ultimately paid by insurance companies, but not until after the collection was placed on their report. Due to all of these factors, we support the proposal that medical collection accounts be recognized for this difference and treated differently than all other collection accounts in the FCRA.

A solution to this problem would be to pass H.R.1767, which requires medical collections to be removed from a consumer's credit history within 45 days after being satisfied so the collection can no longer be a part of their credit profile and impact credit scores. It is a simple, reasonable bill that costs the Federal government nothing and is supported by many major industry groups and leading consumer advocacy groups[6].

Also relevant to the issue of medical debt, in August 2014, credit score giant FICO® released its latest credit score model, 9.0[7]. One of the most positive features of this new score is FICO®'s change with regard to calculation of medical collections, greatly reducing the potential negative impact on consumers. While the media noted all of the improvements associated with the expected changes this new credit score model will bring to consumers with respect to medical collection accounts, it is important to note that it will be some time before consumers experience its beneficial impact. As noted in numerous articles, it takes time for lenders to incorporate new score models into their underwriting, if they choose to make the change to the new score model at all.

With respect to the mortgage market, positive impacts of FICO® 9.0 likely will take even longer to implement. The mortgage lending market changes only as quickly as Fannie Mae/Freddie Mac and HUD allow underwriting changes, and these entities historically has been very slow to act. Since these agencies dictate which credit score models are accepted, it realistically could be years before they are implemented.[8]

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[6] Coalition letter to Senator Tim Johnson and Michael Crapo regarding S. 160, May 13, 2013, https://www.sendspace.com/pro/dl/hz2d9n

[7] FICO Press Release, FICO Score 9 Introduces Refined Analysis of Medical Collections August 7, 2014 http://www.fico.com/en/about-us/newsroom/news-releases/fico-score-9-introduces-refined-analysis-medical-collections/

[8] Washington Post, August 22, 2014 New FICO model could raise scores, but it may not help homebuyers anytime soon, Ken Harney http://www.washingtonpost.com/realestate/new-fico-model-could-raise-scores-but-it-may-not-help- home-buyers-anytime-soon/2014/08/20/1828cf60-2705-11e4-958c-268a320a60ce_story.html

The current score models required by Fannie/Freddie/HUD are: Equifax Beacon® 5.0; Experian®/Fair Isaac Risk Model V2SM; and TransUnion FICO® Risk Score, Classic 04[9]. Each of these score models have been replaced by two to three generations of credit scores by both FICO and the credit score model owned by the three national credit bureaus, VantageScore. The current models required for mortgage lending are based on consumer spending habits from the 2004 – 2005 pre-financial crisis era, which have very distinct differences from the post-financial crisis consumer spending patterns of today.

With regard to the multifamily rental housing market, even greater numbers of Americans are negatively impacted by medical debt issues than in the mortgage marketplace. In 2009, about 35% of the US population lived in rental housing vs. owned homes[10]. Since renters are five times more likely to move than are homeowners,[11] each year millions more American families are hindered in their attempts to obtain fairly priced rental housing due to the widespread use of older credit scoring models in the multifamily industry.

NCRA believes that the changes in FICO® 9.0 represent significant improvements and recommends their immediate implementation. At the same time, NCRA understands that without regulation or legislation some lenders may never adopt the new model and some consumers will never realize the benefits of these important changes.

Another longtime NCRA issue addressed in FICO 9.0 is that of allowing rental payments to be factored into credit decisions. Rarely are the rental payments included in the credit history of consumers, and until FICO® 9.0, if the information was presented there was no methodology in the main FICO® credit scoring models for it to be calculated.

Having included these major changes in FICO® 9.0 the FICO® score will move closer in calculation to the VantageScore treatment of collections and rental payments. Because many lenders have moved to the VantageScore for credit card and other non-mortgage credit decisions,

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[9] Fannie Mae's Single Family Selling Guide September 24, 2013
https://www.fanniemae.com/content/guide/sel092413.pdf
Freddie Mac's Single-Family Seller/Servicer Guide, Vol. 1; Chapter 37, September 24, 2013
http://www.freddiemac.com/sell/guide/
HUD 4155.1, Mortgage Credit Analysis for Mortgage Insurance,
http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4155.1/41551HSGH.pdf

[10] National Multifamily Housing Council, Quick Facts: Resident Demographics, NMHC tabulations of 2013 Current Population Survey, Annual Social and Economic Supplement, U.S. Census Bureau (http://www.census.gov/cps). Updated October 2013 http://www.nmhc.org/Content.aspx?id=4708

[11] U.S. Census Bureau Reports, May 10, 2010 Residents Move at Higher Rate in 2009 After Record Low in 2008
http://www.census.gov/newsroom/releases/archives/mobility_of_the_population/cb10-67.html

these are not radical changes and need to be embraced as soon as possible by all sectors of the lending community.

The Credit Report Post Financial Crisis

One of the results of the 2008 financial crisis is that mortgage lending standards are now very tight, allowing only those borrowers with the very good credit access to the mortgage loans.[12]
With the QM and QRM regulations in effect, the tight credit market is not likely to improve soon as many lenders are reluctant to lend outside of the "Qualified" standards due to the additional risk. Claims of redlining, and concerns about fair access to mortgage loans are increasing.[13] Concerns about the accuracy of the data in the credit reporting system has been studied with troubling findings by the Federal Trade Commission (FTC), which reported that 20% of consumer credit reports contain errors[14]. This has the most severe impact on consumers on the border of credit worthiness, where concerns of Disparate Impact bring added problems to the recovery of the housing market.

There needs to be improvements in the system that provides consumers an opportunity to have their true credit risks analyzed. The system currently being used to underwrite mortgage loans remains unchanged (with the exception of higher credit score requirements) from that which allowed for all of the loans that failed leading up to the 2008 mortgage crisis. A solution is needed to evaluate consumers on the fringe of the QM and QRM approval before they are sent into the much higher cost Non-QM and QRM loans. Such a solution would provide a mechanism for documenting a consumer's full credit accounts history and for verifying questionable data that is now being used regardless of warning signs of potential errors and omissions on the reports.

The current automated underwriting systems in place encourage lenders to ignore the warning signs, and can punish those who seek corrections via added costs and risk overlays. Loans needing to include non-traditional credit accounts[15] or numerous corrections to serious credit reporting

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[12] USA Today Money, September 14, 2011, Tight standards make mortgage tough to get, Julie Schmit, http://usatoday30.usatoday.com/money/economy/housing/story/2011-09-15/mortgages-tough-to-get/50405698/1
[13] National Mortgage News, September 8, 2014 Here Come the Redlining Investigations, Ari Karen, http://www.nationalmortgagenews.com/blogs/hearing/here-come-redlining-investigations-1042565-1.html?utm_medium=email&ET=nationalmortgage%3Ae4000903%3Aa%3A&utm_campaign=-sep%208%202014&utm_source=newsletter&st=email
[14] Federal Trade Commission, December 2012, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, http://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf
[15] Fannie Mae Selling Guide, August 26, 2014 B3-5.4-01 Non-traditional credit reports https://www.fanniemae.com/content/guide/selling/b3/5.4/01.html

issues often get "referred" by the automated underwriting systems requiring a "manual underwrite" to override the automated decision. This means higher costs and tougher underwriting guidelines and many lenders refuse to fund loans under these conditions[16]. While discussing these topics it is imperative to understand that this must be done with lending safety in mind, avoiding a repeat of the pre-crisis lending practices, some of which are already resurfacing[17].

The solution to these issues is technologically feasible and not far away. It comes from the only participant in the mortgage industry best suited at documenting consumer credit data on a conflict free basis without regard to the outcome of the loan; the mortgage credit reporting agency. Their only concern is for completeness and accuracy of the report to limit the legal liability they hold to both the consumer the report is about and the lender who hired them. The solution is a new report type, the "QMCR – the Qualified Mortgage Credit Report" and a "QMCR Score." This report and score would provide a deeper review on the consumer's credit than what is currently being performed, only when a formula to detect credit concerns is triggered. The QMCR would include verifying disputed data and the inclusion of non-traditional or alternative data not currently being reported to the credit repositories. This report should be required by the Federal Housing Finance Agency and HUD to be built from the current tri-merged mortgage credit report, when the consumer's specific credit history contains the following criteria:

- A middle credit score less than the lowest allowed for the lender's best rate, and
- A greater than 25 point spread between the high and low scores.

In the current mortgage underwriting process, the middle credit score is the most important as it is used to price the loan by the lenders. If that score is more than the score level pre-determined by the lender at which consumers receive the best interest rate (we will use 720 as the score required for the best rate in this example), the lender proceeds with the current credit reporting process without change. If the middle score is less than our 720 example, and the other two credit scores not used in the pricing of the loan (the high and low of the three scores) have less than a 25 point difference between them, the lender again proceeds as before using a risk based pricing model that is currently a standard practice in mortgage lending. However, when those high and low scores have more than a 25 point spread, the lender would be ***required*** to add the QMCR to the current process.

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[16] Bigger Pockets, February 24, 2014, What is a "manual underwrite" loan, http://www.biggerpockets.com/blogs/4790/blog_posts/35026-what-is-a-manual-underwrite-mortgage-loan
[17] Forbes Real Estate, March 5, 2014 Subprime Rising, Mark Greene, http://www.forbes.com/sites/markgreene/2014/03/05/subprime-rising/

This change occurs only when the consumer's specific credit situations warrant an additional credit review. The consumer's credit risk does not allow them to qualify for the lender's best interest rate for the loan, and the difference between the high and low credit scores is greater than a typical risk based pricing tier, 25 points, signaling a difference in the credit data worthy of a review for accuracy due to the added risk. After perpetration of the QMCR and the QMCR Score (about three business days) the loan could be sent back through the automated underwriting system for consideration of inclusion as a "qualified" loan for approval. It is imperative for both the safety of the lending institution and the mortgage applicant that this application is not underwritten with questionable credit data, potential missing accounts that could skew debt to income rations.

Many features of the QMCR would be similar to the time tested and proven RMCR requirements that are still claimed to produce the best quality credit reports[18], but require manual underwriting by the GSEs. The new QMCR and related score would allow for automated underwriting and include a summary of the derogatory data on the consumer report for an added value of both accuracy and financial literacy. The summary would also include a statement about the disclosure of all creditors, even those not being reported to the national credit repositories and the legal responsibility and benefit of reporting them to the mortgage consumer reporting agency. Features like this would provide added anti-fraud benefits allowing both lenders and the mortgage insurers to issue safer loans.

The QMCR and QMCR Score is a hybrid approach that incorporates the evaluation of more than 40 years of mortgage credit reporting processes to include the best practices of the automated underwriting technology systems that revolutionized the mortgage process in the mid-1990's with the safeguards that protected the lending industry for decades.

America is now six years past the housing crisis, and the nation's housing market is still struggling to recover. It clearly is time to improve the process that provides one of the most critical documents in mortgage lending decisions. This hearing today is a positive step in that direction, but Congress and all the stakeholders must be willing to engage more fully in these issues to ensure that we do not continue to repeat the same mistakes that led to the economic crisis and housing market collapse.

Conclusion

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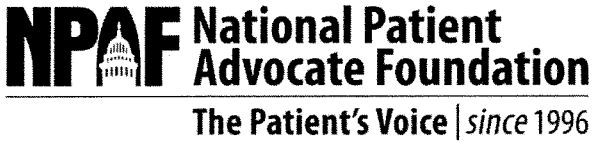
[18] Corelogic, (the largest non-national credit repository consumer reporting agency) as well as many other consumer reporting agencies make claims similar to this one…"The Residential Mortgage Credit Report (RMCR) from CoreLogic Credco is our most comprehensive and complete mortgage credit report. Meeting or exceeding Fannie Mae, Freddie Mac, HUD and industry standards, it's the ideal mortgage credit report for complex credit histories that require verification of four or more items." http://www.corelogic.com/products/residential-mortgage-credit-report-rmcr.aspx

NCRA thanks the Subcommittee for its interest in the nation's credit reporting system. We also appreciate the opportunity to weigh in on important credit reporting issues, including the treatment of medical debt in consumer credit reports and scores, the importance of timely enactment of improvements to major credit scoring systems like FICO 9.0®, and finally the Qualified Mortgage Credit Report and Score, a solution to provide greater transparency in mortgage lending to both consumers and lenders. NCRA welcomes any questions or additional interest in the proposals detailed above. For such a discussion, please contact NCRA's Executive Director, Terry Clemans, at tclemans@ncrainc.org or via phone at 603-539-1525.



July 21, 2014

The Honorable Maxine Waters
2221 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Waters,

The National Patient Advocate Foundation (NPAF) thanks you for introducing HR.1767, the **Medical Debt Responsibility Act of 2013**, and wholeheartedly endorses your legislation.

The patients who seek case management services from our companion organization, Patient Advocate Foundation (PAF), generally have low household incomes and frequently fall into medical debt and struggle to pay their bills as a result. In many cases, financial hardships faced as a result of medical debt lead patients to lose their jobs, and their homes. This legislation recognizes the difference between consumer debt and the involuntary nature of medical debt, and protects patients who incur medical debt through no fault of their own from facing the consequences associated with and unduly low credit score. This is vitally important to the patients we serve, who should be focused on their recovery, rather than financial hardship caused by their illness.

The advocacy activities of NPAF are informed and influenced by the experience of patients who receive direct, sustained case management services from our companion organization, PAF. In 2013, PAF resolved 88,364 patient cases and received more than four million additional inquires from patients nationally. Most requests were from patients needing assistance with accessing health care, either because they could not afford the care recommended, could not obtain services within reasonable proximity to where they lived, or were denied coverage for services and treatments within the purview of their health plan. PAF's most recent Patient Data Analysis Report indicated that debt crisis is one of the most frequently reported issue for which patients sought assistance from PAF in 2013. This legislation would provide great relief for those patients.

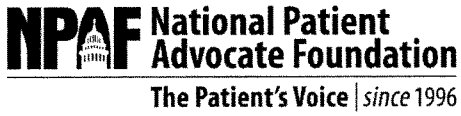
For the aforementioned reasons, NPAF enthusiastically supports HR.1767, and thanks you for your continued work on behalf of patients facing financial hardship due to medical debt. Please contact NPAF Director of Federal Legislative Affairs Ian Hunter at Ian.Hunter@npaf.org if we can help you advance this legislation.

Sincerely,

Alan J. Balch

Alan Balch
Chief Executive Officer
National Patient Advocate Foundation

725 15th St. NW, 10th Floor | Washington, DC 20005 | Phone (202) 347-8009 | Fax (202) 347-5579 | www.npaf.org



STATEMENT FOR THE RECORD

On

An Overview of the Credit Reporting System

Submitted to

United States House of Representatives Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

By

National Patient Advocate Foundation

On

September 10, 2014

Chairman Capito, Ranking Member Meeks, and distinguished Members of the Subcommittee, the National Patient Advocate Foundation (NPAF) thanks you for the opportunity to provide a statement for the record on the hardships faced by millions of Americans as a result of having medical debts remain on their credit reports even after these debts have been paid or fully settled.

The advocacy efforts of NPAF are informed and influenced by the experience of patients who receive direct, sustained case management services from our companion organization, Patient Advocate Foundation, (PAF) which provides professional, sustained case management assistance to patients with chronic, debilitating or life-threatening diseases. In 2013, PAF provided direct assistance to 88,364 patients, with medical debt being the most frequently reported issue for which patients sought assistance.

Summary

Medical debt affects all patient populations, regardless of age, income, or insurance status. Each year, millions of Americans lose their health, their homes, their good credit standing and their hard-won futures, because our nation's laws fail to recognize the unique nature of medical debt. Medical debt is involuntary and unpredictable. Unlike debt stemming from a mortgage, a car payment or a credit card, medical debt is not a financial challenge for which a patient can plan ahead. One does not choose to be diagnosed with a chronic, debilitating or life-threatening disease, nor is a patient afforded the luxury of estimating and planning for the costs associated with any required medical care before undergoing life-saving treatment. Federal law prohibits insurance companies from discriminating against patients with pre-existing conditions, and we ask that Congress act to ensure that credit reporting companies are held to the same standard.

Negative Impact on Patients

Compared to other industrialized nations, medical costs in the United States are disproportionately unpredictable. In fact, patients rarely know in advance the cost of their treatment. One study, sponsored by the National Institutes of Health, showed an enormous variability in emergency room charges: for instance, the charge for a sprain ranged from $4 to $24,110.[1] These prices reflect the extreme fluctuation and unpredictability that is symptomatic of the American health care system as a whole. Nevertheless, a medical bill that has been fully paid or settled can negatively affect a patient's credit score for up to seven years, even absent any initial late payment or other error. This places an incredibly difficult burden on patients and their families, many of whom are undergoing, or recovering

[1]Caldwell N, Srebotnjak T, Wang T, & Hsia R. (2013). *How Much Will I Get Charged for This?" Patient Charges for Top Ten Diagnoses in the Emergency Department.* PLoS ONE 8(2): e55491. Retrieved from http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0055491

from, treatment for a life-threatening disease. When surveyed, many Americans expressed greater concern about the debt that can result from their diagnosis than the risk of death from their diagnosis.[2]

Adding to this problem are inaccuracies in the billing and collection practices of many hospitals and providers throughout the country. According to numerous credit evaluators and other private organizations, medical billing practices result in a higher error rate than consumer billing, and patients' bills are often reported to credit reporting agencies in error.[3] An estimated 20 percent of all medical bills that are reported to collection are the result of a billing or other administrative error,[4] and these mistakes alone adversely impact the credit scores of approximately 7 million Americans.[5] These inaccurate billing practices have an adverse impact on patients' credit scores, even when the matter is settled in favor of the patient.

Medical debt can have a profound effect on patients' credit scores, with even one outstanding bill dropping a score by 100-150 points.[6] In total, roughly 32 million Americans report a lower credit rating as a result of medical bills appearing on their credit report.[7] A recent Consumer Financial Protection Bureau study shows that the drop in credit score resulting from inclusion of medical debt on a credit report often results in a credit score that is too low given the patients' subsequent performance.[8] For patients focusing on recovery from medical treatment, the negative impact of a lower credit score, and its impact on their ability to secure housing, transportation and credit cannot be overstated.

Despite the high error rates of medical billing, it remains very difficult to remove these errors from a credit report, and medical bills can continue to go to collections even as the patient tries to set up a payment plan with a provider or insurance company.[9] This information can stay on a consumer's credit report for up to seven years, dramatically impairing the ability to obtain a new loan or secure a favorable interest rate, which could potentially cost a patient thousands of dollars in unnecessary fees and interest payments. Whether resulting from inaccurate billing and collection practices, or a credit score that does not appropriately predict future behavior, credit reports reflecting medical debts that have been paid or settled often force patients to face extreme and unnecessary hardships.

These problems impact patients regardless of their income level or insured status. In fact, sixty-one percent of those with medical debt were insured at the time care was provided.[10] Because of patients'

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[2] Sun Life Financial. (2013). *Well-placed fears: workers' perceptions of critical illness*. Retrieved from: http://sunlife.mkt5013.com/critical-illness-whitepaper-brokers/critical-illness-whitepaper-brokers-pr

[3] Silver-Greenberg, J. (2013, October 13). "Patients Mired in Costly Credit from Doctors." *The New York Times*, p. A1.

[4] Herron, J. How will unpaid medical bills hurt credit? *Bankrate*. Retrieved from http://www.bankrate.com/finance/credit/will-unpaid-medical-bills-hurt-credit.aspx

[5] Collins et al. Insuring the Future, April 2013.

[6] Ulzheimer, J. (2012 June 25). How Medical Bill Debt Impacts Your Credit Score. *Mint Life*. Retrieved from http://www.mint.com/blog/credit/how-medical-bill-debt-impacts-your-credit-score-062012/

[7] Collins et al. Insuring the Future, April 2013.

[8] Brevoort and Kambara. Data Point: Medical Debt and Credit Scores. Consumer Financial Protection Bureau. May 2014. Available at: http://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf

[9] Walecia, K. (2010, December 17). Protecting Your Credit Score From the Medical Bill Maze. *The New York Times*, B7. Retrieved from http://www.nytimes.com/2010/12/18/health/18patient.html

[10] The Commonwealth Fund, "Seeing Red – The Growing Burden of Medical Bills and Debt faced by U.S. families",

need to access credit, an increasing number of health care facilities have started to issue credit directly, often through a special medical credit card arranged quickly through the medical office. High annual interest rates and severe penalties for missed payments often worsen patients' finances when they are in dire need of a safety net. Attorneys general in several states have filed lawsuits claiming that these health care facilities have misled patients about the financial terms of the cards, employed high-pressure sales tactics, overcharged for treatments and billed for unauthorized work.[11]

Solutions

Since paid or settled medical debts are not reflective of future creditworthiness, their appearance on a credit report serves no purpose for creditors other than to notify them that a potential applicant has been sick in the past, and therefore could get sick in the future. Creditors should not base decisions on whether a person has a potential pre-existing condition, and we must ensure that they are not provided with information that serves no purpose other than allowing them to do so. There is an understanding among many stakeholders that the practice of penalizing patients for incurring medical debt results in unfair, unnecessary consequences, such that FICO has revised its model to reflect the unique nature of medical debt, placing particular emphasis on the fact that medical debts are not incurred voluntarily and therefore do not accurately predict future behavior in the same way that consumer debt does.[12]

The medical debt crisis in America is widespread, but common sense legislation has been introduced in the 113th Congress that would begin to provide much-needed protection to patients across the country. Rep. Maxine Waters (D-CA), Ranking Member of the House Financial Services Committee, introduced the Medical Debt Responsibility Act of 2013, which would prohibit a consumer reporting agency from making any report containing information related to a fully paid or settled medical debt for which the date of payment or settlement precedes the report by more than 45 days.[13] This bill passed the House in 2010 with wide bipartisan support. Another bill, the Accuracy in Reporting Medical Debt Act, introduced by Rep. Gary Miller (R-CA) and co-sponsored by Rep. Carolyn McCarthy (D-NY), would allow patients a 120-day grace period to deal with debt collectors who contact them seeking payment on delinquent medical debt.[14] If patients provide proof to the collector that they are either contesting the debt, working with a provider or insurance company to resolve the account or have applied for financial assistance, this legislation would bar collection agencies from reporting the debt to the three major credit reporting firms for 120 days.

We need a reformed system that protects fairness and equity in credit rating; promotes price transparency; and provides financial protection to homeowners, family members and caregivers. A

[11] Silver-Greenberg, J. (2013, October 13). "Patients Mired in Costly Credit from Doctors." *The New York Times*, p. A1.
[12] Blake Ellis. Got Medical Debt? Your FICO Credit Score May Go Up. CNN Money. August 7, 2014. Available at: http://money.cnn.com/2014/08/07/pf/fico-score/
[13] Medical Debt Responsibility Act of 2013, H.R. 1767, 113th Cong. (2013). Retrieved from http://www.gpo.gov/fdsys/pkg/BILLS-113hr1767ih/pdf/BILLS-113hr1767ih.pdf
[14] Accuracy in Reporting Medical Debt Act, H.R. 2211, 113th Cong. (2013). Retrieved from http://www.gpo.gov/fdsys/pkg/BILLS-113hr2211ih/pdf/BILLS-113hr2211ih.pdf

devastating illness to a patient or a loved one should never result in the financial ruin of an entire family. The above-mentioned legislation seeks to appropriately address the unique and unpredictable nature of medical debt, and its passage is critically important in order to begin to provide protections for those patients who are already overwhelmed with medical debt, as well as for future patients. Policies that recognize the inherent differences between medical debt and consumer debt will ensure that patients are not treated unfairly simply because they got sick.

NPAF looks forward to continuing to work with Members of Congress to address this issue so that families across America who are struggling through medical hardships can focus on their health, rather than their credit score. Thank you again for the opportunity to provide a statement for the record, and for your ongoing efforts to protect the patients we serve. Please contact NPAF Director of Federal Legislative Affairs Ian Hunter at Ian.Hunter@npaf.org if our organization can be of further assistance.

The New York Times

May 4, 2012

Discrepancies on Medical Bills Can Leave a Credit Stain

By TARA SIEGEL BERNARD

When Ray White's son was about 9 years old, he struck a tree branch while riding his bike. Within minutes, an ambulance whisked him off to the emergency room. The boy recovered, but many months and phone calls later, Mr. White's insurance company still had not paid the $200 ambulance bill, even though the insurer had assured him it was covered. He finally decided it was easier to pay it himself.

But by then, it was already too late. Unbeknown to Mr. White, the debt had been reported to the credit bureaus. It was only when he and his wife went to refinance the $240,000 mortgage on their home in Lewisville, Tex., last month — nearly six years after the accident — that he learned the bill had shaved about 100 points from his credit score. Even with no other debts, a healthy income and otherwise pristine credit, the couple had to pay an extra $4,000 to secure a lower interest rate.

"It wasn't like I ignored it," said Mr. White, 47, an executive in Internet advertising. "It's not like I'm a credit risk in any way, shape or form."

Even people with good insurance coverage know how hard it can be to figure out how much they owe after a visit to the doctor or, even worse, the emergency room, which can generate multiple bills. But as patients become responsible for a growing share of costs — not just co-payments, but also deductibles and coinsurance — bill paying is becoming ever more complex.

On top of that, more medical providers are using collection services and turning to them more quickly than they have in the past, some experts say.

"It used to be that the mantra was 'gentlemen and physicians rarely discuss matters of money,' " said Dr. Jeffrey Hausfeld, an otolaryngologist and plastic surgeon who now co-owns FMS Financial Solutions, a collection agency that specializes in medical debts. "It has changed now."

The reason is that the portion of the bill that patients owe has become a larger medical practices' and hospitals' revenue, said Mark Rieger, chief executive of

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Healthcare Exchange Services, which offers software to help providers manage billing. "They are getting increases in their fee schedule amounts, but their revenue is declining because more of the responsibility is being shifted to patients," he said.

Medical providers collected no more than 8 percent of their revenue from patients about 10 years ago, he said. Now, it is closer to 20 percent, or even 30 percent, in some markets.

Like Mr. White, people who fail to pay or respond to a medical collection agency in time — whether intentionally or not — may be surprised to learn, often much later, that it left a black mark on their credit record.

FICO, which produces one of the most popular credit scores used by lenders, said it viewed different types of collection agency accounts — medical-related or otherwise — as equally damaging. For someone with a spotless credit history, "it wouldn't surprise me if their score dropped by 100 points or more," said Frederic Huynh, a principal analytic scientist at FICO. And the blemish does not entirely disappear for seven years.

Consumer advocates argue that this is unfair. After all, medical debt is usually something people do not volunteer for, and billing errors and figuring out who owes what can often take months. According to the American Medical Association's 2011 National Health Insurer Report Card, commercial health insurers processed 19.3 percent of claims erroneously in 2011, up from 17.3 percent in 2010.

In 2010, an estimated 9.2 million people aged 19 to 64 were contacted by a collection agency because of a billing mistake, according to research by the Commonwealth Fund, a nonprofit research group, while 30 million were contacted by a collection agency because of an unpaid medical bill.

"There is enormous room for errors, whether they are intentional or unintentional," said Pat Palmer, founder of Medical Billing Advocates of America.

Rodney Anderson, a mortgage banker in Plano, Tex., said he started to notice in 2008 that more of his customers were being hurt by these medical delinquencies. So he kept notes on 5,100 loan applicants over 10 months. He found that 2,200 had at least one medical debt that lowered their credit score, and many of them were unaware of the damage.

"It's the same thing over and over," said Mr. Anderson, executive director of Supreme Lending. "You just don't let $100 go to collections to ruin your credit."

That prompted him to take the issue to Congress. He said he had spent $1.5 million of his own money on consultants and on lobbying to change the rules. And his efforts, along with those of

consumer groups and others, have gotten lawmakers' attention.

A version of the Medical Debt Responsibility Act, which would erase medical debts from credit reports within 45 days of being settled or paid, was approved by the House with bipartisan support in 2010. The bill was reintroduced in the Senate by Jeff Merkley, Democrat of Oregon, in March.

Interestingly, support for the bill comes from a varied group, including nearly 20 organizations — from consumer groups and the Mortgage Bankers Association to the American Medical Association. "The current system punishes consumers regardless of the underlying facts," the supporters said in an April 16 letter to lawmakers.

Gerri Detweiler, a credit expert with Credit.com who supports the bill, said, "Consumers have more rights when it comes to disputing a $10 credit card charge than they do a $1,000 medical bill." She was referring to the Fair Credit Billing Act, which gives consumers the right to dispute a credit card charge while withholding payment and protects the consumer's credit report during the card issuer's 30-day investigation period.

When a bill is sent to collections, Ms. Detweiler said, there is nothing specifically in the law to stop it from being immediately reported. Ultimately, it is up to the medical provider to sign off when bills go to collections and when the collection agencies should report to the credit bureaus, according to ACA International, a collections trade group.

Still, critics of the bill say that reporting the collection information is important because it can predict consumers' future payment behavior. The Consumer Data Industry Association, which represents the big credit bureaus, said that it had "deep concerns about deleting any type of accurate, predictive data" before the end of the seven-year period.

"Broadly speaking, a precedent of deleting adverse information once a delinquent debt is paid would seriously impinge on the quality of data," a spokesman said.

John Ulzheimer, president of consumer education at SmartCredit.com, also has concerns about deleting data because it does not distinguish between late payments that resulted from errors and those that were truly late.

"If paid or settled delinquencies were simply removed from credit reports as if they never happened, it would severely undermine the integrity of a credit report and the resultant credit score," he said. "That is why it is called a history."

Consumer advocates said they believed there should be some sort of mechanism to differentiate between true delinquencies and billing errors.

The House's version of the bill would erase only debts up to $2,500. Supporters of the bill said they thought that amount would help a wide swath of people because many errors are below that level. Still, the bill would not help everyone, particularly as Americans continue to spend an increasing share of their income on medical expenses. The tens of millions of uninsured and underinsured people are in a particularly hard spot.

"You can't afford to buy a policy, you can't afford to buy coverage through your job, and you end up in the E.R., and you have to pay for that visit, and even more you have to pay at non-negotiated prices," said Sara Collins, a vice president at Commonwealth, referring to the fact that the uninsured often pay much more than the rates that insurers negotiate. "So if it becomes part of your credit history, it strikes me as really unfair."

The Affordable Care Act, a law pushed by President Obama that overhauled the health care system, may help because more people would have insurance and many would have to pay no more than a certain percentage of their income on premiums and out-of-pocket costs, said Mark Rukavina, executive director of the Access Project, a nonprofit group that helps people with large medical debts.

Still, he said, "even with the expansion of coverage, the out-of-pocket costs will be challenging for many American families." He added, "Those struggling to pay their share of the costs, and doing so, should not be penalized."

Statement for the Record

Mr. Rodney Anderson

U.S. House of Representatives

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

Hearing on "An Overview of the Credit Reporting System"

September 10, 2014

Chairwoman Capito, Ranking Member Meeks and Members of the Subcommittee. My name is Rodney Anderson. I serve as the Executive Director of Supreme Lending in Plano, Texas

On September 13, 2012 I had the privilege and honor to testify before this Subcommittee at a hearing entitled " Examining the Uses of Consumer Credit Data." My testimony is in the Subcommittee's archives and I stand by my formal testimony and answers to the Subcommittee members' questions during that hearing. My earlier testimony touches on many of the subjects you will likely discuss today. In particular, I would like to highlight the April 16, 2012 letter to the leadership of the House Financial Services Committee and the Senate Committee on Banking, Housing and Urban Affairs in support of the Medical Debt Responsibility Act. I attached the letter with my earlier testimony.

The letter of support was signed by: Americans for Financial Reform, American Financial Services Association, American Medical Association, The Asset Building Program - New America Foundation, California Association of Mortgage Professionals, Consumer Federal of American, Consumers Union, Corporation for Enterprise Development, DEMOS, Leading Builders of America, Mortgage Bankers Association, NAACP, National Association of Home Builders, National Association of Independent Housing Professionals, National Association of Mortgage Brokers, National Consumer Law Center, The National Consumer Reinvestment Coalition, National Credit Reporting Association, and US PIRG.

Today, I am grateful for the opportunity to submit this "Statement for the Record" on today's hearing addressing a similar and equally important topic "An Overview of the Credit Reporting System."

I applaud the work of the Committee's Members in addressing the problems of medical debts in collection. Medical debts in collection affect millions of American consumers and have a negative impact on the economy by artificially constraining credit for millions of creditworthy Americans.

The focus of this Committee on medical debt in collections reaches back to the 111th Congress with the introduction and passage by the House of HR 3421. In the 112th Congress, HR 2086 was introduced and a hearing was

held on September 13, 2012. In this Congress, two bills, HR 2211 and HR 1767, have been introduced by Representatives Gary Miller and Maxine Waters respectively.

Over the history of the Committee's deliberations and actions on medical debt the efforts have been bi-partisan and pro-active.

Since 2010, companion pieces of legislation to solve this problem have been introduced in the Senate and hearings have been held in that body as well.

Medical debts in collection have been addressed repeatedly by the House and Senate. In the House this consideration has been from the Subcommittee to the full Committee to full House passage (H.Rept 111-629)

In today's hearing I am confident you will once again hear how American consumers are suffering along with the American economy by not directly addressing this medical debt problem.

I remain optimistic that solutions are close at hand and will address two major developments since I appeared before the Subcommittee in 2012.

First, the Consumer Financial Protection Bureau (CFPB) has done an exhaustive study of 5 million credit reports. This recent study documents that consumers are being assigned lower credit scores than their earned creditorworthiness due to the fact that medical debts in collection are held on credit reports even after they are fully paid or settled. The CFPB report highlights the problem beyond doubt and we can be quite certain that each day consumers are paying higher interest, making higher insurance payments, and maybe even frozen out of consumer purchasers because of low credit scores they don't deserve. And, as we know, some Americans may lose job opportunities or even places to rent and buy because of this issue. The CFPB study follows other noted research that I cited in my 2012 testimony. A preponderance of information urging action on medical debt is now before us.

Second, FICO, to its credit has unveiled a new product, FICO 09. If FICO 09 were fully adopted across the lending spectrum it would provide a private sector solution to the problems addressed by the legislative proposals before this subcommittee. It remains to be seen, however, whether FICO 09 will be accepted in the marketplace. MGIC has recently stated that adoption of FICO 09 would likely translate into lower rates for home loan borrowers who, in turn, could end up saving borrowers thousands of dollars.

Additionally, MGIC said home ownership could be even more affordable for those right on the edge of good credit.

Therefore, I urge this Subcommittee to continue to act through regular order to move HR 2211 and HR 1767 to mark-up and move a solution forward.

We now see a convergence of Congress, regulator(s) and the private sector addressing the problems associated with medical debts in collection. This perfect storm indicates that one, some or all players involved will move forward. When this happens there will be increased economic activity and increased fairness to the US consumers who are waiting for action

I deeply appreciate the opportunity to submit this "Statement for the Record."

Respectfully,

Rodney Anderson

Plano, Texas

September 9, 2013

The Honorable Shelley Moore Capito
2366 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Representative Capito:

We are writing to you today on behalf of Equifax Inc. and the National Consumer Telecom & Utilities Exchange ("NCTUE" or "Exchange") in regards to the *Credit Access and Inclusion Act* (HR 2538), which was recently introduced by Representatives Michael Fitzpatrick (R-PA) and Keith Ellison (D-MN). As you consider HR 2538, we would like to make you aware of a service offered by NCTUE that already exists in today's marketplace that provides an opportunity to expand credit access to millions of consumers who in the past have had limited, if any, access to traditional credit as a result of their lack of credit history.

NCTUE is a nationwide, member-owned and operated data exchange that houses both positive and negative alternative payment data (i.e., non-traditional financial payment reporting data, such as telecom and utility payments) on consumers, which is then available to NCTUE's members on a blind basis to aid in their credit decisioning and risk management. This service allows consumers to establish and build their credit profile based on their payment history within the consumer space occupied by NCTUE members. Membership in NCTUE is open to a wide range of companies, including the nation's leading pay television, utility and telecom services. These member companies currently report and share industry-specific payment data on more than 180 million consumers, providing the opportunity for these companies to offer relevant services to underbanked or unbanked consumers.

The Exchange benefits underbanked and unbanked consumers through the use of non-traditional payment information that can provide a basis for evaluating risks of individuals who were previously unscoreable using traditional credit data alone. Twenty-five million consumers not found in traditional credit files are included in the NCTUE database. If a consumer has little or no traditional credit history, but has responsibly paid their phone or utility bills, their payment history may have a positive effect when they apply for new services or credit with other providers or lenders.

Credit grantors may use scores that combine the NCTUE data with traditional credit scores or utilize their own custom risk scores. In addition to these blended scores, NCTUE provides non-utility and telecom credit grantors with their own proprietary scores that serve the account acquisition underwriting needs in retail banking, auto and insurance. If a credit grantor utilizes alternative data sources like NCTUE when a traditional file has insufficient information, the NCTUE data may allow that credit grantor to offer a consumer better terms and credit, leveling the playing field in the credit market.

Currently, some state regulators and public utility commissions restrict sharing of certain utility account information. In addition, certain federal laws restrict several telecom and cable companies from specific uses of their account information. By providing information into an industry specific exchange, NCTUE members have control over the data uses and have implemented meaningful consumer protections. Reporting data to multiple credit bureaus and managing disputes from several sources may be expensive and time-consuming. By contributing data to a credit reporting agency like NCTUE, the dispute volume is limited and reporting is consistent and manageable. NCTUE is fully compliant with the federal Fair Credit Reporting Act ("FCRA").

While we do not object to the true intentions of HR 2538 - helping consumers build their credit profile using alternative payment data - we believe there is already a solution in the marketplace to address most, if not all, of the needs of these consumers. Using both positive and negative data from the NCTUE database allows credit grantors to better serve the credit needs of all consumers, especially those who have little or no traditional credit history. For questions or to request additional information, please contact Nick Stowell, Equifax Government Relations, at (404) 885-8742 or Alan Moore, NCTUE – Executive Director, at (972) 618-0019.

Sincerely,

Buddy Flake
NCTUE – Board President

Michael Gardner
Senior Vice President – Equifax

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