



Consumer Federation of America

TESTIMONY OF

TRAVIS B. PLUNKETT
LEGISLATIVE DIRECTOR

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER
CREDIT OF THE HOUSE COMMITTEE ON FINANCIAL SERVICES

REGARDING

THE ROLE OF THE FAIR CREDIT REPORTING ACT
IN THE CREDIT GRANTING PROCESS

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Good morning Chairman Bachus, Ranking Member Sanders and all the members of this subcommittee. My name is Travis B. Plunkett and I am legislative director of the Consumer Federation of America.¹ I appreciate the opportunity to offer our comments on role of the Fair Credit Reporting Act in the credit granting process. This is a broad and important topic for consumers. For many years, CFA has conducted research and offered public policy recommendations on many aspects of this issue, including the extension and marketing of credit cards and the accuracy of credit reporting data. As this panel has been asked to focus on FCRA and mortgage lending, I will largely confine my remarks to this topic.

As this subcommittee has heard, the credit reporting system in the United States has experienced significant technological change in recent years. The good news is that consumers have benefited from many of these developments. Credit decisions can be made faster than ever before. As new tools for credit risk assessment have been developed – and creditors have generated substantial profits by charging higher fees and interest rates for riskier loans -- credit has been extended to many worthy consumers who in the past might not have been eligible. Partly as a result of this development, homeownership in this country has grown.

During the second half of the 1990s, mortgage underwriting increasingly incorporated credit scores and other automated evaluations of credit histories. As of 1999, approximately 60 to 70 percent of all mortgages were underwritten using an automated evaluation of credit, and the share was rising². More recent estimates from industry leader Fair Isaac indicate that 75 percent of mortgage lenders and over 90 percent of credit card lenders use its credit scores in making credit decisions³.

However, there is bad news too. Some lenders extended credit to subprime borrowers in an abusive and predatory manner, abusing their new technological capabilities to develop usuriously high interest rates and fees carefully targeted at unwitting and vulnerable consumers. These lending practices contributed to an unprecedented growth in bad credit card and mortgage debt, home foreclosures and personal bankruptcies in recent years. Meanwhile, as subprime lending boomed, the Fair Credit Reporting Act's protections to ensure reporting accuracy, protect consumer privacy and prevent identity theft have not kept pace. The increased speed with which credit decisions are now made exposes a significant number of consumers to new problems and abuses for which old safety measures are inadequate. It is as if the credit reporting industry has developed a BMW engine that powers an old Model T car without seat belts, air bags and other modern safety features.

In short, the Fair Credit Reporting Act (FCRA) is in need of an overhaul. This is especially true because this nation's policy is to continue to increase home ownership, particularly among minorities. There is a direct connection between the accuracy and completeness of credit information that is used about these potential borrowers and whether they

¹ CFA is a nonprofit association of 300 pro-consumer organizations that, since 1968, has sought to advance the consumer interest through education and advocacy.

² Straka, John. 2000. A Shift in the Mortgage Landscape: the 1990s Move to Automated Credit Evaluations. *Journal of Housing Research*. Volume 11, Issue 2.

³ National Consumer Law Center. Fair Credit Reporting, 2002. Page 349.

have access to mortgage loans at affordable and sustainable rates. We have a special societal obligation to ensure that mortgage lending to this potential pool of homeowners is granted fairly.

I. Broad and Credible Evidence Demonstrates Serious Problems with Credit Reporting Accuracy

A fair and economically viable credit reporting system requires accurate information. Congress has recognized the importance of accuracy in the FCRA. Multiple witnesses who have already testified before this subcommittee have indicated that accuracy is a major concern. The inclusion of accurate and complete information in consumer credit reports benefits consumers, creditors, and score developers. Consumers are in a better position because they are more likely to be judged based on the actual risk they pose to a potential lender. Creditors benefit because they have a more accurate understanding of the risk posed by consumers and can better compete against other lenders. And companies that develop decision tools such as credit scores can make those scores more accurate if they have more accurate information with which to develop their models.

Of all of the witnesses who have come before this committee, none have articulated what is at stake more concisely than Howard Beales, the Director of the Bureau of Consumer Protection at the Federal Trade Commission when he stated, "... credit report accuracy was, and remains, a core goal of the FCRA. Because even small differences in a consumer's credit score can influence the cost or other terms of the credit offer, or even make the difference between getting approved or denied, accuracy of the information underlying the score calculation is paramount." Unfortunately, a broad range of evidence provided by a variety of sources shows that inaccurate and incomplete reporting is a persistent, significant problem.

A. Consumer Federation of America and National Credit Reporting Association Study finds dramatic discrepancies in credit scores and underlying credit information among credit repositories.

1. Credit score variations are very costly to consumers.

In December 2002, the Consumer Federation of America and the National Credit Reporting Association released an exhaustive study of the accuracy of credit scores and the credit report information that serves as the foundation for those scores.⁴ Researchers reviewed credit report information for a randomly selected sample of more than half a million actual consumers (502,623) seeking mortgage credit. Using a layered methodology, CFA and NCRA examined three sample groups in increasing detail to assess the impact and likely causes of the dramatic discrepancies found in this study. The findings for all three groups were consistent, including the typical discrepancies in scores, the frequency of discrepancies of various magnitudes and the major explanations offered by lenders for the calculation of creditworthiness. To quantify the potential impact of these variations on consumers in the mortgage market,

⁴ Consumer Federation of America and National Credit Reporting Association. *Credit Score Accuracy and Implications for Consumers*. December 2002. Available at: http://www.consumerfed.org/121702CFA_NCRA_Credit_Score_Report_Final.pdf

researchers closely examined the files of consumers with credit scores near 620, the widely recognized standard in the industry separating prime and subprime mortgage candidates.

The study found wide variations in the credit scores for a given consumer among the three national credit repositories (Experian, Equifax, and Transunion). The average discrepancy for all consumers was 41 points, but credit scores for nearly one in three consumers varied by 50 points or more, and credit scores for one in 25 consumers varied by 100 points or more.⁵

The study found that approximately 20 percent of all consumers – about 40 million Americans – are at risk for misclassification into the subprime mortgage market because their scores are near the 620 pricing cutoff point and vary significantly. Consumers above this pricing point receive prime loans with more favorable terms and rates, while consumers with scores below it receive less favorable terms and higher interest rates. Roughly eight million consumers – one in five of those who are at risk – are likely to be misclassified as sub-prime upon applying for a mortgage, based on the study’s review of credit files for errors and inconsistencies. A similar number of consumers are likely to benefit from errors in their reports. However, individual consumers do not benefit from system-wide averages and should not have to cope with a credit reporting system that functions as a lottery

Falling below the cutoff score for a prime rate mortgage can place a tremendous financial burden on these consumers and make it more difficult to meet this and other financial obligations. Interest rates on loans with an “A-” designation, the designation for subprime loans just below prime cutoff, can be more than 3.25% higher than prime loans. Thus, over the life of a 30 year, \$150,000 mortgage⁶, a borrower who is incorrectly placed into a 9.84% “A-” loan would pay \$317,516.53 in interest, compared to \$193,450.30 in interest payments if that borrower obtained a 6.56% prime loan – a difference of \$124,066.23 in interest payments⁷.

While these findings are extremely troubling, they actually underestimate the overall impact of inaccuracies on consumers in the mortgage market. The CFA study considered a single pricing point, 620, and the impact of one dimension of a single transaction, interest paid on mortgages. In the purchase of a home, credit scores play a major role in determining the availability and cost of homeowners insurance, mortgage insurance (for those with down payments of less than 20 percent of the loan) and of utilities and phone service.

In addition, pricing points are proliferating for many financial services products, putting more consumers in harms way. Currently a small discrepancy may not have any impact on consumers with higher credit scores, for example in the mid to high 700’s. But increasingly, lenders have a desire to more finely differentiate among consumer classes by creating ever more

⁵ Score discrepancies reflect differences in the underlying credit data collected by each agency, not differences in the scoring software they use. All three credit reporting agencies buy virtually the same software from Fair, Isaac, and Co. Furthermore, the study determined that score variations could not be attributed to a lag in the adoption of new generations of this software.

⁶ The Federal Housing Finance Board’s *Monthly Interest Rate Survey* reports that the national average loan amount for conventional home purchase loans closed during June of 2001 was \$151,000.

⁷ Interest rates as reported by *Inside B & C Lending* for 30 year Fixed Rate Mortgages for “A-” Credit (par pricing), and “A” Credit respectively, as of July 14.

pricing points. Building such a system without data that is precise and accurate enough to support these pricing distinctions will put more and more consumers into the credit lottery.

2. Standardized, generic explanations do not provide sufficient information for consumers to address inconsistencies and contradictions, let alone outright errors.

The study found that approximately seven in ten credit reports indicated that the primary factor contributing to the score was “serious delinquency,” “derogatory public record,” or “collection filed,” or some combination of these factors, without providing any information about which specific accounts were responsible for the lowered scores. In many cases, it was not even possible to determine which of these extremely broad explanations -- delinquency, public record, or collection -- was responsible for the score. In addition approximately one in six reports indicated that the primary reason for the score was that the proportion of revolving balances to available revolving credit limits was too high. These two relatively generic categories of explanations were reported as the primary reason for a derogatory score on a total of more than seven in ten reports reviewed.

The vague information provided by these explanations is too general to be helpful. Nearly all consumers near the subprime border have had some credit activity that may fall under the broad terminology “serious delinquency, derogatory public record, or collection filed.” If their credit records were more favorable, they would not be so close to the subprime threshold. Such borrowers may accept this generic justification for a low score more readily than consumers with generally good credit. Thus, the consumers who are most likely to be penalized by errors are the least likely to challenge these imprecise explanations. Because these consumers are not provided the specific account information that is lowering their scores, they are not given the tools to identify and correct possible errors. The situation would likely be different if consumers had access to the full credit reports and the scores used to underwrite their loan applications, with an indication of which accounts had the largest negative effect on their scores. If this were the case, consumers would have a much more legitimate opportunity to identify and challenge any errors.

3. Consumers are harmed by errors of commission and errors of omission.

A detailed analysis of the types of credit reporting errors that occurred revealed that errors of omission (non-reporting of information) and errors of commission (incorrect or inconsistent data included in the report) both occurred at significant levels.⁸

- Nearly eight in ten files (78 percent) were missing a revolving account in good standing.
- One in three files (33 percent) was missing a mortgage account that had never been late.
- Inconsistent reporting by the agencies on whether a consumer was late in making a payment was widespread. Wide disparities existed in reporting 30-day delinquencies (on 43 percent of files), as well as 60-day (29 percent) and 90-day (24 percent) delays.

⁸ The specific findings regarding errors of commission and omission are drawn from the smallest sample examined (51 files.) The significant characteristics of that small sample are consistent with those of the larger samples in the study. Furthermore, many of the findings are consistent with those reported in research by the Federal Reserve and other parties.

- Reporting on credit limits and balances was almost universally inconsistent (on 96.1 and 82.4 percent of files, respectively). This is significant as the proportion of balances to available credit was one of the most frequently identified factors affecting a consumer's credit score. One file in six listed the utilization rate as the primary reason for the score.

B. Federal Reserve Board Study raises concerns about incomplete and duplicate reporting.

The Federal Reserve Board earlier this year published a comprehensive study examining the information in consumer credit reports.⁹ It found that the information in credit files is not complete, that these files may contain duplicate information and at times are ambiguous about some consumers' credit status. The study reviewed the credit information in 248,027 consumer credit files from a single national credit repository to determine whether data maintained by credit reporting companies is sufficiently complete, comprehensive, and accurate to serve as a new source of statistical data to evaluate macroeconomic conditions and for other purposes. This study identified several areas of concern regarding the data.

The primary area of concern with data integrity highlighted in this study was that of missing credit limits. About 70 percent of consumers had at least one revolving account in their credit files that did not contain information about the credit limit. Without information on the credit limit, the level of credit utilization – a key factor used in credit evaluation – cannot be determined, and as a result these consumers are likely to be deemed less credit worthy than they are.

The researchers also noted that a large number of accounts had not recently been updated. Among accounts reported with a major derogatory piece of information as the most recent addition, such as a significant delinquency, almost three-fifths of the reports were not current. The researchers concluded that many of these accounts had been closed or transferred, and that it was likely that consumers who had paid off delinquent accounts since they were last reported were being penalized.

This report also cites evidence that some creditors only report derogatory information. Others do not report minor delinquencies. The impact on consumers of these behaviors is mixed. Some may appear more creditworthy as a result, while others may appear less so.

Consumers may also be penalized by the duplicate reporting of collections and public records found in the Federal Reserve study. Items pertaining to the same credit event, such as when a new and duplicate record of a delinquency is added at the time a collection is initiated, and another added at the time a collection is paid. The report concludes that such duplication of these items "could significantly affect credit evaluation."¹⁰

⁹ Avery, Robert, Paul Calem, Glenn Canner, and Raphael Bostic. "An Overview of Consumer Data and Credit Reporting." *Federal Reserve Bulletin*. February 2003. pp. 47-73.

¹⁰ *Ibid*, at 71.

Most of the problems identified in the study “result from the failure of creditors, collection agencies, or public entities to report or update items.”¹¹ In other words, most of the problems with incomplete and ambiguous data are the result of the actions of data furnishers.

C. The Comptroller of the Currency has publicly admonished furnishers of credit information for abusive, unfair, and anti-competitive selective reporting practices.

In a May 5, 1999 speech before Neighborhood Housing Services of New York, Comptroller of the Currency John Hawke stated, “Subprime loans can’t become a vehicle for upward mobility if creditors in the broader credit market lack access to consumer credit history. Yet, a growing number of subprime lenders have adopted a policy of refusing to report credit line and loan payment information to the credit bureaus – without letting borrowers know about it. Some make no bones about their motives: good customers that pay subprime rates are too valuable to lose to their competitors. So they try to keep the identity and history of these customers a closely guarded secret”¹². He reiterated these concerns in a June 9, 1999 speech before the Consumer Bankers Association, condemning the objectionable practice of non-reporting and noting that, “failure to report may not be explicitly illegal. But it can readily be characterized as unfair; it may well be deceptive, and – in any context – it’s abusive.”¹³

D. The Federal Financial Institutions Examination Council (FFIEC) has raised safety and soundness concerns because of selective reporting by furnishers.

In an advisory letter¹⁴ regarding consumer credit reporting practices, the FFIEC reported that “certain large credit card issuers are no longer reporting customer credit lines or high credit balances or both. In addition, some lenders as a general practice have not reported any loan information on subprime borrowers, including payment records. The Agencies have been advised that the lack of reporting is occurring primarily because of intense competition among lenders for customers.” Rather than requiring lenders to report more completely, the letter provides guidance to financial institutions to take extra measures in their risk analysis to account for the missing information, to avoid exposure to credit risk that could affect their safety and soundness.

E. Other research confirms high rates of inaccurate and incomplete information in credit reports.¹⁵

¹¹ Ibid, at 73.

¹² <http://www.occ.treas.gov/ftp/release/99-41a.doc>

¹³ <http://www.occ.treas.gov/ftp/release/99-51a.doc>

¹⁴ FFIEC Advisory Letter. January 18, 2000. Available at: <http://www.ffiec.gov/press/pr011800a.htm>

¹⁵ Ironically, a study conducted for the credit reporting industry that purports to show that very few credit reporting inaccuracies exist, may actually demonstrate that consumers who review their reports are likely to find errors. In 1991, the Associated Credit Bureaus (now the Consumer Data Industry Association) commissioned an analysis from Arthur Andersen. This study, completed in 1992, found that very few consumers who are denied credit request their credit reports (7.7 percent or 1,223 out of 15,703 consumers). However, 25 percent of consumers who reviewed their credit reports (304 out of 1,223), found and disputed errors, and 13 percent of disputes that had been completed by the time of the study (36 out of 267) resulted in a reversal of the original negative credit decision. The often cited finding that this study proves a 0.2% error rate is a somewhat misleading conclusion, because it is arrived at by comparing the number of credit reversals with the number of consumers in the sample (36 out of 15,703). It ignores the fact that 92.3% of the consumers in the study never saw their credit reports and were therefore unable to make

Over the past decade, surveys and research conducted by the Industry Group National Association of Independent Credit Reporting Agencies (now the National Credit Reporting Association)¹⁶, and by the U.S. Public Interest Research Group¹⁷ and Consumers Union¹⁸ have documented inaccuracies in as many as 70 percent of credit reports. Among other problems, these studies identified false delinquencies, mistaken identities, uncorrected errors, missing information, and duplicate reporting of information in credit reports.

II. The ability of consumers to identify and dispute inaccuracies in their reports and scores is severely limited.

- A. Loopholes in the law and the growth of “risk-based” mortgage lending may endanger consumer rights under the FCRA to be informed of and challenge adverse credit decisions.

Many consumers do not see their credit reports until they suffer an adverse action based on the information in those reports, such as having a loan or insurance application denied, being charged higher than prime rates, or receiving less favorable terms, and are told of their right under the FCRA to receive a free copy of their credit report. Such adverse action notices are usually the catalyst for consumer to exercise their right to review and dispute information in their credit reports. However, there are substantial threats to the effectiveness of this pivotal component of the statute. The trend towards “risk-based” pricing in the current marketplace increasingly means that an “adverse offer” is not the wholesale denial of credit, but an offer of credit at less than the most favorable terms. For this reason, several of FCRA’s provisions regarding adverse actions need to be updated to ensure that consumers have access to their rights when they receive a credit offer with higher rates or stricter terms.

First, a loophole in the law regarding so-called “counteroffers” increasingly reduces the efficacy of adverse actions provisions. If a consumer is denied the best credit rate or terms available, but accepts an offer for credit at less favorable terms, they are not entitled to a free copy of their report, or a notice that they have been subject to an adverse action based on information in a consumer report. When applying for a mortgage, many consumers generally identify the type of mortgage they would like to apply for and the amount they wish to borrow, rather than applying for a specific rate. When told about the rate for which they qualify, they are not necessarily in a position to assess whether this rate is unfavorable. Furthermore, many subprime borrowers are unlikely to be alerted to potential mistakes in their credit files that could raise their rate. While increased access to credit is a laudable goal if the loan is not offered on predatory terms and it is sustainable by the consumer, this significant change in the marketplace

any determination as to their accuracy. Furthermore, the study considers only those errors that were significant enough to result in a reversal of the credit denial. Given the sweeping changes in the industry since the study was conducted, including the rise of risk-based pricing, the present impact of smaller errors on consumers should not be overlooked.

¹⁶ *Survey/Study Three Bureau Merged Infile vs. Two Bureau Residential Mortgage Credit Report*. National Association of Independent Credit Reporting Agencies. March 1994.

¹⁷ *Mistakes Do Happen*. Public Interest Research Group. March, 1998.

¹⁸ “Credit Reports: How do potential lenders see you?” *Consumer Reports*. July 2000. P. 52-3., and “Credit Reports: Getting it Half Right.” *Consumer Reports*. July, 1991. p. 453.

requires a re-evaluation of the mechanism and circumstances under which consumers are given free access to their credit reports.

- B. The current statute does not provide access for consumers to sufficient information to make informed assessments of the impact of errors in credit reports.

Despite the fact that many lenders may rely heavily or even exclusively on a credit score to make a credit decision, the consumer has no right under FCRA to see the score used to evaluate them. Moreover, even with notice of an adverse action, the current statutory requirements do not give consumers access to the actual information used by a lender to evaluate their application. In mortgage lending situations, this usually involves a “tri-merged” report with data and scores from all three major credit bureaus. Instead, consumers who request a report received a “cleaned up” copy generated by the identifying data the consumer submits, which is more detailed than the information that lenders are required to submit. Credit reports are generated from large databases of information based on the information included in a query. Depending on the amount of identifying information included in the query, the report and credit score will be substantially different. In particular, credit files are more likely to include mixed information from individuals with similar names, addresses and social security numbers, if very little identifying information is used to obtain the file. This incorrect information will not be apparent to the consumer if the file he or she receives is different than that received by the lender. Moreover, as the findings of the CFA/NCRC report show, the explanations provided to consumers about the reasons for adverse credit decisions are usually vague and unhelpful.

III. Public Policy Recommendations

A. Broaden consumer access to credit reporting and scoring information. Empowering consumers with more and better information is the key to improving the accuracy and fairness of the credit reporting system.

1. Require credit reporting agencies to grant consumers one free credit report and credit score per year upon request. Rather than waiting for an adverse credit decision to check their report and score for accuracy, consumers should be given the opportunity to get the information once a year at no charge. Consumers should be given a description of the major factors that are used to calculate the score, the weight of each factor in calculating the score and how the consumer rated on each major factor. Moreover, consumers should be given a copy of the report a subscriber would get, which is generated by less matching information about an individual than a consumer is required to submit. This allows the consumer to see if his or her file contains mixed or unrelated credit information for someone else with a similar name or address.

B. Require credit furnishers to provide more accurate and complete information. As this testimony has demonstrated, many errors in credit reports can be attributed to the practices of creditors and other credit data furnishers. Credit Reporting Agencies must meet a “maximum possible accuracy” standard but obviously rely heavily on the information that is furnished to them.

1. Increase the legal standard of accuracy for credit furnishers. The current accuracy standard under section 623(a)(1)(A) is quite weak and has not provided an adequate incentive for data furnishers to provide accurate information. It forbids furnishers from providing data to credit bureaus only if “they know or consciously avoid knowing that it is inaccurate.” Unlike the requirement in Massachusetts—which was allowed to stand when the 1996 amendments to FCRA were made—this standard does not require furnishers to know if information they are submitting to a credit reporting agency is actually accurate. A standard more consistent with many other consumer protection laws would be to forbid furnishers from reporting information if they “knew or should have known” it was incorrect.

2. Require furnishers of data to provide complete information on any account for which they use a credit report or score to determine eligibility, pricing or for account reviews. Not all providers of consumer services use credit records or credit scores to determine consumer eligibility, or pricing. However, those that do should be required to report complete information back to the credit repositories, including “positive” payment information and information in all data “fields,” including credit limit information and the date of last activity. Information about any account that was underwritten with a report from one or more credit repositories should be reported to those repositories as frequently as the consumer is obligated to make payments. Collection agencies should be required to report on the status of collections at least once every six months.

3. Require data furnishers to notify consumers any time derogatory information is submitted. Congressman Ackerman has laudably pointed out that such a requirement would offer consumers the opportunity to check the accuracy of derogatory information when it is submitted, as opposed to finding out the next time the consumer applies for credit and is turned down or offered a high interest rate.

4. Prevent duplicate reporting of accounts by preventing credit furnishers from reporting a debt once it is sold or sent to collection. Collection agencies will report this information once they own the account. Credit furnishers should be required to report to credit bureaus when they have sold an account and should be forbidden from reporting information about an account once they no longer own it.

C. Require credit bureaus to distribute more accurate information to the users of credit reports.

1. Require that data provided for credit reports be generated through the accurate matching of at least four of points personal information about the specific consumer who is applying for credit. The amount and type of identifying information provided by creditors requesting a report should be as detailed as that required for consumers requesting their own report or score. This will make it more likely that the credit report that is pulled does not contain “mixed” data from another consumer with a similar name, social security number or address.

2. Require credit bureaus to prevent the reinsertion of fraudulent or erroneous account information that has been previously deleted. There have been repeated complaints that

information that is deleted by a bureau because of an inaccuracy or identity theft is reinserted when the data furnisher submits subsequent routine updates of account information.

D. Modernize the FCRA dispute resolution process.

1. Allow consumers access to the actual credit report and score that were used to make the credit decision. Creditors should immediately provide to any consumer who experiences an adverse credit action a copy of the credit reports and scores used to arrive at that decision free of charge and permit disputes to be immediately resubmitted for reconsideration. All consumers who have experienced an adverse action based on one or more credit reports or scores should immediately be given a copy of both the full report or reports used to derive that score and the related credit scores without having to pay any additional fee.

2. Improve the explanations offered to consumers for why adverse credit actions are taken and offer the consumer the opportunity to correct errors and be immediately reevaluated for the most favorable credit terms. The FCRA and Equal Credit Opportunity Act require lenders to inform consumers that an adverse credit action has been taken. Such an action includes, among other things, denial of credit or the denial of favorable terms on credit. Lenders must also inform consumers what the principal reasons are for the adverse action. As cited above, CFA and NCRA have found that most of these explanations are either vague, duplicative or both. Instead, lenders should be required to identify any specific entries (trade lines) that are lowering the consumer's score and indicate the impact on the consumer (either the point value deducted for that entry or the proportional impact of that entry relative to other derogatory entries in the report). The consumer should then be allowed to identify any errors or out of date information, provide documentation, and be reevaluated for prime rates. The additional cost to lenders and businesses of providing these reports immediately would be minimal. Since they already possess the report in paper or electronic form, they would merely have to copy or print this report.

3. Shorten the deadlines by which creditors must respond to consumer disputes about credit information. Currently, the FCRA provides creditors 30 days to respond to a dispute; 45 days if the consumer submits additional documentation about the dispute. In the age of "instant credit" and three-day credit re-scoring by credit reporting resellers, these deadlines are much too long. By the time the consumer hears back from the credit bureau about the outcome of the dispute, he or she might have lost a home loan (and the home) or submitted to a loan at a higher rate than he or she was entitled to. Given how fast credit decisions are now made, resolution deadlines of ten days (fifteen if the consumer submits additional information) do not seem unreasonable.

4. Require creditors and credit bureaus to meet reasonable minimum standards when "reinvestigating" a consumer complaint. As documented in detail in last week's testimony by the National Association of Consumer Advocates and the National Consumer Law Center, the current automated reinvestigation process used by creditors and bureaus almost always results in creditors verifying that the original data they provided about a consumer is accurate. Credit bureaus are not required to make an independent determination about whether the information that is provided about a dispute is accurate, even if that information comes from an independent third party rather than the furnisher or the consumer. They simply submit a numerical code to a furnisher about the nature of the complaint and ask the furnisher to verify whether the complaint

is accurate or not. Creditors are not asked by credit bureaus to examine the original documents provided in a dispute to determine their veracity.

5. Require decisions based on a single repository's credit report or credit score that result in anything less than the most favorable pricing to immediately trigger a re-evaluation based on all three repositories at no additional cost. Lenders and other credit data users have a desire to keep their underwriting costs low. This is a legitimate desire so long as consumers are not harmed in the process. Some lenders reduce costs by underwriting certain decisions with only one credit report. For example, a lender may offer pre-approved credit cards based on only one report, or underwrite home equity lines of credit or second mortgages with a single report. Given the wide range between scores for a typical consumer and the frequency with which major accounts are omitted from credit reports, such practices have serious negative implications for consumers. Measures should be put in place to protect consumers from any negative impact resulting from such underwriting practices. A simple solution would be to require all decisions based on credit reports to use information from all three repositories. However, this could result in higher costs and reduced availability of products such as pre-approval letters that are beneficial to consumers. Alternatively, lenders and other credit data users could be permitted to continue underwriting based on one report, so long as any adverse impact based on information from a single repository immediately triggers a re-evaluation with information from all three repositories at no additional cost to the consumer. In this manner, businesses could continue to save on underwriting costs for consumers with very good credit, but consumers with less than perfect credit would not be forced to continue to pay a high price for inaccuracies, inconsistencies, or incompleteness on any one credit report.

6. Require creditors to identify any offer of credit at less than the most favorable terms as an "adverse offer." This would include pre-screened "subprime" mortgage offers or credit cards solicitations that are based on negative or less than favorable credit information. As is well known, the subprime credit industry has boomed in the past decade by offering borrowers with blemished or limited credit histories mortgage loans, car loans and credit cards at higher rates and less favorable terms than offered to their "prime" borrowers. As lenders increasingly offer a continuum of loans at different rates and terms, it is more important than ever that consumers have the ability to exercise their FCRA rights to insure that adverse credit information is correct. In the world of "risk-based" pricing, borrowers should know that they are being targeted because of their less than optimal credit history and should be offered the opportunity to check their credit history and change any information that is not accurate or complete. Furthermore, as stated above, many consumers are unwittingly giving up their FCRA rights because they are accepting loans that are legally considered "counteroffers."

D. Improve oversight of credit scoring. End credit scoring misuse for insurance purposes.

1. Establish meaningful oversight of the development of credit scoring systems. Despite the fact that consumer access to, and pricing for, vital services such as mortgages, general consumer credit, insurance, rental housing, and utilities is increasingly dictated by the automated evaluation of credit, there is no government oversight of the design of these systems. The calculations behind credit scores, a fact of life for the American consumer, remain shrouded in secrecy. The appropriate government agencies, such as HUD, the Federal Trade Commission,

and state insurance departments should conduct regular, comprehensive evaluations of the validity and fairness of all credit scoring systems, including any automated mortgage underwriting systems, insurance underwriting systems, tenant and employee screening systems, or any other systems or software that uses credit data as part of its evaluation of consumers, and report to Congress with its findings. These evaluations should be conducted and released in a timely fashion so that score developers can react to any recommendations and so the reviews do not become outdated as new versions of scoring software are developed and distributed. Strong oversight of scoring systems that identifies and protects consumers from any discrimination or abuses will foster consumer confidence in these powerful and increasingly utilized evaluation tools.

2. End the use of credit scoring for insurance purposes. The states of Hawaii and Maryland have forbidden the use of credit reporting data for the purpose of underwriting or pricing some forms of insurance. This is because insurers have not shown that credit data is logically related to a consumer's likelihood of incurring or filing a claim. These states have rightfully concluded that the contention that it is not enough to contend, as insurers have, that there is a correlation between credit history and claims. There may be a correlation between the color of someone's hair and their likelihood of filing an insurance claim, but that doesn't mean that it is logical or reasonable to charge people with red hair higher rates, or to refuse to cover them. What does a person's credit history have to do with the likelihood that a hailstorm will damage their roof and that he or she will file an insurance claim? Congress should follow the example of these two states and forbid the use of credit data for insurance purposes.

E. Broaden federal enforcement of the FCRA.

1. Appropriate federal agencies should conduct regular credit bureau FCRA compliance audits. An appropriate federal agency, such as the Federal Trade Commission, should audit the repositories' records on a regular basis to identify data furnishers who report incomplete or incorrect information to the repositories. Such activity should be subject to fines or other penalties for non-compliance. These audits should also assess the overall accuracy of data maintained by the credit repositories, with appropriate fines or other penalties for inaccuracy.

2. The Federal Trade Commission should collect, analyze and disclose information about credit reporting disputes. Credit bureaus should disclose to the FTC on a quarterly basis data about all disputes filed by consumers, the identity of the furnisher who provided the information in dispute, the outcome of the reinvestigation and the amount of time that the reinvestigation took. The FTC should be required to present an annual report to the Congress that aggregates this data, analyzes the causes and outcomes of consumer disputes and offers public policy remedies to solve endemic problems.

F. Legally empower consumers to combat credit reporting inaccuracies and abuses.

Although federal and state authorities should do more to enforce the requirements of the FCRA, a handful of agencies will never be able to adequately keep track of problems involving more than 190 million credit reporting files. The combined restrictions on private enforcement of the act make it extremely difficult for consumers to hold credit furnishers and bureaus accountable for major violations of the law.

1. Make it easier for consumers to pursue a claim against creditors who report wrong information. Consumers can only enforce the already weak accuracy standard for data furnishers (mentioned above) under very narrow circumstances involving the reinvestigation of a credit reporting problem. As a result, virtually no private actions against creditors have been successful, even for grievous reporting errors.

2. Increase legal deterrents to egregious violations of the law. Several courts have held that the FCRA does not allow injunctive relief for consumers. Broadening this right will allow courts to prevent bureaus from issuing credit reports with false or disputed information. The law should also grant successful plaintiffs minimum statutory damages for egregious violations of FCRA, such as the failure to correct inaccurate information after notice is provided. This will provide a further deterrent to consistently sloppy and inaccurate reporting. And finally, because of a recent Supreme Court decision¹⁹, it is necessary to reinstate the previous rule that consumers have two years from the date of discovery of an error (as opposed to the date the error occurred) to file suit. Chairman Bachus and Representative Schakowsky have proposed legislation, H.R. 3368, which would laudably restore a reasonable statute of limitations for these claims.

G. Improve baseline federal credit reporting standards. Allow states to exceed these minimum standards, as long as state law does not conflict with federal law.

1. Improve federal law. As identified above, the FCRA needs to be modernized and improved to insure greater accuracy of information and to prevent misuse and abuse of credit reporting and scoring information. This will benefit creditors, credit bureaus, and consumers.

2. Allow federal preemption of state credit reporting laws to expire. The eight specific areas of federal preemption that were put in place for the first time in 1996²⁰ expire on January 1, 2004. If federal credit reporting consumer protections are broadened and improved, very few, if any, states are likely to attempt to exceed these baseline standards. However, the expiration of these preemptions would allow some states the opportunity to quickly respond to the particular needs of their states' residents. This is what Vermont did in 1991, when residents of entire towns were victimized by the systemic misreporting of false credit reporting information. It is always a good idea to require meaningful consumer protections in the least economically burdensome manner possible. However, to date, we have not heard a factual basis for the rather hysterical contention that the expiration of these preemptions will result in the passage of many burdensome state laws that will drive costs to consumers up, make credit unavailable to borrowers in some states and result in a "balkanization" of the credit system. In fact, testimony put on the record by the Assistant Attorney General of the State of Vermont and the U.S. Public Interest Research Group last week documented that fair credit reporting standards have always been developed and

¹⁹ Andrews v. TRW, Inc., 534 U.S. 19 (2001).

²⁰ Under 15 USC Section 1681t(b)(1), these preemptions affect: (1) prescreening of consumer reports by credit reporting agencies; (2) timelines by which a consumer reporting agency must respond to consumer disputes; (3) the duties of users of credit information that make adverse decisions; (4) the duties of a person using a consumer report in connection with a credit or insurance transaction not initiated by the consumer; (5) the type of information in a consumer report; (6) the responsibilities of furnishers of information to credit reporting agencies; (7) sharing of credit reporting information among corporate affiliates; (8) the form and content or disclosures that must be offered to consumers. Some stronger state laws were allowed to continue to exist under these provisions.

enforced at both the national and the state level. As cited in these testimonies, there are a number of state laws that exist right now that either: (a) already exceed federal standards on preempted laws because they were “grandfathered” in as part of the 1996 FCRA amendments, or (b) exceed federal standards on non-preempted credit reporting laws. Proponents of continued preemption have not offered evidence that any of these laws, such as the California law that holds credit furnishers to a higher standard of accuracy than federal law, have led in any way to reduced credit extension or higher costs for credit for consumers in these states. On the other hand, these laws have led to increased protections for consumers in those states, which is very positive. Continuation and expansion of a rational federal/state system of credit reporting standards is the best way to both provide some predictable baseline requirements for creditors and credit bureaus, while providing the best and most responsive protections for consumers.

Thank you again for the opportunity to offer our views and recommendations. We look forward to working with you, Mr. Chairman, and the members of this subcommittee to improve the Fair Credit Reporting Act for consumers.