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MAKING SENSE OF CONSUMER CREDIT REPORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER
PROTECTION

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

EXPLORING THE CONSUMER CREDIT REPORTING MARKET, CONSUMER UNDERSTANDING OF CREDIT REPORTS, AND THE EXPANDED OVERSIGHT OF KEY MARKET PARTICIPANTS IN THE CREDIT REPORTING INDUSTRY

DECEMBER 19, 2012

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

Available at: http://www.fdsys.gov/

U.S. GOVERNMENT PRINTING OFFICE

80–539 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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C O N T E N T S

WEDNESDAY, DECEMBER 19, 2012

	Page
Opening statement of Chairman Brown	1
Opening statements, comments, or prepared statements of:	
Senator Corker	2
Senator Akaka	
Prepared statement	26

WITNESSES

Corey Stone, Assistant Director for the Office of Deposits, Cash, Collections, and Reporting Markets, Consumer Financial Protection Bureau	3
Prepared statement	26
Response to written questions of:	
Chairman Brown	135
Stuart K. Pratt, President and CEO, Consumer Data Industry Association	13
Prepared statement	27
Response to written questions of:	
Chairman Brown	137
Chi Chi Wu, Attorney, National Consumer Law Center	15
Prepared statement	38
Response to written questions of:	
Chairman Brown	139

Additional Material Supplied for the Record

Senators Merkley, Schumer, Menendez, and Brown letter to Richard Cordray, Director, Consumer Financial Protection Bureau	143
Richard Cordray, Director, Consumer Financial Protection Bureau, response letter to Senators Merkley, Schumer, Menendez, and Brown	145
National Association of Credit Services Organizations letter to Senators Brown and Corker	147
Letter to Senate Banking Committee and House Financial Services Committee in support of S. 2149 and H.R. 2086 from a coalition of organizations, including the National Homebuilders Association, the Mortgage Bankers Association, the American Medical Association, and the Consumers Union, among others	149
LexisNexis articles from the Columbus Dispatch's investigative series on credit reports	151
New York Times article, "Discrepancies on Medical Bills Can Leave a Credit Stain", by Tara Siegel Bernard	208
Associate Press article, "Medical Bills Can Wreck Credit, Even When Paid Off", by Carla K. Johnson	212

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WEDNESDAY, DECEMBER 19, 2012

U.S. SENATE,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER PROTECTION,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee convened at 10:06 a.m. in room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIRMAN SHERROD BROWN

Senator BROWN. The Subcommittee will come to order. Thank you for joining us. I will welcome Mr. Stone in a minute. We will have two panels today.

I thank Senator Corker. This may be our last hearing together like this on the Subcommittee, as Senator Corker moves on to bigger and better things, and I appreciate his cooperation and his good sense in asking tough questions during his Subcommittee hearings over the last couple of years.

Americans, as we know, depend on access to credit to fund our education, purchase homes, to run their businesses. That is why we need to address credit reports, one of the most significant and least understood elements of the consumer credit system.

This hearing highlights yet another benefit of Dodd-Frank and the new Consumer Financial Protection Bureau. In the past, the Federal Trade Commission has had authority over furnishers, those who send financial information to the credit bureaus. Those furnishers are, in most cases, banks. But it did not have the authority—the FTC did not have the authority to examine the credit bureaus themselves. They could only bring enforcement actions.

The CFPB has comprehensive authority now to examine the operations of credit bureaus, to shed new light on the credit reporting industry, about which we do not know much in many ways, and to write new rules of the road. That is just one reason why the CFPB is so important.

Though consumers are entitled to one free copy of each of their credit reports each year, one from each of the three bureaus, if they choose to do that, the CFPB finds that only one in five consumers request a copy of their credit year report in any given year. Last year, eight million consumers disputed more than 30 million items in their credit report, challenging their voracity or accuracy in one way or another. Even though each American, every American who

is in the credit system, as most Americans are, each American has three credit reports, one for each one of the bureaus, an error on just one credit report can affect that consumer's ability to access credit.

A former colleague of mine in the House of Representatives recently contacted my office. His wife had passed away earlier this year. When he applied for a mortgage, he was denied because one of his credit reports listed him as deceased. When he called the bureau to tell them that he is still alive, he was told that the error would take 30 days to correct, and 30 days is a long time if you are in the midst of a financial transaction, obviously. He got in touch with us. We fixed the problem for him, something he should not have had to do. But he still does not know what other credit reports say.

Unfortunately, that is just one story, admittedly, but these stories are all too common. An investigative series in one of my State's largest newspapers, the Columbus Dispatch, found that more than half of consumers who filed credit report complaints with the FTC, back when it was done that way still, had been unable to resolve their issues through the normal dispute process with credit bureaus. Problems abound, even for consumers with nearly flawless credit.

One of the Nation's foremost bankruptcy experts visited my office last week. She has nearly perfect credit and recently received an auto loan with a rate of 1 percent. She then received an adverse action notice in the mail explaining she may have received a higher than expected rate because of adverse information on her credit report. It is hard to think she could have gotten a rate below 1 percent, but it was not explained, and like most hard-working Americans, she did not have the time to really pursue the follow-up with the organization that sent the notice.

These examples, in my mind, show that the current system does not work always for consumers. It does work and is quite profitable for the banking industry, who are the main customers of those three bureaus, admittedly, but not for consumers who ultimately fact the impact of credit ratings, credit scores.

Creditors make money off of loans with higher rates. Their ability to report negative information too often gives them leverage over consumers. Credit bureaus are largely paid by the lenders, by the furnishers, in many ways, by the lenders themselves when they go back to the bureaus and ask for information. Conducting thorough investigations costs money and cuts into profit margins. Under the law, credit bureaus and creditors have some general commands, but few concrete obligations.

Too often, the burden is on the consumer, whose credit rating and credit score may not be accurate and whose interest rates on their financial transactions may be higher as a result. The burden is on consumers who do not know enough about their credit reports—too few people ask for them—or who do not have time to navigate the all-too-often arcane and confusing system.

I look forward to hearing from our witnesses how we can help to work together to create a system that really protects consumers' interests, is more transparent and more understandable to all of us who use our credit system in this country.

Senator Corker.

STATEMENT OF SENATOR BOB CORKER

Senator CORKER. Thank you, Mr. Chairman. I appreciate you calling the hearing and I have enjoyed working with you over the last couple of years, and I certainly look forward to the testimony of our witnesses and learning more about some of the issues around credit reporting. So thank you for being here and I look forward to your testimony.

Senator BROWN. Thanks. Thank you, Senator Corker.

Corey Stone is Assistant Director for the new Consumer Financial Protection Bureau's Office of Deposits, Cash, Collections, and Reporting Markets. Immediately prior to joining CFPB, Mr. Stone served as a Fellow at the Center for Financial Services Innovation, was Chair of Start Community Bank in New Haven, Connecticut, visiting clinical lecturer at Yale Law School's Community and Economic Development Clinic. From 2006 to 2008, he served as CEO of Pay Rent, Build Credit, an alternative credit bureau helping underserved thin file, he called them, consumers to demonstrate their creditworthiness using their rental and bill repayment history. He served as a member of the Federal Reserve Board of Governors Consumer Advisory Council. He is a graduate of Harvard and the Yale School of Management.

Mr. Stone, welcome, and thanks for your public service.

STATEMENT OF COREY STONE, ASSISTANT DIRECTOR FOR THE OFFICE OF DEPOSITS, CASH, COLLECTIONS, AND REPORTING MARKETS, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. STONE. Chairman Brown, Ranking Member Corker and Members of the Subcommittee, thank you for the opportunity to testify today on the consumer credit reporting industry.

Credit reporting plays a critical role in consumers' financial lives. Credit reports on consumers' financial history and behavior can determine their eligibility for credit cards or car loans and home mortgage loans, and they often affect how much consumers pay for their loans. The industry is critical in our economy. It promotes access to credit that consumers can afford to repay. Without credit reporting, many consumers likely would not be able to get credit at all.

Credit reports are also often used in a number of noncredit decisions about consumers. They can be used to determine whether a consumer is offered a job, a car, homeowners' insurance, or rental housing.

The CFPB is the first Federal Government agency that supervises both consumer reporting companies and the largest banks and many of the nonbanks that provide them with consumers' credit information. This responsibility is a priority of the Bureau. Last year, the CFPB published one report to Congress on credit scores and another report on whether remittance information might help consumers develop positive credit scores. Earlier this year we published a Consumer Advisory about credit reports. In July, the CFPB adopted a rule to extend its supervision authority to cover larger consumer reporting agencies. In September, the CFPB re-

leased its examination procedures for these companies along with a study examining credit scores—the three-digit numbers used to assess consumers' creditworthiness. In mid-October, the CFPB began handling individual complaints about consumer reporting companies. If a consumer files a complaint with a credit reporting company and is dissatisfied with the resolution, the CFPB is available to assist.

As many of us at the CFPB conduct outreach all over the country to learn how consumers hurt by the financial crisis are recovering, we have heard many express frustrations about their credit reports or credit scores. And we have heard a considerable amount of confusion and misunderstanding about credit reporting.

Last week, the CFPB issued a new report based on information provided by the big three consumer reporting companies—Equifax, Experian, and TransUnion—and their industry association. The report highlights the basic systems that credit reporting companies use to collect, organize, and maintain consumer credit information. It is one of the most comprehensive looks at the consumer reporting industry to date. And it represents a significant step forward in understanding this industry and making it more transparent for consumers.

Some of the key findings in the report are, first, more than three quarters of the trade lines in the credit bureaus' databases come from the top 100 furnishers of information. These are largely the large banks and nonbank lenders—and now the largest debt collectors and debt buyers—who fall under the CFPB's supervision. This means for the first time a Federal agency has the tools to examine and understand how well all parts of the credit reporting system are working—including both the sources of credit information and the credit bureaus themselves.

Another finding, more than a third of consumer disputes relate to collections items. In fact, the information provided by the collection industry is five times more likely to be disputed than information from the mortgage industry.

Another finding: A relatively small percentage of consumers—approximately just 20 percent—look at their credit reports each year. This is a shame because—while we do not know for sure how common inaccuracies are—it is likely that many additional consumers could identify and correct inaccuracies if they reviewed their credit reports.

Another finding: Most complaints are forwarded to the furnishers that provided the original information when they are submitted to the credit bureaus. Credit reporting companies on average refer 85 percent of complaints on to the furnishers that provided the original information. But documentation that consumers mailed in to support their cases may not be getting passed on to the data furnishers for them to properly investigate and report back to the credit reporting company.

The CFPB's report should help clarify the confusing world of consumer reports. It should help to inform policymakers and consumers about how this important industry works. If consumers know more about how these companies report on credit use, consumers should be better able to make decisions for themselves and use credit more wisely.

Thank you for inviting me to testify today. I will be happy to answer any questions you have about our report.

Senator BROWN. Thank you, Mr. Stone.

Expand on the last things you said, that if a consumer that is signing up, that is doing a refi of their home, of their home mortgage, wants to challenge her credit score and talks to one of the three companies that does that, typically—and sends documentation of something that she said is inaccurate—typically, the credit bureau does not go back to the original furnisher of the information with the—I mean, goes back to them, but not with the documentation that the consumer sent to the bureau, is that correct?

Mr. STONE. That is correct. If the consumer sends in paper documentation, if they were filing the complaint by mail or faxed it in or provided it in an email, that is correct.

Senator BROWN. There is also my understanding the CFPB's study noted that only 255 characters of consumer-supplied text typically can be provided. Some do not even have a text field available. That makes the consumer complaint less likely to be examined in the way that the CFPB would recommend. Is my understanding right about that?

Mr. STONE. Well, we do not know what happens when the complaint gets to the furnisher. We know that the text field can be filled in either by the consumer themselves when they file a complaint online, or if they call it in or mail it in, it can be translated onto a text field, that same text field, by a representative of the consumer reporting agency.

Senator BROWN. So my understanding is the law requires the credit bureau supply the furnisher with all relevant information. So is that a violation of the law, that they have not provided? Partly, it is a technology issue that, I would think, could be fixed easily enough, I would think. And, second, it is just an issue that they make a determination not to send the furnisher all this information. So is that a violation of at least the spirit of FCRA, or it is a violation of the law? What is it?

Mr. STONE. Senator, our purpose in putting together this paper, which is characteristic of the work of all of our markets teams, is, first, to be descriptive rather than prescriptive, so what we are describing is what we heard. We have many tools with which we can make determinations about whether the law is being violated or not, and in this case, that is what is going to happen. So we have found that this information is not being forwarded.

Senator BROWN. Is it a fair statement to say that consumers must provide evidence when they challenge a credit score, but that creditors are taken at their word?

[Pause.]

Mr. STONE. It is—to describe the system that way, I think, would be accurate. So you are saying that the consumer can provide information, it is not going to get to the furnisher necessarily in the form in which they provide it. It does get converted into codes. It can be put into this limited text field and it can get to the furnisher——

Senator BROWN. Or may not entirely be passed on.

Mr. STONE. It may not be passed on if it is a separate document.

Senator BROWN. And the consumer—the bureau, then, makes this determination by—I mean, there is no outside player here. There is the consumer going back to the bureau, the bureau going to the furnisher, perhaps with less complete documentation, and then the bureau ultimately making the decision which will affect the consumer's credit score, the consumer's interest rate, the consumer's access to credit generally, but all done internally with no real disinterested party making a determination, correct?

Mr. STONE. I would not say it is fair necessarily to characterize the credit bureau as not a disinterested party, but their interest is in making sure that the complaint gets passed on and they fulfilled that obligation. They have created codes and mechanisms to automate it as much as possible. And so the question is—is there more information that a furnisher could use to do a better investigation or not? So there are pieces of information that we know are not getting through.

Senator BROWN. One last question and I will turn to Senator Corker. The three bureaus make the great preponderance of their—the revenues for the three bureaus overwhelmingly come from the financial institutions, not from the consumer, correct?

Mr. STONE. That is correct.

Senator BROWN. So the most important customers to the bureau are the furnishers and those whom they send the credit scores and share the credit information with the financial institutions, correct?

Mr. STONE. That is correct, although I would point out that there is roughly a billion dollars of revenue earned by the three credit bureaus we are talking about today from consumers through credit monitoring services that they sell directly or wholesale through various partners.

Senator BROWN. Give me a couple of examples of—I know you pay $11 if you want your credit score. That does not make up much of the billion dollars, I assume. So where does it come from——

Mr. STONE. There is a subscription service that consumers can sign up for. That is how some of the 40 million consumers who get their reports, that we referenced in our report, are actually getting them. They answer an ad online or they go to one of the three bureaus or other people who sell these subscription services and say, yes, I would like to get a copy of my bureau reports and an educational score once a month, or once a quarter, and they pay $8.99 or $12.99 or some monthly subscription fee for that service.

Senator BROWN. OK. Thank you.

Senator Corker, thanks.

Senator CORKER. Thank you, and I know we have some witnesses that are coming right behind you. I will just ask one question, and hopefully we can get through everybody.

Has anyone raised any concerns about the accuracy of credit scores and their ability to predict? It seems to me that based on what our office knows, they have been very good predictors of behavior, generally speaking, and I know we are talking about a lot of different things today, but have there been any questions in your office about their ability to predict behavior, generally speaking?

Mr. STONE. Thank you, Senator. I am glad you asked that question. Obviously, people focus in on the score because it is a single number and it is easier to tell where you rank——

Senator CORKER. Right.

Mr. STONE.——compared to all the underlying information. Credit scores that lenders use are these three-digit numbers that are built on the information that is in the credit report. So one concern one needs to have is whether the underlying information is accurate. When it is not accurate——

Senator CORKER. Yes, I understand——

Mr. STONE.——then the score will be less predictive than when the information is accurate.

Senator CORKER. But, generally speaking, just out of curiosity, is there any sense in your office different than, generally speaking, they are pretty predictive, is that correct? I mean, I know there may be some outliers and I understand that there are some things that need to be rectified as it relates to consumers' ability to ensure that, you know, the credit ratings they have are accurate and they have access, and I value all those things. But, generally speaking, if someone's credit rating is correct and the information is there, are they fairly predictive for the future and useful in that regard?

Mr. STONE. Yes, Senator, the lenders have found them useful, and that has to be one way in which we need to judge them. But lenders depend on these scores. The mortgage industry depends on a specific score, or a specific set of scores. We do find increasingly that in the auto industry and the credit card industry, that lenders use multiple scores when they do underwriting decisions. They will not rely on just a single score, and they are increasingly relying on scores derived from other kinds of information besides that found in credit reports. So these are different kinds of scores and information is overlaid on top of the original score and the original credit report that would have been pulled as part of an application to make a determination about whether to accept an application and how to price that account.

Senator CORKER. So I would assume, since lenders lose a lot of money if they make bad loans, that having an indicator or a predictor of how people are going to handle their finances is something that is an asset and actually is an asset especially to people who keep their credit in good shape. Would that be true or false?

Mr. STONE. It certainly helps people who keep their credit in good shape and where that credit is reported accurately. One of the concerns that we need to be aware of in the building of credit is the impact that the very first credit lines that consumers establish have on their credit history. Credit scores rely on credit history and, therefore, scores are really using the past to predict the future.

And we know that different consumers start out with different kinds of products and the different products may have different likelihoods of resulting in good or bad payment behavior. One of the questions we are beginning to think about is whether bad loans and bad products make bad repayers and, therefore, can result in harm to consumers' credit histories.

Senator CORKER. Well, listen, I appreciate your efforts to ensure that when something happens on someone's credit report that is inaccurate and unfounded and, candidly, makes it very difficult for them to navigate the society we live in, I appreciate your efforts to rectify those things and make it easier for people to be able to

overcome that. I think that is an important thing. At the same time, obviously, they have some value and have been good predictors, and hopefully, when we are through with this process, we will end up in a place where they are still a useful tool, but at the same time, people who have been maligned inappropriately have the ability to rectify those, and I thank you very much for your testimony.

Mr. STONE. Thank you, Senator.

Senator BROWN. Thank you, Senator Corker, and I think we concur with that. That is where we want to get to. And I understand the valuable service that they provide.

Before turning to Senator Merkley, I ask unanimous consent to include the following documents in the record of this hearing: The National Consumer Law Center's report, "Automated Injustice"; second, a statement by the National Association of Credit Services Organizations; and third, articles from the Columbus Dispatch investigative series on credit reports that I mentioned in my opening statement. Without objection, so ordered.

Senator BROWN. Senator Merkley.

Senator MERKLEY. Thank you very much, Mr. Chairman, and I am going to jump right into an issue I have some concern about, which is the role of medical debt in consumer reports.

I found it fascinating with just my family of four, how many billings I get in the mail, so many letters saying, "This is not a bill, but here is the information," and after about four or five of those, "Here is a bill, but you need to check with your other insurance to see if it is covered," *et cetera.* And it has not been unusual for us to look at it and go, well, this should have been covered, and so we call up and say, "This should have been covered," and virtually always, we are right and it just simply was not processed the first time through. Maybe the insurance company just kind of stamped it and hoped we would not call back and say, "Well, but wait a minute."

I guess the portrait I am trying to lay out is, just from my personal experience, enormous confusion about what you are paying when, and people simply having to go through a complex set of hoops in order to really determine, do I really owe this or should it have been covered by insurance company number one, insurance company number two. Was it a mis-billing? It does not even look like it was the right charge for what I went in for.

So I have looked at all that and proposed that settled medical debt—in other words, after you have sorted through all that mess but you have reached an agreement on what you will—and you have paid it—should not be included in your credit score. And I thank very much the Chair of the Subcommittee, Senator Brown, for cosponsoring that.

But I wanted to ask about your sense of this. Before I do, I want to enter several things into the record. I would like the letter that the Chairman and I sent to CFPB's Director Richard Cordray on the need to address the impact of medical debt; his response back to us; a support letter by a broad coalition that includes the National Homebuilders Association, the Mortgage Bankers Association, the American Medical Association, the Consumers Union; and then two recent articles, one from the AP and the other from the

New York Times, highlighting the disastrous effect of medical debts on consumers' credit and their financial futures many years down the line. If I could enter those things into the record, I would appreciate it.

Senator BROWN. Without objection.

Senator MERKLEY. So, Mr. Stone, I wanted to get your perspectives on this. In your recent report, you cite research showing that 40 percent of all consumer disputes at credit reporting agencies related to collections events. But before we jump into just that piece of it, overall, this issue of the complexity of medical debt and resolving it, whether it is a good predictor, whether it should be part of the credit reporting system.

Mr. STONE. Senator, I appreciate your bringing this issue up. It is definitely a source of concern. The fact that collections items are disputed at very high rates is not a surprise, just because negative information gets disputed more often than positive information. So we should expect high rates on collections items.

As I think you have pointed out in some of your own correspondence, over half of collections items about 10 years ago in a Fed study come from medical collections items, which is way out of proportion to the role that the health care system plays in the economy compared to debt. So——

Senator MERKLEY. Is that the Federal Reserve study you are referring to?

Mr. STONE. That is the Federal Reserve study, correct.

Senator MERKLEY. Yes, 2003? OK.

Mr. STONE. So it is clear that consumers face enormous challenges just understanding medical bills, who is liable for what, dealing with insurance payments. Consumers get with a single procedure bills from multiple entities, some of whom they may not have even been aware they were being treated by—the anesthesiologist, the ambulance driver——

Senator MERKLEY. The laboratory that is involved——

Mr. STONE.——the laboratory, all of that stuff, and it is not clear when a bill is a bill.

One of the complicating factors is also that many health care providers outsource not just collections, but their whole accounts receivable function to agencies who manage the billing. And so the timing of when an item gets charged off or is treated as a collections item and then ultimately gets reported to a consumer reporting agency can vary considerably from provider to provider. There is not a single set of rules out there that happen in the medical billing environment that have evolved, unlike what has evolved in, say, the credit card industry, where a charge-off happens at a particular period of time.

So some collections items show up earlier and before even some of the responsibilities on who owes what or a formal invoice may have been received.

Senator MERKLEY. So, given all that, when a person has worked their way through all that and settled the debt, should it still be on their credit report?

Mr. STONE. So there are a couple of issues raised by that and I think that those are questions that you will have to answer in the

process of developing your legislation. But one of those is simply——

Senator MERKLEY. No, no, no. I am asking you for your expertise. I have already developed the legislation.

Mr. STONE. So here are the things——

Senator MERKLEY. I already know my answer to it.

Mr. STONE. Here are the things that we are looking at, and I have to tell you, we are looking at them now and I do not have firm answers. But one question, obviously, is to what extent medical items, or certain medical items—and many of these are very small, as you know, $100, $75——

Senator MERKLEY. Seventy percent under $250.

Mr. STONE. Yes, tiny items. Are they predictive if they are not paid? Many consumers find out about them only when they go to apply for a loan and they learn that there is a collections item. So the idea that the collections item for those consumers was something that was willfully not paid or that could not be paid is not something that you can infer. And so for those people, one could argue that it would not be predictive of anything regarding ability or willingness to pay, which is kind of the way credit history is used and reflected in credit scores.

A second issue is where in the system one wants to hold accountable the filter for determining what is and what is not predictive. We have the credit reporting agencies who collect the data, and then we have score developers such as FICO and VantageScore who translate the underlying data into something that is predictive of creditworthiness. And so they have the ability to leave out information that is unimportant. They have the ability to distinguish between items that have been there for a long time versus not, or between the large items and small items, and those are things that a score developer could determine. We actually have purchased a panel of anonymized consumer data from one of the credit reporting agencies that will have this medical data and from which we will be able to make a determination about the predictiveness of this data.

Senator MERKLEY. Terrific. I am going to have to cut you off there because I am way over my time. I do want to take note that VantageScore does throw out most medical data, and my understanding is they do not consider it to be predictive. But, still, this data is in the scores and it is affecting millions of Americans. And again, I am only arguing that when people have settled these, gone through the complex process of determining which insurance company should have paid what, they settle it, but by that time, it has already been reported and it is on their credit record for 7 years. Between the fact that a lot of the industry does not consider it predictive and the fact it does so much damage, it seems to me it ought to come out and I look forward to the results of your study. Thank you. Thank you, Mr. Chair.

Senator BROWN. Thank you, Senator Merkley.

Before calling on Senator Akaka, I believe this probably will be his last hearing, at least in the Banking Committee, and I appreciate your work, especially the work you have done for the underbanked and the unbanked, how that is a persistent problem in our society, and we have looked to your leadership, Senator Akaka, on

that issue and also on financial education. Thank you for all of your work in all of that. I yield to Senator Akaka from Hawaii.

Senator AKAKA. Thank you very much, Mr. Chairman. Chairman Brown, it is so good to be here with you and the Committee. I have enjoyed working with all of you here. Of course, we are here to help the people of America.

First, let me just say thank you very much for holding this hearing today and for all of your work on consumer protection issues, Chairman Brown. I know you agree, when Americans make wise economic decisions and are protected from bad actors, our economy and Nation are stronger for it.

It is fitting that a hearing on the topic of consumer protection will be my last as a Member of the Senate. Financial literacy and consumer protection issues are very close to my heart. So while my Senate career is coming to an end, I know there are many of my colleagues who will continue to empower consumers to make the best financial decisions possible. So thank you very much to my colleagues here on the Committee, also Chairman Johnson and Chairman Brown and Senator Reed, Senator Merkley, Senator Hagan, and others who I know share my strong interest in consumer protection issues.

I also appreciated the dedicated work of the Committee and the staff and personal office staffs, as well, because we have worked together very well to do so much to support the work that we do, so thank you, again, as well.

And I want to thank our witnesses for your tireless work on consumer protection.

Mr. Chairman, I ask that my full statement be added in the record——

Senator BROWN. Without objection.

Senator AKAKA.——and I would like to ask just a couple of questions.

Senator AKAKA. We are glad to have you here, Mr. Stone. I am so glad to see that the Consumer Financial Protection Bureau is working out here. I look forward to your work.

I believe that it is important to have a complete picture of an individual's financial record when calculating a meaningful credit report. I fought to include a report on remittance transfers in the Dodd-Frank provisions. Last year's CFPB report on the remittance transfers mentioned research that the CFPB planned to do to address the potential for using remittance histories to enhance credit scores. So my question to you is, can you please discuss any progress being made in those research projects.

Mr. STONE. Yes, Senator. First, let me thank you for making sure that that report requirement was inserted in Dodd-Frank. It is an important issue of what kinds of information are going to help provide a complete history that gives all consumers an opportunity to get access to credit.

As you pointed out, we did provide an initial report last year and that dealt with some of the strengths and weaknesses that we would anticipate would be involved in using remittance history. For context, lots of people who send remittances are people who have thin files, so it is a great opportunity for a new kind of information to enrich our understanding of their ability to pay and financial

wherewithal. A downside of remittance information is that it is not an obligation and, therefore, does not provide indications of whether an obligation has been met.

I am happy to say that since we completed that report, we received a sample of information from one of the largest remittance providers, transaction history, all anonymized on a very large sample of consumers. That information has been matched with those consumers' credit histories so that we have remittance history and we have how those consumers performed on their credit obligations subsequent to that remittance history. Right now, we are doing the analysis to determine how useful the remittance transactions are in predicting the credit performance and repayment history of those consumers. So we expect that report to be finished in the second quarter of calendar year 2013.

Senator AKAKA. Well, thank you very much for that.

The CFPB report discusses the many ways that credit reports affect the lives of Americans, from finding a job to finding a home, two fundamental topics when we talk about moving our economy forward. Yet, less than one in five consumers accesses their credit report. Please tell me, what is the CFPB doing to encourage people to access their credit reports?

Mr. STONE. Thank you, Senator, for asking that. It is important to us that consumers access their credit reports, and we have a number of mechanisms to do so. As you know, we have a whole Consumer Education and Engagement Division. That office posts blogs. We develop content that gets distributed through all kinds of community partners. We also make sure people are aware of research that shows what the benefits are of people seeing their credit reports and knowing their credit reports and knowing their credit scores. In fact, there was a very recent article from the Federal Reserve Bank of Boston that showed some of the potential benefits of consumers knowing their scores when they apply for credit and the handicap of not knowing their scores.

I want to call attention to our particular constituent offices that were part of the formation of our Consumer Education and Engagement Division. We do special outreach to service members through our Office of Service Member Affairs headed by Holly Petraeus. We have an Office of Students. Our Office of Older Americans is headed by Skip Humphrey. These offices have developed specialized channels for communicating what in particular about credit reports and scores is important for these particular groups to know, and we are trying to make the message available to each of these groups at the most teachable moments.

Senator AKAKA. Well, thank you very much. May I then ask you to please pass my aloha to Holly Petraeus. She did come out to Hawaii, and particularly to talk to the military about financial literacy, and she did a great job, and the staff that came with her, also. So I am proud of what you folks are doing to help the people of our country.

Mr. STONE. Thank you, Senator. I will be happy to pass on your greetings to Mrs. Petraeus.

Senator AKAKA. Thank you very much.

Thank you, Mr. Chairman.

Senator BROWN. Aloha. Thank you, Senator Akaka.

Thank you very much for your testimony, Mr. Stone.

The Chair will call up Stuart Pratt and Chi Chi Wu, if the two of them would join us.

[Pause.]

Senator BROWN. I thank the two of you. Stuart Pratt is President and CEO of the Consumer Data Industry Association headquartered in Washington. He has advised U.S. Presidential and gubernatorial task forces on the importance of the free flow of information to the economy. He has testified often before Congress. He serves as an advisor to the Department of Commerce regarding E.U.-U.S. trade negotiations and has counseled private and government entities overseas on responsible uses of consumer data. He serves on the U.S. Chamber of Commerce's Committee of 100 and on the Advisory Council for the National Foundation for Credit Counseling. He received his Bachelor's degree from Furman University and conducted his graduate studies in business at the University of Maryland. Welcome, Mr. Pratt.

Ms. Wu, Chi Chi Wu, has been a staff attorney at NCLC for over a decade. Her specialties include fair credit reporting, credit cards, refund anticipation loans, and medical debt, which Senator Merkley asked about. Before joining NCLC, she worked in the Consumer Protection Division at the Massachusetts Attorney General's Office and the Asian Outreach Unit of Greater Boston Legal Services. She is a graduate of Harvard Law School and the Johns Hopkins University. She is coauthor of the legal manuals Fair Credit Reporting and Collection Actions, and a contributing author to Consumer Credit Regulation and Truth in Lending. Welcome, Ms. Wu.

Mr. Pratt, would you begin. Thank you.

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

Mr. PRATT. Chairman Brown and Ranking Member Corker, thank you for the opportunity to be here before you today.

Let me just touch on a few highlights of the written testimony that we have already submitted. To start off, I think that we talked a little bit about credit reports and whether or not consumers really understand them or not, but they really are the strongest advocate for me as a consumer. When I walk into the bank, the bank does not know me. Lenders do not know me. Forty million of us move every year in this country. We move to new cities. We need to engage in business. And the credit report is the bridge that tells my story. It is about my hard work. It is about how I pay my bills. It is about the good decisions I make. It is about personal responsibility. So credit reports at their very best are an incredible indicator to others of everything about me that you want somebody else to know about me.

In fact, USAID, the International Finance Corporation, Bank of International Settlements, and the World Bank are all so deeply involved—they are so supportive of credit reporting that they are involved in spreading this good news around the world. And, in fact, I serve on an International Task Force for Credit Reporting Standards to try to advance credit reporting in other parts of the world, as well.

The system is big. I think the CFPB's report laid it out very well. Two-hundred-million consumers plus have a credit report in this country. About 10,000 lenders and other data furnishers are supplying data. There are about 1.3 billion accounts in the credit reporting system and about three billion updates every month going into that system, as well.

With all of that said, our members are confident of the accuracy of the system that we have, and they should be. They work on accuracy 7 days a week.

We provided the FTC with data free of charge so that they could conduct their study of accuracy, and I think it is imminent. They are going to release their report soon, and we will see what they have to say.

We did not wait for the FTC, however, to measure the question of accuracy, and, in fact, we wanted to answer the question that consumers most often asked of us, and that is, is there an inaccuracy on my credit report that is consequential, one that is likely to affect the mortgage loan for which I am making application? And I think there is some good news in all of that.

We contracted with an outside group, the Political and Economic Research Council. It was an arms'-length grant that we gave to them. They controlled the data. They controlled the results. They controlled the press releases. That was their study, not ours. And, in fact, it was a very powerful study. It was peer reviewed by professors at the Wharton School of Business, University of Pennsylvania, Duke University, and UNC–Chapel Hill.

So what does it mean to me as a consumer? Well, about less than 1 percent of the time will a dispute and a correction of data my credit bureau filed result in a 25-point change in my credit score, and less than a half-percent of the time, or about a half-percent of the time, I will see myself move from a higher-priced pricing tier to a lower-priced pricing tier. So 99.5 percent of the time, I am not likely to see something that my credit bureau filed that is really going to impair my ability to engage in the marketplace and to lose out on the offer that I really am seeking in the first place.

Reinvestigations, another big issue that we have talked a little bit about already this morning. We also asked consumers how they felt about reinvestigations, and most importantly, the result of the reinvestigation. We did this in tandem with the work that the PERC had done with their accuracy study and we got a bit of good news there, as well. Ninety-five percent of the consumers that disputed information on their credit reports and then saw the results indicated that they were satisfied with those results, 95 percent.

Automation really is not the problem. We have heard that sometimes, but it really is not. We solved fundamental problems for consumers with automation. I go all the way back to the 1990s when we depended on mail for processing disputes. Today, it is a highly automated system. It is Web-based. It wires together about 15,000 to 18,000 financial institutions. And whereas law requires that we resolve a dispute in 30 days, these automated systems allow us to resolve disputes in 14 days.

We had a little bit of a discussion of paperwork already this morning, so I thought I would add a bit to CFPB's report. CFPB and our own research indicate about 44—roughly 44 percent of the

time, the consumer sends a communication about a dispute through the mail. They send us paper. However, 85 percent of the time, it is just a standardized form or a single-page letter. Ten percent of the time, it is an identity theft report, and maybe two to 3 percent of the time is it something more than that. That is really important, because I think the perception has been consumers are sending big stacks of validating data. Some of that is not getting to the lenders. But we see consumers satisfied at 95 percent and we see a system which is working today even though it is automated, because, in fact, it turns things around faster, serves that consumer who is in the middle of that lending transaction.

One of the biggest challenges for reinvestigations, however, is credit repair. Forty-three percent of the mail we receive comes from fraudulent credit repair activity, 43 percent. It clogs the system. It interferes with process. Consumers, when they hire a credit repair, often do not know what the credit repair agency is going to do. Credit repair agencies take money from consumers in cases where, in fact, they could exercise their rights free of charge. We are grateful for the Credit Repair Organizations Act having been enacted. We are grateful for FTC enforcement. But credit repair is one of our greatest challenges.

I am happy to go forward. I see my time has expired, however, Mr. Chairman, so I will leave it at that and I look forward to the questions and answers. Thank you.

Senator BROWN. Very helpful. Thank you, Mr. Pratt.

Ms. Wu, welcome.

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

Ms. WU. Mr. Chairman, Ranking Member Corker, Members of the Subcommittee, thank you for inviting me here today. My name is Chi Chi Wu. I am a staff attorney at National Consumer Law Center.

Mr. Chairman, thank you for holding this hearing about the American credit reporting system. Credit reports play a critical role in the economic lives of Americans. They are the gatekeeper for affordable credit, insurance, sometimes, unfortunately, even a job. Yet despite their vital importance, the system is full of preventable errors, and the dispute mechanism mandated by the Fair Credit Reporting Act to fix these errors has been turned into an automated travesty of justice.

Consumer advocates have been complaining about these issues for over a decade in numerous hearings, reports, and media articles. These issues were discussed in a 2006 report by the FTC, by the groundbreaking series this year in the Columbus Dispatch that the Chairman mentioned, and in a report released just last week by the CFPB.

Preventable errors include what are called mixed files, where credit information relating to one consumer is placed in the file of another. Mixed files happen because the credit bureaus' matching criteria are too lax. In particular, they match information based on seven out of nine digits of the Social Security number if the consumers' names are similar. Mixed files could be prevented by requiring the credit bureaus to have an exact match of Social Secu-

rity numbers, the one piece of unique identifying information that most every American has.

Debt collectors and debt buyers present their own special types of errors created by the fact that they usually do not get any of the supporting documentation to establish that the consumer actually owes the debt, the correct amount, whether there are any disputes, or even if the collector is dunning the correct consumer. The report issued by CFPB indicates a disproportionate number of errors involve debt collectors, given that they only provide about 13 percent of the accounts to the credit bureaus, but generate 40 percent of the disputes.

Now, the industry has attempted to rebut these issues by citing the studies that they funded showing less than 1 percent of reports contain serious errors. We have a number of concerns about this study and it contrasts with studies by consumer groups and polling surveys finding higher rates. But even if we take this 1 percent error rate at face value, that figure translates into two million Americans, given that the credit bureaus have information about 200 million Americans in their databases. That is not acceptable. Would we accept it if 1 percent of airplanes fell out of the sky?

As for the dispute process, we have documented the broken nature of the system in our 2009 report, Automated Injustice, which we thank the Chair for introducing into the record. Credit bureaus translate disputes, sometimes painstakingly written by desperate consumers, into two- or three-digit codes. They use the same handful of codes over 80 percent of the time. And the entire role of the foreign workers employed by their offshore vendors to handle these disputes amounts to little more than selecting these codes. They fail to send documents, as has been mentioned, that have been submitted by the consumers, such as canceled checks, payoff statements, even court judgments, to the furnishers involved in the dispute.

Then the credit bureaus blithely accept or parrot whatever the furnishers respond with, no matter how good the consumer's evidence is to show they are right, even when the furnisher is a debt buyer or debt collector with a known record of bad behavior. The consumer is not only always presumed guilty, but she cannot even get an innocent verdict if she provides proof and the furnisher just says, "Nah, she is guilty."

For their part, furnishers also engage in nonsubstantive investigations, mostly limited to ensuring data conformity between the records maintained by the credit bureaus and their own records. For instance, the FTC just brought a case in which it alleged that Asset Acceptance, a debt buyer, required its dispute handlers, 14 or 20 of them, to handle half-a-million disputes a year—that is, to process one dispute every 3 minutes.

The end result of this broken system is that no one, either at the credit bureau or the furnisher, conducts any sort of meaningful inquiry into the consumer's dispute, such as examining documents, contacting the consumers by phone or email, or exercising any form of human discretion in resolving a dispute.

Reform needs to happen now. It should have happened years ago. We have high hopes for the CFPB, now that it has begun formal supervision of the credit bureaus. But Congress can help, too, by

giving consumers the ability to seek injunctive relief under the Fair Credit Reporting Act.

Turning to medical debt, this is an issue with enormous impact on credit reports. We support the Medical Debt Responsibility Act and thank Senator Merkley for introducing it. It is probably the simplest and quickest fix out there to improve the credit records of millions of Americans. As we have heard, medical debt makes up over half of the items on credit reports for debt collection, and it is often for services that are involuntary, unplanned, and unpredictable. It could result from a dispute between the insurer and provider or a mistake in billing. When mistakes occur, delay happens and bills can be sent to collection agencies in the meantime. Now, tell me, how does the fact that a consumer got caught between an insurer and a hospital in a billing dispute make him or her a bad credit risk?

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

Senator BROWN. Thank you, Ms. Wu.

Before beginning questions, I turn to Senator Corker for a couple of comments.

Senator CORKER. Mr. Chairman, again, thank you for this hearing. I am going to step into another meeting, and I know we all have multiple things to do today, but I think this has been very enlightening.

Mr. Pratt, I thought your testimony was, from the standpoint of the credit folks, very, very good. And, Ms. Wu, if I am ever in a situation, which I hope I am not, where I need an attorney for that kind of thing, I am going to call you. You are very good.

[Laughter.]

Senator CORKER. So I hope that—you know, look, we all want this to work for everybody, and obviously there are some issues here that need to be resolved and I hope we can do that.

And I want to thank you again for calling this hearing and for your leadership, and I will see you later today.

Senator BROWN. Thank you, Senator Corker. Thank you. Thanks very much.

And I thank both of you for testifying, and I endorse Senator Corker's comments about the two of you and your insightful testimony.

Mr. Pratt, let me start with you. Is it feasible for credit bureaus to share documentation with furnishers? I understood you said that, more often than not, it is a one-page document. I understand the technology issues. But I understand, also, that it seems pretty certain that the bureaus do not share that information with furnishers when furnishers, it seems to me, should be able to see it. Is it feasible for them to begin to share all of that information each time?

Mr. PRATT. So, I think if you look at technology, the answer is there is probably some technologies we could look at, and, in fact, we are always in that dialogue. Is there a way to improve the reinvestigation process? Is there some new mechanism that we could put forward?

Just to give you an idea of one of the challenges, though, when you do get, I guess, a thicker letter, and that is consumers will

often talk about two or three different accounts on the same front page of the letter. One of our challenges is we cannot send a Bank of America information about Citigroup or information about another lender. So how do we parse through the letter and make sure that we get the right information to the right lender? So one of the legal issues we have—it is a matter of law issue—is how to unpack complicated communications so that data could be sent from one party to another if, in fact, it is going to advance the ball beyond the coding systems we have today.

Again, our measure is we think we are getting it right. In other words, most of the letters come in and they say, "That is not my account." Or most of the letters come in and say, "I never missed a 30-day late payment. Go talk to my lender."

And, by the way, I will say one more thing, and that is more consumers, I think, with a complicated dispute, are choosing to dispute directly with their lender the issue that they have, and this is something that was done——

Senator BROWN. Even if the lender is not the furnisher?

Mr. PRATT. Well, the lender in this case would be the furnisher.

Senator BROWN. OK.

Mr. PRATT. I mean, right. So, yes. In the case where my lender is the furnisher, I, actually, through the FACT Act, an Act, of course, that you voted on, as well—the FACT Act actually pushed forward the idea that sometimes I may need to go talk directly to my lender and I should have that right under the law, under the Fair Credit Reporting Act, and sometimes I may go to the credit bureau. We see more consumers with complicated issues going to the lender to resolve the issue, and that is why I think you will continue to see that evolution going forward. I think it was a good idea that was put into the law in 2003 and it is one that consumers are beginning to take up——

Senator BROWN. But it seems, more often than not, the furnisher and the lender are not the same institution.

Mr. PRATT. No, they are—if a consumer says—if a consumer looks at his or her credit report and says, here is a credit card issuer. I disagree. I never missed 30 days. Then, obviously, assuming I do not think that that account is——

Senator BROWN. That is if they have their credit report.

Mr. PRATT. Yes.

Senator BROWN. But if they look at their credit score and then they see—when they are in the middle of a transaction with a financial institution, they look at their credit score——

Mr. PRATT. Right.

Senator BROWN.——they question why it is that low——

Mr. PRATT. Right.

Senator BROWN.——and they then come back to you, to the credit bureau, and the credit bureau—I mean, I think that consumers do not—I mean, this is a sort of a dense kind of a black hole for consumers dealing with the credit bureau so often, and if the credit bureau is not sharing the information with the furnisher, there is sort of no good appeals process for that——

Mr. PRATT. Well, you know, we want that process to work, first of all. You know that. I know that. It may not be——

Senator BROWN. Why would you not share—I understood the one reason you would not share with furnishers, but that is not the story every time.

Mr. PRATT. But the primary reason is because furnishers themselves—it is a voluntary system. Historically, we have had to be very careful about overburdening the system where a furnisher says, you know what? I have just decided to stop sharing my data. So that is one challenge. So we try to automate and make sure that we deliver the right information to the furnisher so the furnisher can process that information effectively.

I would tell you today that if a consumer writes a single-page letter and says, "That is not my account," furnishing the letter does not do anything to change how that lender is then going to investigate the data. If the consumer says, "I never missed a 30-day late payment," whether it is a code that says, "Never missed payment," or whether it is a letter that says, "Never missed payment," it has the same effect and the lender is going to process the dispute in precisely the same way.

So I think the wheat and the chaff here is there is very little communication coming over the transom to the credit bureaus that is large, thick, complicated sets of data.

And, by the way, on the letter writing side, I will tell you this, Senator Brown. One of the challenges we have is credit repair is flooding the mail-based system. Forty-three percent of what we are getting is coming from credit repair. Credit repair is out there saying, we will dispute unverifiable data, but what they mean is I will dispute the same information over and over and over again until the lender stops reporting it, even if it is accurate. And so 44 percent of our mail—and if we keep pushing that mail or those disputes back out to that lender, all we are doing is harming the system.

So one of the great challenges we have, it has been around for a long time, the Credit Repair Organization Act was enacted in 1996. The FTC has been enforcing the law. State Attorneys General have been enforcing their State laws. But it is a challenging issue for us.

Senator BROWN. Thank you.

Let me shift for another round of questions to the Asset Acceptance that you brought up, Ms. Wu. Why did credit bureaus—and then certainly Mr. Pratt has a chance to respond to it, too—why would credit bureaus keep accepting customers that have a poor record of compliance? Talk through more of the Asset Acceptance, what happened.

Ms. WU. Well, that is a great question, Senator Brown, and it is a very simple answer. It is, money talks. Asset Acceptance—just a little background—Asset Acceptance is a company we complained about in 2007 before the House. It is a debt buyer, a particularly notorious debt buyer. They were subsequently sued by one of the credit bureaus for supplying inaccurate information to that credit bureau, getting that credit bureau involved in a lawsuit——

Senator BROWN. Five million accounts, is that number correct?

Ms. WU. Uh——

Senator BROWN. They were sued for providing false information for several million accounts, is that——

Ms. WU. I do not remember the exact number, but it was a class action involving a number of accounts. And then, just this year, the Federal Trade Commission sued them for egregious violations of the Fair Credit Reporting Act.

This is the type of furnisher that is constituting about 40 percent of the disputes, by the way. This is the kind of furnisher that the industry says it does not want to burden with the obligation of resolving the disputes. I think they are required by law to deal with these disputes.

But, anyway, the reason that Asset Acceptance is still in the system—and we think they still are because their SEC filings so state—is because they are the customer. They pay the credit bureaus both to enter their information into the system and to pull reports. They are a subscriber. And it is the creditors and the debt collectors that are the major customers of the credit bureaus, not the consumer.

This is an industry unlike every other industry in the United States, or almost every other industry. Usually, in an industry, you have competition. A consumer has a choice. If they do not like one cell phone carrier, they can go to another. In this system, consumers do not have a choice. If you are unhappy with how Experian handles your information, you cannot say, "I am not going to deal with Experian anymore. I am only going to deal with TransUnion," because, you know what? If you want a mortgage, you have to go with Experian. So there are no traditional market forces to improve the services to consumers.

On the other hand, creditors and debt buyers, like Asset Acceptance, can choose between the credit bureaus, and they are the ones who are paying the bulk of the revenues.

Senator BROWN. Mr. Pratt, you can certainly answer that, but answer this, too. Given the history of bad behavior among some debt collectors, should there be a higher standard for these furnishers and for credit bureaus that work with them?

Mr. PRATT. So, let me do two things. I will answer that question, and it kind of ties back, of course, to some of Ms. Wu's comments.

First of all, I think it is just fundamentally wrong, what Ms. Wu is saying about our relationships with consumers. National credit bureaus, and I think Mr. Stone described it, as well, are seeking a relationship with consumers and tens of millions of consumers have that relationship every year through these products and services they make available——

Senator BROWN. But you do acknowledge the relatively small part of revenues for the——

Mr. PRATT. To the contrary. To the contrary. One of our national credit reporting systems, their direct-to-consumer relationships generate more revenues than their credit bureau. To the contrary. It is an important relationship that is developing and evolving. It is market-based. It is free market-based. It is exactly what we should want in this country, and it operates conterminously with the rights that I have under the law, which I can certainly exercise free of charge.

Senator BROWN. Your revenues—of the three major——

Mr. PRATT. One of our members has a revenue stream——

Senator BROWN. One of the big three gets more money from consumers than they do from lenders, furnishers, other financial institutions?

Mr. PRATT. That is right. That is right.

Senator BROWN. The other two——

Mr. PRATT. The world is changing.

Senator BROWN. What is the ratio on the other two?

Mr. PRATT. I cannot tell you.

Senator BROWN. You know a lot about the one. Do you not know about the other two?

Mr. PRATT. Yes, I just do not have math in my head that I can tell you exactly. It is obviously less than that.

Senator BROWN. OK. Fair enough. Proceed.

Mr. PRATT. So I think it is just patently wrong to say that we are not seeking a relationship with consumers. And it is also patently wrong to say that we want to have a less than—some sort of substandard system for processing reinvestigations. All I can tell you is when we look at our metrics, we have one of our companies that measures every time a consumer goes through and talks to an operator, "Would you like to take a survey and tell us how we did? Please sign up before you talk to the operator." You know, one out of five—one to five, do we do a good job. The average is 4.5 for consumers.

We are measuring and looking for ways to serve consumers through what the law requires, and we are also looking for ways to serve consumers in the marketplace that we have. Both are important ways for us to reach consumers.

I would also say that there has been a lot of discussion of consumers being confused about credit reporting, but I have it in the testimony, the Consumer Federation of America, totally independent from us, often one of our critics, has surveyed consumers and said progress has been made. Consumers understand credit reporting better today than ever before, and by many, many multiples over earlier surveys. So we are making progress with that. So I think it is probably wrong to say that we are still in the same place that we might have been back in 2003 or back in 1996.

Why do credit bureaus do business with—debt collectors are certainly one community with whom we do business. That is true. And I think that Mr. Stone said it just right. Because debt collectors report negative information, their dispute rate will be higher.

We, however, as credit bureaus, evaluate every new incoming data furnisher. They go through probationary periods. Actually, the CFA White Paper does a great job of outlining the process by which we check and bring a new furnisher on board. Examinations that the CFPB is conducting are looking at that very question. How do we bring a new customer on board? And we also have an ongoing audit process for every set of data that is coming into the system to make sure that we quality control for what is coming into the system before it is loaded into the system.

So this is not the Wild West description that I think we sometimes run into. It is a very deliberate, very careful quality assurance process, which is why, by the way, I think you see dispute rates that are running around—bank card retail, a dispute rate of 0.17 percent. Even with collection agencies, by the way, the dispute

rate runs around 1 percent of all data reported. So when you look at it in the macro level, the dispute rates are incredibly good relative to the amount of data that is reported. That is what is showing up in the accuracy study that we sponsored in the first place.

Senator BROWN. Do you want to specifically—and thank you for that. Do you want to specifically respond to the Asset Acceptance question?

Mr. PRATT. Yes. I cannot speak to Asset Acceptance specifically other than, obviously, one of our national members felt that there was a basis for them to sue the company for what was being furnished in the first place.

Senator BROWN. Great.

Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chair.

First, I wanted to ask both of you about the use of credit scores in employment. Are we setting up a vicious cycle where a person's credit score may affect their ability to get employment, which, in turn, obviously, affects their ability to pay bills? Ms. Wu.

Ms. WU. Thank you, Senator Merkley. Yes, we have taken the position and strongly oppose the use of credit reports in employment, except in very limited circumstance. We think it harms American workers. It does create a vicious catch-22. If you lose your job, you cannot pay your bill. Your credit report is damaged. And now your credit report is being used against you when you are getting a job. It just sets up the worker to fail. It puts them in a horrible bind.

When you are talking about our most recent economic recession, where we had almost 10 percent unemployment, we have millions of consumers affected by this practice. We know that a lot of employers use it. The statistic is 60 percent of employers use credit reports in some form or another in jobs.

We also think it has a disparate impact on minorities. We have evidence and statistics. Every study shows that, as a group, certain minority groups have lower credit scores. If credit scores are supposed to be an accurate translation of the credit reports, that means this practice disproportionately affects those communities.

So we have supported bills in the House before to restrict this practice.

Senator MERKLEY. What is the employer's best argument for using the credit score, and how much weight do you think that carries?

Ms. WU. Well, I think some employers make the argument that the credit report is somehow a reflection of personal responsibility, that it shows hard work, you know, good values. But I submit that people with damage on their credit report often are the victim of circumstances, of bad luck. They lose their job. They cannot pay their bills. They get sick. I mean, we just had this discussion about medical debt and how a lot of the damage on credit reports is from medical debt.

So I do not think credit reports are a reflection of personal responsibility. I think they are a reflection of circumstances, bad luck, and sometimes hard times.

Senator MERKLEY. What about student loans? We have this recognition that student loans now involve more debt across America

than credit cards. And, of course, when you come out of college in a setting like this and you cannot get a job, your student loans are due. Is that proving to be a challenge for people trying to get work in that their student loans create bad credit because they do not yet have a job to pay their student loans, and then that makes it impossible to pay their student loans?

Ms. WU. Yes, student loans certainly show up on credit reports and certainly have an impact on credit reports and credit scores. And then what we have heard, at least in the past, is that if you have deferments, it actually affects the credit score in another way having to do with the ratio of credit available to credit outstanding. So it definitely does have an impact on credit reports.

Senator MERKLEY. Does this create kind of a generational bias, in that if you are fortunate enough to have parents who can cover your student loans, you then have a much enhanced ability to get a job as compared to someone who did not have parents who could pay your student loans while you are in that process of looking for work?

Ms. WU. I think credit reporting and credit scoring often reinforces gaps in the economic circumstances, whether they are generational, because of what has been happening in our economy and how the younger generation is being impacted by high unemployment; whether it is racial, by sort of baking into the system centuries of discrimination and racism. You know, the evidence we have with credit scoring is that the good scorers tend to have their scores go up. The bad scorers, their scores go down because they have to pay more for credit. They have to pay more for insurance. Remember, credit scores are often used in insurance. Everybody needs insurance if you are going to drive a car, if you are going to own a home, and you are going to pay a lot more if your credit score is low for insurance.

And so the burdens placed on a consumer economically because of a bad score makes it financially harder for them to dig out and reinforces that sort of vicious cycle.

Senator MERKLEY. Now, in insurance, you have a situation where, if you do not pay your bill, you lose your insurance, so there is no kind of credit outstanding, if you will, and no credit issue. Why would a credit score be used in that setting?

Ms. WU. From what we understand from the industry, they use credit scores because they have found them to correlate with loss ratios, in other words, when people file claims. Again, industry claims that the reason why credit scores are correlated with loss ratios is that consumers who are bad with their credit reports are just bad drivers and have messy lives. Again, we submit that the correlation has to do with economics. People with low scores may have lower income, have more difficult financial situations, and if they are in a fender bender, they are more likely to file a claim. It is all about the money.

Senator MERKLEY. Mr. Pratt, what do you think about this issue of employment and the fact that we are baking into the process the biases from a previous generation in terms of parents' ability to cover debts, or particularly student loans, and thereby kind of putting people on an unequal footing going forward?

Mr. PRATT. So I think the news is better than that, so let me share just a few thoughts with you. First of all, the Society for Human Resources Management, which represents a lot of the human resources folks in this country who do this sort of thing for a living, has been polling their members regularly, trying to learn more about, first of all, what is going on in the marketplace today, and today, really, only 53 percent of employers who conduct a background check are using a credit report for any job, and it is really important to know there is a difference between saying 53 percent of employers use it for one out of ten jobs versus 53 percent of employers use it monolithically for all jobs. There is no employer that is using it monolithically for all jobs that are out there.

Number two, the folks they surveyed said 80 percent of them have hired somebody despite poor credit. This is because the human resources folks are saying, we are looking for something in particular, something that may deal with personal responsibility, but we are usually doing this after we have made a contingent offer. So at that point, I am going to talk to you about your circumstances. At that point, I may be interested in why you have some delinquent student loans. But at that point, I may also say, "I get it. I absolutely understand it. If you do not have a job, you cannot pay your loans. I am going to give you a job and you are going to be able to pay your loans." And in this case, I do not think that this delinquency that shows up on a student loan has anything to do with how you are going to perform in the particular job that I have available.

So, in fact, that is what we see. Eighty percent—and, by the way, credit reports are used most often for positions with financial responsibilities, for senior executive positions, and employees who have access to highly confidential information. So there is a certain cabined-in population. So it is a narrow set of jobs.

By the way, our members—we have surveyed our members—maybe 5 percent of the product they issue in the marketplace includes a credit report from the background screening perspective. That means 95 percent of the background screening product in the marketplace does not include a credit report. It is being used for a very discrete population.

So I think that also responds to the idea that, somehow, you are right, some parents are able to pay student loans and other parents are not, and some parents are able to pay their kids' bills when they can and others are not. I think that it is the way it is being used. It is not what is in the credit report, but it is the way that it is being used that really is the pivotal question. In this case, the answer is, it is being used responsibly.

Finally, credit scores are not used. The credit report is used, but our members do not sell credit scores for employment, so you are not just seeing a number. You are seeing the report and you are taking a deeper dive into the details, which is exactly what human resources folks say they want to do. So I think the news is better than that.

Senator MERKLEY. Thank you, Mr. Pratt.

Senator BROWN. I do not think you meant to say no employer uses it for every job?

Mr. PRATT. That is probably dangerous these days, is it not? But I would say that, based on everything we have seen, Mr. Chairman, it is used very selectively and it is not used in some sort of just broad filtering process. It is used on a contingent offer basis, most commonly.

Senator BROWN. OK. And you talk persuasively about—and using percentages—but as Ms. Wu points out, percentages of 200 million are a lot of people. Very low percentages of 200 million, I think it is—you were not inaccurate. I am not accusing you of that, for sure. But when it is a few percent of 200 million, it is a lot of Americans affected by this, as, of course, you know.

Thank you. I particularly appreciate Senator Merkley's questions. I think this points to the fact that moderate-income Americans and low-income Americans whose lives are often a challenge when most of them have not had much of a raise in 10 years and then face these obstacles of maybe higher insurance rates in some cases, more difficulty getting a job, more difficulty getting an apartment, and more difficulty certainly getting a lower interest rate than they might otherwise get, sometimes a credit score that they have earned through their behavior, other times credit scores that may not be entirely accurate that are challengeable, but it is low-income and moderate-income people that are probably least likely to know that they can challenge these scores and get them fixed. I hope that—I know that you, Mr. Pratt, are aware of that, and I hope that we can see, without legislative action, some remedies in some of this.

I ask both the minority and the majority that anybody who wants to submit questions to the panelists, please do and get them back to us by January 2, if you can do that. And if either of the two of you or Mr. Stone wants to expand on anything you have said or submit anything for the record, please get that to us by January 2.

Thank you very much for being here, and the hearing is adjourned.

[Whereupon, at 11:22 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF SENATOR DANIEL K. AKAKA

Thank you, Chairman Brown. Thank you very much for holding this hearing today and for all of your work on consumer protection issues. I know you agree that, when Americans make wise economic decisions and are protected from bad actors, our economy—and Nation—are stronger for it.

It is fitting that a hearing on a topic of consumer protection will be my last as a Member of the Senate. Financial literacy and consumer protection issues are very close to my heart. This is a policy area of the utmost importance to me. I am proud of the work we have accomplished on this Committee through both legislation, such as the Dodd-Frank and the Credit CARD Acts, and oversight, including numerous hearings with officials from the CFPB.

Financial literacy is important for many reasons. Strong personal finances make for strong families. Being financially literate makes it easier for individuals to pay unexpected emergency expenses, further their education, and save for retirement. It allows people to better fulfill their dreams and deal with difficult times. It makes for happier, healthier communities and truly helps people in so many areas of their lives. That is why I have worked hard during my time in Congress to educate, protect, and empower consumers.

I am pleased that we will hear from our panelists about the work they have done examining credit reports from a consumer's perspective. I also look forward to hearing from the witnesses about their ideas on how to further protect consumers and what more we in Congress can do to help people secure their financial futures. Working families need to access mainstream financial institutions so that they are not prone to make use of predatory and unscrupulous lenders. We need straightforward disclosures so that consumers can make choices that best suit their situations. Student debt should not hinder our young people from getting the training they need to compete globally, and financial concerns should not put additional strains on our military families.

While my Senate career is coming to an end, I know that there are many of my colleagues who will continue to empower consumers to make good financial decisions. Mahalo nui loa to my colleagues here on the Committee including Chairman Johnson, Chairman Brown, Senator Reed, Senator Merkley, Senator Hagan, and others.

I also appreciate the dedicated work of Committee and personal office staffs. They do so much to support the work that we do, so mahalo to you all as well.

Over the years my staff has provided excellent assistance in helping consumers in Hawaii and across our country both by aiding individuals on a case-by-case basis and by advancing commonsense laws to improve the functioning of the financial marketplace. It is very nice to know that four of my former staffers—Erika Moritsugu, Matthew Pippin, Preethi Raghavan, and Elizabeth Songvilay—are continuing to advance consumer protection and financial literacy in their roles at the CFPB.

Panelists, thank you for your tireless work to protect consumer interests. I look forward to hearing your testimony. Thank you.

PREPARED STATEMENT OF COREY STONE

ASSISTANT DIRECTOR FOR DEPOSITS, CASH, COLLECTIONS, AND REPORTING MARKETS
CONSUMER FINANCIAL PROTECTION BUREAU

DECEMBER 19, 2012

Chairman Brown, Ranking Member Corker, and Members of the Subcommittee, thank you for the opportunity to testify today on the consumer credit reporting industry.

Credit reporting plays a critical role in consumers' financial lives. Credit reports on consumers' financial history and behavior can determine their eligibility for credit cards, car loans, and home mortgage loans—and they often affect how much consumers pay for their loans. The industry is critical in our economy. It promotes access to credit that consumers can afford to repay. Without credit reporting, many consumers likely would not be able to get credit.

Credit reports are also often used in a number of noncredit decisions about consumers. They can be used to determine whether a consumer is offered a job, a car, homeowner's insurance, or rental housing.

The CFPB is the first Federal Government agency that supervises both consumer reporting companies and the largest banks and many of the nonbanks that provide them with consumers' credit information. This responsibility is a priority for the Bu-

reau. Last year, the CFPB published one report to Congress on credit scores and another report on whether remittance information might help consumers develop positive credit scores. Earlier this year we published a Consumer Advisory about credit reports. In July, the CFPB adopted a rule to extend its supervision authority to cover larger consumer reporting agencies. In September, the CFPB released its examination procedures for these companies, along with a study examining credit scores—the three-digit numbers used to determine consumers' credit worthiness. In mid-October, the CFPB began handling individual complaints about consumer reporting companies. If a consumer files a complaint with a credit reporting company and is dissatisfied with the resolution, the CFPB is available to assist.

As many of us at the CFPB conduct outreach all over the country to learn how consumers hurt by the financial crisis are recovering, we've heard many express frustrations about their credit reports or credit scores. And we've heard a considerable amount of confusion and misunderstanding about credit reporting.

Just last week, the CFPB issued a new report based on information provided by the big three consumer reporting companies—Equifax, Experian, and TransUnion—and their industry association. The report highlights the basic systems the credit reporting companies use to collect, organize, and maintain consumer credit information. It is one of the most comprehensive looks at the consumer reporting industry to date. And it represents a significant step forward in understanding this industry and making it more transparent for consumers.

Some of the key findings in our report are that:

- ***More than half of the trade lines in the credit bureaus' databases are supplied by the credit card industry.*** This means that credit cards are given great weight in how consumers build their credit profiles.
- ***More than three quarters of the trade lines in the credit bureaus' databases come from the top 100 furnishers of information.*** These are largely the large bank and nonbank lenders—and now the largest debt collectors and debt buyers—who fall under the CFPB's supervision. This means for the first time a Federal agency has the tools to examine and understand how well all parts of the credit reporting system are working—including both the sources of credit information and credit bureaus themselves.
- ***More than one-third of consumer disputes relate to collection items.*** In fact, the information provided by the collections industry is five times more likely to be disputed than mortgage information.
- ***A relatively small percentage of consumers—approximately 20 percent—look at their credit reports each year.*** This is a shame because—while we do not know for sure how common inaccuracies are—it is likely that many additional consumers could identify and correct inaccuracies if they reviewed their credit report.
- ***Most complaints are forwarded to the furnishers that provided the original information.*** Credit reporting companies on average refer 85 percent of complaints on to the furnishers that provided the original information. But documentation that consumers mail in to support their cases may not be getting passed on to the data furnishers for them to properly investigate and report back to the credit reporting company.

The CFPB's report should help to clarify the confusing world of consumer reports. It should help to inform policymakers and consumers about how this important industry works. If consumers know more about how these companies consider credit use, consumers should be better able to make decisions for themselves and use credit more wisely.

Thank you for inviting me to testify today. I will be happy to answer any questions you may have about our report.

PREPARED STATEMENT OF STUART K. PRATT

PRESIDENT AND CEO, CONSUMER DATA INDUSTRY ASSOCIATION

DECEMBER 19, 2012

Chairman Brown, Ranking Member Corker 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 180 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. Their 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.

My written comments will include important background on the industry and then focus on the following specific Committee requests listed below:

- Current oversight of credit reporting agencies by the Consumer Financial Protection Bureau
- The dispute resolution process for consumers
- Communication between furnishers and credit reporting agencies
- Specialty credit reporting agencies and their duties under the Fair Credit Reporting Act
- Differences in credit scores available to clients versus consumers

Background Part 1—The importance of credit reporting to consumers and our Nation's 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 50 or a 100 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 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 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 tell the story of our good choices and hard work. They 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 that tell our story and ensure that we are treated fairly. Our members focus on consumers first, on ensuring fairness for them in the marketplace and on the accuracy of the data in the products they produce.

Background Part 2—An overview of the types of data used to build a consumer's credit history.

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 meets 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*—these accounts are 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 law and have access a consumer's report.

Note that credit reports do not contain information on an individual's medical condition, race, color, religion, or national origin. It is important to note that our U.S. credit reporting systems are full-file and thus they include both positive and negative payment history on a consumer. 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 on-time payments.

Background Part 3—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 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 about the credit, credit reporting industry. 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 issued on May 14, 2012:

> 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 percent and 90 percent correct, respectively).
> - Many other service providers also use these scores—landlords, home insurers, and cell phone companies (73 percent, 71 percent, and 66 percent correct, respectively).
> - Missed payments, personal bankruptcy, and high credit card balances influence scores (94 percent, 90 percent, and 89 percent correct, respectively).
> - The three main credit bureaus—Experian, Equifax, and TransUnion—collect the information on which credit scores are frequently based (75 percent correct).
> - Consumers have more than one generic score (78 percent correct).
> - Making all loan payments on time, keeping credit card balances under 25 percent 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 percent, 85 percent, and 83 percent correct, respectively).
> - It is very important for consumers to check the accuracy of their credit reports at the three main credit bureaus (82 percent 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 percent correct), whenever a consumer is turned down for a loan (79 percent correct), and on all consumer loans when a consumer does not receive the best terms including the lowest interest rate available (70 percent 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 and 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 is making their lives better.

Background Part 4—Credit Repair Scams

It is good news that consumers' knowledge of credit reports and how scores analyze credit report data is improving. 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. 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. 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 percent) [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 and also for our members who serve consumers. Our members estimate that as much as 43 percent of incoming mail is tied to credit repair schemes that distract from processing valid disputes and which tie up data furnisher resources leading some to give up and delete accurate, predictive data.

Committee Request I—Current oversight of credit reporting agencies by the Consumer Financial Protection Bureau

Our members have successfully operated in a highly regulated context for decades. Recent changes in how the Federal Government enforces various consumer protection laws, most notably the Fair Credit Reporting Act (15 U.S.C. § 1681 *et. seq.*), do not materially alter this fact.

The FCRA was first enacted in 1970 (PL 91–508). It has since been the subject of active oversight by many different Congresses. Following is a partial listing of major and minor amendments to the law which speaks to the fact that the FCRA is a contemporary law that has been updated to recognize changes in the marketplace:

- Consumer Credit Reporting Reform Act of 1996 (Public Law 104–208, the Omnibus Consolidated Appropriation Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1)
- Section 311 of the Intelligence Authorization for Fiscal Year 1998 (Public Law 105–107)
- The Consumer Reporting Employment Clarification Act of 1998 (Public Law 105–347)
- Section 506 of the Gramm-Leach-Bliley Act (Public Law 106–102)
- Sections 358(g) and 505(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USAPATRIOT Act) (Public Law 107–56)
- The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (Public Law 108–159)
- Section 719 of the Financial Services Regulatory Relief Act of 2006 (Public Law 109–351)
- Section 743 (Div. D, Title VII) of the Consolidated Appropriations Act of 2008 (Public Law 110–161)
- The Credit and Debit Card Receipt Clarification Act of 2007 (Public Law 110–241)
- Sections 205 and 302 of the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (Public Law 111–24)
- The Consumer Financial Protection Act of 2010 (CFPA) (Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203)
- The Red Flag Program Clarification Act of 2010 (Public Law 111–203).

Most important to understanding this statute is that it carefully and clearly divides responsibilities for ensuring the accuracy of information in credit reports and also how consumer disputes and questions about their credit reports are resolved. As CFPB Director Cordray stated during a July 26, 2012 field hearing:

> Our credit reporting system involves several key participants. First are the creditors and others that supply the information about your financial behavior, which can include your credit card issuers, your mortgage company, or companies that are collecting debts they claim you owe, among others. Second are those that collect and sell the information, which are the credit reporting companies. Third are those that use the information, which largely consist of financial institutions, but can also include insurance companies, auto dealers, retail stores, and even prospective employers. Fourth are consumers themselves, who are the object of all this scrutiny and who are immediately affected by it. All of these participants play important roles in ensuring that the credit reporting system operates effectively to help consumer credit markets work better for us all.

At this same hearing Director Cordray also pointed out:

> 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. We want to deepen our understanding of the recordkeeping and reporting practices by lenders and we want to see what the credit reporting companies can be doing to test and screen for the quality of information they receive.

The FCRA has always been enforced by both State attorneys general and also through private litigation. Until the enactment of the Dodd Frank Act (PL 111–203) the Federal Trade Commission had the primary Federal responsibility for enforcement of the provisions of the FCRA which apply to our members. As a result of Dodd Frank, the Consumer Financial Protection Bureau was created (See Title X)

and this enforcement responsibility was transferred to the CFPB. While the CFPB now has primary oversight for our members' FCRA duties, the FTC and State attorneys general may still bring enforcement actions. A Memorandum of Understanding between the CFPB and FTC has been completed and it outlines how the two agencies will cooperate on enforcement actions.

Our members have sought a positive and collaborative relationship with the CFPB. Free of charge, our nationwide credit reporting agencies provided the CFPB with 600,000 depersonalized credit reports and another 3,000,000 credit scores so that the Bureau could conduct a study of the similarities of various credit scores in the marketplace. One of our members voluntarily provided the CFPB with free, depersonalized credit reports for a study of the usefulness of remittance data in predicting creditworthiness of consumers who may have "thin" credit reports or no credit report. Further, our members conducted extensive, free research for the CFPB in support of their effort to draft a white paper on the credit reporting eco-system. Ultimately it is our hope that these efforts are in support of a CFPB that continues to follow the important guiding comments of the Bureau's Deputy Director, Raj Date when he stated:

> First, we are committed to basing our judgments on research and data analysis. We won't shoot from the hip. We won't reason from ideology. We won't press a political agenda. Instead, we're going to be fact-based, pragmatic, and deliberative.

It is essential that the CFPB remain an organization focused on the facts and not driven by the headlines. The CFPB cannot be successful if it seeks out inflammatory headlines that are a distraction for consumers, or reacts to headlines that simply are not based in good social science and scientific methods.

Committee Request II—The dispute resolution process for consumers.

Before we delve into the systems our members have designed to assist consumers with disputes regarding information in their credit reports, some context for the accuracy of credit reports is helpful.

In May of 2011 the PERC completed and released a CDIA-commissioned study of the quality of data found in the databases of nationwide consumer credit reporting agencies. This work was groundbreaking. The research was truly an arms-length, let-the-chips-fall-where-they-may project which was the only condition under which Dr. Turner would agree to conduct the study. Our members had no reservations about this requirement. Consumers wanted answers from a trusted source regarding the accuracy of credit reports and we wanted to make sure we gave them an answer, particularly since the General Accountability Office has rejected all consumer advocate efforts to measure accuracy due to serious flaws in their methodologies and lack of sound statistical practices. The CFPB's recent white paper on the credit reporting eco-system added to these GAO criticisms in its discussion of the failure of a consumer group to develop a statistically representative, unbiased study population.

PERC designed its study using a peer review process that included reviews of methodology conducted by leading academics from the Wharton School of Business at the University of Pennsylvania, the University of North Carolina and Chapel Hill and Duke University. As an indication of the openness of Dr. Turner to engage in the dialogue about accuracy, when PERC published its results, it also made the raw data and research findings available to the CFPB and the FTC so that these agencies could replicate the findings and not merely depend on PERC's interpretation of the data.

Dr. Turner and his team used two measures of what might be a material error in a consumer's credit report. First they used VantageScore to measure the point change between credit reports before and after a dispute and reinvestigation process. In this instance they found that only 0.93 percent of all credit reports examined had one or more disputes which resulted in a credit score increase of 25 points. However, Dr. Turner recognized that in a risk-based-pricing context even a single point change could make a difference for a consumer who is on the edge of qualifying for a better rate. Thus the PERC team also measured material errors by considering how often a consumer moved from a higher priced pricing tier to a lower one (an approach the CFPB has used in a study of credit scores). Only one half of 1 percent (0.51 percent) of all credit reports examined by consumers had a credit score change that resulted in the consumer likely receiving a lower-priced product. This study puts to rest the debate about the accuracy of our members' data.

As a further statement of our members' confidence in their systems and the quality of their data, they not only provided a grant to fund the PERC research, they also provided, free of charge, the data the Federal Trade Commission needed to ful-

fill its mandate under the FACT Act to study the accuracy of nationwide credit reporting systems. Release of the FTC's full research findings is imminent.

CDIA applauds its members for facing the hard questions about data quality and engaging in responsible, sound research. The results of our members' decisions are impressive and expected.

As for the question of dispute resolution procedures, consumers' rights are 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 above measured consumer satisfaction with the reinvestigation process and fully 95 percent of consumers were satisfied with the results. These data are facts and not merely anecdotes and set aside unfounded accusations 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 percent 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.***[1]

It is also important to note that in 2003 consumers were given the right to dispute information furnished 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 percent chose to dispute an item of information directly with the data furnisher rather than with a consumer credit reporting agency. It is

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

our view that consumers will continue to grow in their understanding of this right and will more often dispute with the data furnisher.

The 95 percent satisfaction rate and the FTC's analysis of complaints received are strong, empirical evidence of our members' commitment to getting it right for all consumers.

Committee Request III—Communication between Furnishers and Credit Reporting Agencies

New data furnisher—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 newly released 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.

Ongoing furnishing—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 their 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, appears to agree with 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 provides free access to a "Credit Reporting Resource Guide" which is the comprehensive overview of the Metro2 Format. This guide is designed for all types of data furnishers, but it also provides specific guidance for certain types of furnishers to encourage proper use of the format. Target audiences include collection agencies, agencies which purchase distressed debt, all parties which report data on student loans, child support enforcement agencies and utility companies. CDIA and its Metro2 Task Force have administered telephonic and in-person workshops for thousands of data furnishers representing the majority of all data furnished to their systems. These programs include a range of specialized topics including, for example:

- Reporting Requirements for Third Party Collection Agencies and Debt Purchasers.
- Reporting Requirements Specific to Legislation & Accounts Included in Bankruptcy.

The CFPB report also discusses oversight of ongoing data furnishing at Section 4.2, page 19 and an outline of the Metro 2 Data 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

[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.

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.

Committee Issue IV—Nationwide Specialty Consumer Reporting Agencies

Some consumer reporting agencies regulated under the FCRA are further defined a "nationwide specialty consumer reporting agency." This term is defined as follows:

§ 603. Definitions; rules of construction [15 U.S.C. § 1681a]

(x) The term "nationwide specialty consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to——

(1) medical records or payments;

(2) residential or tenant history;

(3) check writing history;

(4) employment history; or

(5) insurance claims.

NSCRAs have to provide a free annual disclosure. Below is the section of law which establishes this duty:

§ 612. Charges for certain disclosures [15 U.S.C. § 1681j]

(C) Nationwide Specialty Consumer Reporting Agency

(i) In general. The Bureau shall prescribe regulations applicable to each consumer reporting agency described in section 603(w) to require the establishment of a streamlined process for consumers to request consumer reports under subparagraph (A), which shall include, at a minimum, the establishment by each such agency of a toll-free telephone number for such requests.

(ii) Considerations. In prescribing regulations under clause (i), the Bureau shall consider——

(I) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

(II) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports; and

(III) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

(iii) Date of issuance. The Bureau shall issue the regulations required by this subparagraph in final form not later than 6 months after the date of enactment of the Fair and Accurate Credit Transactions Act of 2003.

(iv) Consideration of ability to comply. The regulations of the Bureau under this subparagraph shall establish an effective date by which each nationwide specialty consumer reporting agency (as defined in section 603(w)) shall be required to comply with subsection (a), which effective date——

(I) shall be established after consideration of the ability of each nationwide specialty consumer reporting agency to comply with subsection (a); and

(II) shall be not later than 6 months after the date on which such regulations are issued in final form (or such additional period not to exceed 3 months, as the Bureau determines appropriate).

Committee Issue V—Differences in Credit Scores Available to Clients versus Consumers

In September of 2012 the CFPB issues a reported entitled "Analysis of Differences between Consumer- and Creditor-purchased Credit Scores." The findings of this report were very favorable to consumers and set aside any concerns regarding which score a consumer chooses to purchase. Four out of five consumers get exactly the same result regardless of the score they choose and where this isn't the case it is a result of how lenders set their prices in the market place. No one credit score will every match up with all lender pricing strategies or with their internal underwriting systems which include customized credit scores designed uniquely for them. From a statistical/scientific perspective the CFPB reports that all scores they studied were highly correlated (.9 out of 1). In a competitive credit scoring marketplace correlations could not likely be better, and this is good news for consumers, as well.

Because, as the CFPB itself reports, there is no one score in the marketplace (some commonly used score brands have as many as 49 different versions operating

in the current marketplace) and lenders make different offers to the same consumer, we agree with the CFPB that the lesson learned from this study is that it is essential that consumers shop around for a deal. Consumers should never take the first offer on the table. Consumers should take advantage of the availability of credit scores and set aside unfounded concerns about the variety of high-quality credit scores available in today's competitive marketplace.

CDIA issued a release in support of the CFPB's report and we have included it below. It captures our industry's reaction to the study.

WASHINGTON, Sept. 25, 2012 /PRNewswire-USNewswire/—"We applaud the Consumer Financial Protection Bureau's credit score report that was released today. We think it puts an end to the debate over the value of educational scores versus those scores lenders use," said Stuart K. Pratt , president and CEO of the Consumer Data Industry Association.

The CFPB study concluded that "correlations across the results of the scoring models were high." As a result, it determined "that for a majority of consumers the scores produced by different scoring models provided similar information about the relative creditworthiness of the consumers. The study found that different scoring models would place consumers in the same credit-quality category 73–80 percent of the time."

"The study sheds new light on why consumers can trust the credit score disclosures they receive and the products in the commercial marketplace that help consumers build a deeper understanding of their credit scores and how they affect their financial decisions. Consumers want to be proactive in learning about their scores. Unfortunately, too many mixed messages have made them hesitant to access the data currently available that will help them better understand the scoring process. This study is good news for consumers who can now be confident that the disclosures and services they are getting today are helping to empower them to receive better prices tomorrow in the credit market," stated Pratt.

The study was built on the foundation of two key facts made clear in the Bureau's 2011 report and reiterated again in this study:

- "Given this complexity it is unlikely that a consumer will often be able to know the exact score that a particular lender will use to evaluate them."[1]
- "Lenders use credit scores produced by many different scoring models."[2]

"The CFPB is right," said Pratt, "no one score is used by all lenders. However, the credit score is a valuable educational tool and can enable consumers to better understand their creditworthiness relative to other consumers." As the CFPB's report notes, the many credit score options in the marketplace today will help consumers answer these questions. CDIA recommends that when consumers obtain their credit scores they should ask these important questions:

1. What credit scoring model was used?
2. What's the scale?
3. What does the score I received mean in terms of lending risk?
4. What are the key factors affecting my credit score?
5. How might my future financial decisions affect my credit score?

CDIA's members are global leaders in the development of credit score technology. While the CFPB was not charged by Congress with studying every effective and reliable credit score in the marketplace, this report shows that all such scores designed using the same common principles will help educate consumers with equal effectiveness.

In support of the CFPB's study, the CDIA will fund a new series of public service announcements focused on encouraging consumers to read the CFPB's report, obtain their credit scores and also, in support of the Consumer Federation of America's latest credit score poll, avail themselves of resources that are available to better understand what does and doesn't affect a credit score.

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[1] July 19, 2011 CFPB Report, "The impact of differences between consumer- and creditor-purchased credit scores," Pg. 18.

[2] July 19, 2011 CFPB Report, "The impact of differences between consumer- and creditor-purchased credit scores," Pg. 1.

SOURCE: Consumer Data Industry Association

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. I am happy to answer any questions.

NCLC

NATIONAL
CONSUMER
LAW
CENTER®

Advancing Fairness
in the Marketplace for All

Testimony before the

U.S. SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER PROTECTION

regarding

"Making Sense of Consumer Credit Reports"

December 19, 2012

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Table of Contents

INTRODUCTION 1

I. EASILY PREVENTABLE INACCURACIES PLAGUE THE CREDIT REPORTING SYSTEM 3

A. Categories of Avoidable Inaccuracies 4

1. Mixed Files 4

2. Identity Theft 6

3. Furnisher errors 6

B. Accuracy Statistics 8

C. Fixing the System: The Role of the CFPB, the Nationwide CRAs and Empowered Consumers 12

1. The role of the CFPB 12

2. The culpability of the nationwide CRAs 13

3. The vital importance of private rights and empowered consumers; the need for consumer rights 17

II. THE FCRA-MANDATED CREDIT REPORTING DISPUTE SYSTEM IS A TRAVESTY OF JUSTICE 19

A. A Long-Documented History of Blatant Violation 19

B. The Nationwide CRAs' Bias against Consumers Violates the FCRA 22

C Furnishers Also Engage in Perfunctory "Investigations," with Encouragement from the Nationwide CRAs 24

D. What Needs to be Done 29

III. SPECIALTY CONSUMER REPORTING AGENCIES 32

IV. CONSUMERS SHOULD HAVE THE BASIC RIGHT TO ANY CREDIT SCORE THAT IS ABOUT THEM AND THE RIGHT TO A FREE ANNUAL SCORE 36

V. CONGRESS SHOULD REQUIRE THAT PAID OFF MEDICAL DEBT BE DELETED FROM A CONSUMER'S CREDIT REPORT 39

VI. CONGRESS SHOULD BAN THE USE OF CREDIT HISTORIES IN EMPLOYMENT WITH LIMITED EXCEPTIONS 45

VII. CONGRESS MUST ACT TO CORRECT AN INJUSTICE RESULTING FROM A SCRIVENER'S ERROR IN THE FCRA. 47

Testimony of Chi Chi Wu, National Consumer Law Center

Before the Subcommittee on Financial Institutions and Consumer Protection

of the U.S. Senate Committee on Banking, Housing and Urban Affairs

regarding

"Making Sense of Consumer Credit Reports"

September 19, 2012

INTRODUCTION

Mr. Chairman, Ranking Member Corker, 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]

Mr. Chairman, for over a decade, consumer advocates have complained of a credit reporting system plagued with preventable errors, and a broken dispute system that utterly fails to conform to requirements of the Fair Credit Reporting Act (FCRA). These complaints have been confirmed by numerous courts, journalists, and now a report from the Consumer Financial Protection Bureau (CFPB).

- Credit reports are plagued by inaccuracies, such as files mixing the identities of consumers; errors caused by debt collectors, creditors and other furnishers of information; and the fallout caused by identity theft. Whether the percentage of errors is

[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* (7th ed. 2010) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu and Persis Yu of NCLC, with assistance from Carolyn Carter.

33% or 1%, it is too high, especially when the errors are easily preventable with straightforward measures.

- 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 have developed a perfunctory automated system that consists of nothing more than translating a consumer's dispute into a two- or three-digit code, forwarding that code and a one-page electronic form to the furnisher, and parroting whatever the furnisher states in response.
- The CFPB has the authority and ability to reform this system, and in the short time that it has existed, we have seen it take significant steps. However, there are measures that Congress can take to help consumers. A consumer should have the right to ask a court to order the nationwide CRAs and furnishers to correct an error when it appears in his or her own credit report.

The problems described above don't end with the credit reports issued by the nationwide CRAs. Reports issue by specialty consumer reporting agencies, such as background check CRAs and tenant screening CRAs, are even more rife with errors and present even worse problems.

Finally, there are a number of other issues and problems with the credit reporting system that Congress should address:

- Consumers lack critical information regarding credit scores. They do not have the right to obtain a copy of the credit score most commonly used by lenders (FICO), or other types of scores based on their credit or consumer reports, such as insurance credit scores,

tenant screening scores, or healthcare scores. They do not have the right to a free annual credit score.

- Millions of Americans have their credit reports damaged by medical debt, even when the debt is the result of insurance disputes or billing errors by providers, or is ultimately settled or paid off. We strongly support S. 2149, 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 traditional credit reports by employers is a growing practice that is harmful and unfair to American workers. Despite many good reasons to avoid engaging in this practice, sixty percent of employers do so today. We urge Congress to restrict the use of credit reports in employment to only those positions for which it is truly warranted, such as those requiring a national security clearance.
- The Fair and Accurate Credit Transactions Act of 2003 (FACTA) inadvertently deprived consumers of a 30 year-old pre-existing right they had to enforce the FCRA requirement that users of credit reports disclose to consumers when an "adverse action" is taken, i.e., credit or insurance is denied or provided on less favorable terms, on the basis of an unfavorable credit report. Congress can easily fix this scrivener's error and should do so, as it was never part of the legislative bargain struck by FACTA.

I. EASILY PREVENTABLE INACCURACIES PLAGUE THE CREDIT REPORTING SYSTEM

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, a consumer's credit report can have a huge impact on a consumer's life. A good credit report allows a consumer to own a home, buy a car, obtain insurance for both, get a fairly priced credit card, or perhaps secure an apartment. Conversely, a bad credit report will deny consumers those same things, or force them to pay thousands more for credit and insurance. It may even cost a consumer a vitally needed job. It is no exaggeration to say that a credit history can make or break a consumer's finances.

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. 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. Categories of Avoidable Inaccuracies

1. 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 Federal Trade Commission (FTC) and state Attorneys General during

a 30 month period, the reporters found that about 6% of the 21,600 complaint to the FTC and 8% of 1842 complaints to state Attorneys General involved mixed files.[2] An older study found that 44% of credit reporting complaints to the FTC involved mixed files.[3]

Mixed files occur largely because the nationwide CRAs do not use sufficiently rigorous criteria to match consumer data precisely, even when such unique identifiers as SSNs are present. 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.[4]

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."[5]

The nationwide CRAs have been aware of mixed file errors for decades.[6] In the early to mid-1990s, the FTC reached consent orders with the nationwide CRAs requiring them to

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[2] Michael Wagner and Jill Reipenhoff, *Credit Scars: Mixed and Marred*, Columbus Dispatch, May 7, 2012.
[3] U.S. Public Interest Research Group, *Credit Bureaus: Public Enemy #1 at the FTC*, October 1993. In this sample, U.S. PIRG analyzed 140 complaints to the FTC.
[4] *See, e.g.*, Reeves v. Equifax Info. Serv., 2010 WL 2036661 (S.D. Miss. May 20, 2010) (mixed file case involving similar names, different addresses but same state, and match of seven of nine SSN digits); Apodaca v. Discover Fin. Servs., 417 F. Supp. 2d 1220 (D.N.M. 2006)(describing how Equifax uses partial matching logic, including only seven of nine SNN digits, to build files).
[5] 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).
[6] For an example of a mixed file case dating from the late 1970s, *see* Thompson v. San Antonio Retail Merchants Ass'n, 682 F.2d 509 (5th Cir. 1982).

improve their procedures to prevent mixed files.[7] However, nearly two decades later, mixed files remain a significant problem.

2. Identity Theft

Identity theft is often called the "fastest growing crime" in this country, with an estimated eleven million consumers victimized by some form of the crime every year.[8] 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.

3. 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. Sometimes these errors occur

[7] 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).
[8] Javelin Strategy & Research, 2010 Identity Fraud Survey Report: Consumer Version 5 (2010).

because the creditor has not complied with industry reporting standards, such as the Metro 2 reporting format.

A particularly difficult type of error involves furnishers who have attributed a credit account to a consumer who does not owe the debt, often called an "ownership dispute." This type of dispute often involves a spouse or other authorized user who is not contractually liable for a debt. Other times, the consumer may have been the victim of identity theft. These "ownership" disputes are among the most common, constituting 33% of the disputes to nationwide CRAs.[9]

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).[10] In addition, the CFPB's report on its supervision activities for the Fall of 2012 noted significant

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[9] 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 31, available at http://www.consumerfinance.gov/reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system.

[10] 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/.

FCRA violations, including the failure of financial institutions to report disputes to the nationwide CRAs, and the inability to determine whether disputes had been fully investigated.[11]

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.[12]

A report issued by the CFPB just last week indicates that a disproportionate number of credit reporting errors involve debt collectors. This December 2012 CFPB Report finds that debt collectors generate 40% of disputes to the nationwide CRAs, despite providing only 13% of the account tradeline information in credit reports.[13]

B. Accuracy Statistics

Given the types of problems described above, one would rightfully conclude that errors are unfortunately all-too-common in the credit reporting system. Indeed, study after study has documented significant error rates in credit reports.

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[11] Consumer Financial Protection Bureau, *Supervisory Highlights: Fall 2012*, at 12, *available at* http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf

[12] Chi Chi Wu, National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* (Jan. 2009), at 11-12, *available at* www.nclc.org/issues/credit_reporting/content/automated_injustice.pdf.

[13] 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.

For instance, a 2010 on-line survey by the Columbus Dispatch reported that one-third of respondents said they had found errors on their credit reports.[14] A similar on-line survey by Zogby Interactive found that 37% of consumers who ordered their credit reports discovered an error, and 50% of those were not easily able to correct the error.[15] A study by the Consumer Federation of America and National Credit Reporting Association documented numerous serious errors in credit reports.[16] Studies from U.S PIRG and Consumers Union have found errors in 25% of credit reports serious enough to cause a denial of credit.[17]

The FTC is currently undertaking a comprehensive study of errors in credit reports, using expert consultants to help study participants order and review their credit reports. The results of this study should be available soon. In the second pilot phase of the study, 15 of the 128 participants (or 12%) found material errors in their credit reports.[18] Only 12 of the 15 filed disputes with the assistance of the researchers; of these, 7 resulted in changes to the credit report, 3 resulted in partial changes, and 2 cases resulted in no changes. Thus, at least 7 out of 128 participants (or 5.5%) had material errors that were confirmed due to a change upon dispute.

The credit reporting industry has attempted to rebut charges of systemic inaccuracies, commissioning a study by the Policy and Economic Research Council (PERC) claiming that fewer than 1% of credit reports are inaccurate.[19] However, further analysis of the PERC study

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[14] Jill Reipenhoff and Michael Wagner, *Credit Scars*, Columbus Dispatch, May 6, 2012.
[15] Zogby Interactive, *Most Americans Fear Identity Theft*, Zogby's American Consumer, April 2007, at 3.
[16] Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers*, December 17, 2002, *available at* www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf ["(CFA-NCRA study"].
[17] Nat'l Ass'n of State PIRGs, *Mistakes Do Happen: A Look at Errors in Consumer Credit Reports*, at 11 (2004); Consumers Union, *What Are They Saying About Me? The Results of a Review of 161 Credit Reports from the Three Major Credit Bureaus* (Apr. 29, 1991).
[18] Federal Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 2 (Dec. 2008).
[19] Michael Turner et al., Policy and Economic Research Council, U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts, May 2011. This study was funded by the Consumer Data Industry Association, which provided both monetary support as well as assistance with the study implementation, along with the nationwide CRAs.

shows that an initial rate of alleged errors was actually closer to 20%, but this percentage was whittled down by excluding categories of established errors, discounting errors if the participant did not make a dispute, and excluding errors that did not change the participant's credit score by more than 25 points. In particular:

- One-third of the alleged errors were excluded from consideration as immaterial because the consumer did not file a dispute. Yet previous FTC research has noted how difficult some consumers find it to file a dispute.[20] This is the reason why the FTC provided consumers with the assistance of consultants in its study.
- Another one-third of errors involving consumers' identifying information - such as name, address, employer, or date of birth - were excluded as immaterial. While some errors of this type may be minor, other errors in identifying information can be an indication of mixed files, as discussed above in Section I.A.1. In 2004, the FTC estimated that about 4% of inquiries match to more than one file, thus indicating potential mixed files.[21] Errors in identifying information are especially critical because the copy of the credit report that a consumer receives may be different from the version that creditors and other users receive. As the National Credit Reporting Association noted regarding the PERC study,[22] consumers typically receive a sanitized version of their reports, in which all data

[20] Federal Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, Appendix at 17 (Dec. 2006). As the researchers in the first FTC pilot study noted, "[w]e expected that participants would be motivated to have any errors in their credit reports corrected promptly. This did not generally occur." An example of this from the FTC pilot was a consumer with a material error who explained that she did not file a dispute because "she was a single mother with twins and could not muster the time to file a dispute."
[21] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 58 (Dec. 2004).
[22] The NCRA stated: "Consumer disclosures require strict data inputs and have tighter matching criteria that are known to filter out some of the most common errors, credit files that have data mixed between more than one individual." Terry Clemans, Executive Direcotr, National Credit Reporting Association, Position on the Dodd-Frank Wall Street Reform Proposed Qualified Residential Mortgage Requirements, Aug. 1, 2011, at 15. The NCRA also noted that:

have been properly matched using their full name, all nine digits of the SSN, and full addresses. In contrast, a user may receive a version based on the partial match criteria discussed above in Section I.A.1. The reports employed by PERC therefore potentially exclude an entire category of mixed files.

- Any error that did not result in a correction with a score increase of 25 points was excluded as immaterial, even if the item was negative, and thus was not counted in the 1% error rate. Yet 87% of the tradelines in which there were alleged errors were modified or deleted, and 40% resulted in some increase in the participant's credit score. Thus, the error rate could just as well be characterized as 16.7% (87% of 19.2%) or 7.7% (40% of 19.2%). Second, some particularly negative items by themselves (*e.g.*, an erroneous collection account) could cause a denial regardless of the score.

Most importantly, a 1% error rate is still too high because it means 2 million consumers harmed by inaccurate reporting. If we take PERC's 1% error rate at face value, that figure translates into 2 million consumers, given the 200 million credit histories in the databases of each of the nationwide CRAs. Thus, even by PERC's analysis, 2 million consumers are harmed by inaccurate reporting. This is simply unacceptable. Would we accept it if 1% of all airplanes fell out of the sky? Would we accept it if 1% of all automobiles had defects that caused horrible accidents? This is especially egregious when errors could be prevented with straightforward measures.

Finally, note that a 1% figure was a snapshot in time. The chances of a consumer being impacted by a credit reporting error are much greater over the consumer's lifetime. For

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While the study is impressive for its professional design and depth of research, the findings just do not match the real world experiences of the average American consumer. Based on the aforesaid issues and considering the methodology of the previous study funded by the national credit bureaus, (the 1992 ACB/AA study) it looks very likely that the methodology behind this study has been carefully crafted to obtain the unrealistically low error rate it claims.

instance, consider that about 121.7 per 100,000 women (or 1.2%) in the United States have breast cancer at any time.[23] But as many women know, the "lifetime risk" of getting breast cancer is much higher at 12.4%.[24]

C. Fixing the System: The Role of the CFPB, the Nationwide CRAs and Empowered Consumers

1. The role of the CFPB

The CFPB has the authority and ability to reform the credit reporting system, and we have high hopes that it will do so. The Dodd-Frank Act gave the CFPB significant authority to regulate the nationwide CRAs, in a way that the FTC never had. The CFPB can write regulations to implement almost all of the provisions of the FCRA, including the provisions regarding accuracy and the dispute process, while the FTC only had rulewriting authority over specific provisions. 15 U.S.C. § 1681s(e). The CFPB can take enforcement action against the major players in credit reporting.

Most importantly, the CFPB has supervision authority over the "larger participants" of the credit reporting industry, including the nationwide CRAs. 12 U.S.C. § 5514(a)(1)(B). The CFPB began supervising the nationwide CRAs in September 2012, and we hope that it will be able to move them toward reforming these problems.

The CFPB also has supervision authority over the largest furnishers of information, such as banks with over $10 billion in assets. CFPB began supervision over some of these institutions earlier, and we have already seen results, as discussed above in Section 1.A.3.

[23] Centers for Disease Control and Prevention, *Cancer Among Women*, May 2, 2012, at www.cdc.gov/cancer/dcpc/data/women.htm.
[24] National Cancer Institute, *Breast Cancer Risk Among American Women*, Sept. 24, 2012, at www.cancer.gov/cancertopics/factsheet/detection/probability-breast-cancer.

We commend the CFPB for taking these enforcement actions. We also appreciate that the FTC has been more active in taking enforcement actions against furnishers such as debt collectors, as well as specialty CRAs, discussed below in Section III.

However, these enforcement actions raise the troubling issue that these flagrant violations of the FCRA have been prevalent for years, with no sanction by prior regulators and no recourse for consumers. Why were major lenders such as American Express, which should be well versed in the law and have ample resources to ensure compliance, in such blatant violation of the FCRA and other federal consumer protection laws? The CRAs are culpable in this as well. Why did the nationwide CRAs not detect these problems and prompt these furnishers to improve their systems?

2. The culpability of the nationwide CRAs

Obviously, the nationwide CRAs have the critical role in fixing errors caused by their own procedures, such as mixed files. However, they also bear some responsibility for furnisher errors, which are aided and abetted by the failures of the nationwide CRAS to exercise adequate oversight.

The nationwide CRAs unquestioningly rely on furnishers and provide little oversight of the quality of the information being reported. Any error sent by the furnisher in its computer file automatically appears in the consumer's credit report, sometimes even when the information patently contradicts information appearing in other parts of the credit report. The classic example is reporting a consumer as "deceased" when active tradelines are being reported by other furnishers, clearly indicating that the consumer is still alive.[25] And as the CFPB's

[25] *See, e.g.*, Perez v. Trans Union, L.L.C., 526 F. Supp. 2d 504, 509, 510 (E.D. Pa. 2007) (question of fact for jury as to whether CRA should have detected inaccuracy in reporting consumer as deceased even though payments were reported as being made to his current accounts).

December 2012 Report noted, the nationwide CRAs "do not conduct independent checks or audits to determine if the data is accurate,..."[26] This unquestioning acceptance and re-publication of furnisher information invites abuse.

Must of the problem lies in the mindset of the nationwide CRAs, which claim they are only the database, or the "library" for the information of the furnishers, and thus have no responsibility for its accuracy.[27] But that is not what the FCRA requires. The FCRA imposes "grave responsibilities" on consumer reporting agencies to promote accuracy, and to act with "fairness, impartiality, and a respect for the consumer's right to privacy." 15 U.S.C. § 1681. The FCRA requires them to have and follow "reasonable procedures to ensure maximum possible accuracy." 15 U.S.C. § 1681e(b).

In other words, the CRAs are not supposed to be bystanders. They are supposed to actively take steps to promote accuracy. They are supposed to be engaged, aggressive, and proactive in rooting out errors. Reasonable procedures for ensuring maximum possible accuracy surely does not include standing by and doing nothing while creditors and debt collectors blatantly violate the law.

The culpability of the nationwide CRAs is especially true when it comes to debt collectors and debt buyers. Despite being aware of these errors, the nationwide CRAs refuse to take meaningful action to exclude bad actors who provide bad data. For example, in our 2007

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[26] 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 19, available at http://www.consumerfinance.gov/reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system.

[27] *See, e.g., Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing before the House Committee on Financial Services*, 110th Congr. 46 (2007)(oral testimony of Stuart Pratt, President and CEO, Consumer Data Industry Association)("But to put the CRAs in a position of being a small claims court, to try to adjudicate and be the oracle of truth is the wrong place for it to be. The lender will know the decision.").

testimony,[28] we cited the example of the debt buyer Asset Acceptance, which had been allegedly excluded for re-aging obsolete account information, but then reinstated as a furnisher by the nationwide CRAs.

Despite the information provided in the 2007 hearing, the nationwide CRAs continued to accept Asset Acceptance's data -- even though in July 2011, one of the nationwide CRAs (TransUnion) sued it for providing inaccurate information that led to TransUnion being named as a defendant in an FCRA lawsuit.[29] And just this year, the Federal Trade Commission took enforcement action against Asset Acceptance in part over its failure to properly investigate consumer disputes and reporting of information it had reason to suspect was inaccurate.[30]

Yet there is no indication that any of the nationwide CRAs have excluded Asset Acceptance as a furnisher. In fact, the company's Annual Report filed March 2012 states "We furnish information concerning our accounts to the three major credit reporting agencies,...".[31] Asset Acceptance is only one out of many debt buyers and collectors that continually provide inaccurate information to the nationwide CRAs. For another example, see the Brim v. Midland case discussed below in Section II(D).

Unfortunately, there are very logical reasons, and tremendous incentives for the nationwide CRAs NOT to exclude bad actors or require stricter measures to reduce furnisher errors. The credit reporting industry is unlike most other American industries in a fundamental respect. The paying clients of the credit reporting industry are not consumers, but the very

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[28] *See, e.g., Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing before the House Committee on Financial Services*, 110th Congr. 46 (2007)(statement of Chi Chi Wu, Staff Attorney, National Consumer Law Center).
[29] Complaint, Trans Union LLC v. Asset Acceptance, LLC, (Ill. Cir. Ct. Cook Cty July 12, 2011).
[30] Complaint, United States v. Asset Acceptance, LLC, Case No. 8:12-cv-182-T-27 (M.D. Fla. Jan 30, 2012).
[31] Asset Acceptance Capital Corp., 2011 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, March 29, 2012, at 11.

creditors and debt collectors that the CRAs should be – but are not – screening the data of, auditing, and overseeing.

Moreover, consumers have no say in whether their information is included in the nationwide CRAs' databases. Most Americans cannot avoid having a credit history. Unless they are very wealthy, consumers will need to borrow money if they want to buy a house or attend college. Thus, unlike almost all other business relationships, consumers who are unhappy with the actions of a CRA cannot vote with their feet – they cannot remove the information or take their business elsewhere.

On the other hand, debt collectors and creditors do have the ability to switch between CRAs if they wish. And vigorous oversight by the nationwide CRAs, or tougher requirements for accuracy, are likely to drive furnishers away. The biggest impact of excluding a furnisher like Asset Acceptance is to cost the nationwide CRAs a paying customer; the nationwide CRAs don't profit and indeed lose money from making sure consumers are treated fairly. Furthermore, furnishers want all negative information that might possibly relate to the consumer, even if the information is of uncertain accuracy – it costs creditors more if negative information is unreported than if it is falsely reported. Thus, the nationwide CRAs have incentives to develop systems that are overly inclusive of negative information.

In short, traditional competitive market forces provide little incentive for CRAs to incur the costs to institute new procedures that ensure information is accurate or to undertake investigations to correct errors, since these activities primarily benefit consumers. Up until the creation of the CFPB, the major force doing so were consumers themselves who were willing to go to court to enforce their rights under the FCRA.

3. The vital importance of private rights and empowered consumers; the need for consumer remedies

In 1970, Congress recognized that no one has a bigger stake in the accuracy of a credit report than the consumer whose name is on it. By establishing the right of consumers to seek private redress under sections 1681n and 1681o, Congress assigned the primary enforcement role to those with the greatest interest in accomplishing such a task – the individuals whose peace of mind and material wellbeing are directly impaired by inaccurate credit reports. In the 1970 legislation, there were no exceptions to this private enforcement scheme.

And for over 40 years, private litigants have provided the most significant enforcement of the FCRA. A Westlaw search for reported Fair Credit Reporting Act cases citing either section 1681n or 1681o yields over 1,500 cases. In contrast, there was been much less enforcement by federal regulators. At best, the FTC was only able to bring several dozen FCRA cases, and most of them did not involve the accuracy of the nationwide CRAs. Prior to the CFPB, not one single banking regulator had publicly disclosed an FCRA enforcement action against a bank furnisher.

New rights were added to the FCRA in 1996 and 2003 to protect consumers, but in compromises with the credit industry, consumers were prohibited from seeking relief in court to enforce some of these rights. Most notably, many of the responsibilities placed on furnishers are only enforceable by government agencies. This includes a prohibition on reporting information that the furnisher knows or has reason to believe is inaccurate, and the requirement that furnishers handle credit reporting disputes sent directly to them. *See* 15 U.S.C. § 1681s-2(d).

Thus, a consumer who has been the victim of inaccurate information in his or her credit report simply has no resource against the furnisher, even if the furnisher deliberately and maliciously provided the wrong information. She has no resource if she files a dispute directly

with the furnisher, and the furnisher ignores her. Furthermore, a part of the compromise to impose obligations on furnishers, the FCRA preempts state laws governing them, even in some cases venerable common law doctrines such as defamation and slander. *See* 15 U.S.C. §§ 1681h(e), 1681t(b)(F).

At least one court has expressed extreme frustration with this statutory scheme:

> But the FCRA's substance is even more troubling than its complex form. The statute includes numerous provisions that limit consumers' ability to enforce its mandates either by explicitly barring private actions or by imposing such burdensome procedural requirements that no layperson could possibly be expected to comply.

The court in this case, *Burrell v. DFS Services, LLC*,[32] went on to note:

> In a particularly frustrating twist, another provision of the FCRA requires several federal entities to promulgate regulations governing when and how a consumer may submit a dispute directly to a creditor, 15 U.S.C. § 1681s–2(a)(8)(A), but that provision falls under the section of the FCRA that prohibits private enforcement. See 15 U.S.C. § 1681(d). As if that were not enough, the FCRA actually takes away any alternative means that consumers could previously have used to enforce their rights by expressly preempting virtually all state law causes of action related to credit reporting. 15 U.S.C. § 1681 t(b)(1)(F); 15 U.S.C. §§ 1681 h(e).
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> Those requirements have the practical effect of insulating creditors, such as Defendants, from liability even in cases where they fail to take basic measures to protect their customers. Instead, the FCRA places the burden of ensuring the efficient functioning of the credit reporting system on the consumers themselves—laypeople who are, in most

[32] 753 F. Supp.2d 428, 444 (D.N.J. 2010).

cases, in no position to carry out that task by jumping over the technical hurdles created by the statute. Such a scheme is troubling, to say the least.

We submit that Congress should, and must act, to rectify this troubling situation. We urge Congress to provide consumers with the right, currently sorely lacking under the FCRA, to ask a judge to tell a furnisher or a CRA: "fix that report."

With one minor exception, the FCRA does not provide for declaratory or injunctive relief in actions by private parties. The vast majority of courts have held that courts do not have the power to issue an injunction under the FCRA. The FCRA is an anomaly in this respect, as the Supreme Court decision in Califano v. Yamasaki[33] provides the basis for injunctive relief for most other laws.

Providing courts with explicit authority to issue injunctive relief would further the purpose of the FCRA to "assure maximum possible accuracy."

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

A. A Long-Documented History of Blatant Violation

As we have documented repeatedly, 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, automated process that consists of nothing more than translating consumer disputes into a two- or three-digit code, forwarding

[33] 442 U.S. 682, 99 S. Ct. 2545, 61 L. Ed. 2d 176 (1979).

that code and a one-page electronic form to the furnisher, and parroting whatever the furnisher states in response.[34]

In this highly automated, computer-driven process, a consumer's dispute is communicated using a Consumer Dispute Verification form (CDV). An automated version of the form, communicated entirely electronically, is known as Automated Consumer Dispute Verification (ACDV). Furthermore, all three nationwide CRAs collaborated through the Consumer Data Industry Association to create an automated on-line reinvestigation processing system called "e-OSCAR."

This automated system is heavily dependent upon standardized dispute codes used to communicate the nature of the dispute. Approximately 44% of consumer disputes are written.[35] These written disputes often consist of a detailed letter with supporting documentation, painstakingly written by concerned and even desperate consumers. All of these documents, including a consumer's careful description of a specific dispute, are reduced to a two or three digit code that the employee of the CRA's offshore vendor[36] who glances at the material believes best describes the dispute. The code is sent to the furnisher and is often communicated alone, without supporting documentation provided by the consumer - documents such as account applications, billing statements, letters, payoff statements and even court judgments that can show overwhelming and even conclusive proof.

The overly automated and perfunctory nature of the process, and the obstacles it creates for consumers, has been noted repeatedly by consumer groups, as well as courts, regulators, and

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[34] Chi Chi Wu, National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* (Jan. 2009), *available at* www.nclc.org/issues/credit_reporting/content/automated_injustice.pdf.

[35] 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 27, available at http://www.consumerfinance.gov/reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system.

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

journalists. Consumer advocates raised criticism of this system during the debates leading up to the FACTA amendments of 2003. A 2006 study mandated by FACTA and conducted by the FTC and Federal Reserve Board confirmed the automated and perfunctory nature of the dispute system.[37] In a 2007 hearing before the House Financial Services Committee, several consumer advocates provided more evidence, such as materials obtained in discovery and deposition testimony, and greater details about the Kafka-esque nature of the system.[38]

In 2009, the National Consumer Law Center issued an in-depth report about the details, nature, and abuses of the credit reporting dispute system in a report called *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Report.* This report included many real-life cases, deposition testimony and other extensive cites documenting the extent of how the system prevents consumers from fixing errors and deprived them of their rights under the FCRA. We wish to submit this report (also found at www.nclc.org/issues/credit_reporting/content/automated_injustice.pdf) for the record.

Unfortunately, the abuses in the credit reporting dispute system have persisted despite this extensive history of criticism and calls for reform. Just this year, the Columbus Dispatch issued a series of articles with a similarly in-depth exposé of the dysfunctional credit reporting dispute system, proving that the abuses continue despite decades of complaints.[39]

The latest report to document the problems with the credit reporting dispute system was issued just last week by the CFPB. The CFPB's report confirmed the automated nature and hands-off approach of the nationwide CRAs, and documented that in 85 percent of cases, the

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[37] Federal Trade Commission and Federal Reserve Board, Report to Congress on the Fair Credit Reporting Act Dispute Process (Aug. 2006), at 12, available at www.ftc.gov/os/comments/fcradispute/P044808fcradisputeprocessreporttocongress.pdf

[38] *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing before the House Committee on Financial Services*, 110th Congr. (2007).

[39] Jill Reipenhoff and Michael Wagner, *Credit Scars Series*, Columbus Dispatch, May 7-14, 2012, available at http://www.dispatch.com/content/topic/special-reports/2012/credit-scores.html.

CRA does no more than pass along the dispute to the furnisher. Most notably, CFPB Director Cordray noted that, as consumer advocates have long alleged, "the documentation consumers mail in to support their cases may not be getting passed on to the data furnishers for them to properly investigate and report back to the credit reporting company."[40]

We believe this failure to pass along documentation submitted by the consumer deliberately violates the FCRA's requirement that a CRA include "all relevant information" about the dispute that the CRA received from the consumer. 15 U.S.C. § 1681i(2). And if all relevant communication is not forwarded, the furnisher cannot comply with the FCRA's requirement to "review all relevant information" provided by the CRA. 15 U.S.C. § 1681s-2(b)(1)(B).

B. The Nationwide CRAs' Bias against Consumers Violates the FCRA

Another 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, and even when that furnisher is a bad actor with a history of violations, such as a debt buyer. 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.

[40] Prepared Remarks by Richard Cordray, Director of the Consumer Financial Protection Bureau, Credit Reporting White Paper Press Call, December 13, 2012 .

Recent cases include *Dixon-Rollins v. Experian Info. Solutions*,[41] in which the Federal District Court for the Eastern District of Pennsylvania noted:

> Significantly, 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. Trans Union's attempt to avoid that instruction by citing another circuit's decision that is not on point is unavailing. Indeed, its argument suggests that it had no intention of correcting its reinvestigation procedures. It cannot avoid its obligations by creating an illusory exception. Thus, there is ample evidence to support a legal and factual determination that Trans Union's procedures are objectively unreasonable.

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."[42]

In *Saindon v. Equifax Information Services*,[43] 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

[41] 753 F. Supp.2d 452, 464 (E.D. Pa. Sept. 23, 2010)
[42] Id. at 465.
[43] 608 F. Supp. 2d 1212, 1217 (N.D. Cal. 2009).

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 unjustifiably high risk of violating the FCRA.[44]

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. This is not only wrong, it is illegal under the FCRA.

C Furnishers Also Engage in Perfunctory "Investigations," with Encouragement from the Nationwide CRAs

For their part, furnishers often also conduct non-substantive and perfunctory "investigations." These procedures consist of nothing more than verifying the challenged data

[44] Drew v. Equifax Info. Serv., 2010 WL 5022466 (N.D. Cal. Dec. 3, 2010). *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).

by comparing the notice of dispute with the recorded information that is itself the very subject of the dispute. In such cases, combined with the CRAs' failure to conduct any independent review, the ultimate effect that no one ever investigates the substance or merits of the consumer's complaint.

Unfortunately, the trend by furnishers is to increase the automation of their dispute processes, encouraged by the nationwide CRAs. The nationwide CRAs promote the "Automated Batch Interface" which "allows Data Furnishers to receive Consumer Dispute Verification (ACDV) requests in XML batch file format" so that they can handle disputes using a mass production method.[45] And some furnishers have fully embraced this automation. For example, as we noted previously:

- **MBNA (now FIA Card Services/Bank of America)** - During the course of the Johnson v. MBNA litigation,[46] MBNA's employees testified that the company's FCRA investigation process consisted of merely confirming the name and address of consumers in the MBNA computers and noting from the applicable codes that the account belonged to the consumer. The employees revealed that they never consulted underlying documents such as account applications to determine accuracy of disputed information.
- **Capital One** – Capital One employee Pamela Tuskey described how all three of the national credit bureaus instructed Capital One personnel to simply verify information and to "make our system look like your system." The credit bureaus even discouraged the Capital One personnel from actively researching by pulling statements or similar activities.[47]

[45] e-OSCAR, Automated Batch Interface, at http://www.e-oscar.org/automated-batch-interface.aspx.
[46] 357 F.3d 426 (4th Cir. 2004).
[47] Deposition of Pamela Tuskey, Carol Fleischer v. TransUnion, Case No. CV 02-71301 (E.D. Mich.).

- **Mortgage Bankers** - Trade groups for certain furnishers/creditors have asserted that if a credit report reflects what is in the furnisher's records, it should be considered "accurate," no matter whether the furnisher's records are objectively accurate as a matter of reality. For example, the Mortgage Bankers Association has urged regulators to define accuracy as "accurate reporting of the status of the account as reflected in the furnisher's records."[48]

More recent examples of automated non-substantive processing of dispute by furnishers are:

- **USAA Federal Savings Bank** - USAA not only engages in perfunctory investigations, but a recent Sixth Circuit decision noted that: "Boggio offers deposition testimony by a USAA employee stating that USAA reviewers were *prohibited from consulting documents in his file*—including the allegedly forged check in question—and instead would have verified only his identity before responding to a CRA notice."[49]
- **Credit Bureau Collection Services** - In its 2010 complaint against this debt collector, the FTC alleged: "For certain types of disputes, such as those where the consumer claims the account is not his or hers or belongs to someone with a similar name, it is CBCS's policy and practice only to compare the name, social security number, date of birth, and address in CBCS's computer database with the information provided on ACDV forms. Where three of the four items match, CBCS will report to the CRA that it has verified the information it furnished as accurate. It is CBCS's policy that only after the consumer has

[48] *Comments of Mortgage Bankers Association re: Interagency Advanced Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act*, May 22, 2006, at 4.
[49] Boggio v. USAA Federal Sav. Bank, 696 F.3d 611 (6th Cir. 2012) (emphasis added).

alleged the same type of account inaccuracy more than four times will the matter become assigned to a supervisor to do further 'investigation.'"[50]

- **Asset Acceptance** - The FTC's 2012 complaint against this debt buyer describes Asset Accepance's equally meaningless treatment of disputes: "Asset processed many ACDVs through 'batch processing,' an automated system in which certain 'identifiers' in Asset's electronic account records are automatically compared with the information provided on the ACDV forms. When the Social Security number and consumer name on the ACDV match the information in Asset's database, Asset reports to the consumer reporting agency that it has verified the information....The batch processing of comparing a consumer's name and Social Security number often does not adequately respond to the consumer's dispute and is not a reasonable investigation. ... Asset does not investigate the particular merits of the consumer's claim by, for example, reviewing individual account documents, contacting the portfolio seller to verify the accuracy of the information, asking the consumer reporting agency for more information, or reviewing its own internal notes."[51]

  The FTC also noted that Asset only employs 14 to 20 "ACDV specialists" despite receiving half a 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***.

- **Midland Credit Management.**[52] Midland is another major debt buyer that engages in non-substantive, unreasonable investigations. In one case, the consumer had unimpeachable evidence that he had already paid off a debt to Dell Computers, and did

[50] Complaint, United States v. Credit Bureau Collection Services, Case No. 2:10-cv-169 (S.D. Ohio Feb. 24, 2010).
[51] 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.
[52] Brim v. Midland Credit Management, 795 F. Supp.2d 1255 (N.D. Ala. 2011)

not owe Dell anything. But Dell sent Mr. Brim's account to Midland, which reported it to the nationwide CRAs. Mr. Brim sent numerous disputes to the nationwide CRAs and Midland between 2008 and 2009. Midland responded to the notices by merely checking the dispute against its own records. Its review did not go any further than simply verifying that the debt existed on its books. Midland also responded to Brim's evidence (specifically, a bank account payment history) as "inadequate" and requested supplemental bank documents that were not available. Brim devoted nearly five years of his life to fighting a debt that he had timely paid, resulting in loss of income, loss of credit, and emotional distress.

Unsurprisingly, the last three examples involve debt collectors. 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.[53] 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.

[53] 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.

D. What Needs to be Done

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 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"[54] of the evidence. This means talking to consumers and furnishers, examining documents in a meaningful manner, 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. Nationwide CRAs must also be required to forward to furnishers actual copies of the documents submitted by consumers.

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,...[55]

[54] Johnson v. MBNA, 357 F.3d 426, 430-431 (4th Cir. 2004).
[55] Burke v. Experian Info. Solutions, 2011 WL 1085874 (E.D. Va. Mar. 18, 2011).

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). Thus, the burden should be on the furnisher, not the consumer, when there is a credit reporting dispute.

At a minimum *all* good faith disputes should be marked as such and excluded 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 disputes from the credit score is entire voluntary and the industry could change its mind any time and start scoring all disputes. For example, consider this complaint:

> I applied for a home equity line of credit with Fifth Third Bank. Specifically I was interested in the line of credit that came with an initial rate of 2.99% with a credit score of 750 or above. A few days after the application, I was informed in writing by the loan officer that my application had been "Preliminarily Approved." However, I was told that I did not qualify for the 2.99% rate because my credit score was only 725, as reported by TransUnion.
>
> As this did not make sense to me, I researched both my credit reports and my credit scores. My Equifax credit score was 802. I was unable to obtain my Experian credit score. The TransUnion credit score report provided to me by Fifth Third includes a

section stating -- "Key factors that adversely affected your credit score: 040-Dereg public recd or collection filed."

The TransUnion credit report includes mention of a $70 unpaid debt to [a local medical center] from 2009. I had refused to pay this bill because it was for an emergency room visit for my son. He had a broken hand. We registered at the emergency room and then waited for services for 4 hours, finally, at close to midnight, we left. As we never received any services, I refused to pay for the bill. I disputed the bill with the hospital and then with the collection agency.

There are no other derogatory factors listed on my credit report other than this old, disputed bill. *It is apparent to me that TransUnion is using this disputed debt in its calculation of my credit score.* To remedy this, I have tried to go on to the TransUnion website for the past five days to formally dispute the debt with TransUnion. The website does not allow one into the disputed section -- it always says there are too many users. I have tried multiple times, even in the middle of the night.

As a result, this line of credit will cost me hundreds of dollars more, and it will be thousands more if I intended to keep the line of credit open for over a year.[56]

In this case, the consumer had submitted a bona fide dispute to the debt collector, yet the collection item plunged her score by 75 points. Note that this consumer is a colleague at National Consumer Law Center. If she could not successfully nullify the impact of this negative information by disputing it, what chance does the average consumer have? Thus, Congress and/or the CFPB should require that all debts that are the subject of a dispute on a credit report

[56] Email from Margot Saunders, Of Counsel, National Consumer Law Center, Dec. 14, 2012 (emphasis added).

must be excluded from the score, unless the furnisher or CRA can prove that the dispute is not bona fide.

Furthermore, 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.[57]

Finally, as discussed above, consumers should have the right to ask a court to order the nationwide CRAs and furnisher to fix their credit reports when there is an error. Congress cannot sit idly by while innocent consumers are victimized by credit report errors because the law does not provide them with the ability to ask a court to prevent violations of the law.

III. SPECIALTY CONSUMER REPORTING AGENCIES

"Specialty consumer reporting agencies" are the wild west of consumer reporting agencies. These consumer reporting agencies compile and maintain files relating to criminal records, residential or tenant histories, check-writing histories, employment histories, or insurance claims.

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[57] 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.

Specialty consumer reporting agencies are not required to be licensed or even registered, nor is there any one source identifying all of these companies. Therefore, as of 2012, there is no centralized location to obtain the kind of data required to generate accuracy data. Furthermore, too many users fail to comply with the FCRA's requirement to provide "adverse action" notices (explained in Section VIII below) to the employee or applicant that a consumer report has been used against them. This hinders the ability to conduct a reliable survey of consumers to determine whether they have been denied employment, housing, or any other service because of a specialty consumer report.

In Spring 2012, NCLC released a report that describes a number of ways in which criminal background screening companies make mistakes that greatly affect a consumer's ability to find employment.[58] The use of criminal background checks is controversial for a number of reasons. Whether these checks should be used for employment screening is a matter of public debate.

However, there is little debate that if these records are to be used, they must be accurate. As stated above, despite the importance of the accuracy, actual accuracy rates are not possible to obtain.[59] However, what evidence that is available indicates that professional background screening companies routinely make mistakes with grave consequences for job seekers.

Our research found that the following common errors:

- Reports that mismatched the subject of the report with another person (usually with a similar name);
- Reports that revealed sealed or expunged information;

[58] Persis S. Yu & Sharon M. Dietrich, Nat'l Consumer Law Cent., Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses, April 2012.
[59] *See generally* SEARCH, the Nat'l Consortium for Justice Info. and Statistics, Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information (2005) at 7, *available at,* www.search.org/about/news/2005/reports.asp.

- Reports that failed to include information about how the case was disposed or resolved;
- Reports that contained misleading information, such as reporting single cases or charges multiple times; and
- Reports that mischaracterized the seriousness of the offense reported.

Many of these errors can be attributed to common practices by background screening companies, such as:

- Obtaining information through purchase of bulk records, but then failing to routinely update the database;
- Failing to verify information obtained through subcontractors and other faulty sources;
- Utilizing unsophisticated matching criteria;
- Failing to utilize all available information to prevent a false positive match; and
- Lack of understanding about state-specific criminal justice procedures.

The National Association of Professional Background Screeners claims that its members have a 99% accuracy rate. However, this error rate appears to actually be the rate of the disputes received by its members. Basing an accuracy statistic on the rate of disputes is flawed for several reasons. First, this rate did not include inaccuracies in the reports of consumers for whom background check reports have not yet been issued to an employer, but may have errors that exist in their files which could cost them a job when a report is ultimately issued.

Second, this rate did not include errors in the background checks of consumers who did not file a dispute over the error. Consumers may not file a dispute over an erroneous background check report because they have no knowledge of the error. Unfortunately, too many employers fail to comply with notice requirements under the FCRA. Therefore, many people are denied

employment and never know that it is due to their background check nor that they have the right to see the report and file a dispute.

We also know from the context of credit-based reports that many consumers with errors in their consumer reports do not send disputes because of lack of time or resources, educational barriers, and lack of understanding of their rights.

Although the FCRA does provide consumers with the right to preemptively review the information in their consumer file, this right is virtually meaningless for specialty consumer reports. There are hundreds, if not thousands of specialty consumer reporting agencies operating in the United States. Unlike the big three credit bureaus, there is no centralized location where a consumer can go to order his or her background check.

Fortunately, the CFPB has recently released a list of contacts for some of the largest specialty credit reporting agencies. However, it only scratches the surface of the number of background checking agencies. With thousands of specialty consumer reporting agencies operating, a consumer cannot predict which company his or her employer, insurance company, or landlord will use.

Furthermore, dispute rights are similarly meaningless with specialty consumer reports. Even if a consumer is successful in disputing information on his or her report, the opportunity may be gone, and the chances of that report being used again are small. The only way to provide meaningful protections to consumers is to take greater steps to ensure the accuracy of the reports from the outset.

There are numerous ways in which the FCRA can be improved to better fit with the realities in which specialty consumer reports are used. Consumers need, at the least, the following protections:

1. Restore the private right of action for the failure to provide adverse action notices, discussed in Section VII below. Without these notices, consumers have no idea that they have been denied employment or services based upon a consumer report and cannot take steps to correct any misinformation.
2. Require all consumer reporting agencies to be licensed and registered. Before accuracy can even be addressed, it must be known how many consumer reporting agencies even exist.
3. Require all consumer reporting agencies to undergo independent auditing of their data and records for accuracy. Current reviews of accuracy are insufficient because consumers lack the knowledge and incentive to dispute inaccurate information on a consumer report.
4. Provide the CFPB with supervisory authority over all larger participant consumer reporting agencies.
5. The CFPB should draft regulations detailing matching criteria and ensuring that information on consumer reports is up to date.

IV. CONSUMERS SHOULD HAVE THE BASIC RIGHT TO ANY CREDIT SCORE THAT IS ABOUT THEM AND THE RIGHT TO A FREE ANNUAL SCORE

One of the troubling aspects of our credit reporting system is the difficulty faced by consumers in obtaining a critical piece of information about themselves – their credit scores. Consumers do not have the right to a free credit score unless they are denied credit or charged a higher price for it. Furthermore, they have no right to obtain the score used by the vast majority of lenders – their FICO scores. They also do not have a right to see their scores that are used for non-credit purposes, such as insurance, tenant screening, or health care.

Consumers do have the right to obtain their credit reports. Though that is an important right, credit reports do not give consumers an easy-to-understand snapshot of their credit standing.

Until the 2003 amendments added by the Fair and Accurate Credit Transaction Act, consumers had no right to access their credit scores, not even for a price. After the FACT Act amendments, consumers have the right to purchase a credit score, but the credit reporting agencies need only sell them an "educational score,"[60] even though no actual creditor might ever use that score. Consumers have no right to purchase their FICO scores, even though FICO scores represent over 90 percent of the market for scores sold for credit-related decisions, according to the CFPB.[61]

The CFPB study released a study just this past September finding that, for about one out of five consumers, there are meaningful and significant differences between the educational score and FICO scores – an entire risk category of difference.[62] Yet to this day, consumers cannot purchase their FICO score based on their Experian credit report.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 improved the situation by giving consumers the right to receive their actual credit scores, the ones used by a lender, when they are denied credit or charged a higher price for it.[63] However, consumers should not have to apply for credit first and then get turned down in order to learn their FICO scores. The time for consumers to obtain their credit scores is BEFORE they need to apply for

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[60] The FCRA permits credit reporting agencies to provide "a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer." 15 U.S.C. § 1681g(f)(7)(A).

[61] Consumer Financial Protection Bureau, The Impact of Differences Between Consumer- and Creditor-Purchased Credit Scores: Report to Congress, July 19, 2011, at 6, *available* at www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110719_CreditScores.pdf

[62] Consumer Financial Protection Bureau, Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores, Sept. 2012, *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf.

[63] Pub. L. No. 111-203, 124 Stat. 1376, § 1100F (2010), codified at 15 U.S.C. §§ 1681m(a) (2) and 1681m(h)(5)(E).

credit, so that they can be informed shoppers, know what kind of credit they are qualified for and to dispute any errors that are affecting their scores. Indeed, the anecdote provided in Section II.D is a good example of this issue; if the consumer had been able to obtain her TransUnion FICO score, she would have known that a collection tradeline – which she had disputed months ago -- was still affecting her score, despite it being marked as disputed.

Thus, we urge Congress to give consumers the right to obtain their credit scores – the ones used most frequently by lenders – without charge on an annual basis, just as they can obtain their credit reports.

Moreover, providing a general right to the credit score would help to enforce the existing right to a score after credit has been denied or offered at a higher price. Consumers could seek out their credit scores directly from the credit reporting agencies to compare them with the score provided by the lender.

Furthermore, we urge Congress to give consumers the right to obtain any score based on a consumer report that is about them. Currently, the FCRA only gives consumers the right to obtain scores used for granting credit.[64] Yet there are a multitude of scores based on a credit or consumer report that grade consumers for other purposes – insurance underwriting, healthcare, and tenant screening. Consumers should have the right to obtain these scores for free on an annual basis, just as they are entitled to free annual reports from specialty consumer reporting agencies.

This is a matter of basic fairness. These scores are about the consumer - they are about us. They are based on information about our behavior and our lives. They may be based on inaccurate information that we have a right to correct. To have this important information about

[64] The FCRA defines credit scores as "a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default..." 15 U.S.C. § 1681g(f)(2)(A).

ourselves squirreled away in secret databases that we have no right to access seems inconsistent with the American way.

V. CONGRESS SHOULD REQUIRE THAT PAID OFF MEDICAL DEBT BE DELETED FROM A CONSUMER'S CREDIT REPORT

The National Consumer Law Center, on behalf of its low-income clients, is pleased to support the Medical Debt Responsibility Act, S. 2149. 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.

The collective scope and impact on medical debt on the credit histories of American consumers is enormous and cannot be overstated. According to the Commonwealth Fund, nearly 73 million working age adults (or about 40%) experienced problems with medical bills in 2010.[65] Of those consumers, 30 million were contacted by a collection agency for unpaid medical bills,[66] and thus were likely to have their credit reports damaged by the negative existence of a collection account on their 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 ends up in the hands of

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[65] Sara R. Collins, et al., The Commonwealth Fund, *Help on the Horizon: How the Recession Has Left Millions of Workers Without Health Insurance, and How Health Reform Will Bring Relief—Findings from The Commonwealth Fund Biennial Health Insurance Survey of 2010*, March 2011, at 6, *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Fund%20Report/2011/Mar/1486_Collins_help_on_the_horizon_2010_biennial_survey_report_FINAL_v2.pdf.

[66] *Id.* at 10.

collection agencies - and thus is likely to be reported to credit reporting agencies - is simply stunning:

- A 2003 Federal Reserve study found that over ***half*** of entries (52%) on credit reports for collection items are for medical debts. More than one-third (36%) of medical collections had balances due, when reported, of $100 or less and the majority (nearly 70%) were for less than $250.[67]
- A later Ernst & Young study confirmed the Federal Reserve's study, finding that medical debts constituted more than ***half*** (52.2%) of the debt collected by debt collection agencies in 2010 – more than twice as much as credit card and other financial debt.[68]
- A 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."[69]

The vast scope 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. The unique nature of medical debt raise questions on whether it is appropriate data to even include on a credit report.

Most critically, consumers may find that their medical debt has been characterized as a debt in collection for credit reporting purposes even though 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

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[67] Robert Avery, Paul Calem, Glenn Canner, & Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Fed. Reserve Bulletin, at 69 (Feb. 2003).
[68] 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.
[69] Robert M. Hunt, Fed. Reserve Bank of Philadelphia, Collecting Consumer Debt in America, Bus. Rev., at 13 (2d Quarter 2007), *available at* www.philadelphiafed.org/files/br/2007/q2/hunt_collecting-consumer-debt.pdf.

remains on the consumer's credit records for seven years and will likely adversely impact a consumer's credit score. According to a spokesperson for FICO, collection items that are "paid or unpaid, large or small amounts all can affect a credit score" and "a person with a FICO score of 680 will see their score drop between 45 and 65 points. Someone with a FICO score of 780 will see their score drop between 105-125 points,..."[70]

Furthermore, the presence of a medical collection item may result from no fault of the consumer, but from the complex and convoluted nature of our health care payment system. The collection item may have resulted from a dispute between the insurance company and provider. It may result from a provider's failure to properly bill the insurer, or the insurer's failure to properly reimburse the provider. After all, the American Medical Association itself estimated that one in five claims is processed inaccurately.[71] Even when errors are eventually fixed, they result in long delays in payments to providers. During these delays, bills can often be sent to a collection agency, completely out of the consumer's control.

The complexities of health insurance and medical billing also contribute to this problem. Many people are simply confused about who has responsibility for paying the bill. They are often uncertain about the explanation of benefits form, unclear of the descriptions of the procedures they have received, and unsure of whether they should pay the healthcare provider or insurer; one study found that nearly 40 percent of Americans do not understand their medical bills.[72] 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. According to media reports, an

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[70] Carla K. Johnson, *Late Medical Bills Can Lower Credit Scores For Consumers: How to Check and Fix Your Report*, Associated Press, Mar 4, 2012.
[71] American Medical Association, 2010 National Health Insurer Report Card, *available at* www.ama-assn.org/ama/pub/news/news/2010-report-card.page.
[72] 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.

estimated 9.2 million Americans had a medical bill sent to a collection agency because of a billing mistake.[73]

Indeed, many of the stories from consumers about how their credit reports and credit scores were damaged by paid medical debt involve such instances of confusion, mistakes, or problems with insurers. For example:

- The New York Times documented the case of Ray White from Lewisville, TX. Mr. White received a $200 ambulance bill, which his insurer did not pay despite assurances that it would do so. Finally, after many months and many phone calls, Mr. White paid off the $200 bill, but by then the damage was done. Unbeknownst to Mr. White, the debt had been reported to the credit reporting agencies. Mr. White had no knowledge of this black mark lurking on his credit report until he and his wife went to refinance the $240,000 mortgage on their home, nearly six years later. It was only then that he learned this paid $200 bill – the result of his insurance company dropping the ball on payment - had shaved about 100 points from his credit score. With no other debts, a healthy income and otherwise pristine credit, Mr. White and his wife had to pay an extra $4,000 to secure a lower interest rate.[74]

  (This story is also an example of "parking," a practice in which debt collectors merely report a debt to a credit reporting agency without doing more, then simply wait until the consumer applies for a mortgage or other credit. At that point, the consumer will discover the collection item and then pay the debt in an attempt – in vain – to improve his or her credit score. "Parking" creates even more problems with medical debt on credit

[73] Tara Siegel Bernard, *Discrepancies on Medical Bills Can Leave a Credit Stain*, New York Times, May 4, 2012.
[74] *Id.*

reports, because consumers do not know about the problem until they are in the midst of a time-sensitive process of applying for a loan).

- The Associated Press reported the case of Iraq veteran Steve Barnes and his wife, Tara, who were refinancing their home through a Veteran's Administration program when they found out that nearly $600 in unpaid medical bills had brought down their credit scores. The bills were for treatment related to the wife's cancer, which had been turned over to a collection agency while Mr. Barnes was still talking with his insurance company about what would be covered. The $600 in unpaid bills – caused by insurance snafus – cost them an extra $1,700 in fees on their refinanced mortgage. Plus, even though Mr. Barnes and his wife paid the bill, the black mark will remain on their credit reports for seven years.[75]
- A New York City consumer who lost consciousness on a street in Atlantic City, NJ, received a bill for $800 because a passer-by called an ambulance. The consumer had revived before the ambulance showed up, and had declined to go to the hospital. It is unclear whether the $800 was a charge for first aid at the scene (having his blood pressure and vital signs checked) or because the hospital mistakenly believed that he was brought to the emergency room. In either case, the consumer disputed the $800 bill, but it remains on his credit report as a collection item. The consumer has been declined credit at least once as a result of this reporting, despite the fact that he never summoned the ambulance or went to the hospital.[76]

[75] Carla Johnson, *Medical Bills Can Cause Lingering Credit Pain*, Associated Press, Mar. 4, 2012. This article documents several more cases in which medical collection items harmed the credit reports of consumers and cost them thousands in fees when refinancing.
[76] Email from Brian Bromberg, Bromberg Law Offices, May 30, 2012.

- A West Virginia consumer applied for Medicaid, but the state agency made a series of mistakes resulting in a long delay in enrolling the consumer. Finally, the state agency fixed the mistakes, and enrolled the consumer retroactive to February 2011. Meanwhile, four of the consumer's medical bills had been sent to debt collection agencies, and these collection agencies reported the debts to the credit reporting agencies. Medicaid paid the consumer's bills, but the collection items will remain on the credit report and harm the consumer's credit score for seven years – despite the fact that the failure to pay the bills was the fault of the state Medicaid agency, not the consumer.[77]
- An Arkansas consumer was hurt in an automobile accident and taken to the hospital. The consumer filed a lawsuit against the other driver. While the consumer was waiting for a settlement with the other driver's auto insurer, one of the medical providers turned over a medical bill for $118 to a debt collection agency, which reported the debt to a credit reporting agency. Meanwhile, the $118 bill was paid in full to the medical provider – actually it was paid the day before the debt collector made the report to the credit reporting agencies. The debt has shown up the consumer's credit report as a paid collection account, dropped her credit score from 800 to 700, and prevented her from obtaining credit at the best interest rates. The debt collector refuses to delete the black mark even though the consumer paid the bill before it was reported.[78]
- A Florida consumer went to an emergency room to receive medical treatment. He gave the hospital his proper identification showing his correct address. The hospital data entry personnel made a mistake by inputting a wrong address into the hospital's system. The consumer never received a bill, and thus never paid it. In the meantime, the debt was sent

[77] Email from Deborah Weston, Staff Attorney, Mountain State Justice, Inc., June 26, 2012.
[78] Email from Kathy Cruz, Attorney, June 27, 2012.

to a collection agency. Later, the consumer applied for credit, and it was only then that he learned of the outstanding collection item from the hospital on his credit reports. The consumer called the hospital, and confirmed they had the wrong address. Despite the fact that the hospital's personnel caused the situation with the data entry error, the collection item remained on the consumer's credit report.[79]

All of these consumers, and millions more like them, have had their credit reports and credit scores severely damaged through no fault of their own by medical collection items. Furthermore, they currently have no recourse under the Fair Credit Reporting Act to fix this damage. The Ninth Circuit has held that a consumer has no remedy under the FCRA to remove a medical collection item from her credit report, because technically the patient owes the medical bill even though the default was caused by an insurance dispute.[80]

The Medical Debt Responsibility Act, S. 2149, will help ameliorate this huge 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 approach that will prevent the credit records of millions of consumers from being unfairly tarnished. Rather, credit records will show that these hard-working consumers, who successfully paid off or settled their medical bills, are more creditworthy than the current system would otherwise lead a prospective lender to believe.

VI. CONGRESS SHOULD BAN THE USE OF CREDIT HISTORIES IN EMPLOYMENT WITH LIMITED EXCEPTIONS

The use of credit reports in employment is a growing practice that is harmful and unfair to American workers. Despite many good reasons to avoid engaging in this practice, more than

[79] Email from Leo Bueno, Attorney, May 14, 2010.
[80] Carvalho v. Equifax Info Serv., LLC, 629 F.3d 876 (9th Cir. 2010).

half of employers (60%) do so today,[81] a dramatic increase from only 19% in 1996.[82] We are concerned about this trend 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.
- **Use of credit checks in hiring could prevent economic recovery for millions of Americans.** The use of credit history for job applicants is especially absurd in the midst of still-too-high unemployment. With the massive job losses of the past 5 years, resulting in unemployment rates of sometimes nearly 10%, this is exactly the wrong time to be permitting this unfair practice. 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 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,

[81] Society for Human Resource Management, *Background Checking: Conducting Credit Background Checks*, Jan. 22, 2010, at http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx.
[82] 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).

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. If credit scores are supposed to be an accurate translation of a consumer's credit report and creditworthiness, that means these groups will fare worse when credit history is 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 would steal or behave irresponsibly in the workplace. There is no evidence showing that people with weak credit are more likely to be bad employees or to steal from their bosses.
- **As discussed in Section I.B., 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.

VII. CONGRESS MUST ACT TO CORRECT AN INJUSTICE RESULTING FROM A SCRIVENER'S ERROR IN THE FCRA.

The FACTA amendments of 2003 inadvertently deprived consumers of a 30 year-old pre-existing right they had to enforce the FCRA requirement that users of credit reports disclose to consumers when an "adverse action" is taken, *i.e.*, credit or insurance is denied or provided on less favorable terms, on the basis of an unfavorable credit report. 15 U.S.C. § 1681m. Congress can easily fix this scrivener's error and should do so, as it was never part of the legislative bargain struck by FACTA.

The adverse action disclosure is fundamental to ensuring the effectiveness of the FCRA's accuracy protections. The ability of consumers to seek redress for an adverse action disclosure violation has been key to its enforcement for over 30 years. FACTA itself clearly indicates that Congress had absolutely no intention of abolishing the consumer's right to seek redress of this important right. Current provisions of the FCRA, which exempt another subsection of section 1681m from private enforcement, make no sense and indicate that Congress did not intend to abolish consumer remedies for all of section 1681m.

The legislative history can be no clearer that Congress did not intend to abolish private enforcement of the FCRA's adverse action disclosure requirements when it enacted FACTA in 2003. The uncodified version of FACTA stated:

> Rule of Construction.--Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.

This provision expressly preserved all private enforcement rights that existed under the FCRA as of the date of the new law. While not codified in the United States Code, this provision is still effective law as part of the Statutes at Large. Pub. L. 108-159, 117 Stat. 1960, § 312(f) (2003).

After FACTA's enactment, the credit industry did not claim to have eliminated the consumer remedy for the adverse action disclosure, with the *American Banker* only noting that FACTA "*perhaps inadvertently* eliminates the existing right of consumers and state officials to sue for any violations of the adverse-action provisions of the FCRA."[83] Had Congress intended FACTA to carve private damages suits wholesale out of the user liability section of the FCRA,

[83] M. Heller, *Regulators Scurry to Close FACT Act Loophole*, American Banker (Dec. 12, 2003), at 3.

the banking and credit industry would have trumpeted that change in the days following the President's signature.

Even four years after FACTA's passage, industry representatives declined to claim that FACTA had intentionally abolished this private enforcement remedy. In a 2007 hearing before the full committee, Chairman Barney Frank engaged in the following colloquy with Stuart Pratt, President and CEO of the Consumer Data Industry Association, and Anne Fortney of Hudson Cook, another industry representative.[84]

> The CHAIRMAN. We will look into that. Let me just ask, the other question is to Ms. Fortney and Mr. Pratt, because both Ms. Wu and Mr. Bennett talked about the interpretation that we had sub silentio repeal of the private right of action. Do you agree that was something that was not done intentionally? And what would your view be to our restoring it? Mr. Pratt?
>
> Mr. PRATT. We didn't work on that section of the FACT Act. It relates to the date of furnishers and the date of—
>
> The CHAIRMAN. Okay. Ms. Fortney?
>
> Ms. FORTNEY. I think the statute is clear, and that is why the vast majority—
>
> The CHAIRMAN. That wasn't the question.
>
> Ms. FORTNEY. Okay. I know.
>
> The CHAIRMAN. Then why don't you answer it?
>
> Ms. FORTNEY. The answer is, I don't know that whoever drafted that—
>
> The CHAIRMAN. Fair point. But would you like to leave it the way it is?
>
> Ms. FORTNEY. I am sorry?

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[84] *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Serv.*, 110 Congr. 50 (2007).

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

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

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

Unfortunately, the mistaken use of the phrase "this section" in Section 1681m(h)(8) has been interpreted by almost all of the courts to address the issue to apply to the pre-existing adverse action requirements.[85] The scrivener's error that has deprived hundreds of consumers of their rights already, and has the potential to harm thousands more in the future, can be corrected with a very simple fix. The fix consists of the addition of three letters to two places in the FCRA:

Proposal: Revise 15 U.S.C. § 1681m(h)(8) to read:

(A) No civil actions.---Sections 1681n and 1681o shall not apply to any failure by any person to comply with this subsection.

(B) Administrative enforcement ---- This subsection shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials identified in that section

This change reinstates a right that had existed for over 30 years from to FACTA, and has no impact on any other provision

Thank you for the opportunity to testify, and I look forward to your questions

[85] National Consumer Law Center, Fair Credit Reporting § 8.5.5 (7th ed. 2010 and Supp.)..

NATIONAL CONSUMER LAW CENTER'S REPORT

AUTOMATED INJUSTICE:

HOW A MECHANIZED DISPUTE SYSTEM FRUSTRATES CONSUMERS SEEKING TO FIX ERRORS IN THEIR CREDIT REPORTS

January 2009

NATIONAL
CONSUMER LAW
CENTER®

Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports

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ACKNOWLEDGMENTS

Portions this report are based on the Congressional testimony of Leonard A. Bennett, a consumer attorney specializing in credit reporting cases, to the House Financial Services Committee during a June 2007 hearing. It also follows the work of Evan Hendricks, editor of Privacy Times, and the author of *Credit Scores and Credit Reports: How the System Really Works, What You Can Do*, which contains additional information about this topic and many other important issues concerning credit reporting.

Thanks to Lauren Saunders and Willard Ogburn of NCLC and Richard Rubin for valuable guidance, feedback, and editorial assistance in the preparation of this report. Svetlana Ladan formatted the report and its graphics. Tamar Malloy provided editorial support.

Thanks to the following consumer attorneys who provided valuable information and/or represented the consumers in this report: Justin Baxter, Blair Drazic, Steve Fahlgren, Joanne Faulkner, Richard Feferman, James Francis, Christopher Green, Ian Lyngklip, Robert Sola, David Szwak, and Lisa Wright.

Copies of this report are available by downloading from NCLC's web site at www.consumerlaw.org.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

I. INTRODUCTION 3

II. BACKGROUND: CREDIT REPORTS AND THE FAIR CREDIT REPORTING ACT 4

A. WHAT'S A CREDIT REPORT? 4
B. DISPUTE RIGHTS UNDER THE FCRA 4
C. CREDIT REPORTS ARE FULL OF ERRORS 5
D. FREQUENT TYPES OF CREDIT REPORTING ERRORS 7

III. YOU CALL THIS AN INVESTIGATION? 13

A. HOW AN INVESTIGATION SHOULD WORK 14
B. HOW IT REALLY WORKS: THE E-OSCAR SYSTEM 14
C. OF CLERKS AND AUTOMATONS 17
D. FURNISHERS' INADEQUATE INVESTIGATION 21
E. PARROTING: THE CREDITOR AS GOD 23
F. "ALL RELEVANT INFORMATION" 25
G. BURDEN OF PROOF 28

IV. THE ECONOMICS OF CREDIT REPORTING 30

A. WHO IS THE CUSTOMER 30
B. FAR AND AWAY 31
C. QUOTAS 31
D. CREDIT REPAIR ORGANIZATIONS 33

V. TIPS & RESOURCES 35

A. HOW TO DISPUTE ERRORS IN A CREDIT REPORT 35
B. RESOURCES 38
C. REFORM RECOMMENDATIONS 40

EXECUTIVE SUMMARY

Inaccuracies and errors plague the credit reporting systems. Estimates of serious errors range from 3% to 25%. Even using a low-end estimate, which is from the credit reporting industry and included only a narrow subset of problems, ***6 million Americans*** face serious errors in their reports that could result in a denial of credit. Typical errors include:

- Credit bureaus mixing the files and identities of consumers.
- Creditors causing mistakes by attributing a debt to the wrong consumer or incorrectly recording payment histories.
- The fallout caused by identity theft.

Nearly 40 years ago, Congress enacted the Fair Credit Reporting Act to protect consumers from errors in credit reporting. One of the most important safeguards in the FCRA is the requirement that credit bureaus conduct a reasonable investigation when a consumer disputes an item in his or her credit report.

Despite its importance, the FCRA dispute process has become a travesty of justice. The major credit bureaus (Equifax, Experian, and TransUnion) conduct investigations in an automated and perfunctory manner. The bureaus:

- Translate the detailed written disputes submitted by desperate consumers into two or three digit codes.
- Fail to send supporting documentation to creditors and other information providers (furnishers) as required by the FCRA.
- Limit the role of their employees who handle disputes, or of the foreign workers employed by their offshore vendors, to little more than selecting these two or three digit codes. Workers do not examine documents, contact consumers

by phone or email, or exercise any form of human discretion in resolving a dispute.

The conduct of some furnishers is no better. The FCRA also requires information furnishers to participate in dispute resolution by themselves conducting an investigation. Like the credit bureaus, some furnishers also conduct meaningless, non-substantive investigations. Their "investigative" activity consists of nothing more comparing the notice of dispute with the recorded information that is itself the very subject of the dispute.

The credit bureaus then accept whatever the furnishers decide in resolving the dispute. The bureaus merely "parrot" the furnishers' results, without conducting any independent review, with the ultimate effect that no one ever investigates the substance or merits of the consumer's complaint.

Why does this happen? Credit bureaus have little economic incentive to conduct proper disputes or improve their investigations. Consumers are not the paying customers for credit bureaus – furnishers are the ones who pay the bureaus' bills. Thus, consumer disputes represent an expense to the bureaus, which minimize the resources devoted to them by using automation that produces formalistic results. In fact, one credit bureau has reduced the amount it pays to its vendor that handles disputes to a mere ***$0.57*** per dispute letter.

I. INTRODUCTION

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 employers, landlords, utility providers, and insurers.

Thus, a consumer's credit report can have a huge impact on a consumer's life. A good credit report allows a consumer to own a home, buy a car, obtain insurance for both, get a fairly priced credit card, and perhaps even secure a job. Conversely, a bad credit report will deny consumers those same things, or force them to pay thousands more for credit and insurance. It may even cost the consumer an employment opportunity or result in termination. It is no exaggeration to say that a credit history can make or break a consumer's finances.

Kenneth Baker[1]

Kenneth Baker had a single financial objective from the early part of 2005 until March 2006 – he wanted to move his family into a new home. The family home in Loudoun County, Virginia was too cramped for his wife, daughter, and wife's children. In order to move, Kenneth needed approval for a mortgage. It shouldn't have been too hard – after all, Kenneth had always paid his bills on time.

Unfortunately for Kenneth, his credit history had become "mixed" with that of another "Kenneth Baker" – a Kenneth Baker who was not so diligent about paying his bills. This other man had racked up numerous delinquencies, charge-offs, collections and judgments against him. These black marks showed up on Kenneth's credit report, making it impossible for him to get a mortgage.

Kenneth made enormous efforts to fix these errors and get a mortgage. He sent multiple disputes to the credit bureaus. He hired lawyers to write dispute letters to the bureaus. His letters explained how the other man's negative accounts had gotten mixed into his credit report, how he needed the problem fixed to get a mortgage, and even how the bureaus procedures had caused similar problems in other cases that resulted in successful lawsuits against the bureaus.

Kenneth applied unsuccessfully every month to get a mortgage, sometimes applying more than once in a month. Every time he tried, Kenneth had to explain to a mortgage broker how some other man's negative accounts had gotten mixed into his credit history. Every time he had to explain this, Kenneth Baker became embarrassed and anxious. The constant rejections humiliated Kenneth, and he soon became depressed.

On March 24, 2006, Kenneth Baker committed suicide. In his last dispute letter to Experian, he wrote of how his battle to fix his credit report had "destroyed his life." In his suicide note, Kenneth referred to his ordeal with the credit bureaus. In this case, inaccurate credit reporting literally cost a man his life.

[1] Complaint, Estate of Baker v. Experian Info. Solutions, Civ. Ac. 3:07-cv-00470 (Aug. 10, 2007).

II. BACKGROUND: CREDIT REPORTS AND THE FAIR CREDIT REPORTING ACT

A. WHAT'S A CREDIT REPORT?

A credit report (also called a credit history) is a record of how a consumer has borrowed and repaid debts. Almost every adult American has a credit history with the three major national credit bureaus: Experian, Equifax, and TransUnion.

A credit report contains the history and status of many of a consumer's credit accounts. It has basic personal information about a consumer--Social Security number, birth date, current and former addresses, and employers. The report also lists basic information about a consumer's credit accounts, including the date the consumer opened the account, the type of account (such as real estate, revolving (credit card), or installment); whether the account is currently open or has been closed; the monthly payment; the maximum credit limit; the latest activity on the account; the current balance; and any amounts past due.

Each account includes a code that explains whether the account is current, thirty days past due, sixty days past due, or ninety days past due, or if the account involves a repossession, charge off, or other collection activity. The report also includes the addresses and telephone numbers of the creditors.

The report will list any accounts that have been turned over to a collection agency. In addition, a credit report will include certain public records information, such as court judgments (and sometimes mere lawsuits), garnishments, tax liens, foreclosures, and bankruptcies.

B. DISPUTE RIGHTS UNDER THE FCRA

In 1970, Congress created the Fair Credit Reporting Act (FCRA) to protect consumers when dealing with credit bureaus. The FCRA limits who can see a consumer's credit report, mandates how long negative information can remain on a report, and contains a number of identity theft protections. The credit bureaus, which are called "consumer reporting agencies" under the FCRA, are required to follow "reasonable procedures" to ensure the "maximum possible accuracy" of credit reports.

One of the most critical FCRA protections is the consumer's right to dispute errors in his or her credit report. Under the FCRA, both the credit bureaus and the information provider have responsibilities to investigate disputes and correct inaccurate or incomplete information. The provider of information is often referred to as the "furnisher." Furnishers include banks, credit card companies, auto lenders, collection agencies or other businesses.

If the consumer sends a dispute to a credit bureau, the bureau must investigate the items in question, usually within 30 days. The bureau can reject the dispute if it

determines the dispute to be frivolous or irrelevant. The credit bureau must conduct a "reasonable" investigation (sometimes called a "reinvestigation," which is the term used in the FCRA) that includes reviewing and considering all relevant information submitted by the consumer. Within five days of receiving the dispute, the bureau must also notify the furnisher of the dispute, and the notice must include "all relevant information" provided by the consumer about the dispute.

After the furnisher receives notice of a dispute from the credit bureau, the furnisher has its own duties under the FCRA. The furnisher must conduct an investigation, review all relevant information provided by the credit bureau, and report the results to the bureau. If the furnisher finds the disputed information to be inaccurate, it must notify all three of the national bureaus so that they can correct this information in the consumer's credit report file.

When the investigation is complete, the credit bureau must give the consumer the written results and a free copy of the credit report if the dispute results in a change. If information is corrected or deleted, the credit bureau cannot put back the disputed information in the consumer's credit report unless the furnisher verifies that it is accurate and complete. The credit bureau also must send the consumer a written notice that includes the name, address, and phone number of the furnisher.

For tips on sending a credit reporting dispute, see Part V.A of this Report.

C. CREDIT REPORTS ARE FULL OF ERRORS

Despite the importance of accurate credit reports and the purpose of the FCRA to promote accuracy, errors are unfortunately quite common in the credit reporting system. Study after study has documented significant error rates in credit reports. An on-line survey by Zogby Interactive found that 37% of consumers who ordered their credit report discovered an error, and 50% of those were not easily able to correct the error.[2] A study by the Consumer Federation of America and National Credit Reporting Association documented numerous serious errors in credit reports.[3] One indication of the magnitude of such errors is the fact that 29% of credit files had a difference of 50 points or more between the highest and lowest scores from the three national credit bureaus.[4]

Studies from U.S PIRG and Consumers Union have found errors in 25% of credit reports serious enough to cause a denial of credit.[5] Even the trade association for the credit bureaus – the Consumer Data Industry Association (CDIA) - has admitted that, out

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[2] Zogby Interactive, *Most Americans Fear Identity Theft*, Zogby's American Consumer, April 2007, at 3.
[3] Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers*, December 17, 2002, *available at* www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf ["(CFA-NCRA study"].
[4] *Id.* at 20.
[5] Nat'l Ass'n of State PIRGs, *Mistakes Do Happen: A Look at Errors in Consumer Credit Reports*, at 11 (2004); Consumers Union, *What Are They Saying About Me? The Results of a Review of 161 Credit Reports from the Three Major Credit Bureaus* (Apr. 29, 1991).

of 57.4 million consumers who ordered their own credit reports, 12.5 million (or 21.8%) filed a dispute.[6]

The FTC is currently undertaking a comprehensive study of errors in credit reports using a consultant to help study participants order and review their credit reports. In the pilot phase of the study, 53% (16 out of 30) of consumers found an error in their credit reports. Sixteen percent of the consumers found errors that either would have likely had a material effect on their credit score (3 out of 30), or the effect was uncertain (2 out of 30).[7] The study may have undercounted the error rate because it was skewed toward consumers with high credit scores, who the study indicated "not surprisingly" were less likely to have major significant errors in their credit reports.[8]

The credit reporting industry has attempted to rebut charges of systemic inaccuracies in credit reports with their own studies, claiming that fewer than 3% of credit reports are inaccurate.[9] However, the industry reached this statistic by counting as "inaccurate" only those credit reports in which the consumers fulfilled all four of the following criteria: (1) were denied credit; (2) requested a copy of their credit report; (3) filed a dispute; and (4) the dispute resulted in a reversal of the original decision to deny credit. This study did not include inaccuracies in the credit reports of consumers who did not apply for or were denied credit, had not filed a dispute, or who did not seek a reversal of the original denial of credit. This could be a significant number of consumers for many reasons, such as the fact that some lenders do not deny credit but instead simply charge more if the consumer has an impaired credit report, and the barriers faced by many consumers who do not file disputes even when they know of blatant errors.

Indeed, many consumers with errors in their reports do not send disputes because of barriers such as lack of time or resources, educational barriers, and not knowing their rights. In the FTC study discussed above, only one of the consumers who definitely had a major error in his/her credit report was successfully able to dispute it, despite the assistance of the FTC's consultant. Another consumer disputed on-line and the credit bureau did not respond. The third consumer explained that she did not file a dispute because "she was a single mother with twins and could not muster the time to file a dispute." The consultant mused that "[w]e expected that participants would be motivated to have any errors in their credit reports corrected promptly. This did not generally occur."[10]

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[6] Federal Trade Commission and Federal Reserve Board, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006), at 12, *available at* www.ftc.gov/os/comments/fcradispute/P044808fcradisputeprocessreporttocongress.pdf. [hereinafter "FTC/FRB FCRA Dispute Process Report"].

[7] Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (December 2006), Appendix at 15, *available at* http://www.ftc.gov/reports/FACTACT/FACT_Act_Report_2006_Exhibits_1-12.pdf [hereinafter "FTC Pilot Study on Accuracy"].

[8] *Id.* at 15-16.

[9] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2004), at 25, *available at* http://www.ftc.gov/reports/facta/041209factarpt.pdf [hereinafter "FTC 2004 FACTA Report"] (citing an Arthur Andersen study commissioned by the credit bureaus).

[10] FTC Pilot Study on Accuracy, Appendix at 17.

Even using the industry's low estimate of a 3% serious error rate, there are over 200 million consumers in this country with a credit report on record at the credit bureaus.[11] Thus, 3% of 200 million files would mean that inaccurate credit reports are affecting the economic well-being of ***6 million Americans***. One of the primary purposes of the FCRA is to give these consumers the right to have the errors investigated and fixed.

D. FREQUENT TYPES OF CREDIT REPORTING ERRORS

There are many types of errors in credit reports; we focus on a few of the most egregious.

Mixed files

Mixed or mismerged files occur when credit information relating to one consumer is placed in the file of another, thus creating a false description of both consumers' credit histories. Mismerging occurs most often when two or more consumers have similar names, Social Security Numbers (SSNs), or other identifiers (for example, when information relating to John J. Jones is put in John G. Jones' file).

Mixed or mismerged files are a frequent problem. One study found that 44% of credit reporting complaints to the FTC involved mismerged files. Of these complaints, 64% had total strangers' files mixed in, while 36% involved information belonging to relatives or former spouses.[12] Another study found that one in ten files contained at least one, and as many as three, additional credit reports. It was very common for the additional reports to contain a mixture of credit information, some of which belonged to the subject of the report requested and some which did not.[13]

Mixed files also result in debt collection harassment and lawsuits against innocent consumers. One of the first steps a collection attorney will take when he or she receives an assigned file is to request a skip trace from one of the national credit bureaus. These reports are often the broadest matched files provided by the bureaus. It is common for collection attorneys to receive an incorrectly matched report and to sue the wrong consumer.[14]

Mixed files occur largely because the credit bureaus' computers do not use sufficiently rigorous criteria to match consumer data precisely, even when such unique identifiers as SSNs are present. For example, the credit bureaus will include information

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[11] FTC/FRB FCRA Dispute Process Report at 3.

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

[13] CFA-NCRA Study at 10.

[14] *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing before the House Committee on Financial Services*, 110th Congr. (2007) (statement of Leonard A. Bennett), at 10, available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/osbennett061907.pdf. [hereinafter "Leonard Bennett Testimony"]

in a consumer's file even when the SSNs do not match, but other information appears to match.[15] Thus, they have been known to mismerge files when the consumers' names are similar and they share seven of nine digits in their SSN.[16]

Angela Williams[17]

Angela Williams, a medical transcriptionist from Orlando, Florida, had a bad credit report. Her Equifax report included at least 25 accounts showing negative information. The problem was that none of these accounts belonged Angela Williams. Instead, they belong to Angelina Williams, a woman whose only connection with the medical transcriptionist was a similar name and a Social Security number that was almost the same - the last two digits were reversed.

Angela Williams spent a total of 13 years trying to get her credit report fixed. She sent dispute after to dispute to Equifax. Occasionally, Equifax would delete one of false accounts from Angela's credit report, only to have the account show up again later. Even after being notified of this problem through Angela's disputes, new accounts from the other woman would appear in Angela's report.

Worse yet, creditors and debt collectors who were pursuing the other woman would order reports from Equifax and get Angela's information. Soon they started wrongfully pursing Angela for the other woman's debts.

These repeated errors over a 13 year period took an enormous toll on Angela Williams. Her credit score dropped into the 500s – well below the subprime cutoff. She was denied credit repeatedly and even told to leave one store after an employee viewed her credit report. The ordeal caused Angela tremendous stress and frustration. Finally, she sought the assistance of a lawyer and filed a lawsuit against Equifax.

Equifax fought this lawsuit long and hard, despite glaring evidence that it had mixed up Angela William's credit report with that of the other woman. In November 2007, a jury found in favor of Angela Williams, and entered a verdict against Equifax for $219,000 in actual damages and $2.7 million in punitive damages.

Mixed files could be prevented by requiring the credit bureaus to use strict matching criteria when placing information into a consumer's credit report. The most critical reform would be to require an exact match of Social Security numbers. The credit bureaus could reduce mixed file problems by merely requiring an eight of nine SSN match and a flag if that match isn't perfect. However, the credit bureaus have chosen to be excessively and unreasonably over-inclusive because, as the FTC noted in a 2004 report mandated by the Fair and Accurate Credit Transactions Act of 2003: "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."[18] Indeed, an erroneously low credit score may even provide the furnisher with more profit,

[15] FTC 2004 FACTA Report at 40.
[16] *See, e.g.*, Apodaca v. Discover Fin. Servs. 417 F.Supp.2d 1220 (D.N.M. 2006).
[17] *Consumer Victory: Equifax Must Pay $2.9 million for Mixing Up Credit Files*, The Consumer Advocate, Vol. 14, No. 1, National Association of Consumer Advocates (Jan.-Mar. 2008) at 14; *Consumer Wins Fight For Credit Report Accuracy*, Privacy Times, Dec. 6, 2007.
[18] FTC 2004 FACTA Report at 47.

because the consumer will be charged a higher rate, a practice known as "risk-based pricing."

The credit bureaus have been aware of mixed file errors for decades.[19] In the early to mid-1990s, the FTC reached consent orders with the credit bureaus requiring them to improve their procedures to prevent mixed files.[20] However, over a decade later, mixed files remain a significant problem. Despite the recognition of the continuing nature of mixed file issues in its 2004 report, the FTC has not required the credit bureaus to improve their matching criteria.

Identity Theft

Identity theft is often called the "fastest growing crime" in this country, with an estimated eight million consumers victimized by some form of identify theft every year.[21] Identity theft itself presents a serious source of inaccuracies in the credit reporting system. The identity thief, however, is not the only culprit. Credit bureaus and furnishers bear a share of the blame as well.

The credit bureaus' loose matching procedures, discussed above, contribute to identity theft problems. For example, if a thief has only adopted the victim's first name and Social Security number but not his or her last name or address, the algorithm used by credit bureaus 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" is really characterized as a hybrid of a mixed file problem.

The Litchfields[22]

Susan and David M. Litchfield of Norwell, Massachusetts, battled the credit bureaus for six years to erase numerous debts on their record that were incurred by a David J. Leighton of Tampa. The Litchfields even obtained a copy of one credit card agreement they had allegedly signed, which upon review showed Leighton's signature, along with David M. Litchfield's Social Security number neatly penned in.

Even with this evidence, the credit bureaus did not fix the errors. The Litchfields sent disputes to all three bureaus telling them of the apparent fraud, to no avail. They disputed more than a dozen items on the report, including a Tampa child support order for $19,060 on their Experian report.

The bureaus' nonresponsive was costly to the Litchfields, who were rejected for a student loan for their daughter, had their credit card interest rates raised to penalty levels, and were forced to pay more for a

[19] For an example of a mixed file case dating from the late 1970s, *see* Thompson v. San Antonio Retail Merchants Ass'n, 682 F.2d 509 (5th Cir. 1982).
[20] 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).
[21] Synovate, Federal Trade Commission – Identity Theft Survey Report, Nov. 2007, at 3, *available at* http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf .

home equity loan from the bank where Susan Litchfield had done business her entire life. "I just sat here and cried," she said.

Finally it took the intervention of the Boston Globe for TransUnion to agree to work with the Litchfields. What happens to identity theft victims who don't have the assistance of a major metropolitan newspaper?

Furnisher errors

Furnishers can often be the source of errors in credit reports. Furnisher inaccuracies primarily fall into two categories types. First, the furnisher might report the consumer's account with an incorrect payment history, current payment status, or balance. The error might be due to a misapplied payment or data entry error. Sometimes these errors occur because the creditor has not complied with industry reporting standards, such as the Metro 2 format.

George Saenz[23]

George Saenz's credit report became another victim of the broken American health care system. In 2001, he incurred a $512 medical bill that he couldn't pay. It went into collections and was sold to NCO, a large debt collector. NCO reported the debt to the credit bureaus.

NCO contacted Saenz, and in August 2003, accepted a compromise payment of $333 in full satisfaction of the outstanding debt. Justifiably thinking that he had cleared the debt, Saenz sent a dispute to TransUnion informing the bureau that he had paid off the NCO account.

TransUnion turned around and referred the dispute to NCO. Despite the fact that Saenz had just paid off the debt, NCO's automated systems responded to TransUnion that the debt was unpaid.

Saenz sent a second dispute on September 30, 2003. This time he included documentary evidence that the dispute had been paid, including a letter from NCO offering to settle the debt for $333, a receipt for a $333 money order payable to NCO, and a certified mail receipt.

TransUnion sent a second automated dispute form to NCO. However, TransUnion did not provide NCO with copies of the documents sent by Saenz, nor did it ask NCO about the authenticity of the documents. In fact, TransUnion didn't even ask NCO whether NCO had received the $333 payment.

NCO's automated system again erroneously verified that Saenz had not paid off the debt. Frustrated, Saenz filed a lawsuit against NCO and TransUnion. In January 2007, three and a half years after Saenz paid off the debt, and only after a federal lawsuit was filed, did TransUnion remove the debt from his credit report.

The second type of dispute involves furnishers who have attributed a credit account to a consumer who does not owe the debt, often called an "ownership dispute." This type of dispute often involves a spouse or other authorized user who is not contractually liable for a debt. Other times, the consumer may have been the victim of identity theft. According to credit reporting industry statistics, these "ownership"

[22] Beth Healey, *Credit Agencies Lag on Errors, Fraud*, Boston Globe, Dec. 28, 2006.
[23] Saenz v. TransUnion, LLC, 2007 WL 2401745 (D. Or. Aug. 15, 2007).

disputes are among the most common, as the bureaus use the dispute code "consumer states account is not his/hers" over 30% of the time.

Any error sent by the furnisher in its computer file automatically appears in the consumer's credit report, even if the information patently contradicts information appearing in other parts of the credit report. The national credit bureaus unfortunately fail to exercise virtually any quality control over the information initially provided to them by furnishers. The credit bureaus blindly rely on furnishers and provide no oversight of the quality of the information being reported. This unquestioning acceptance and re-publication of furnisher information invites abuse. This is especially true when it comes to debt collectors and debt buyers, who present their own special types of errors.

Charles King[24]

Charles King's ex-girlfriend did a number on him. She opened up at least one, if not more, credit card accounts in his name, charged them up, and stuck him with the bill. After charging off the account as delinquent, First Consumers National Bank sold an account in King's name to Asset Acceptance, a large debt buyer. As usual for debt buyers, Asset Acceptance did not have any of the original account documents from First Consumers.

The debt showed up on King's credit report under Asset Acceptance's name. King justifiably disputed this information to the credit bureaus. After all, he was the victim of identity theft. He had not opened the account or used the credit card.

The credit bureaus referred the dispute to Asset Acceptance. In turn, all that Asset Acceptance did was to merely compare the data in its files – the same files that had produced the disputed information - with the identical information that the bureaus were naturally then reporting. Asset Acceptance did not request the original documents from First Consumers - documents that might have shown the signature on the credit card account did not match King's signature.

Instead, Asset Acceptance's usual procedure in an identity theft investigation was to ask the consumer to send it a fraud affidavit – and Asset did not even make this request in King's case at all. How did Asset Acceptance conduct proper investigations for identity theft without looking at the signature on the original credit card application to see if it was forged or not?

Re-aging of obsolete debts

A type of abuse by debt collectors that results in inaccurate reporting is the "re-aging" of obsolete debts. The FCRA requires most consumer debts to be deleted from a credit report after seven years from the date of charge-off or 180 days after the delinquency.[25] "Re-aging" occurs when debt buyers purposefully misrepresent the critical date of delinquency, which is the trigger date from which the seven years is counted. Debt buyers report a date of delinquency that falls within the seven-year period,

[24] King v. Asset Acceptance, 452 F.Supp.2d 1272 (N.D. Ga. 2006).
[25] 15 U.S.C. § 1681c(a).

thus resurrecting long dormant and nearly worthless debts with the simple act of false credit reporting.

This problem has grown particularly prevalent and profitable in recent years with the emergence of a multi-billion dollar distressed debt industry that buys, sells, and re-buys large portfolios of defaulted and time-barred debt for pennies on the dollar and then duns vulnerable consumers for inflated sums. In 2000, the FTC imposed a $2 million civil penalty against one debt buyer, Performance Capital Management, for repeated instances of re-aging debts as well as conducting inadequate perfunctory investigations.[26]

The credit bureaus play a role in re-aging abuse as well, failing to control properly for debt buyers who are effectively gaming their systems. The Seventh Circuit expressed its concern over Equifax's procedures concerning the "Date of Last Activity" field, which is the date used by Equifax to calculate the seven year expiration period. The Seventh Circuit noted that Equifax's procedures for this date field could "effectively allow Equifax the opportunity to keep delinquent accounts in the credit file past the seven and one-half year limitation of" the FCRA.[27]

Steven Rosenberg[28]

Sometime in the early to mid 1990s, Steven Rosenberg had received a phone call from a debt collector about a debt he owed to Fleet Bank. Rosenberg couldn't recall any debt he owed Fleet, and told the debt collector so. The debt collector responded that the debt arose from an account Rosenberg had with NatWest Bank in the 1970s (which Fleet acquired). Rosenberg had closed his account with NatWest in the 1980s, and denied he owed any money when he stopped banking there.

About ten years later, in April 2003, Rosenberg received a letter from Cavalry Investments, a buyer of bad debts, attempting to collect a debt it had bought from Fleet Bank. Again, Rosenberg denied he owed a debt to Fleet. More importantly, he discovered that Cavalry had reported the debt to the credit bureaus with an "opening date" of December 2001.

At about the same time, Rosenberg had been attempting to refinance his mortgage. The lender approved his loan, on the condition that he pay off the debt to Cavalry. Rosenberg refused to pay – he believed he did not owe the debt. He retained a lawyer, who sent a dispute to Cavalry indicating that the alleged debt, even if Rosenberg owed it, was at least a dozen years old. Rosenberg also sent a dispute to Equifax. Equifax in turn sent the dispute to Cavalry, requesting that Cavalry confirm the "date of last activity" and "opening date" of the account.

Cavalry "verified" the report. Fortunately for Rosenberg, Cavalry failed to provide the requested dates, and thus the account was deleted. However, the harm from the illegally reported debt – a debt that, even if Rosenberg owed it, was from the 1980s and thus about 20 years old– was done. Interest rates had risen by then.

[26] U.S. v. Performance Capital Management (Bankr. C.D. Cal 2000) (consent decree), *available at* http://www.ftc.gov/os/2000/08/performconsent.htm.
[27] Gillespie v. Equifax Information Services, 484 F.3d 938 (7th Cir. 2007).
[28] Rosenberg v. Calvary Investments, L.L.C., 2005 WL 2490353 (D. Conn. Sept. 30, 2005).

III. YOU CALL THIS AN INVESTIGATION?

The FCRA does not impose strict liability for inaccuracies. Instead, it requires the credit bureaus to "follow reasonable procedures to assure maximum possible accuracy." That is the first level of protection for accuracy in credit reporting. Unfortunately, Part II of this report shows that the credit bureaus do not always meet their obligations for this level of protection.

For those consumers for whom this first level of protection fails- whether it be 3% or 25% of the U.S. adult population- Congress enacted a second level of protection: the dispute process. The dispute process is the safety net when something goes wrong in the processing of billions of pieces of data for hundreds of millions of files.

The dispute process is critical to ensuring the accuracy of credit reporting, and to protecting the rights of the millions of consumers whose livelihoods, housing, insurance, and access to credit depend on accurate reporting. Congress's intent in enacting the FCRA's dispute process and its societal importance were plainly stated by Senator William Proxmire when the FCRA was first introduced in the U.S. Senate:

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

115 Cong. Rec. 2412 (1969).

Thus, the dispute process is supposed to be the safety net for consumers plagued by inaccurate credit reporting. Unfortunately, the industry has created gaping holes in that net. The credit reporting dispute system in its current form is fundamentally flawed. The credit bureaus have created an automated and perfunctory process that is a mockery of how a real dispute process should function. This automated dispute system involves credit bureaus converting detailed consumer disputes into cryptic two or three digit codes. The bureaus forward these cryptic codes to the furnishers but do not forward the underlying documentation sent to them by consumers.

Furnishers have a role in this automated injustice. Their investigations of disputes sometimes involve merely verifying that the information matches their own computer records, without undertaking a meaningful examination of the underlying facts. The bureaus accept whatever the furnishers tell them without conducting an independent

review. The continued result of this lackadaisical investigation system is that consumers find it extremely difficult, frustrating, and expensive to dispute errors.

A. HOW AN INVESTIGATION SHOULD WORK

Most people have a general expectation of what an "investigation" of a credit card or loan dispute should look like. An investigation should involve reviewing documents, researching facts, interviewing witnesses, or comparing handwriting. For example, consider the deposition testimony of a bank employee who once worked as a fraud investigator for Zales Jewelers. This employee described how her fraud investigations for Zales included: [29]

- gathering original documents, including the credit application, the sales tickets, and any statements from the store personnel that were in written form;
- gathering copies of identification and police reports;
- examining the signature of the purchaser on the sales ticket and account application;
- interviewing store personnel, including the store manager, where possible, and the sales associate who had handled the actual transaction;
- preparing statements to be signed by store personnel or taking notes of interviews;
- interviewing the fraud victim because "often they would have additional information that would help us in locating a suspect or determining how the fraud or forgery had occurred."

This description probably matches with most consumers' understanding of what should happen in an investigation. Unfortunately, these steps, or anything resembling a real inquiry, rarely occur in a credit reporting dispute.

B. HOW IT REALLY WORKS: THE E-OSCAR SYSTEM

In contrast to the meaningful and substantial investigation described above, credit bureaus have developed a highly automated, computer-driven system that precludes any real investigation. This system converts the often-detailed and painstakingly written dispute letters into nothing more than a two or three digit code, sometimes with a few lines of narrative.

The credit reporting industry uses a standardized form to communicate disputes to furnishers, called a Consumer Dispute Verification form (CDV). An automated version of the form, communicated entirely electronically, is known as Automated Consumer Dispute Verification (ACDV) form. The credit bureaus initiate a request for an investigation with the furnisher by sending an ACDV through an automated on-line processing system called "e-OSCAR" (Online Solution for Complete and Accurate Reporting). In 2006, the industry reported that 83% of disputes were processed using e-

[29] Deposition of Elizabeth Aadland, Smith v. Citifinancial Retail Services, No. 3:06-cv-02966 (N.D. Cal. March 23, 2007).

OSCAR. Furthermore, each of the three national credit bureaus had announced plans to require that all disputes be processed using e-OSCAR.[30]

An ACDV simply consists of a few items: identifying information about the consumer in the credit bureau's file; one or two codes summarizing the consumer's dispute; and, in some cases, a one-or-two-line free-form narrative field that supplements the dispute codes. The credit bureau employee selects a specific dispute code from among twenty-six offered by the e-OSCAR system, such as "Not his/hers" and "Claims account closed." These codes are often contained in a dropdown "pick list."[31]

This automated system is heavily dependent upon these standardized dispute codes. Yet these codes are entirely inadequate in many instances to properly convey information about a dispute. As many as 80% of consumer disputes are written.[32] These written disputes often consist of a detailed letter with supporting documentation, painstakingly written by concerned and even desperate consumers. All of these documents, including a consumer's careful description of a specific dispute, fashioned to make detection and correction easy, are reduced to a two or three digit code that the bureau employee who glances at the material believes best describes the dispute.

The code is sent to the furnisher without supporting documentation provided by the consumer - documents such as account applications, billing statements, letters, and payoff statements that can show overwhelming and even conclusive proof. These critical documents are left out of the investigation process, which itself may violate the FCRA as discussed below in Part III.F.

Even worse, the credit bureaus reduced the number of dispute codes from 100 choices under their prior system, to 26 under e-Oscar.[33] Most shockingly, of these 26 codes, the credit bureaus use the same four or five codes for the vast majority of all disputes. According to the testimony provided in congressional hearings, credit bureaus used the following codes in the following percentages of disputes:[34]

Not his/hers	30.5%
Disputes present/previous Account Status/History	21.2%
Claims Inaccurate Information. Did not provide specific dispute	16.8%
Disputes amounts	8.8%
Claims account closed by consumer	7.0%
Total	84.3%

Once the dispute is purportedly investigated, the credit bureaus then send generic and uninformative letters stating that an investigation has been made, without including

[30] FTC/FRB FCRA Dispute Process report at 16.
[31] Leonard Bennett Testimony at 21.
[32] *See* Deposition of Eileen Little, Evantash v. G.E. Capital Mortgage, Civ. Action No. 02-CV-1188 (E.D. Pa. Jan. 25, 2003).
[33] Leonard Bennett Testimony at 28.
[34] *Id.*

any details as to whom they have contacted and what information was obtained or relied upon for a final determination. As the Seventh Circuit Court of Appeals has noted, the ACDV process is often "cryptic" and "meaningless":

> It seems that Experian has a systemic problem in its limited categorization of the inquiries it receives and its cryptic notices and responses. For example, there is the meaningless communication [plaintiff] received from Experian in response to her notice of dispute: "Using the information provided the following item was not found: Grossinger City Toyota." Another example is the opaque notice of dispute sent by Experian to U.S. Bank: "Claims Company Will Change or Delete." Moreover, in what appears to be an unresponsive form letter rather than the report of an adequate investigation into her claim, [plaintiff] was notified that the "Paid/Was a repossession" notation would remain in her report and the only change would be the addition of: "Account closed at consumer's request."[35]

When is a "Repossession" Not a Repossession?[36]

Rosemary Krajewski did nothing more than any mother would have done – she helped her ex-husband and father of her children get a car in 2004 by co-signing the loan and she did not object when her ex-husband let their adult son Joseph use the car. She drove the car only once, and it was stored at her ex-husband's home.

In April 2006, Joseph was arrested in the car and the police towed it to an impoundment lot. As a result, the lender on the car loan – American Honda Finance – repossessed the car based on fine print in the loan agreement. American Honda reported the repossession to the credit bureaus but failed to report that the repossession was based on a police seizure and that neither Krajewski nor her ex-husband had failed to make any of the payments due under the loan.

Despite this heavy-handed treatment, Krajewski even tried to do the right thing by taking a loan from a finance company to pay off American Honda. Because of the black mark on her credit report, however, she was unable to get the financing.

Krajewski tried to tell her side of the story by sending a dispute to TransUnion in October 2006 stating that American Honda's report of a repossession on her credit report was incorrect because she had never missed a payment on the car loan, the car was improperly repossessed, and there was no default on the loan. But TransUnion did not listen.

Instead, TransUnion sent American Honda an ACDV that unhelpfully explained "[c]laims company will change. Verify all account information." The ACDV did not ask American Honda to verify payment history in response to Krajewski's assertion that she had not paid late on the account. The ACDV did not mention that Krajewski claimed the repossession report was incorrect because it was really a police seizure caused by her son.

American Honda, of course, merely compared the information on the ACDV to its own computer records

[35] Ruffin-Thompkins v. Experian Info. Solutions, Inc., 422 F.3d 603, 610-611 (7th Cir. 2005).

and verified all information as accurate. Krajewski filed a second dispute in January 2007, with the same result.

So despite the fact that she never missed a payment on the Honda loan, almost never drove the car, didn't even garage the car at her home, and the "repossession" was the result of her adult son being arrested in the car, Krajewski was forced to file a lawsuit to remove the erroneous information on her credit report that she was the subject of a repossession and thus not creditworthy. Krajewski did nothing more than help her ex-husband (and American Honda) by co-signing to loan to make sure it was paid – which it was – and her reward was a ruined credit record that she could not get fixed without a lawsuit.

C. OF CLERKS AND AUTOMATONS

The role of the credit bureau employees allegedly assigned to "investigate" credit reporting disputes is extremely limited. Both the internal handbooks of the credit bureaus and evidence in FCRA lawsuits indicate that the primary job of these employees, or in some cases outsourced vendors, is no more than selecting the appropriate dispute codes sent to the furnisher.

For example, TransUnion's dispute processing manual instructs its employees or vendors in relevant part:[37]

1. Identify the Line item. ("[I]dentify the tradeline.")
2. Open the Disputes Screen.
3. Add Claim Code(s). ("Based on the information the consumer provides, select a Claim Code from the Claims drop-down list and chose Add.")
4. Add Consumer Comment. ("Add a Consumer Comment if the consumer provides additional details about the dispute that is not addressed by the current Claim Codes.")[38]
5. Select an Address. ("If the subscriber/data furnisher has more than one address....The CDV will be sent to the displayed address.")
6. Finish opening the Dispute. ("Choose 'Done.'")

What is of course missing from this procedure is the exercise of any discretion by the bureau employee or outsource vendor. TransUnion's procedures were further elaborated upon in this deposition of an employee who performed dispute processing before her job was outsourced to a vendor in India:[39]

> Q. [If the] consumer says, 'I dispute this credit card account, here's the account number, it belongs to my husband, not to me, what would you

[36] Krajewski v. American Honda Finance Corp., 557 F.Supp.2d 596, 614 (E.D. Pa. 2008).
[37] "Consumer Disputes," TransUnion CRS Manual, Sept. 28, 2004, at 1-4, as cited in Leonard Bennett Testimony at 24-25.
[38] This Consumer Comment field, also called the "FCRA Relevant Information" field, is used infrequently, as discussed in Part III.F.
[39] Deposition of Selena Bazemore, Mullins v. TransUnion, Civ. Ac. No. 3:05cv888, Sept. 21, 2006, as cited in Leonard Bennett Testimony at 25-26.

have done if you were complying with TransUnion's procedures in August '05?
A. I would dispute the account with the appropriate claim code.
Q. How would you do that?
A. In the computer. [. . .] I would click on the account and select the appropriate claim code. Once you hit okay, it says open, which means the dispute on that account has been opened.
Q. After you put the dispute code and click on the dispute, do you have any other role in the investigation or dispute process for that account?
A. No.
Q. It just gets sent onto the creditor, and your job as to that dispute is done, right?
A. Correct.
Q. It would be fair to say that if you were complying with TransUnion's policies, you're not as an investigator or as a dispute processor making any judgment calls or exercising any discretion about whether a consumer really owns the account? [. . .] You're not exercising that discretion?
A. No. [. . .]
Q. How does TransUnion instruct its employees to process the dispute?
A. In the system.
Q. By taking the consumer's dispute, summarizing it into a claim or dispute code, inputting that into the system and sending that code to the creditor?
A. Correct.
Q. Is there any other part of an investigation besides that that TransUnion has instructed its employees is required?
A. No.

Equifax's procedures are substantially similar. In a March 2007 deposition, Equifax's Vice President of Global Consumer Services described that bureau's "reinvestigation" process accordingly: [40]

Q: What knowledge do you have as to the mechanics of how a DDC Filipino employee would process an Equifax dispute? [. . .]
A: The electronic image would be displayed on their screen. They would have an ACIS [Automated Consumer Interview System] screen that they would use. They would then look at the electronic image. They would read off the identifying information, enter [. . .] that ID information into the system, access that credit report. At that point, they'd be able to determine if they were looking at the correct file. If they were, they'd go further. They'd read the letter, they gain an understanding of the issues at hand, and they'd look at the credit report to see if the credit report at that time reflects that. If it does, they would send those particular items to the

[40] Deposition of Gary Poch, Faile v. Equifax, Civ. Ac. No. 3:06cv617, March 13, 2007, as cited in Leonard Bennett Testimony at 22-23.

data furnisher or furnishers. They would request that an investigation be started.

[. . . .]

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

A: That's correct.

Q: Do DDC employees have telephones on their desk?

A: I do not believe so.

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

A: They do not.

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

A: They do not.

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

A: They do not.

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

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

Q: And what about fax machines?

A: [. . .] They do not have fax machines either.

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

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

As this deposition shows, the only human intervention by the credit bureaus' employees is to determine the appropriate two-or-three-digit code to enter in a computer message to the creditor. No independent discretion is exercised. No information is "considered" in the investigation. The credit bureau's employees or vendors only action is to transfer the consumer's written dispute, of whatever detail, into a dispute code. In fact, other than the unusual and rare "VIP" disputes handled by the credit bureau attorneys or legal support, there is not even human contact between the furnisher and the creditor source.

Experian's procedures are no more rigorous than those of TransUnion or Equifax. Its employee testified:[41]

Q. After you receive a dispute such as Exhibit 1 [a multipage dispute letter with nearly 60 pages of supporting documentation], if you were following Experian's mandate or requirement, you would plug the

[41] Deposition of Brenda Hahlen, Beck v. Experian, Civ. Ac. No. 1:05CV347 (E.D. Va.), June 29, 2005, as cited in Leonard Bennett Testimony at 26.

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

What these depositions and internal credit bureau documents show is that their employees are no more than data entry clerks in the dispute and investigation process. None of the credit bureaus permit these clerks to consider and exercise discretion over a consumer's dispute. When an Experian credit bureau witness was asked during another deposition, "What does Experian intend for its employees to do in order for them to obtain and review copies of the underlying documents on the dispute – from the creditor on the disputed account?," the employee testified, "It's not Experian's policy to require or suggest that its agent ask for any underlying documents. Experian doesn't train its employees to do handwriting analysis or various other investigative-type things that would be required of reviewing a credit application."[42]

Internet disputes involve even more automation, as there is usually no involvement of the credit bureau's personnel in the dispute process. The internet dispute forms provide a list of on-line check-boxes to select as the basis for the dispute. The check-box selected by the consumer is matched to one of the pick-list ACDV dispute codes and automatically sent to the furnisher without any human intervention.

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[42] Deposition of Kimberly Hughes, Beck v. Experian, Civ. Ac. No. 1:05CV347 (E.D. Va.), June 30, 2005, as cited in Leonard Bennett Testimony at 26-27.

D. FURNISHERS' INADEQUATE INVESTIGATION

As if the automated and perfunctory nature of the e-OSCAR system were not bad enough, furnishers contribute to the problem by conducting inadequate investigations. Often, furnishers will merely verify the existence of disputed information, instead of actually investigating the dispute. They will not actually research the underlying dispute, review documents, or speak to consumers about the dispute. Instead, these furnishers simply confirm that the information in the ACDV matches their computer records, and then verify the disputed information to the credit bureaus.

Linda Johnson[43]

The seminal FCRA decision establishing the legal duties of a furnisher in an FCRA dispute involves the credit card lender MBNA. Until its acquisition by Bank of America, MBNA was one of the top ten credit card lenders in the country. In Johnson v. MBNA, the company wrongfully attempted to hold Linda Johnson liable for the credit card debt of her ex-husband by reporting the debt on her credit report. Johnson had never signed up to be responsible as a joint accountholder on her ex-husband's account. Instead, her ex-husband had merely authorized her to use his card when they were married.

Johnson sent dispute after dispute to the credit bureaus trying to get her ex-husband's delinquent MBNA account off her credit report. Frustrated, she finally sued MBNA and the credit bureaus. During the course of the litigation, MBNA's employees testified that the company's FCRA investigation process consisted of merely confirming the name and address of consumers in the MBNA computers and noting from the applicable codes that the account actually belonged to the consumer. The employees revealed that they *never* consulted underlying documents such as account applications to determine accuracy of disputed information.

More appalling was the fact that MBNA argued these perfunctory checks for data conformity were all that the FCRA required of furnishers in an investigation. MBNA claimed that it was not required to review the ex-husband's original account application, which would have shown whether Johnson had really signed on the dotted line or merely been added as an "authorized user." In fact, MBNA revealed it didn't even keep the original account application after 2 years. Query how MBNA would have investigated an identity theft case if it refused to review the original signed application or had even discarded it?

Fortunately, the Fourth Circuit disagreed with MBNA. The court held:[44]

> The key term at issue here, "investigation," is defined as "[a] detailed inquiry or systematic examination." ... Thus, the plain meaning of "investigation" clearly requires some degree of careful inquiry by creditors.... It would make little sense to conclude that, in creating a system intended to give consumers a means to dispute-and, ultimately, correct-inaccurate information on their credit reports, Congress used the term "investigation" to include superficial, unreasonable inquiries by creditors. .... We therefore hold that [the FCRA] requires creditors, after receiving notice of a consumer dispute from a credit reporting agency, to conduct a reasonable investigation of their records to determine whether the disputed information can be verified.

[43] Johnson v. MBNA, 357 F.3d 426 (4th Cir. 2004).
[44] *Id.* at 430-431 (citations omitted).

Other lawsuits reveal that MBNA is not alone in conducting superficial investigations. Other furnishers with similarly perfunctory FCRA investigative procedures include:

- **Capital One** – Capital One is one of the top 10 credit card lenders in the country. Its employee Pamela Tuskey described how all three of the national credit bureaus instructed Capital One personnel to simply verify information and to "make our system look like your system." The credit bureaus even discouraged the Capital One personnel from actively researching by pulling statements or similar activities.[45]

- **Debt Collectors/Buyers** – The *King v. Asset Acceptance* case in Part II.D, describes how this debt buyer "investigates" FCRA disputes by merely comparing the account information in ACDV with the information in Asset's files. According to the information revealed in the *King* case, Asset does not even obtain account documents from the original creditor.[46]

  Asset Acceptance is not alone among debt buyers. The FTC took enforcement action against another debt buyer, Performance Capital Management (PCM), alleging that it failed to conduct "investigations" within the meaning of the FCRA because:[47]

  > "When PCM receives consumer dispute verification notices, it is the practice of PCM to compare the name, address, and information in PCM's computer database with the information provided on each consumer dispute verification form. Where the two match, PCM reports that it has verified as accurate the information in its files. The actual records of the original creditor are not reviewed, nor is the matter referred to the original creditor for the original creditor to verify the accuracy of the information.

- **Mortgage Bankers** - Trade groups for certain furnishers/creditors have asserted the same argument as MBNA – that if a credit report reflects what is in the furnisher's records, it should be considered "accurate," no matter whether the furnisher's records are objectively accurate as a matter or reality. For example, the Mortgage Bankers Association has urged regulators to define accuracy as "accurate reporting of the status of the account as reflected in the furnisher's records."[48]

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[45] Deposition of Pamela Tuskey, Carol Fleischer v. TransUnion, Case No. CV 02-71301 (E.D. Mich.).
[46] King v. Asset Acceptance, 452 F.Supp.2d 1272 (N.D. Ga. 2006).
[47] Complaint, U.S. v. Performance Capital Management (Bankr. C.D. Cal. 2000), *available at* http://www.ftc.gov/os/2000/08/performcomp.htm.
[48] *Comments of Mortgage Bankers Association re: Interagency Advanced Notice of Proposed Rulemaking: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act*, May 22, 2006, at 4.

Some furnishers are even worse. Apparently, they do not even bother to make sure they have reviewed *all* their records when they take the perfunctory step of checking that the information in their database matches the information in the ACDV.

The Robertsons[49]

Danny and Gay Robertson opened a J.C. Penney credit card account in 1978. Many years later, the Robertsons' account ended up at GE Money Bank, with a balance of $222.22. In October 2004, GE called the Robertsons to collect the balance. The Robertsons paid off the balance over the phone using their debit card. GE even gave the Robertson's a confirmation number, and its own internal records showed that this payment was made.

However, GE failed to post the Robertson's payment to their account. GE attempted to collect the balance on the account several more times. Each time, the Robertsons informed GE that they had paid off the account by debit card.

GE eventually charged the account off as bad debt and assigned the account to a debt collector. The debt collector reported the account to the credit bureaus as "in collections." When the Robertsons realized this account was showing up negatively on their credit reports, they sent detailed dispute letters to TransUnion, Equifax, and GE.

The Robertson's dispute letters to the three bureaus stated clearly that they had paid off the account. TransUnion sent an ACDV to GE on September 29, 2005. GE sent a response back *on the very same day* verifying that the account had been charged off as bad debt, despite information in its own records that a payment had been made.

Equifax sent GE an ACDV on October 4, 2005. Again, GE verified the account as charged off, this time waiting a day to do so. GE did not conduct any investigation into its own records except to verify identity information.

The use of automation by the credit bureaus contributes to the problem of furnishers conducting superficial investigations. The ACDV codes fail to provide a meaningful description of the dispute and underlying documentation - furnishers have even complained that the dispute codes are "vague and overbroad."[50] The e-OSCAR system makes it all too easy for a furnisher to simply check a box indicating that the disputed information has been verified, an exercise that aids and abets perfunctory investigation.

E. PARROTING: THE CREDITOR AS GOD

After the furnisher responds to an FCRA dispute, the credit bureaus main response is to "parrot" what the furnishers report to them. They will accept the results of the furnisher's "investigation" even when a simple check would reveal inconsistent information. In other words, the credit bureaus' policies are that what the furnisher says is gospel and even court records cannot contradict that.

[49] Robertson v. J.C. Penney Co., 2007 WL 623397 (S.D. Miss. Mar. 4, 2008).
[50] FTC/FRB FCRA Dispute Process Report at 17.

For example, the case of *Allen v. Experian Information Systems* involved a Sears account that was being reported on the consumer's credit report as being "included in bankruptcy" past the limitations period for that information. The consumer's bankruptcy had occurred in 1993, which was reflected in the section of the consumer's report that listed public records information. Yet the Sears account was reported as being part of a bankruptcy that occurred in 1997. During a deposition, the consumer's attorney asked Experian employee Kathy Centanni why Experian did not address the consumer's dispute by cross-checking Experian's own records or checking the records of the United States Bankruptcy Court as to the correct date of the bankruptcy. Ms. Centanni answered:[51]

> ...the consumer is not disputing the bankruptcy. If they were disputing the bankruptcy as such, we would dispute the public record.
>
> The consumer is disputing the information being reported by a creditor, and it's our responsibility to go back to that creditor for them to research it.

In other words, Experian's policy was to defer to what the furnisher responded, even when court records and its own files contradicted that response.

Indeed, in case after case, the credit bureaus have refused to conduct their own investigation and instead simply "parroted" the furnisher. Recent examples include:

- Cairns v. GMAC Mortg. Corp., 2007 WL 735564 (D. Ariz. March 5, 2007). Equifax argued that "by contacting GMAC regarding Mr. Cairns' dispute, it had complied with the statutory obligations regarding reinvestigation."
- Murphy v. Midland Credit Mgmt., 456 F.Supp.2d 1082 (E.D. Mo. 2006). The court rejected Experian's argument that an investigation solely consisting of ACDVs without seeking additional documentation was reasonable as a matter of law.
- Saenz v. TransUnion, LLC, 2007 WL 2401745, *7 (D. Or. Aug. 15, 2007). In this case, the court noted: "TransUnion argues that use of ACDV procedures is necessarily reasonable [in an investigation] .... TransUnion buttresses its arguments with the assertion that creditors are better situated that reporting agencies to determine the accuracy of disputed information. TransUnion's argument rests upon a significant mischaracterization of its duties under the FCRA."

Another excerpt of the deposition of TransUnion's employee who performed dispute processing before such tasks were outsourced to a vendor using workers in India revealed how the credit bureaus entirely defer to the furnisher in disputes:

> Q. What if the creditor and the consumer strongly disagree about whether a debt is owed, consumer says that the debt's not owed, the creditor says yes, it is, what does TransUnion do to determine who's correct?

[51] Deposition of Kathy Centanni, Allen v. Experian Information Solutions, Civ. No. 04-817 (S.D. Ill. Dec. 6, 2005).

A. It's up to the creditor to make the decision.[52]

Thus, if the creditor instructs the credit bureau to retain the information as reported, there is almost nothing the consumer can do to override that instruction.

While the credit bureaus claim that they will review the documents the consumer provides to determine if they are "acceptable" to allow a correction outside the ACDV process, this is actually a very narrow category of documents. Essentially, for a consumer's dispute of a credit account, the only "acceptable" documents for TransUnion are written letterhead communications from the creditor itself instructing TransUnion to delete or correct the reported account.[53] Further, the creditor letter would have to be more recent than the last date the creditor had otherwise "verified" the account.
CSC Credit Services, which is an Equifax affiliate, has explicitly stated its policy of not considering any payoff letter from a creditor over 90 days old.[54]

June Betts[55]

In 1998, a Cadillac was abandoned at the side of the road. Law enforcement officials had the vehicle towed, and it was sold at auction. The auction proceeds didn't cover the towing company's fee, so the difference was assigned to Topco, a debt collector.

Topco found a vehicle seller's report on file with the Washington State Department of Licensing with the name of June Baker as the buyer. June Baker was June Betts's maiden name, and the report had her address on it, but Betts claimed she never owned the Cadillac. Despite her protestations, in January 2001, Topco sued Betts in King County District Court. Betts won that lawsuit, and the court issued a judgment finding her not liable for the towing fee.

Topco also reported the towing debt on Betts's credit report. On February 13, 2001, Betts sent a notice to Equifax disputing the debt. Equifax sent a CDV to Topco, which simply updated Betts's address and confirmed the debt. Betts's made a second dispute, and Topco received another CDV on March 20, 2001. Topco again verified the debt. This time, Topco even increased the amount it claimed was owed, from $488 to $829. Equifax simply listed this new information, accepting Topco's decision. This was despite the fact that Betts had won Topco's lawsuit against her, and she had a court judgment holding that she was not responsible for the debt.

F. "ALL RELEVANT INFORMATION"

As part of a credit reporting investigation, the FCRA contains an explicit and key requirement that the credit bureau include in the notice of dispute to the furnisher "all

[52] Deposition of Selena Bazemore, Mullins v. TransUnion, Civ. Ac. No. 3:05cv888, Sept. 21, 2006, as cited in Leonard Bennett Testimony at 25-26.
[53] "Documents Acceptable for Maintenance," TransUnion CRS Manual, Sept. 28, 2004, at 1-4, as cited in Leonard Bennett Testimony at 25.
[54] McKinley v. CSC Credit Serv., 2007 WL 1412555 (D. Minn. May 10, 2007).
[55] Betts v. Equifax Credit Information Services, 245 F. Supp. 2d 1130 (W.D. Wa. 2003).

relevant information" provided by the consumer.[56] However, as discussed in Part III.B, when a consumer sends a dispute to the credit bureau, the bureau will reduce the dispute, no matter how detailed, substantive or documented, to one of the handful of two or three digit dispute codes used by the e-OSCAR system. The bureau will not send the furnisher any of the supporting documentation provided by the consumer, such as account applications, billing statements, letters, and payoff statements – documents that could show overwhelming and even conclusive proof of the consumer's dispute.[57] The bureaus' refusal to forward all relevant documents and details of the dispute appears to be in clear conflict with the dictates of the FCRA.

Not only have consumers and their attorneys complained of this failure to forward documents, this has also been a matter in contention between the FTC and the credit bureaus. Yet unfortunately, the FTC and Federal Reserve Board have decided not to universally condemn the bureaus' failure to provide furnishers with the supporting documentation submitted by consumers. Instead, the FTC and Fed have stated that "[b]y itself, however, this does not mean that [credit bureaus] fail to convey 'all relevant information' to furnishers," but that "in certain situations, the failure to convey the actual documents may lead to incorrect outcomes."[58] And despite even this concession that the failure to forward documents may lead to incorrect outcomes in some cases, the FTC and Fed apparently have not taken any action to require the credit bureaus to improve their procedures.

The credit bureaus claim that forwarding documents through e-OSCAR is "questionable," a difficult claim to believe given how easily documents can now be transmitted electronically. First, all three national bureaus scan and archive the consumer's dispute and documents. There is no greater storage space required. There is also no technological obstacle to forwarding the dispute and documents electronically. Equifax and TransUnion already do so to India and the Philippines. Sending them concurrently to domestic furnishers would not require any more resources.

The credit bureaus' response to criticism over their failure to forward documentation is to rely on a field in the ACDV form that permits a "free text" comment to be entered by the credit bureau clerk, which is called the "FCRA Relevant Information field." This box is limited to one line and a fixed number of characters. The credit bureaus' procedures manuals offer almost no instructions for their clerks as to what information should be placed in this one-line text field.[59] As a result, only a minority of ACDVs sent by the bureaus actually contain such a field. The credit bureaus have admitted that this field is used in only 30% of disputes processed through e-Oscar.[60] TransUnion's employee has testified that it is used less than 10% of the time and even

[56] 15 U.S.C. § 1681i(a)(2).
[57] FTC/FRB FCRA Dispute Process Report at 18.
[58] FTC/FRB FCRA Dispute Process Report at 33-34.
[59] Leonard Bennett Testimony at 21.
[60] FTC/FRB Report at 17.

then only if the consumer's dispute is not in a regularly selected category.[61] In other words, if the employee is able to categorize the dispute into one of the two or three digit codes, the text field is apparently not used to convey additional information that might help resolve the dispute.

Michael Karmolinski[62]

The case of Michael Karmolinski demonstrates how inadequate the "FCRA Relevant Information" field can be in informing the furnisher of a dispute, as compared to the consumer's actual notice letter and supporting documentation.

In March 2001, then-19 year old Karmolinski opened a credit card account with Associates Credit Card, a lender later acquired by Citibank. He lost his job, and fell behind on paying a $1,000 debt. Associates charged off the debt and sent it to Enterprise Recovery Systems (ERS), a debt collector, in December 2001. Karmolinski made arrangements to pay off the debt, with a final payment of $508 in June of 2002.

Karmolinski paid off the debt, but Citibank reported to the credit bureaus that Karmolinski still owed a past due balance on the account. As a result, Karmolinski was unable to guarantee his wife's car loan, and was denied other credit. He contacted ERS, which gave him a letter dated May 2003 stating that he paid off the Associates account in June 2002.

After pulling his credit report in April 2004 and seeing that Citibank was still reporting a past due balance, Karmolinski sent disputes to TransUnion in April 2004 and September 2004. With the first dispute, he included a copy of the check paying off the account. With the second dispute, he included the May 2003 letter from ERS. Neither document was sent to Citibank.

Instead, TransUnion sent to ACDVs to Citibank asking it to verify various information such as account balance and original loan amount. TransUnion never mentioned that Karmolinski had asserted the account was paid off and had documentation in support of his assertion. In fact, TransUnion told Karmolinski that it could not accept the May 2003 ERS letter, because it was over a year old and not from Citibank, despite the fact that ERS had been working on behalf of Associates/Citibank. Instead, the September 2004 ACDV merely stated in the free form box "[c]laims company will change. Verify all account information" – a very unhelpful explanation and certainly not "all relevant information" about the dispute in comparison to the actual payoff letter from ERS.

Of course, Citibank verified the past due balance on the account in response to both ACDVs. Karmolinski filed a lawsuit when he received notice of the second verification on October 6, 2004. A few weeks later, the delinquent account was deleted from his credit report.

The credit bureaus' failure to forward the consumer's documentation has a real and significant impact on consumers. Often, it strips them of their rights to force furnishers to conduct the very investigation on which the bureaus defer. Several federal courts have dismissed consumer claims against furnishers because of the generality of the

[61] Deposition of Eileen Little, Mullins v. TransUnion, Civ. Ac. No. 3:05cv888, Sept. 21, 2006, as cited in Leonard Bennett Testimony at 28.
[62] Karmolinski v. Equifax Information Serv., 2007 WL 2492383 (D. Or. August 28, 2007).

bureaus' ACDVs and failure to forward the actual dispute and documents. For example, the Seventh Circuit held in one case:

> Credit Control's investigation in this case was reasonable given the scant information it received regarding the nature of Westra's dispute. Credit Control received a CDV from TransUnion indicating that Westra was disputing the charge on the basis that the account did not belong to him. The CDV did not provide any information about possible fraud or identity theft or include any of the documentation provided to TransUnion by Westra. Credit Control verified Westra's name, address, and date of birth and sent the CDV back to TransUnion. Had TransUnion given Credit Control notice that the nature of the dispute concerned fraud, then perhaps a more thorough investigation would have been warranted.[63]

G. BURDEN OF PROOF

The result of the broken credit reporting system is that the burden of proof has effectively shifted from the creditor or debt collector to the consumer. Creditors and collectors are allowed to take action against consumers without being required to justify their contentions. Consumers now have the burden to prove a negative - that they do not owe a debt – and are rebuffed when they attempt to do so. When they fail because they deck is stacked against them, the creditor or collector will continue to report the consumers as liable. In fact, in litigating the Johnson v. MBNA case discussed in Part III.D, Ms. Johnson's attorney learned from MBNA's account records that the consumer was expressly told, "It is not our burden to prove you owe the debt. It's your burden to prove you do not."[64]

For debt collectors, the credit reporting system alleviates them from the need to prove in a court of law by a "preponderance of the evidence" that a consumer is liable for a debt, and that the amount of the debt is correct. Instead, the debt collector simply places the black mark on the consumer's credit report, and waits until the consumer needs to buy a car or home or insurance coverage. The consumer is either forced to pay off the amount to improve her credit report or forced to pay higher prices (if he or she can get the credit or insurance at all).

For consumers to get errors in their credit reports fixed, they must dispute multiple times and in some cases retain a lawyer to file a lawsuit. Consumers who do not have the time, educational skills, and resource to send multiple disputes, like the single mother of twins in the FTC study, are simply out of luck – plagued by a Scarlet "F" of credit that they did not cause but cannot get fixed. And even those who manage to send multiple disputes cannot always get justice without being able to find an attorney experienced in litigating credit reporting disputes.

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[63] Westra v. Credit Control of Pinellas, 409 F.3d 825 (7th Cir. 2005); Malm v. Household Bank, N.A., 2004 U.S. Dist. LEXIS 12981 (D. Minn. July 7, 2004).
[64] Leonard Bennett Testimony at 14.

Victoria Apodaca[65]

Victoria Apodaca was a schoolteacher in New Mexico trying to buy a house. To her horror, she discovered her Equifax credit report stated she had filed for bankruptcy and had several accounts that were reported as past due. Apparently, Apodaca's credit files had become mixed in with that of Victoria Lopez Apodaca, because they had the same last and first name, seven of the nine digits in their Social Security numbers matched, and they both resided in the state of New Mexico.

Apodaca sent her first dispute to Equifax in June 2003, without satisfaction. She continued to contact Equifax, including sending another dispute on August 12, 2003, which included the bankruptcy petition of Lopez Apodaca and pointing out the different Social Security numbers between the two. Apodaca also mentioned that these errors were preventing her from purchasing a home that she was supposed close on August 15. She noted that she had sent in other written disputes with copies of her driver's license number and paystubs. Even with this clear documentation, Equifax did not fix Apodaca's credit report.

Apodaca sent another dispute in October 2003, again with copies of her driver's license and Social Security card. This dispute also pointed out several accounts that were not hers, including a GMAC and Discover Financial Account. Apodaca sent a final dispute on April 2004, again including a copy of Lopez Apodaca's bankruptcy petition and stating that the GMAC and Discover accounts were not hers. The bankruptcy and GMAC account was finally deleted, but not the Discover account. Frustrated, Apodaca resorted to filing a lawsuit. Only then did Equifax delete the Discover account.

During the lawsuit, Equifax claimed that its policy was to delete information from a credit report if the consumer provides "acceptable" documentation. The bureau apparently did not consider copies of the actual petition filed by Lopez Apodaca in a United States Bankruptcy Court to be "acceptable".

Instead, Equifax contracted with a company called Choicepoint to review the bankruptcy court records, and sent a CDV with the code "Not his or hers, please provide complete ID." Equifax did not send Apodaca's dispute or the copies of the bankruptcy documents. Choicepoint reviewed the bankruptcy court's records, but failed to notice the difference in Social Security numbers. As a result, Choicepoint verified the bankruptcy information on Apodaca's report as correct.

The fact that Choicepoint did not notice the difference in Social Security numbers was the direct result of the automated CDV system and Equifax's failure to provide Apodaca's dispute to its vendor. As the court noted, "if Equifax had forwarded copies of all the information supplied by Plaintiff to a competent investigator or public-records vendor instead of simply reducing all of that information to a three-digit code on its standardized CDV form, it is reasonable to infer that the mixed-file situation could have been corrected more promptly."

[65] Apodaca v. Discover Fin. Servs. 417 F.Supp.2d 1220 (D.N.M. 2006).

IV. THE ECONOMICS OF CREDIT REPORTING

A. WHO IS THE CUSTOMER

While critically important to consumers and the national economy, the credit reporting industry is unlike most other industries in some fundamental respects. It is essential to understand that the paying clients of the credit reporting industry are not consumers, but the creditors who furnish or use the information contained in the credit bureaus' databases. Despite the growing profits in credit monitoring services, the credit bureaus make most of their money from furnishers. For example, discovery in lawsuits uncovered the fact that TransUnion had received over $6 million per year from MBNA alone.[66]

Moreover, consumers have no say in whether their information is included in the credit bureaus' databases. Most Americans cannot avoid having a credit history. Unless they are very wealthy, consumers need to borrow money if they want to buy a house or attend college. Credit reports are also used in other essential aspects of life, such as insurance and employment. Thus, unlike almost all other business relationships, consumers who are unhappy with the actions of a credit bureau cannot vote with their feet – they cannot remove the information or take their business elsewhere.

Creditors, in contrast, do have the ability to switch between credit bureaus if they wish. Furthermore, vigorous investigation of consumer disputes is likely to drive creditors away. The creditor who reports a delinquent account to the credit bureaus does so in the hope of collecting that debt. Credit bureaus have no interest in deferring to a consumer involuntarily captured in a relationship with the bureau, when doing so could cause its paying customer to lose collection opportunities and profits. Both furnishers and credit bureaus also benefit from a system that allows them to spend only seconds on a dispute rather than the time (even if minimal) required to actually resolve it.

Thus, traditional competitive market forces provide little incentive for credit bureaus to incur the costs of instituting new procedures that ensure information is accurate or to undertake investigations to correct errors, since these activities primarily benefit consumers. Only the FCRA itself compels such behavior.

However, the risk of an occasional FCRA lawsuit appears not to have overcome these economic incentives. The result is persistent inaccuracies in credit reports, which harm both consumers and creditors. Until the failure to conduct a real investigation becomes more expensive than the savings from these cost reducing measures, the current system will remain broken. Furthermore, any protections for identity theft victims cannot be effective in the absence of a real investigation.

[66] Leonard Bennett Testimony at 30.

B. FAR AND AWAY

Another factor in the inadequacy of credit reporting investigations is that two of the three national credit bureaus have outsourced these tasks to vendors who use workers in foreign countries. While there are many policy issues concerning the offshoring of jobs that are beyond the scope of this report, an important concern from a credit reporting perspective is that a worker in another country is not as likely to understand the American credit system. In addition, foreign companies may be governed by a different set of privacy rules than U.S. law provides.

Of the three national credit bureaus, only Experian processes consumer disputes domestically. TransUnion receives disputes at its consumer relations facility near Philadelphia, scans the dispute into an electronic image and then transmits the image to Intelenet, its subcontractor located in Mumbai, India.[67] Intelenet in Mumbai can connect directly to TransUnion's CRONUS database, retrieve a consumer's credit file and initiate the ACDV exchange.

Equifax uses a number of outsource vendors for its dispute processing. Consumer disputes are imaged by Innasource, based in Atlanta.[68] A record of the dispute is logged into the consumer's file, and the dispute is then electronically transmitted to Jamaica, the Philippines, or Costa Rica.[69] The foreign contractor accesses Equifax's database, retrieves the consumer's credit file and initiates the ACDV exchange as applicable. The results of the ACDV exchange are then automatically reflected back into the consumer's credit files.[70]

C. QUOTAS

As discussed in Part IV.A, there is little economic incentive to conduct true investigations, because they do not produce revenue. Real investigations would cost the credit bureaus and furnishers real money. For the credit bureaus, this is money spent on people who are not their real customers. For furnishers, this is an investigation that could undermine their debt collection efforts.

Thus, until recently with the move of E-Oscar into a for-profit entity, the investigation function has been seen only as a cost burden, to be minimized and reduced as much as possible. As part of this cost reduction, litigation discovery has revealed quota systems used by the credit bureaus to force employees to process disputes rapidly and without meaningful inquiry. For example, Experian uses a system to measure the number of "converted units" produced by each employee.[71] Each task is assigned a different value. To meet Experian's minimum standards for a pay incentive if processing

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[67] Leonard Bennett testimony at 22.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] Deposition of Kimberly Hughes, Beck v. Experian, Civ. Ac. No. 1:05CV347 (E.D. Va.), June 30, 2005, as cited in Leonard Bennett Testimony at 31.

the most difficult of disputes -- fraud and identity theft claims -- the employee would have to perform at least 98.25 disputes per day, or 13.1 per hour.[72] The quota minimum at TransUnion before it outsourced its investigation functions was between 10 to 14 dispute letters per hour.[73] In other lawsuits, credit bureau employees have testified that employees are required to process one dispute every four or six minutes in order to meet quotas.[74]

In fact, more recent litigation discovery has shown that the credit bureaus have driven costs even lower. Before mid-2004, when Equifax still handled some disputes in-house, its average cost per dispute was $4.67.[75] By late 2004 and into 2005, Equifax was using an outsource vendor called ACS in Montego Bay, Jamaica. Its ACS investigations cost Equifax only $1.08.[76] Now, after the move to DDC in the Philippines, Equifax pays only $.57 per consumer dispute letter, regardless of how many items or accounts are at issue.[77] These dramatic reductions in cost per dispute described above have all come during a period of rising identity theft and fraud disputes.

TransUnion has a different contractual relationship with its outsource vendor. It pays the Indian company a flat $8.00 per man-hour the vendor incurs, but it maintains rigorous production standards the vendor must meet.[78]

To add insult to injury, the credit bureaus have found another way to reduce their cost burdens for investigations – by charging furnishers for investigations and actually making a profit from them. For example, Equifax pays its outsource vendor in the Philippines up to $.57 to process each consumer dispute letter it receives. But through e-Oscar system, the bureaus charge no less than $.25 to each furnisher for each ACDV dispute form sent electronically.[79] Thus, if a consumer disputes five inaccurate accounts after a file is mixed or an identity stolen, Equifax would pay its vendor a fraction of the gross amount (e.g. $1.25) it charges its creditor customers through E-Oscar. In fact, the more automated disputes it sends out, the more money it generates.

This is as much "cost" information as consumers have yet discovered. In fact, in two recent cases, the credit bureaus claimed not to maintain budgets, projections or gross cost estimates for their investigation functions,[80] a claim that is fairly incredible.

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[72] *Id.*
[73] *See* Deposition of Eileen Little, Evantash v. G.E. Capital Mortgage, Civ. Action No. 02-CV-1188 (E.D. Pa. Jan. 25, 2003).
[74] *See* Cushman v. TransUnion Corp., 115 F.3d 220, 224-25 (3d Cir. 1997). *See also* Deposition of Regina Sorenson, Fleischer v. TransUnion, Civ. Action No. 02-71301 (E.D. Mich. Jan 9, 2002).
[75] Leonard Bennett Testimony at 30.
[76] Deposition of Gary Poch, Faile v. Equifax, Civ. Ac. No. 3:06cv617, March 13, 2007.
[77] *Id.*
[78] Leonard Bennett Testimony at 30.
[79] *Id.* at 4.
[80] Beck v. Experian, Civ. Ac. No. 1:05CV347 (E.D. Va.), and Faile v. Equifax, Civ. Ac. No. 3:06cv617.

"VIP" Files

The problems with superficial and perfunctory investigation of credit reporting disputes may not affect certain people, such an identified celebrity, regulator or government official. Each of the three national credit bureaus maintains a list of consumers they identify as "VIP" files. A TransUnion employee testified in a deposition:[81]

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

For obvious reasons, these files, which also include credit bureau employees, receive special treatment. They are handled by high level employees. In fact, for Equifax and TransUnion, a significant difference is that they are handled by a credit bureau employee actually located in the United States.

D. CREDIT REPAIR ORGANIZATIONS

Credit bureaus may attempt to justify the perfunctory FCRA investigation process as a response to frivolous disputes generated by credit repair organizations. Some of these organizations do deceptively market false promises to obtain the removal of otherwise accurate credit data. The Consumer Data Industry Association has estimated that 30% of the credit bureau disputes involve credit repair organizations.[82]

However, trivializing all consumer disputes in the name of coping with credit repair disputes is throwing the baby out with the bathwater. Credit bureaus must assume that, as FTC guidance states, a consumer's dispute is bona fide, unless there is evidence to the contrary. The short-shrifting of legitimate substantive disputes may actually encourage more consumers to turn to credit repair organizations in their desperation.

Moreover, credit bureaus have already developed methods to spot credit repair disputes.[83] Credit repair disputes are often generic in nature, making a claim such as "This account is inaccurate" with nothing more, and thus easily separated from most legitimate disputes. Another hallmark of credit repair disputes is that they will dispute all negative information in a credit report without specific allegations concerning any of the

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[81] Deposition of Shontese Norwood, Mullins v. TransUnion, Civ. Ac. No. 3:05cv888, Sept. 21, 2006, as cited in Leonard Bennett Testimony at 5.

[82] *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing before the House Committee on Financial Services*, 110th Congr. (2007) (statement of Stuart K. Pratt, President, CDIA), at 20, *available at* http://www.house.gov/apps/list/hearing/financialsvcs_dem/ospratt061907.pdf.

[83] Some of these methods are described in Klotz v. Trans Union, LLC, 246 F.R.D. 208, 211 (E.D. Pa. 2007).

individual items. Other signs are disputes made using a common format, mass mailings with the same envelopes or postage, or disputes in which the consumer has included the cover letter and instructions from the credit repair organization.

A dispute bearing such hallmarks and unsupported by specific allegations or evidence, without more, is not entitled to an in-depth, meaningful investigation under the FCRA. In fact, the FCRA already permits a credit bureau to refuse to investigate disputed information if the bureau "reasonably determines" a dispute is frivolous or irrelevant.

The problem of frivolous credit repair disputes does not justify the credit bureaus' failure to put appropriate resources into resolving legitimate disputes. Consumers whose disputes do not show the hallmarks of a credit repair dispute are entitled to a meaningful investigation, not a farce.

V. TIPS & RESOURCES

A. HOW TO DISPUTE ERRORS IN A CREDIT REPORT

While this report shows that the investigations conducted by the credit bureaus in response to disputes will usually be perfunctory, it is still important for consumers to dispute errors in their credit reports and to follow up with more disputes.

First, the furnisher may be willing to fix the error, either because the furnisher actually does find an error or to maintain good customer relations. Second, if the furnisher does not respond, the credit bureau is legally required to delete the disputed information from the consumer's credit report. Third, if the error is not corrected, the consumer has a potential legal claim under the FCRA – but ONLY if the consumer has sent a dispute to the credit bureau.

The following are some tips on sending a dispute to credit bureau. Even if the disputes themselves do not get results, these tips will ensure that the consumer preserves his or her legal claim under the FCRA.

1. Request a Investigation in Writing, Return Receipt Requested (Don't Use the Credit Bureau's Web Site)

Although not required by the FCRA, it is safest to request an investigation in writing (keeping copies of all correspondence), or to follow up a telephone request with a written confirmation. Telephone disputes do not create an adequate record in the event a consumer needs to follow up a failed dispute with litigation. In addition, the consumer will not be able to provide documentary support of the dispute by telephone. Furthermore, although the FCRA requires national credit bureaus to maintain a toll-free number for consumers, telephone access to the credit bureaus is not always consistent.

It is even advisable to send the request by certified mail, return receipt requested. Even though the consumer retains a mailing presumption, this may still leave her with a marginal claim. If the credit bureau can claim that it never received the dispute, it will argue that it merely made a mistake, rather that be forced to defend a claim that its procedures themselves are inadequate. Avoid using the internet to forward disputes, for some of the same reasons.

2. Don't Be Limited by Credit Bureau Request Forms

When consumers request copies of their credit reports from the national credit bureaus (Experian, TransUnion, and Equifax), they will receive a dispute form that they are encouraged to use. These forms attempt to pigeon hole the dispute into one of several general types, and do not facilitate a detailed consumer dispute. These forms provide a list of "check box" dispute choices, and appear to discourage a more substantive dispute. Consumers using such forms for a dispute should supplement the forms with additional

written details and documentary support. Internet disputes confine consumers to a similar list of check boxes, and thus should be avoided.

3. The Consumer Should Keep a File of All Communications

A request for investigation may be just the beginning of a protracted battle with the credit bureau that may ignore correspondence or fail to follow up as promised. Thus it is good practice for the consumer to establish a file of all correspondence sent to and received from the credit bureau, and to have proof that the credit bureau has received the consumer's correspondence. Similarly, the consumer should keep dated notes of all telephone calls.

4. Also Notify the Furnisher of the Dispute

Consumers at the same time should directly notify the creditor or other furnisher of the disputed information. The critical notice of dispute is directed to the credit bureau, which triggers the right to an investigation that the consumer can enforce. The bureau will then ask the furnisher to investigate. But also sending a detailed notice to the furnisher will forestall any arguments by the furnisher that the notice from the credit bureau was not adequate for it to conduct a reasonable investigation.

5. Send a Dispute at Least to All Three Major Bureaus

It is usually not enough to dispute an error at one credit bureau. Instead, the consumer should request a credit report from at least Experian, TransUnion, and Equifax, and dispute errors individually with each of the three companies. A furnisher supplying incorrect information to one of these agencies will often supply the same incorrect information to the other two. Moreover, correcting a consumer's file with one of these three does not lead to correction at the other two.

A more compelling need to contact more than one credit bureau can arise when the consumer is informed by a creditor (or other person) that adverse action was based on a credit report received from a credit bureau which is not one of the "Big Three," such as a reseller. While it is important to dispute the accuracy of information with the reseller who supplied it to the creditor, and while special rules require resellers to handle or forward the dispute, a consumer should also consider going straight to the "Big Three."

6. Be Careful How an Account Number Is Described

The dispute notice should adequately identify the consumer, fully identify the account or other item being disputed, and explain why it is disputed. Otherwise, the credit bureaus may take consumer disputes literally, and do nothing more than what is expressly requested.

If the consumer states, "I have never had a MBNA credit card, so delete MBNA account #1234," the credit bureau will only delete an account with that number, and not

other accounts the consumer may have with MBNA. This is a common problem because many furnishers change account numbers after an initial dispute is made. Correcting just the old account will not affect these new accounts. Other times, the account number the consumer sees in a periodic statement is different than the number used in the consumer's file at the credit bureau (or by a debt collector to which the debt is transferred).

To prevent these problems, an investigation request should describe the full range of accounts the dispute covers. For example, "I have never had a MBNA credit card. Any MBNA account in my credit file is not mine and should be deleted. This includes account number 1234, as well as any other account you may be reporting, as well as any account that may be reported by any debt collector who is reporting a debt originating from a MBNA account." For First USA accounts, which became Bank One and then Chase accounts, a consumer could state, "I am disputing the First USA account #2345. It may also be reported as a Bank One or a JPMorgan Chase account."

7. Sign the Dispute under Oath

Signing the dispute letter under oath will convert the dispute into an affidavit, with several resulting benefits. This should provide greater credibility to the consumer's complaint, especially in contrast to the automated, unsworn response of a furnisher. This also advances a claim against the credit bureau that it failed to forward "all relevant information" to the information furnisher. Furnishers may have policies that give greater weight to consumer affidavits and thereby more readily accept the consumer's version of the dispute and resolve it in their favor. But be careful; if there is a questionable statement in the affidavit, the consumer may be challenged later if there is litigation given that statement was sworn to under oath.

8. Include All Documentary Evidence and Suggest Investigative Steps the Credit Bureau Should Take

A consumer's request for investigation should include all documentary evidence and other information that supports the dispute. If the creditor has provided a letter or statement confirming its understanding that the reported information was inaccurate, the letter should be provided with the dispute to the credit bureau.

While it is certainly not a requirement, a consumer may choose to suggest what the credit bureau could do to best accomplish the investigation. In a dispute over ownership of an account, a consumer should request that the credit bureau obtain a copy of the underlying application or contract from the furnisher, and should provide several handwriting samples, such as copies of cancelled checks, a driver's license or backs of credit cards that include her signature.

The credit bureaus may claim that it would be unreasonable to expect them to pay for a handwriting analysis. To avoid this, the consumer could offer to pay this expense. Consumers can also provide the name and contact information of third-party witnesses who support their disputes. For example, if a consumer has been in direct contact with

a furnisher representative who was helpful and agreed with her position, the dispute letter could provide the name and address of that person, and a request that the credit bureau manually send the dispute directly to that person, rather than through an electronic message. If the dispute concerns a public record, a request for investigation could include the name and telephone number of the court clerk. If there was prior litigation involved, the dispute letter could include the name and telephone number of the attorney who previously represented the creditor.

9. Include Information Questioning the Furnisher's Accuracy in Other Contexts

A dispute letter should also include any available information questioning the accuracy of the furnisher's information in other contexts, in order to rebut any claim that the furnisher's reporting could be considered presumptively accurate. There are no limitations as to the nature of such additional information: copies of relevant court opinions against the furnisher in credit reporting contexts, or similar complaints by other consumers against that furnisher. A consumer could even include press clippings that referenced a particular furnisher.

10. Hire a Lawyer

If the consumer has been unable obtain a satisfactory result after sending multiple disputes to the bureaus, he or she may have to think about hiring a lawyer. It is best to hire a lawyer experienced in handling FCRA cases on behalf of consumers. The FCRA is a complicated statute full of pitfalls for inexperienced practitioners. For example, some of the requirements of the FCRA do not permit the consumer to seek redress in court for their violation. A common rookie mistake is to sue under one of these provisions. Listings of consumer lawyers handling FCRA cases can be found at the following websites:

National Association of Consumer Advocates: www.naca.net
My Fair Credit: www.myfaircredit.com

B. RESOURCES

1. Books

The following publications include additional information about the FCRA dispute process, other important rights under the FCRA, and FCRA litigation.

National Consumer Law Center, *Fair Credit Reporting Act* (6th ed. 2006 and Supp.)

Evan Hendricks, *Credit Scores & Credit Reports: How the System Really Works, What You Can Do* (Privacy Times 2007)

Mari Frank, *From Victim to Victor: A Step By Step Guide for Ending the Nightmare of Identity Theft* (Porpoise Press, Inc. 2005)

2. *Useful Websites*

Resources

My Fair Credit: www.myfaircredit.com
Privacy Times: www.privacytimes.com
FTC Identity Theft site: www.consumer.gov/idtheft
Identity Theft Resource Center: www.idtheftcenter.org
Identity Theft Prevention and Survival: www.identitytheft.org

Consumer Advocacy Organizations

National Consumer Law Center: www.consumerlaw.org
National Association of Consumer Advocates: www.naca.net
Consumers Union: www.consumersunion.org
Consumer Federation of America: www.consumerfed.org
U.S. Public Interest Research Group: www.uspirg.org
Electronic Privacy Information Center: www.epic.org
Privacy Rights Clearinghouse: www.privacyrights.org
Americans for Fairness in Lending: www.affil.org (check out their "How to File a Complaint" page).

Government Websites

Federal Trade Commission: www.ftc.gov
State Attorneys General: www.naag.org/ag/full_ag_table.php

Credit Bureau and Other Industry Sites

Free Annual Credit Report Centralized Source: www.annualcreditreport.com
Equifax: www.equifax.com
Experian: www.experian.com
TransUnion: www.transunion.com
Fair Isaac: www.myfico.com (consumer site)
www.fairisaac.com
Choicepoint: www.choicetrust.com (consumer site)
www.choicepoint.com
Consumer Data Industry Association (CDIA) www.cdiaonline.com

C. REFORM RECOMMENDATIONS

1. The Regulators Must Act

As discussed throughout this report, many of the problems and deficiencies in the FCRA dispute and investigation process may already violate the current law. In fact, many of the consumer cases described in this report resulted in successful lawsuits or legal settlements under the FCRA. Yet the credit bureaus have not fundamentally reformed their dispute and investigation procedures, preferring to fight individual consumers in court, and paying the occasional judgment against them.

In addition, some of the provisions of the FCRA cannot be enforced by consumers harmed by their violation, including the all-important accuracy requirements for furnishers. That requirement can only be enforced by federal regulators, including the FTC and banking regulators.

Despite the problems illustrated in this report, which have been documented in congressional testimony and letters to regulators, the FTC has only brought a handful of cases during this decade against the Big Three credit bureaus. More importantly, none of these cases involved the accuracy of information or their failure to conduct meaningful investigations.

The banking regulators are even worse. We do not know of any FCRA enforcement actions that federal banking regulators have taken against banks. If there have been any such actions, they have not been publicized. The banking regulators are the sole entities capable of enforcing the accuracy requirements of the FCRA against bank furnishers, which include almost all of the major credit card lenders. They have abdicated this responsibility, leaving consumers unprotected against inaccurate and even deliberate misreporting by banks.

The FTC and bank regulators must act to:

- Take regulatory and enforcement action against the credit bureaus' blatant noncompliance with the FCRA dispute and investigation requirements. This includes:
    - Requiring the credit bureau to meaningfully review and evaluate both the consumer's dispute (including supporting documentation) and any the response from the furnisher, rather than merely parroting it.
    - Requiring credit bureaus to send to the furnisher all documents submitted by the consumer in an FCRA dispute pursuant to the FCRA's requirement that "all relevant information" be forwarded.
    - Developing an appeal procedure that the consumer can invoke, including a telephone conference with a bureau employee who has the consumer's dispute and all the documentation provided by the furnisher and the consumer.

- Require credit bureaus to improve their reporting systems by:
  - Promulgating technical specifications for the standardized reporting format (called Metro 2) that allow credit bureaus to track transferred accounts, prevent duplicate accounts, and prevent reinsertion by furnishers of deleted incorrect items.
  - Require the credit bureaus to use the full identifying information of consumers when matching information to a file, including all nine digits of the consumer's Social Security number.

- Taking regulatory and enforcement actions against furnishers for their failure to conduct proper investigations, and require them to make a substantive determination of the validity of the specific dispute at issue. This includes:
  - Requiring furnishers to investigate the specific dispute raised by the consumer rather than merely verifying that the disputed information itself appears in their own records. The furnisher's investigation must involve reviewing the actual documents provided by the consumer, and reviewing documents in its own possession or in the possession of an earlier holder of the debt. It may include requiring furnishers to contact third parties.
  - Requiring furnishers to rebut the consumer's specific dispute by providing to the consumer and the credit bureau documentation that shows that the information furnished is correct. Furnishers should not be allowed simply to tell the credit bureau that the consumer is wrong and the original information was correct. Instead, the furnisher should be required to give the consumer and the credit bureau the underlying information - copies of documents with original signatures to rebut a forgery claim, for example, or copies of the payment record to demonstrate that the claimed balance is correct.
  - Taking action against debt collectors who re-age information so that it stays on consumers' credit reports past the statutorily permitted seven years.

- Require furnishers to improve the accuracy of their reporting by:
  - Requiring furnishers to retain specific operative records for any account for which they are reporting to a credit bureau. For example, credit card furnishers should be required to retain original account applications, original contract or agreements, any billing statements, and any records of disputes.
  - Requiring debt collectors and debt buyer to obtain the original records needed to verify a debt from the creditor and to review them before furnishing information to a CRA. For example, in a credit card case, the debt buyer must be required to obtain and review the consumer's account application, original agreement, history of periodic statements, and any record showing whether any of the debt was disputed with the creditor. If the consumer disputes the debt and the debt buyer does not have adequate original documentation, the account must be deleted from the consumer's file.

2. Congressional Action

The number one right that consumers lack under the FCRA is the ability to ask a judge to tell credit bureaus and furnishers: "fix that report." With one minor exception, the FCRA only allows injured consumers to get money for damages that they suffered, and a penalty if the violation was willful. The vast majority of courts have held that courts do not have the power to issue an injunction under the FCRA, *i.e.* to order the credit bureaus to do or not do something. The FCRA is an anomaly in this respect, as a Supreme Court decision provides the basis for injunctive relief for most other laws.[84]

Consider a consumer who has filed dispute after dispute with the credit bureaus, who has supplied evidence of fraud or mistake, and who has sued to protect her rights under the FCRA. If she can show that the credit bureaus or furnishers were unreasonable in their investigations, she might be able to get actual damages if she can prove the error caused a denial of credit after the dispute or is in a jurisdiction that permits intangible damages. If she can show the credit bureaus or furnishers knew they were violating the law or acted with reckless disregard, she can seek statutory or punitive damages. But she cannot seek the one thing she really wants, the remedy that started her down this arduous path in the first place - an order telling the credit bureaus and furnisher to correct the error. Providing courts with explicit authority to issue injunctive relief would further the purpose of the FCRA to "assure maximum possible accuracy."

Congress must also act to fix the broken credit reporting and dispute system, especially if the regulators do not act. If the regulators do not act, Congress should amend the FCRA to statutorily impose the essential requirements discussed in Part V.C.1 above on credit bureaus and furnishers.

[84] Califano v. Yamasaki, 442 U.S. 682 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction.").

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN BROWN FROM COREY STONE

Q.1. One theme in credit reporting issues has been that, even if consumers are vigilant and try to check their credit reports (or purchase credit scores), they can still miss substantive credit issues that arise when a consumer goes to use a line of credit.

Consumers may not be able to understand the information contained in their credit reports, and, as the CFPB has reported, consumers who purchase their credit scores see a materially different score than a creditor would see 19–24 percent of the time.

Is this lack of clear information consistent with the spirit of the FACT Act?

A.1. The FACT Act has provisions to make the information in credit reports and the scores derived from them more accessible to consumers. The FACT Act entitles consumers to obtain a free credit report annually from each of the nationwide consumer reporting agencies and from nationwide specialty consumer reporting agencies, as well as additional free reports from nationwide consumer reporting agencies in connection with initial fraud alerts and extended alerts. Additionally, the FACT Act gives consumers the right to purchase a credit score at a reasonable fee and requires mortgage lenders who use credit scores in connection with consumer mortgage applications to provide the scores to the consumers. Subsequent amendments to the FCRA in Dodd-Frank further expanded consumer access to credit scores by requiring lenders to disclose credit scores with adverse action and risked based pricing disclosures.

In October 2012, the CFPB published a study, "Analysis of Differences between Consumer- and Creditor-Purchased Credit Scores," comparing credit scores obtained by consumers with those used by lenders. For the study, the CFPB analyzed 200,000 credit files from each of the three major nationwide consumer reporting agencies.

While the CFPB found that the educational scores sold by the credit bureaus generally correlate highly with the score most widely used by creditors, the correlations are not perfect, so as you point out, a substantial minority of consumers could find themselves with educational scores that would not be reflective of the score a lender would be looking at (most likely a FICO score).

Given this variation in outcome, the CFPB concluded in the report that "firms that sell scores to consumers should make consumers aware that the scores consumers could purchase could vary, sometimes substantially, from the scores used by creditors."

Q.2. How can we improve access and information for consumers given the discrepancies?

A.2. Improvements can be made in several areas.

In the CFPB's recent study on credit reporting, the CFPB found that only about one in five people with a credit history (44 million consumers) check their free credit report from the nationwide consumer reporting agencies each year or obtain reports through paid credit monitoring services or notices of adverse action or risk-based pricing decisions. Regardless of the credit scoring model used by a lender, a consumer can benefit by reviewing the underlying information in his or her credit report. Consumers who identify and successfully dispute incorrect derogatory information in their credit files (*e.g.,* an account reported as delinquent that was not in fact delinquent, an incorrect collection) will likely improve their standing with creditors regardless of the credit scoring model used. The CFPB encourages consumers to exercise their legal right to review their credit files.

Improvements can also be made in the disclosure of information to consumers who purchase credit scores. The CFPB noted in its October 2012 report that providers of educational credit scores should ensure that the potential for score differences is clear to consumers. As we noted in the report:

> . . . for a substantial minority of consumers, the scores that consumers purchase from the nationwide CRAs depict consumers' creditworthiness differently from the scores sold to creditors. It is likely that, unaided, many consumers will not understand this fact or even understand that the score they have obtained is an educational score and not the score that a lender is likely to rely upon. Consumers obtaining educational scores may be confused about the usefulness of the score being sold if sellers or scores do not make it clear to consumers before the consumer purchases the educational score that it is not the score the lender is likely to use.

Q.3. Does the variability in credit reports make it more difficult for consumers to monitor and correct their information?

A.3. The CFPB study on credit scores found that for most consumers, the scores produced by different scoring models provide similar information about the relative creditworthiness of the consumers. For 19 to 24 percent of consumers, variations in scoring models could lead to consumers having an inaccurate perception of how lenders see their creditworthiness. In the cases where educational scores were higher than a score used by lenders, consumers may overestimate their creditworthiness, and might be lulled into a false sense of confidence. In cases where consumers have an educational score that is lower than what a lender might see, consumers could be motivated to improve the information in their credit file, both by changing behavior and correcting errors.

Q.4. Is there any evidence that a person's credit history has any connection with their job performance?

A.4. We are not aware of evidence on this topic.

Q.5. Would it be practicable or advisable for each credit inquiry listed on a credit report—whether a hard or soft inquiry—to include the inquiring party's contact information, the nature of their business, and the purpose of their inquiry?

A.5. File disclosures to consumers currently provide the contact information for hard inquiries (inquiries that would impact a consumer's credit score). The contact information for soft inquiries (*e.g.,* account reviews, pre-screening inquiries) is not provided. Since soft inquiries do not impact a consumer's credit rating, it is

not clear that adding contact information for soft inquiries would assist consumers in improving their credit standing.

Q.6. Do you agree that FACTA inadvertently repealed the existing right of consumers and State officials to sue for any violations of the adverse-action provisions of the FCRA?

A.6. FACTA amended section 615 of the FCRA so that sections 616 and 617, which create civil liability for certain violations of the FCRA, do not apply to failures to comply with section 615.

Q.7. Would you support or oppose restoring the original intent of the FCRA by restoring this private enforcement right?

A.7. As an independent regulatory bureau, the CFPB is focused on carrying out, implementing, and enforcing the laws that Congress and the President enact. If there is a specific legislative proposal we are asked to review for purposes of providing technical advice on its likely consequences, we would be happy to do so.

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN BROWN FROM STUART K. PRATT

Q.1. Is there any evidence that a person's credit history has any connection with their job performance?

A.1. A 2008 study by Edward Oppler, *et al.,* showed a correlation between using a credit report for employment purposes and what Oppler described as "counterproductive work behavior," defined as theft and related behaviors. In short, Oppler concluded that employees with financial history concerns were significantly more likely to engage in counterproductive work behavior than those without financial concerns. In fact, a job applicant with a troubled financial history was almost twice as likely to engage in theft as an applicant who lacked any financial history issues.

Additionally, an Eastern Kentucky University study conducted by Jerry Palmer and Laura Koppes stated that there are reasons why a credit report could be useful as part of an employment check, especially when considering potential losses due to theft or concerns about negligent hiring liability. Palmer has noted, "These all seem like good reasons to include a credit check when considering a candidate for employment."

The importance of managing risks via the use of a credit report becomes evident in the context of data released by the Association of Certified Fraud Examiners. It notes that employee thefts account for nearly $1 trillion annually. The average theft totals more than $175,000, but that number increases to $200,000 for organizations with less than 100 employees. The top two red-flag warnings present in these crimes were instances where the fraudster was living beyond his or her financial means or experiencing financial difficulties. That's important because employee fraud and theft can very well determine whether a small business survives or not.

As I discussed during the question and answer period it is important to remember that employers' use of credit reports is responsible. A survey of human resources professionals conducted by the Society for Human Resource Management (SHRM) found the following is true with regard to use:

- 80 percent of those surveyed had hired someone despite a poor credit history.
- 87 percent use a credit report for positions with financial responsibilities.
- 42 percent use a credit report for senior executive positions.
- 34 percent do so for positions with access to highly confidential employee information.

In a survey of our own members we found that employers ordered credit reports as part of only an average of 10 percent of all background screening products.

In summary, credit reports are used responsibly based on SHRM data. They are used discretely based on CDIA data. They are useful when you review the academic literature. Finally the fact that the FCRA permits the use of a credit report does not absolve an employer from its duty to comply with Title VII of the Civil Rights Act and to consider guidance issued by the EEOC regarding this Title. Employers are also subject to enforcement and investigative actions by the EEOC.

Q.2. Would it be practicable or advisable for each credit inquiry listed on a credit report—whether a hard or soft inquiry—to include the inquiring party's contact information, the nature of their business, and the purpose of their inquiry?

A.2. No. CDIA believes that Congress has already struck the right balance regarding the amount of information that should be disclosed to consumers when an inquiry is included in their credit file disclosures.

The law states that "the name of the person or, if applicable, the trade name (written in full) under which such person conducts business" must be disclosed and then, upon request, the consumer reporting agency must provide the address and telephone number of the person. By layering the amount of information a consumer sees, it is far more likely that consumers will take the time to review inquiries and to then to seek additional information regarding only those for which they have questions.

The theory that more information being immediately available is better is simply not true. It is very likely that when presented with a large volume of information a consumer may find the task of reviewing inquiries too great and simply skip this section of the credit file disclosure. This would be a bad policy result.

In terms of expanding the data made available to consumers regarding an inquiry to include "the nature of their business, and the purpose of their inquiry" we believe these data are best provided by the company that made the inquiry. This is why Congress requires consumer reporting agencies to provide contact information upon request in the first place. CDIA believes that FCRA Section 609(a)(3)(B) strikes the right balance and the result is a success for consumers in terms of transparency and effective, meaningful disclosure.

Q.3. Do you agree that FACTA inadvertently repealed the existing right of consumers and State officials to sue for any violations of the adverse-action provisions of the FCRA?

A.3. CDIA believes that Congress itself is in the best position to speak to its intent when it repealed the right described in the question.

Q.4. Would you support or oppose restoring the original intent of the FCRA by restoring this private enforcement right?

A.4. At this time the CDIA would oppose opening up the FCRA to any amendment. The Consumer Financial Protection Bureau is midstream in the exercise of its considerable powers with regard to the FCRA and our members. We should not expose the FCRA to open debate which would insert unhelpful and unnecessary legislative uncertainty.

RESPONSE TO WRITTEN QUESTIONS OF CHAIRMAN BROWN FROM CHI CHI WU

Q.1. Is there any evidence that a person's credit history has any connection with their job performance?

A.1. 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, conducted by Professors Jerry Palmer and Laura Koppes of Eastern Kentucky University, concluded there is no correlation between credit history and an employee's job performance.[1]

A more recent study from 2011 also failed to find a link between low credit scores and theft or deviant behavior at work.[2] Indeed, the study found a correlation between low credit scores and an agreeable personality.

A representative of TransUnion, one of the three major nationwide credit reporting agencies, has admitted that: "At this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[3] Richard Tonowski, the Chief Psychologist for the Equal Employment Opportunity Commission, agreed. In 2010, he testified that there is "very little evidence that credit history is indicative of who can do the job better" and it is "hard to establish a predictive relationship between credit and crime."[4]

Promoters of the use of credit histories in employment have tried to link credit history to job performance by citing an Association of Certified Fraud Examiners report noting that two warning signs exhibited by some fraudsters were living beyond their financial

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[1] 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-goodpredictor-of-job-performance-or-turnover* (summarizing study by Drs. Palmer and Koppes).

[2] 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. *See also* Ann Carrns, *Bucks Blog: No Link Seen Between Low Credit Scores and Bad Job Behavior,* New York Times, November 8, 2011, *available at http://bucks.blogs.nytimes.com/2011/11/08/no-link-seen-between-low-credit-scores-and-bad-job-behavior/* (summarizing study by Dr. Bernerth).

[3] Andrew Martin, *As a Hiring Filter, Credit Checks Draw Questions,* New York Times, April 9, 2010, *available at http://www.nytimes.com/2010/04/10/business/10credit.html.*

[4] Statement of Richard Tonowski, EEOC Chief Psychologist, EEOC Meeting on Employer Use of Credit History as a Screening Tool, October 20, 2010.

means or experiencing financial difficulties. However, while some thieves may have had financial difficulties, it is a far cry to say that any worker with financial difficulties has a propensity to be a thief. This conclusion would imply that the 25 percent of American workers who have impaired credit are likely thieves.[5] Note that the same study found that men are responsible for twice as much in fraud losses than women; that fraud from workers over 50 resulted in losses twice as high as fraud by younger workers; and another significant warning sign for fraud is divorce. Yet no one is suggesting screening out men, older workers, or divorced workers because they are supposedly prone to committing theft.

Finally, there are a number of other problems with the issue of credit history by employers, such as:

- ***Credit checks create a fundamental "Catch-22" for job applicants.*** A worker who loses her job is likely fall behind on paying her bills; with the increasing use of credit reports, this worker now finds herself shut out of the job market.
- ***Use of credit checks in hiring could prevent economic recovery for millions of Americans.*** The use of credit history for job applicants is especially absurd in the midst of still-too-high unemployment and the aftermath of the Great Recession.
- ***The use of credit in hiring discriminates against African American and Latino job applicants.*** Study after study has documented how, as a group, African Americans and Latinos have lower credit scores than whites. If credit scores are supposed to be an accurate translation of a consumer's credit report, that means these groups fare worse when credit history is considered in employment.
- ***Credit reports suffer from unacceptable rates of inaccuracy, especially for a purpose as important as use in employment.***

These issues are discussed in greater depth in our written testimony for the December 19, 2012 hearing before the Subcommittee on Financial Institutions and Consumer Protection, as well as hearings before the House Financial Services Committee[6] and the Equal Employment Opportunity Commission.[7]

Q.2. Would it be practicable or advisable for each credit inquiry listed on a credit report—whether a hard or soft inquiry—to include the inquiring party's contact information, the nature of their business, and the purpose of their inquiry?

A.2. We do not see any barriers to including more information about the entity that obtained a credit report—referred to as the

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[5] Press Release, FICO, Growing Number of Consumers Nearing the Perfect FICO Score, Apr. 30, 2012 (chart showing that number of consumers with FICO scores under 600 was 24.7 percent in 2011).

[6] *Legislative Hearing on H.R. 3149, the Equal Employment for All Act:* Hearing before the Subcomm. on Financial Inst. and Consumer Credit, House Comm. on Fin. Servs., 110th Congr. (2010) (written statement of Chi Chi Wu, Staff Attorney, National Consumer Law Center); *Use of Credit Information Beyond Lending: Issues and Reform Proposals:* Hearing before the Subcomm. on Financial Inst. and Consumer Credit, House Comm. on Fin. Servs., 110th Congr. (2010) (written statement of Chi Chi Wu, Staff Attorney, National Consumer Law Center).

[7] *Barriers to Employment: Employer Use of Credit History as a Screening Tool:* Hearing before the Equal Employment Opportunity Commission (October 20, 2010)(written statement of Chi Chi Wu, Staff Attorney, National Consumer Law Center).

"user" of the credit report—for each inquiry on that report. This information could include the user's contact information, which is already required to be disclosed upon the consumer's request under the Fair Credit Reporting Act (FCRA). It should not be difficult to automatically include this information instead of requiring a consumer request.

The additional information could also include the nature of the user's business, and under what provision of the FCRA did the user have a statutorily permitted purpose to obtain the credit report. The credit reporting agency should have this information, because it should have screened the user to ensure it had a permissible purpose. This information would help consumers understand for what reason their credit reports were obtained, and would ensure that users actually do have a purpose that is legally permitted under the FCRA.

Q.3. Do you agree that FACTA inadvertently repealed the existing right of consumers and State officials to sue for any violations of the adverse-action provisions of the FCRA?

A.3. Yes, we agree. A number of courts have held that FACTA repealed the existing right of consumers and State officials to sue for any violations of the adverse-action notice provisions of the FCRA.[8] We believe that this repeal was inadvertent, unintentional, and not part of FACTA's legislative bargain.

FACTA itself clearly indicates that Congress had absolutely no intention of abolishing the consumer's right to seek redress of this important right. The uncodified version of FACTA states:

> Rule of Construction.—Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.
>
> Pub. L. 108–159, 117 Stat. 1960, § 312(f) (2003).

This provision expressly preserved all private enforcement rights that existed under the FCRA as of the date of FACTA's passage, and indicates Congress's intent to retain all existing consumer remedies under the Act.

Indeed, after FACTA's enactment, the credit industry did not claim to have eliminated the consumer remedy for the adverse-action disclosure, with the *American Banker* only noting that FACTA "*perhaps inadvertently* eliminates the existing right of consumers and State officials to sue for any violations of the adverse-action provisions of the FCRA."[9] Had Congress intended FACTA to carve private damages suits wholesale out of the user liability section of the FCRA, the banking and credit industry would have trumpeted that change in the days following the President's signature.

Q.4. Would you support or oppose restoring the original intent of the FCRA by restoring this private enforcement right?

A.4. We absolutely and unequivocally support restoration of the ability for consumers to seek relief in the courts when their right

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[8] For a list of cases, *see* National Consumer Law Center, Fair Credit Reporting § 8.5.5 (7th ed. 2010 and Supp.).

[9] M. Heller, *Regulators Scurry to Close FACT Act Loophole,* American Banker (Dec. 12, 2003), at 3.

to an adverse action notice under the FCRA is violated. Consumers have been deprived of an important remedy because of this scrivener's error, which needs to be corrected.

We note that in previous testimony, industry representatives declined to claim that FACTA had intentionally abolished this private enforcement remedy or to oppose its restoration. In a 2007 hearing before the House Committee on Financial Services, then Chairman Barney Frank engaged in the following colloquy with Stuart Pratt, President and CEO of the Consumer Data Industry Association, and Anne Fortney of Hudson Cook, another industry representative:[10]

> The CHAIRMAN. We will look into that. Let me just ask, the other question is to Ms. Fortney and Mr. Pratt, because both Ms. Wu and Mr. Bennett talked about the interpretation that we had *sub silentio* repeal of the private right of action. Do you agree that was something that was not done intentionally? And what would your view be to our restoring it? Mr. Pratt?
> Mr. PRATT. We didn't work on that section of the FACT Act. It relates to the date of furnishers and the date of——
> The CHAIRMAN. OK. Ms. Fortney?
> Ms. FORTNEY. I think the statute is clear, and that is why the vast majority——
> The CHAIRMAN. That wasn't the question.
> Ms. FORTNEY. OK. I know.
> The CHAIRMAN. Then why don't you answer it?
> Ms. FORTNEY. The answer is, I don't know that whoever drafted that——
> The CHAIRMAN. Fair point. But would you like to leave it the way it is?
> Ms. FORTNEY. I am sorry?
> The CHAIRMAN. Would you object if we restored the right of action that is in the bill?
> Ms. FORTNEY. I don't have an opinion on that, sir.
> The CHAIRMAN. Oh, OK. Then it is two to nothing, two abstentions.

It was not until several years later that industry representatives began opposing restoration of this private remedy.

[10] *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Serv.,* 110 Congr. 50 (2007).

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

United States Senate
WASHINGTON, DC 20510

August 2, 2012

Hon. Richard Cordray
Director
Consumer Financial Protection Bureau
1800 G Street, NW
Washington, DC 20522

Dear Director Cordray:

We write to express concern about the impact of medical debt on the consumer credit market. In recent months, national press coverage has helped highlight the unfortunate fact that fully paid-off medical debts are needlessly constraining the ability of millions of consumers to responsibly acquire credit. This state of affairs is bad for consumers, bad for lenders, and bad for our economy.

The issue of consumer debt is usually discussed in relation to a consumer's ability to pay. But for medical debt, the problem is one of information. Consumers frequently do not even *know* there is a debt that they are personally responsible for paying before it goes to collections. Often, by the time they find out, the medical office has already reported the bill to collections. In this case, even if the consumer is still in discussions with the insurance company, the damage to the consumer's credit score has already been done. In fact, the Fair Isaac Corporation estimates that *any* unpaid debt sent to collections, whether for $100 or $10,000, can shave up to 100 points off of a credit score.

These black marks, which remain on credit reports for *seven years*, can translate into large and unforeseen costs for consumers. Creditworthy consumers look artificially risky and their ability to contribute fully to our economy is constrained. As we all know, markets do not work well when the information they rely on is not correct.

The uniqueness of medical debt—the unplanned nature of the purchases, the opaqueness of the costs, the complex billing procedures, the exceptionally high error rate in reporting, and the lack of predictive value for lenders—and the implications of the informational inaccuracies it creates require all involved to craft careful and thoughtful solutions.

One potential approach put forward by us is the Medical Debt Responsibility Act (S.2149). This bill would amend the Fair Credit Reporting Act to require consumer reporting agencies to remove medical debts from a consumer's credit report within 45 days once they have been fully paid or settled. This approach has already won the backing of a number of key industry participants, including the American Medical Association, the Mortgage Bankers Association,

and the National Credit Reporting Association. It also passed the House of Representatives last Congress with a bipartisan majority of 336-82.

But there may be other approaches that could also address the challenge of medical debt, both legislatively and through the regulatory process. We therefore ask you to begin to process of addressing, through your authorities and in cooperation with us, the problems related to medical debt collections and scoring.

Addressing the unique challenges of medical debt would be helpful to all involved. Consumers would get access to credit at the prices they truly deserve, while lenders would get better and more accurate information about consumer creditworthiness. But the real winner would be our economy, as millions of creditworthy consumers would be released from artificially-low credit scores that misrepresent their ability and likelihood to pay.

We look forward to working with you and with colleagues on both sides of the aisle on this issue.

Sincerely,

Sen. Jeff Merkley

Sen. Chuck Schumer

Sen. Robert Menendez

Sen. Sherrod Brown

August 30, 2012

The Honorable Jeff Merkley
313 Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Schumer
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Robert Menendez
528 Hart Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
713 Hart Senate Office Building
Washington, DC 20510

Dear Senators Merkley, Schumer, Menendez, and Brown:

Thank you for your letter about medical debt. The CFPB shares your concern about the impact of medical debt on consumers. Unfortunately, dealing with medical debt is a daily reality for many Americans.

Perhaps the only circumstance more vulnerable than being sick is being sick and in debt. Medical debt is a major contributor to credit problems and personal bankruptcies among American consumers. Medical debt is also a major source of negative information in consumers' credit files and is reportedly the largest source of consumer debt sent to collection agencies. According to a study by the Federal Reserve Board, over half of all collection actions on a credit report were associated with medical bills. Consumers who have medical collection actions reported on their credit file face real-world consequences; they can face a harder time getting a loan approved or even getting a job.

Over the past decade, consumers have had to pay, on average, a growing share of medical expenses out-of-pocket, even when insured. Those who are uninsured have it worse. And due to the complexity of the medical billing and repayment process, consumers can face significant hurdles in keeping track of their financial obligations when they receive care. After receiving treatment, consumers may receive bills from multiple parties, and often face challenges in knowing exactly how much to pay, whom to pay, and when to pay. In some cases, consumers may not even be aware of medical debts reported to collections due to billing errors.

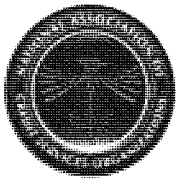
In light of these challenges, the CFPB has begun a review of the treatment of medical debt in both the debt collection and credit reporting industries. We want to make sure that medical debt and all information that goes into a consumer's credit report is reported accurately, and that consumers are treated in a fair and consistent way when providers send debt to collection.

As you may know, we recently adopted a rule to begin supervising larger market participants in the consumer reporting industry, including the large national credit bureaus. The final rule extends our supervisory authority to consumer reporting agencies that have more than $7 million in annual receipts. This authority will extend to about 30 consumer reporting agencies that account for about 94 percent of consumer reporting revenue. This will be the first time these companies will be supervised at the federal level. We are also currently working to finalize a similar rule that will allow us to begin supervising larger market participants in the debt collection industry.

We will certainly keep the issues you have raised in mind, and we look forward to continuing to work with you to protect American financial consumers.

Sincerely,

Richard Cordray
Director



December 18, 2012

The Honorable Sherrod Brown
Chairman, Financial Institutions and Consumer Protection Subcommittee
US Senate
Washington, DC 20510

The Honorable Bob Corker
Ranking Member, Financial Institutions and Consumer Protection Subcommittee
US Senate
Washington, DC 20510

Dear Chairman Brown and Ranking Member Corker:

The National Association of Credit Services Organizations, the leading trade association for the credit repair industry, actively advocates legal compliance, consumer and industry education, ethical practices, and consumer fairness in the credit repair process.

NACSO is pleased that the Committee is holding the hearing entitled, "Making Sense of Consumer Credit Reports". Every day, credit report inaccuracies preclude honest consumers from attaining their dreams. A single inaccuracy can often have devastating consequences. Credible, law-abiding credit repair companies fulfill a vital role in serving those who request assistance in removing inaccurate and unverifiable information from their credit report so that it accurately reflects their probable credit worthiness.

The Columbus, Ohio Dispatch newspaper conducted an extensive investigation into credit report errors. A copy is enclosed. To quote one consumer, Brenda Campbell, in the Dispatch investigation, "It nearly destroyed my life, and then fixing the problem consumed my life."

While the Federal Trade Commission has jurisdiction of our industry pursuant to the Credit Repair Organizations Act (CROA), we have maintained an open dialogue and served as a resource to the CFPB. We commend the agency for the keen focus in studying the credit reporting agencies' activities impacting consumers from all walks of life.

One key takeaway from the recent CFPB 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" is that "the credit reporting companies resolve an average of 15 percent of consumer disputed items internally, without getting the data furnishers involved. The remaining 85 percent are passed on to the furnishers....the report however, found that the documentation consumers mail in to support their cases may not be getting passed on to the data furnishers for them to properly investigate and report back to the credit reporting company."

NACSO Non-Profit Business League, Inc. • a 501 (c) (6) Non-Profit Organization
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www.nacso.org

That is just one unnecessary hardship consumers face when challenging inaccurate or unverifiable items on a credit reports. What's more, in recent testimony before the House Financial Services Committee, Chi Chi Wu of the National Consumer Law Center, discussed "Automated Injustice" because consumers spend hours documenting disputes and the bureaus turn the complaint into a data code, transmit the code with a sentence to creditor or collection agency, and don't submit the consumer's dispute file. As Ms. Wu stated, "It's very hard for consumers to get their errors fixed. Some people just don't have the literacy or educational backgrounds to file the disputes by themselves."

The Federal Trade Commission's own Congressional reports explain the necessary role that experts play in helping consumers obtain an accurate credit report. This relief often enables consumers to obtain a car loan or home mortgage, to qualify for a lower interest rate, or in some instances, to get a job. However, we would be remiss if we did not inform you that the FTC staff's statutory interpretation of the Credit Repair Organizations Act (CROA) threatens to eradicate legitimate credit repair companies and expose consumers to the dishonest, poorly organized and unlawful credit repair scams that will fill the void of legitimate professionals to assist them.

Credit report inaccuracies can have a devastating effect on consumers. The FTC's FACT reports to Congress have acknowledged that many consumers need expert assistance to navigate the process of obtaining an accurate credit report. As credible credit repair companies have become established and benefitted the marketplace, consumer complaints regarding credit repair have plummeted over the past few years, to where credit repair was not within the top 60 product/service subcategories attracting consumer complaints.

Professional credit repair companies have served tens of thousands of satisfied customers; positively impacting lives and helping consumers achieve the American dream. Just as consumers hire non-attorney advocates to assist with social security disability claims, there are professionals who help consumers repair credit reports. Credit repair companies cause consumer benefit, not consumer harm. FTC staff has interpreted CROA's outline of "services" in an overly broad, overreaching and inconsistent manner that departs from CROA's plain language, creates undefined parameters, and allows no viable business model for a legitimate credit repair company.

Credit repair is a much-needed solution for hard working American consumers. It's time to stop treating credit repair as if it were the problem.

We remain at your service to assist with issues that may arise before the Committee. If you have any questions or need assistance, please contact our executive director in Washington, Nicholas Owens, at 202-495-0701 or nick@nacso.org.

Thank you for your consideration of these views.

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April 16, 2012

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Barney Frank
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The undersigned organizations strongly support H.R. 2086 and S. 2149, the Medical Debt Responsibility Act, introduced in the U.S. House of Representatives and the U.S. Senate. The bills require credit agencies to remove FULLY paid or settled medical debt from credit reports within 45 days.

Annually, approximately 73 million Americans experience medical billing problems or have accrued medical debt. Medical debt is unique in that it is not typically reported to the credit bureaus by healthcare providers, but instead by collection agencies. Typically, medical bills are reported to the credit bureaus only after they have been assigned to collections. It is frequently the case that medical bills are sent to collection due to uncertainty over who should pay. The medical billing system is fraught with errors and confusion, further compounding the situation for consumers.

Indeed, when information is inaccurate, markets make decisions on less than perfect information. With regard to medical debt, this can mean significantly reducing a consumer's credit score and subsequently impeding economic activity and consumer borrowing capacity. According to the Fair Isaac Corp., any unpaid debt sent to collections, whether for $100 or $10,000, can shave up to 100 points off a person's credit score[i] – even if this collection is a mistake, made in error, or is in dispute. This can have a dramatic impact on an individual's ability to obtain a mortgage, a car loan, or any other form of credit, thereby limiting economic activity.

Many consumers in states throughout America are adversely impacted by this issue. The current system punishes consumers regardless of the underlying facts (e.g., mistakes, errors, or otherwise). Congress can create equity in the current system and dramatically increase economic activity and growth by amending the Fair Credit Reporting Act to require the removal of medical collection accounts that are paid in full or settled.

The Medical Debt Responsibility Act will prevent the credit records of millions of consumers from being unfairly tarnished. Credit records will show that these hard working consumers, who successfully paid off or settled their medical bills, are more creditworthy than their credit report would otherwise indicate to a prospective lender.

We urge Congress to pass this common sense legislation. H.R. 2086 and S. 2149 will help responsible consumers and at the same time reignite the economy.

Sincerely,

Americans for Financial Reform

American Financial Services Association

American Medical Association

The Asset Building Program, New America Foundation

California Association of Mortgage Professionals

Consumer Federation of America

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

U.S. PIRG

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[i] Jessica Silver-Greenberg, How to Fight a Bogus Bill: Many Medical Bills Contain Errors That Could End Up Wrecking Your Credit Score. Here's What You Need to Know, Wall Street Journal, February 19, 2011.

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

December 16, 2012 Sunday

SECTION: NEWS; Pg. 1A

LENGTH: 3782 words

HEADLINE: DISPATCH INVESTIGATION; CONSTANT BURDEN;
Federal student loans can become unforgiving monsters of debt for borrowers who default. The most common ways out: Pay up or die.

BYLINE: Jill Riepenhoff and Mike Wagner, THE COLUMBUS DISPATCH

BODY:

The decision to pay for college with federal loans turned financially fatal for millions of Americans.

Their credit scores have sunk. They've been unable to buy cars, rent apartments and, in some cases, land jobs. They are trapped by ballooning student-loan debt that has overshadowed many of them for decades.

Without question, millions of people have chosen to ignore their student-debt obligations, costing taxpayers millions of dollars.

Yet a Dispatch investigation found that many want to pay but can't dig out of mounting debt, such as a teacher who fell into serious financial trouble after a car crash, a Kent State graduate stuck with her ex-husband's loans and a woman who quit truck-driving school after two days.

"The system is extremely unforgiving," said Deanne Loonin, a National Consumer Law Center attorney who directs the Student Loan Borrower Assistance Project for the Boston-based nonprofit agency. "We've chosen, as a public policy, very punitive collection. From a taxpayer-return point of view, it makes more sense to help them succeed."

Republicans and Democrats in Congress recognize problems with federal student-loan programs and have offered reforms in dozens of bills. Yet little has changed, except the size of a growing default rate. The U.S. Department of Education tracks student loans for the first three years of repayment. The most recent data show that 13.4 percent of borrowers who were to begin repayment in 2009 had defaulted by the end of 2011.

But millions of others also are in default, and some have been there for years.

To gauge the lingering consequences, The Dispatch collected and analyzed a random sample of 394 cases from the nearly 16,000 lawsuits that the U.S. government has filed against defaulted student-loan debtors since 2007.

More than 73 percent of the cases were filed a decade after borrowers fell into default, which is generally defined as not making payments for nine consecutive months. Nearly a third of them were filed 20 years after default.

The defendants owed a median debt of $8,100 -- nearly twice what they originally borrowed, because of compounding interest and debt-collection fees.

More than 40 percent owe double what they originally borrowed, most owing more in interest than on the principal balance. More than 8 percent owed at least triple the original amount. One owed a total of $15,227 on a $2,500 loan from 1985.

"Interest and fees start compiling and building way beyond what people borrowed, and that's what makes this problem so traumatizing," said U.S. Rep. Hansen Clarke, a Democrat from Michigan who introduced a student-loan forgiveness bill. "Student debt is the next big financial bubble to burst. The system needs to be changed to help people deal with this debt."

Recent public attention has singled out the private student-loan market for its toxic products because of variable interest rates and other risky terms. But private lenders don't have the same arsenal to collect on debts as the federal government and, at some point, the private delinquent debt becomes obsolete.

The Education Department points out that borrowers can erase the default -- and its damning credit-score impact -- through various programs, such as a loan consolidation or by making a payment. But those options sometimes offer only Band-Aids to financially strapped consumers, and another default often follows.

Borrowers rarely can escape their federal student loans, and the consequences for not paying can lead to a lifetime of credit scars.

Unlike private lenders, the federal government can garnish paychecks, seize income-tax returns and take Social Security benefits from borrowers who defaulted, sending them further into financial distress.

The federal loans aren't subject to a statute of limitations and are virtually impossible to discharge in bankruptcy.

And the U.S. Department of Education rarely negotiates with defaulted borrowers, even though in some cases, half of the debt is derived from collection fees and compounding interest.

The loans generally follow borrowers until the debts are paid or the borrowers die.

"The federal government currently places a greater priority on recovering defaulted loans than on treating borrowers as human beings," said Mark Kantrowitz, an expert on financial aid and publisher of the websites FinAid.org and Fastweb.com.

The Dispatch provided the Education Department with a summary of the newspaper's findings, but officials there declined requests for an interview and sent an email response instead.

"We want to make sure we are doing everything we can to strike the right balance between helping borrowers who have hit hard times and honoring our responsibility to be good stewards of taxpayer dollars. Federal student loans are not like other forms of private credit. The American taxpayer lends money to students without any credit or collateral requirements and provides numerous repayment options and benefits," said the statement from a department spokeswoman. "Our goal is to prevent borrowers from defaulting in the first place, and the vast majority of borrowers stay in good standing and ultimately repay their loans."

This year, student-loan debt hit a dubious milestone: It surpassed outstanding credit-card debt as the largest form of consumer debt. More than 37 million borrowers owe more than $1 trillion in student loans -- the majority in government loans.

More than 5 million people are in default. An uncounted number of other borrowers are delinquent and struggling to make regular, on-time payments.

U.S. Sen. Sherrod Brown, D-Ohio, said the federal government and universities aren't doing enough to make college affordable or helping students avoid the student-loan trap.

"We as a nation have failed people in helping them attend college without the burden of these huge debts," Brown said. "We say on one hand that you need to go to school, and then too many people are in a worse-off financial situation after they leave college. That is a failure of society."

Plenty of blame

Borrowers, colleges and the federal government all share the blame for student-loan defaults, experts said.

Colleges don't adequately counsel students about the debts they take on. Borrowers are blindly signing loan contracts without fully understanding the risks. And the federal government, including Congress, has created a system that is punitive, unbending and short on key data.

But in the end, "the consequences are borne by the borrowers," Kantrowitz said. They signed up for the debt, and those who don't pay on time or completely face ruined credit.

Schools present loans as part of total financial-aid packages to students and their parents. It's a confusing tangle of paperwork in which some of the aid could be in the form of scholarships and various different loans: subsidized and unsubsidized, federal and private. For many, the process of accepting loans is done electronically during college registration -- and without a single conversation.

Colleges aren't required to provide debt-management counseling, even as they enroll students whose financial situation clearly puts them at high risk of default. Students who drop out are four times more likely to default.

The Education Department said it now requires students to undergo financial counseling, but it did not say where or how, and it has asked schools to be more transparent about costs and financial aid with its students.

The federal government doesn't track defaults on parent loans, which are made directly to parents for them to help finance their children's educations. It doesn't know the average debt at graduation by field of study, and its loan limits don't consider borrowers' ability to repay the debt. "They don't have a basic heartbeat of the system," Kantrowitz said.

And over the past two decades, after the government took heat for allowing too many borrowers to skate from their debts, Congress has eliminated the last-resort safety nets for borrowers in deep financial trouble -- the statute of limitations and bankruptcy, even though few took that route.

"There's no way out for a borrower. There's no way to get a clean slate," Kantrowitz said. "These borrowers are in perpetual purgatory. The more time that passes, the bigger the hole becomes."

Highest default rates

The only way Dorothy Kellicut could endure more years of having her husband out on the road was to climb into the cab with him and take turns helping him maneuver an 18-wheeler across the country.

The Michigan woman's children were almost out of school, so the time seemed right for Kellicut to make the transition from homemaker to truck driver.

In 1988, she borrowed $3,333 from the federal government for a three-week program that, upon completion, would earn her a commercial driver's license and more time with her husband.

But two days into the program, Kellicut learned that she wouldn't be allowed to drive with her husband for at least a year and would have to be on the road with another driver.

"The school deceived me, and it wasn't what I signed up for," said Kellicut, 59, who has been married almost 41 years and has two children and seven grandchildren. "I borrowed that money and never got anything out of it."

Kellicut dropped out, and the for-profit, Michigan truck-driving school kept the money she borrowed.

For-profit schools, which typically offer certificates for trades such as cosmetology and welding, have the highest student-loan default rates in the country. Among borrowers who attended a for-profit school and were to begin repaying in 2009, more than 22 percent had defaulted within three years, the most recent Education Department data show.

For-profit schools also have low completion rates, a risk factor for default. The Education Department has taken aim at schools with high default rates and will ban them from the student-loan program if more than 30 percent of their loans fail three years in a row.

But that's little consolation to Kellicut, who has been paying $65 a month since she settled her student-loan court case in 2008.

"I blame myself somewhat, but once you get into this situation, no one really cares about the circumstances," she said. "Whether it's a truck-driving school or the University of Michigan, people better know what they are getting into when they borrow that money."

Crushing interest and fees

DISPATCH INVESTIGATION; CONSTANT BURDEN; Federal student loans can become unforgiving monsters of debt for borrowers who default. The most common ways out: Pay up or die. The Columbus Dispatch (Ohio)

It took three days to help make the high-school gymnasium look like a Rave party for the prom, but finally, Terri Crothers had hung the last of the decorations. She was driving home to shower before her chaperoning duties in the spring of 2008 when an oversize pickup truck smashed into the back of her car.

Though the middle-school teacher in Gallipolis, in southern Ohio, spent just 10 hours in the emergency room, lingering injuries required expensive surgery and stints in rehab and left her with one leg shorter than the other.

The medical bills soon piled up for the 49-year-old who, until the accident, said she had a good credit rating and paid her bills on time, including her student-loan debt.

Crothers had left her unfulfilling job as a customer-service representative in 1995 and enrolled in college to become a teacher when she was in her mid-30s.

She borrowed about $40,000, which helped pay for her bachelor's and master's degrees.

For seven years, she made monthly payments on her student loans. Then came the crash. She started drowning in her debt.

The loans went into default, and the balance quickly escalated to $70,000 because of interest and collection fees.

Crothers is making payments of $500 a month and expects to repay the debt about the time she turns 80.

"I did things the right way with paying back my loans," Crothers said. "I couldn't help that I got hurt. It's not right that I owe so much more than I borrowed, even after paying (on) them ... faithfully."

No one knows how many borrowers fall behind after years of on-time payments. Experts say that's key data to collect to help people who fall on an unexpected financial hardship.

Crothers' credit history was severely damaged, and she almost lost her home after the student loans defaulted.

She now mainly worries about how she will help her 12-year-old daughter pay for college.

"It's terrible to think I will still be paying for my education when I am trying to help her," she said. "No one can take away my education from me, and I love being a teacher. The loans just have me trapped."

Congress gets tough

The thought of filing for bankruptcy made Twyla Manning sick to her stomach, but she believed there was no other way to escape from the defaulted student-loan debt that had crippled her financially.

She had borrowed about $3,000 in the late 1980s to earn a teaching degree, but by 2003, it had grown to almost $20,000 with compounding interest and fees.

She knew bankruptcy would destroy her credit, but she needed those loans cleansed from her financial past.

"I met with a lawyer and he told me the student-loan debt would be erased and I would get a clean start," said Manning, 54, of Springfield. "But he was wrong, and those loans stayed right with me."

Fearing that borrowers would finance expensive educations with government money and then wipe out the debt through bankruptcy, Congress in the 1990s declared that student loans could not be erased except in rare circumstances.

Today, borrowers have to prove "hopelessness," a standard that means the borrower has no reason to expect their dire financial circumstances to change.

Of 72,000 bankruptcy cases filed nationally last year, only 29 were able to discharge all or part of their student loans, said Kantrowitz, the financial-aid expert.

Consumer advocates have long asked Congress to return bankruptcy protections for federal student loans.

"Bankruptcy is not a panacea," Kantrowitz said. "It's 10 years of great difficulty."

But at the end of that period, debtors can rebuild their financial lives and credit scores.

Manning, who lost her full-time job in child development last spring, remains in debtors' hell. She tried to return to school again this past September at Clark State Community College in Springfield and thought her student-loan mess was gone. She had made some payments, and both her wages and income-tax-return checks had been garnished several times.

But the admissions check revealed that she still owed $3,200 -- more than she had borrowed 25 years ago.

"I took out those small loans to better my life, and it was the worst mistake of my life," she said. "It's been more aggravating than anything I've dealt with."

More stress than cancer

The expectant mother, exhausted from another round of night classes, pulled on the car door with all her might, but it was frozen shut and she couldn't open it.

In that frustrating moment in 1977, even though she needed just two classes to finish her degree, Susan McNeal surrendered to the rigors of school, work as a clerk at a police station and her pregnancy.

She stopped taking classes at a small college in Illinois, but her quest to pay off about $4,000 in federal student loans has continued for more than 35 years.

McNeal, 56, of Canal Winchester, said she couldn't afford her student-loan payments initially, but her income-tax returns have been garnished by the government on and off since 1981.

McNeal, who eventually earned a degree in 1985, estimates that she already has paid about $12,000 -- three times what she originally borrowed. That includes payments she made over the years, as well as the money from tax returns.

She still owes $8,775.

"The student loan is something I can't get away from," said McNeal, who earns about $46,000 a year in an accounting tech job for the federal government. "It just keeps following me."

McNeal has twice battled breast cancer, had a double mastectomy last year and is still undergoing treatments.

But she says the student-loan debt has caused her more stress than the cancer.

She now makes payments of $77 a month.

"I will probably die before I pay this off," she said.

Consolidation can cripple

The likelihood of 17-year-old Taylor following in her mother's footsteps and attending Kent State University increased as she strolled through its spacious student media center the day after Thanksgiving.

Malissa Babe basked in her daughter's excitement from a few feet away, but her mind drifted to the student-loan debt that has haunted her for the past several years.

She currently owes about $290,000 in student loans, even though she borrowed only a fraction of that amount to attend Kent State in the early 1990s.

"I'm hopeful and fearful for my daughter," said Babe, 46, who traveled with Taylor from Irvine, Calif., for the visit. "I will do everything in my power to make sure what happened to me doesn't happen to my daughter."

Babe's mistake was consolidating her $17,000 student loan with her then-husband's $117,000 debt. At first, Babe and her ex-husband were exempt from making payments because they taught in low-income Ohio school districts and were granted forbearance by the government.

After the couple divorced in 2005, the loan eventually went into default. Babe's former husband didn't tell her that he had stopped making payments. Because of the consolidation, that massive debt belonged to her as well.

It wasn't until she moved to California in 2008 and attempted to finance a car and obtain home loans that she learned the truth: Her credit score, which was once 800, had dropped into the 500s, making her ineligible for credit. After learning of the loan mess, Babe contacted the collection company, but it refused to give any information, saying it was an invasion of her ex-husband's privacy, even though her name was listed on the loan.

"I've tried to fix this over and over, and I've always paid something on the loans," Babe said. "But I'm powerless in this situation."

Babe earns $85,000 as a middle-school teacher but lives paycheck to paycheck. She has drained her savings, maxed out her credit cards and, at one point this past summer, she had $2 remaining in her checking account.

Through the government's income-based repayment plan, Babe pays 15 percent of her discretionary income -- about a $1,000 a month -- toward her loans.

But for reasons unknown to Babe, the collection company hasn't done the same to her ex-husband, who still lives in California.

Government officials, including President Barack Obama, have touted the income-based repayment option as one solution to the student-debt crisis. Rep. Clarke's proposal would make the option a requirement and eliminate the need for third-party debt collectors, saving borrowers such as Babe thousands of dollars.

The Education Department hires debt collectors to chase defaults. Those nongovernment businesses tack on as much as 30 percent of the loan amount to the balance and share the collection fees with the government.

Babe's balance now stands at more than $290,000, and she has been unable to get a true accounting of how the balance skyrocketed.

"I've spent many nights crying my eyes out, begging them to work with me, but the answer is always no," Babe said. "Consolidating those loans was the biggest mistake of my life, and it's draining everything I have."

Her daughter doesn't know all the details of her mom's ordeal, but it serves as a constant reminder of how daunting it will be to pay for a college education.

"It's not something you want to think about on a college visit," Taylor said. "The cost of college is out of control, and most of us have no choice but to borrow money to make it through. You just have to hope you can pay it back when the time comes."

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CREDIT SCARS: STUDENT LOANS

Student-loan debt stands at a staggering $1 trillion, and millions of people are in default. That cripples the credit reports and financial future of students, parents and grandparents.

* Today: Inescapable debt

* Monday: No golden years

* Tuesday: Future debtors

Read previous "Credit Scars" installments on credit reports at Dispatch.com/credit.

Benefits and risks in borrowing

Federal Student Loans

* You will not have to start repaying federal student loans until after you graduate, leave school or change your enrollment status to less than half-time.

* The interest rate is fixed and often is lower than private loans -- and much lower than some credit-card interest rates. View current rates on federal student loans at http://studentaid.ed.gov/types/loans/interest-rates.

* Undergraduate students with financial need likely will qualify for subsidized loans, for which the government pays the interest while you are in school on at least a half-time basis.

* You don't need to get a credit check for most federal student loans (except for PLUS loans). Federal student loans can help you establish a good credit record.

* You won't need a co-signer to get a federal student loan in most cases.

* Interest may be tax-deductible.

* Loans can be consolidated into a federal Direct Consolidation Loan. Learn about your consolidation options at http://studentaid.ed.gov/repay-loans/consolidation.

* If you have trouble repaying your loan, you might be able to temporarily postpone or lower your payments.

* There are several repayment plans, including an option to tie your monthly payment to your income.

* There is no prepayment penalty fee.

* You might be eligible to have some portion of your loans forgiven if you work in public service. Learn about loan forgiveness programs at http://studentaid.ed.gov/repay-loans/forgiveness-cancellation.

* Free help is available at 1-800-4-FED-AID and at studentaid.ed.gov.

Source: U.S. Department of Education

Private Student Loans.

* Many private student loans require payments while you are still in school.

* Private student loans can have variable interest rates, some more than 18 percent. A variable rate could substantially increase the total amount you repay.

* Private student loans are not subsidized. No one pays the interest on your loan but you.

* Private student loans might require an established credit record. The cost of a private student loan will depend on your credit score and other factors.

* You may need a co-signer.

* Interest might not be tax-deductible.

* Private student loans cannot be consolidated into a Direct Consolidation Loan.

* Private student loans might not offer forbearance or deferment options.

* You should check with your lender to find out about repayment options.

* You need to make sure there are no prepayment penalty fees.

* It is unlikely that your lender will offer a loan-forgiveness program.

* The Consumer Financial Protection Bureau's private-student-loan ombudsman might be able to assist you if you have concerns about your private student loan: www.consumerfinance.gov.

GRAPHIC: Illustration; Photo; Graphic
(1) CHARLIE ZIMKUS / DISPATCH Illustration (2) EAMON QUEENEY / DISPATCH Twyla Manning stands outside Clark State Community College, where she learned that even after 25 years, she still carried student-loan debt. (3) TOM DODGE/ DISPATCH Southern Ohio teacher Terri Crothers faithfully paid on her student loans for seven years before a devastating car crash. (4) ERIC ALBRECHT / DISPATCH ABOVE: A student loan has hung like a dark cloud over Susan McNeal since the 1970s. The Canal Winchester woman doesn't think she'll ever be rid of it. (5) RACHEL KILROY / FOR THE DISPATCH LEFT: Malissa Babe, 46, shows off her alma mater, Kent State University, to her daughter Taylor, 17, during a recent college visit. Babe struggles with student loans that she and her now ex-husband consolidated. They owe a combined $290,000.

LOAD-DATE: December 16, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

October 9, 2012 Tuesday

SECTION: NEWS; Pg. 1A

LENGTH: 2805 words

HEADLINE: DISPATCH INVESTIGATION; Incurable financial wounds plague many;
Debt collectors pursue an estimated 40 percent of Americans for medical debts, which can stay on credit reports up to 7 years

BYLINE: Mike Wagner and Jill Riepenhoff, THE COLUMBUS DISPATCH

BODY:

Few in Congress who now debate the merits of stripping negative medical debts from credit reports know the woman who inspired the original bill.

Julia Mueller never publicly told her story, until now. But in 2008, the Ohio State University student was drowning in the fallout of medical debt and later sent a letter to then-U.S. Rep. Mary Jo Kilroy asking for help.

Mueller was working graveyard shifts and plowing her way through a chemical-engineering degree when doctors ordered a sleep study to combat her chronic fatigue.

Her health-insurance company reneged on a promise to pay for the study, causing the $6,200 bill to fall delinquent and onto her credit report.

She managed to pay it off with help from others, but the debt still haunts her financial history today.

And it will follow her until 2013.

The medical bill was turned over to a debt collector, who reported it to the credit bureaus. As a result, the interest rate on Mueller's credit card jumped by 18 percentage points, and she was forced to use what little cash she had left to pay for a used car.

The Columbus native's story compelled some members of Congress in 2009 to press for changes to the Fair Credit Reporting Act. Their effort came up short, but the bill was reintroduced in 2011 and is now in committee hearings.

The bill would erase paid medical debt from credit reports. Those debts can remain on reports for up to seven years.

More than three years after the bill was first introduced, an alarming percentage of Americans -- estimated at up to 40 percent -- have medical bills on their credit reports that have been turned over to debt collectors. Many of the debts are for less than a few hundred dollars, but even one for $20 can be financially devastating.

A Dispatch investigation and studies by government and private-sector researchers show that medical debt is crippling some consumers.

More than half of the 220 consumers who complained to the Ohio attorney general about a medical debt in collection between January 2009 and July 2012 blamed their insurance company or health-care provider for the problem.

Some of the medical debts, like Mueller's, involve a dispute with an insurance company or workers' compensation.

Others are for medical bills they never received or had paid long ago.

The Federal Reserve reported in 2003 that 31 percent of all credit reports had a collection account and that half of them were related to a medical debt.

The Commonwealth Fund, a private foundation in New York City that advocates for an improved health-care system, reported two years ago that 30 million consumers were called by collection agencies over unpaid bills. That's up from 22 million in 2005 -- a 36 percent increase.

People can't control when they get sick and often are overrun by the expenses. But they are even more helpless in a national credit-reporting system that treats all debts in collection equally.

Medical debt differs from other types of debts, such as car loans, mortgages and credit cards, because it often involves a third party -- a health-insurance company.

It also differs from those other traditional debts because it generally comes without a monthly statement that spells out the payment due date and amount. Patients often have no idea when the bill for services will arrive and then may have to argue with the provider or the insurance company.

"This is not like someone has defaulted on credit-card payments for buying a flat-screen TV," said Mark Rukavina, of The Access Center, a Boston-based resource center for health-care issues. "False medical debts or debts that have been paid shouldn't linger on someone's credit report."

The three big national credit-reporting agencies oppose efforts by Congress to strip paid medical debt from credit reports because they say such debts help predict the creditworthiness of a consumer.

Yet Equifax, Experian and TransUnion rarely, if ever, report on medical bills that are paid on time because hospitals, doctors and other health-care providers aren't furnishers of information to the credit-reporting agencies.

So consumers never receive a good mark for paying medical bills on time. Rather, they are affected only by delinquent medical debts, because they have been turned over to debt collectors who routinely report to the credit bureaus.

Industry insiders say that reporting delinquent medical debt actually helps consumers.

"Isn't it true that a household that is under serious financial distress is not well-served by being extended additional lines of credit that put it further into debt?" said Norm Magnuson, vice president of public affairs for the Consumer Data Industry Association, the trade organization in Washington, D.C., that speaks for the credit-reporting agencies.

The Consumer Data Industry Association is opposed to removing paid medical debts from credit reports.

It says there's ample time between when an account becomes delinquent and when it's sent to a consumer's credit file to resolve problems.

"An average of 135 days elapses prior to the reporting of a delinquent medical debt to a credit bureau, which suggests a very robust vetting process, even if there are complexities regarding insurance companies," Magnuson said in a written statement to The Dispatch.

Only 0.2 percent of those who filed a dispute with the credit-reporting agencies did so because of a delay in payment from an insurer, he wrote.

Wide-ranging effects

Credit reports today are used for many purposes beyond getting loans, such as determining who gets a job and what price a consumer pays for car insurance.

Julia Mueller believes she is caught in an unfair system.

"It is frustrating, because I should not have to delay full adulthood because of a bad system, and getting the runaround on erasing medical debt that wasn't my fault," said Mueller, 29, now working on a doctorate at the University of Queensland in Australia.

Her debt from the sleep study was paid off mainly because of the compassion of OSU's student insurance program, which took care of the bulk of Mueller's bill after hearing her story. Her doctor's billing office also forgave a smaller piece of the debt.

Even so, the medical debt remains a part of her credit history more than four years later.

When she returns to the United States, she said, she fears that high interest rates are waiting for her.

The words she wrote in a 2009 letter to Kilroy still ring true today: "I am financially responsible, and I would like to be treated that way."

Complaints to state and federal officials about debt collection often reflect tales of devastating consequences of wrongly assigned medical debt.

More than 12 percent of consumers who complained to DeWine's office about a medical bill in collection said the debt did not belong to him or her. It's an often-cited complaint to the FTC, too.

A Virginia woman injured in a car crash that was not her fault found that a medical bill had been turned over to a collection agency and landed on her credit report.

"This is not an error on my part, and I am not at fault. Because of this, my credit score has suffered a huge blow, and I need this problem fixed. Please help me; my future is on the line," the woman wrote to federal officials.

A credit-card company denied an application from a 21-year-old man in Lorain County in northeastern Ohio because of an unpaid doctor bill. "I was 12 years old then," he wrote.

A University of Michigan student wrote that the loan he needed to pay for his senior year of college had been jeopardized by a $130 collection account. The student had been injured at his job, and the medical bills should have been covered by workers' compensation.

"My parents have since paid the $130 to the collection agency, being that it was ruining my credit; however, because this has shown up on my credit report, I am unable to receive the loan that I need for this upcoming school year," he wrote. "I will not be able to graduate. I am completely devastated and at a loss for options as to how to fix this issue."

Such stories prompted federal lawmakers to reintroduce the bills to make changes to the federal credit-reporting law and ease some of the consequences of delinquent medical debt.

"The consumers in this country are fighting an unknown entity," U.S. Rep. Don Manzullo, R-Ill., said at a House Financial Services Committee hearing last month on a pending medical-debt relief bill. "In time after time after time again, things show up on the credit report and people have no idea it's on there."

Stunned in Texas

Congressional hearings may not have happened if not for Texas mortgage banker Rodney Anderson.

In 2008, Anderson was working on a mortgage for a couple in their 70s when he discovered a 100-point drop in their credit score because of a false $150 medical debt. The couple paid thousands of dollars in closing costs beyond the norm to obtain the loan.

Another client, a lawyer who Anderson said made $1.3 million a year, was denied a loan because a $30 medical debt dropped his credit score below 700.

After seeing dozens of people denied loans or forced into higher interest rates, Anderson conducted a study of medical debt.

The findings stunned Anderson: More than 45 percent of the 1,701 consumers applying for loans from him had some type of medical debt weighing down their credit reports.

So Anderson dove into Washington politics and began crusading for a bill that would erase paid medical debt from a consumer's credit report.

He eventually connected with Kilroy, the bill's first sponsor. The bill won approval in the House but time ran out in the congressional session before the Senate could act. The bill died, Kilroy lost re-election and the measure seemed dead until Anderson found a new supporter.

The bill was reintroduced in June 2011 and has bipartisan support.

"This bill would lift a huge financial weight off so many Americans," said Anderson, who added that he has spent $1.6 million of his own money pushing the issue. "It would help creditworthy borrowers have access to the best interest rates and closing costs and improve consumers' overall financial health."

At their mercy

The bill could have saved Ed Browning's credit.

During a routine appointment after a colonoscopy, Browning paid the $43 co-pay for the doctor's visit.

Nineteen months later, the Worthington resident received a bill from the pathology medical office saying he still owed $43. He disputed the bill and a short time later received a notice from a debt collector.

He feared the false debt would end up on his credit report, so he paid the $43 again so it wouldn't become a bigger financial headache.

"I thought it would go away if I just paid it," Browning said. "But it just got worse from there."

Browning was among the 13 percent of consumers who wrote to DeWine's office complaining that they were pursued by debt collectors even after they paid off the debt.

Browning discovered the debt had been applied to his credit report in August 2010 when his application for a credit card was denied.

He sent evidence to each of the three credit-reporting agencies showing that the bill had been paid. One, however, was unconvinced and refused to remove it from his credit report, lowering Browning's once-impeccable credit score.

"As a consumer, you have no control over what the collection company or credit agencies will do," Browning said. "We are at their mercy."

The law currently allows that debt to remain on Browning's credit report until 2014.

Consumers in situations similar to Browning's across the U.S. also say they are at the mercy of a system that has cost them jobs, loans, insurance and higher interest rates.

When Terry Story of Dallas went to Anderson to refinance his mortgage earlier this year, he learned that a lingering $20 medical debt would have cost him $8,600 in additional fees.

Story was contacted by a debt collector in 2011 who said he owed the $20 for what likely was a co-pay for a doctor's visit by his daughter in 2008. The Texas man still is unsure there was ever a doctor's visit by his daughter, but if it happened, he is certain they would have paid the $20 co-pay.

But like Browning, Story paid the small bill to avoid further credit trouble.

He then found the paid medical debt on his free credit report when he went to refinance his mortgage.

Story, 45, vice president of operations for an elevator company in Texas, said three other people in his office also suffered financially from similar medical-debt problems. Story said his credit report also listed a mobile home that he never purchased, a job he never held and other accounts that didn't belong to him.

"That's why I call this a racket," Story said. "The information is not right, I still paid the debt even though I didn't think it was legit and it still ends up hurting my credit."

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CREDIT SCARS: DEBT COLLECTORS

Credit reports are primary weapons for debt collectors. And lax oversight by credit-reporting agencies and loopholes in federal laws allow debt collectors to ruin the credit of unwitting consumers.

* Sunday: Strong-arm tactics

* Monday: Courts complicit

* Today: Medical debt

Read the series online at Dispatch.com/credit.

Where to find help

The Consumer Protection Section of Ohio Attorney General Mike DeWine's office encourages consumers to report errors in their credit reports or problems with debt collection. The office can help mediate disputes.

Complaints may be submitted:

* Online: ohioattorneygeneral.gov/consumercomplaint

* By phone: 1-800-282-0515

* By mail: Ohio Attorney General Consumer Protection Section, 30 East Broad St., 14th Floor, Columbus, OH 43215.

Contact information for other states' attorneys general can be found on the National Association of Attorneys General website, www.naag.org, under AG Fast Facts.

Stuck in Congress

Former U.S. Rep. Mary Jo Kilroy was the first to sponsor a bill to strip credit reports of medical debt. Though supported by the House, the bill stalled in the Senate. New versions have been introduced within the past two years in both the House and the Senate, but Congress has yet to vote on either.

S.B. 2149 Medical Debt Responsibility Act of 2012

* Sponsor: Sen. Jeff Merkley, D-Oregon

* Co-sponsors: Five Democrats -- Sherrod Brown, Ohio; Dick Durbin, Ill.; Robert Menendez, N.J.; Charles Schumer, N.Y.; and Tom Harkin, Iowa

* Introduced: March 1, 2012

* Status: Referred to Senate Banking, Housing and Urban Affairs committee

* Recent activity: None

* What the law would do: Require the credit-reporting agencies to delete from a consumer's credit report negative information related to a medical debt once the bill has been paid or settled.

H.R. 2086 Medical Debt Responsibility Act of 2011

* Sponsor: Rep. Heath Schuler, D-N.C.

* Co-sponsors: Nine Republicans and 43 Democrats, including Ohioans Marcy Kaptur and Dennis J. Kucinich

* Introduced: June 2, 2011

* Status: Referred to House Committee on Financial Services

* Recent activity: Hearing last month

* What the law would do: Require the credit-reporting agencies to delete from a consumer's credit report negative information related to a medical debt of $2,500 or less after the bill has been paid or settled.

Sources: GovTrack and OpenCongress

Closer look at the big 3 credit bureaus

EXPERIAN

* Founded: 1980

* Corporate headquarters: Dublin, Ireland

* U.S. headquarters: Costa Mesa, Calif.

* Employees: 15,000 in 40 countries

* Annual revenue: $4.2 billion

* Listed on the London Stock Exchange (EXPN.L)

* Owns FreeCreditReport.com and consumerinfo.com, where access to free annual reports often comes with fees

* Political influence 2011-12: lobbying, $1.1 million; campaign contributions, $553,065

* Regulatory troubles: Fined $1 million in 2000 by the Federal Trade Commission for not providing phone help to consumers; fined $950,000 in 2005 and $300,000 in 2007 by the FTC for deceptive marketing of free credit reports

* Contact: www.experian.com/personal-credit/report-and-credit-score.html

EQUIFAX

* Founded: 1899

* Corporate headquarters: Atlanta

* Employees: 7,000 in 15 countries

* Annual revenue: $1.5 billion

* Listed on the New York Stock Exchange (EFX)

* Political influence 2011-12: lobbying, $814,500; campaign contributions, $46,983

* Regulatory troubles: Fined $500,000 in 2000 and $250,000 in 2003 by the FTC for not providing phone help to consumers

* Contact: www.equifax.com/cs/Satellite?pagename=contact_us

TRANSUNION

* Founded: 1968

* Corporate headquarters: Chicago

* Employees: 3,000 worldwide

* Annual revenue: $1 billion

* Political influence 2011-12: lobbying, $542,000; campaign contributions, $61,300

* Regulatory troubles: Fined $1 million in 2000 by the FTC for not providing phone help to consumers

* Contact: www.transunion.com

Sources: Company websites, Securities and Exchange Commission, Federal Trade Commission, OpenSecrets.org

GRAPHIC: Photo and Graphic
(1) Courtesy of Julia Mueller Columbus native Julia Mueller struggles with paid medical debt affecting her credit report even while she studies chemical engineering in Australia. (2) TOM DODGE / DISPATCH Ed Browning said he always paid his bills on time and was rewarded with an impeccable credit score until a dispute over a $43 medical bill destroyed his financial reputation. "It's tragic what can happen to us," the Worthington resident said. (3) PETE MAROVICH / FOR THE DISPATCH Texas mortgage banker Rodney Anderson told Congress last month: "The consumer is the only party who pays for the errors, mistakes and confusion of the process. Those making the errors ... bear no responsibility." (4) A $20 medical debt hampered Terry Story's efforts to refinance his Texas home. Story doubts that he owed the debt.

LOAD-DATE: October 9, 2012

5 of 29 DOCUMENTS

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

October 8, 2012 Monday

SECTION: NEWS; Pg. 1A

LENGTH: 1981 words

HEADLINE: Dispatch investigation; Law, courts involved in prolonging agony of debt; The system for resolving disputes is broken; even debt collectors are asking for change

BYLINE: Jill Riepenhoff and Mike Wagner, THE COLUMBUS DISPATCH

BODY:

When debt collectors turn to the courts to compel payment of delinquent bills, consumers in some states, including Ohio, can suffer the consequences far longer than Americans in the majority of the country.

Decades longer.

Debt collectors also are not required to produce original contracts or other conclusive evidence to prove an account is delinquent to secure a judgment in Ohio and several other states.

And unknown to most consumers in that predicament is a specter that will haunt them: Court-ordered judgments are financially crippling marks on a credit report. Their lasting effects vary because of a patchwork of laws that stretch from consumer-friendly to almost punitive.

More than a quarter of the 22,500 consumers who complained to the Federal Trade Commission over a 2 ½-year period beginning in January 2009 about problems with their credit reports said the issue involved a court record, a Dispatch analysis found.

They had judgments that did not belong to them, had been paid or had been dismissed by a judge. Correcting those errors is a burdensome process that largely is blind to consumers' proof because of an automated credit-reporting system.

The Fair Debt Collection Practices Act sets standards of conduct for collection but is virtually silent about what happens when a debt lands in court. Rather, state laws and local court rules determine statutes of limitations and evidence standards.

The FTC, a U.S. government consumer-watchdog agency, gave a blunt assessment of the state of debt-collection lawsuits in 2010 after a series of meetings with industry insiders, consumer advocates and judges: "The system for resolving disputes about consumer debts is broken ... because consumers are not adequately protected."

The current system is so convoluted and unfair that the industry itself is calling for change.

"We just want a clear set of rules to be governed by," said David Rubinger, spokesman for DBA International, the debt-buying industry's trade association in Sacramento.

The trade group for debt collectors agrees. "Any way we can make it more uniform, the better," said Tim Collins, a member of ACA International in Minneapolis.

Court-ordered judgments can appear on a credit report for seven years, even if the original delinquent debt has long-since fallen off. To the national credit-reporting system, a judgment is a new piece of information that is critical to determining consumers' creditworthiness.

Experian, Equifax and TransUnion, the three largest U.S. credit-reporting agencies, hire vendors to collect judgments from courthouses for the agencies to include in consumers' credit files.

But even with such high stakes, errors abound.

"The credit report has taken on a life of its own -- way beyond what the industry or Congress thought when it first enacted the law," said Mary Spector, a consumer-law professor at Southern Methodist University in Dallas.

Heavy consequences

One glance at Chris Draper's arms offers proof that he pushes and pulls hundreds of pounds during his workouts.

In 2005, the Dayton man signed a three-year contract with World Gym, mainly because it had the volume of weights he needed for his lifts; there was a gym close to his home; and the sales representative could work out at World Gym locations nationwide during business trips.

Six weeks after Draper became a member, the World Gym near his home closed.

This August -- more than seven years after the gym closed -- Draper received a summons from Fairborn Municipal Court. He had been sued by a finance company for a gym membership he used for less than two months.

"I couldn't believe it," said Draper, 48, who is married with three children. "To not hear anything for that long and then get sued for something I didn't get to use was insane."

If Draper loses his case, his credit report could suffer the consequences for an additional seven years.

Each state has a statute-of-limitations law that determines when debts become too old and cannot be targeted for lawsuits.

In Kentucky, debt collectors can pursue a judgment for up to 15 years after an account becomes delinquent. The law was the same in Ohio until last month, when it dropped the statute of limitations to eight years.

And regardless of when judgments are obtained, they can appear on credit reports for the following seven years.

So that means that consumers in Kentucky and those in Ohio who fell delinquent up to Sept. 28 can be haunted by debts for 22 years.

Ohioans who fell behind on payments after Sept. 28 can be on the hook for 15 years.

But bad debts in Washington, D.C., the Carolinas and four other states can hurt consumers for only 10 years. In fact, 39 states have statutes of limitations that are friendlier than Ohio's.

In real terms, Ohioans with judgments on their credit reports could have to wait much longer than the vast majority of Americans to buy a house, land a job or get better car- and property-insurance rates -- simply because they live here instead of elsewhere.

"It's important that people pay their debts. It's also important that people be viable financially. That's why, after a period of time, debts are forgiven," said Robert J. Hobbs, deputy director of the National Consumer Law Center in Boston. "You cannot liquidate a family. Debt collection cannot become a perpetual issue."

The industry itself said the current situation is unfair.

"We need to balance around consumer protection and collectors who need to do their job," said David Schiffman, spokesman for the industry's trade association. "But we're governed by this patchwork quilt."

Chris Draper said he made two monthly payments for $33.22 for the time he was able to use World Gym before it closed, then he stopped payment on the checks.

About a month later, the company that financed Draper's membership contacted him and expected him to honor his 3-year contract with a different gym. But Draper believed that was an offer -- not a contractual requirement.

He declined because that gym was about 20 miles from his home, akin to driving from Downtown Columbus to Pataskala. He said the gym also didn't have weights he needed or locations across the country.

Instead, he found a new gym in the Dayton suburb of Beavercreek, where he has been lifting weights since.

"If I had wanted a different gym back then, I would have joined it in the first place," Draper said. "But the worst part of this is them coming after me seven years later."

He was unaware until three years ago that the company holding the closed World Gym's accounts had noted the delinquency on his credit report every month since 2005.

Julia Woods, a manager for Colorado-based Credit Investments Inc., said the company plans to pursue the suit.

Woods said that the second gym offered to Draper was a few miles away from the World Gym that closed and had the necessary heavy weights for the Dayton man's workout. She also said Draper still could have used World Gyms across the country because the new gym was affiliated with the same national fitness association.

Draper now is trying to defend himself in a system tipped against consumers in Ohio. The debt that he considers invalid may be harder to lift from his financial profile than all those weights.

No proof, no problem

Two years ago, the FTC called for more transparency in debt-collection lawsuits.

Too many lawsuits were based on insufficient evidence and too many ended with default judgments because the consumer did not appear in court, the agency said.

That lack of documentation leaves consumers confused about who is suing them and for what.

The FTC encouraged states and local courts to follow the lead of Connecticut, Massachusetts and Michigan to require that each lawsuit contain, at a minimum:

* The identity of the original creditor.

* The date of default and amount due at that time.

* The name of the current debt holder.

* The amount currently due with a breakdown of how much is owed in principal, interest and fees added by the debt collector.

A Dispatch analysis of 235 debt-collection lawsuits filed in Franklin County Municipal Court the week of Oct. 10, 2011, found cases lacking the FTC's recommendations.

More than 43 percent of the cases failed to identify the date when the debt fell delinquent.

In more than 16 percent of the cases, the court files lacked any documentation from the original creditor but rather a statement created by the debt collector.

Nearly two-thirds of the cases involved credit-card debt. None of those files contained signed agreements but rather copies of credit-card statements.

More than 28 percent of the lawsuits were filed on behalf of debt buyers, companies that buy portfolios of delinquent accounts for pennies on the dollar and then collect on the full amount plus tacked-on interest and fees.

The majority of the 235 cases -- nearly 70 percent -- ended with a default judgment because the consumer never responded to the summons, the official notification that a lawsuit has been filed.

However, in more than 55 percent of the cases, there was no proof in the files that the consumers received the summons, which are first sent by certified mail and then by regular U.S. mail.

The envelopes came back marked "unclaimed" or "undeliverable."

In New York City, courts can not grant default judgments in cases in which the summonses have been returned as undeliverable.

Spector, the SMU law professor, conducted a similar study last year of debt-collection cases in Texas from 2007.

The findings in Franklin County are "very consistent with what I was seeing in Texas and, frankly, is alarming because it's still happening," she said. "The fact that these practices are continuing is cause for concern."

But even when consumers acknowledge the summons, they face an uphill battle.

A debt collector won a default judgment against an elderly woman suffering from dementia who now lives in Florida. Her son wrote letters to the Franklin County court explaining how her memory is forever gone. The collector objected to the son's letter because it didn't meet court rules on answers to lawsuits, and won a judgment.

In another case, a Columbus man sent documents to show that when he signed up for the credit card that eventually fell delinquent, he also enrolled in an insurance policy that would pay off the debt if he lost his job.

His credit card was charged $30 a month for that policy.

The 62-year-old man, who asked not to be named, lost his job as a school-bus driver in December 2010, couldn't pay on the credit card and was sued last October.

For nearly five months, the debt collector refused to accept the man's credit-card statements as proof of payment even as the company was using the same documents to prove its validity.

"They kept hounding me and hounding me to pay," he said. "But there was no way I was going to do that after I was paying for the protection in case I lost a job. That just wasn't right.

"And I know it probably happens to other people, too."

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CREDIT SCARS / DEBT COLLECTORS

Credit reports are primary weapons for debt collectors. And lax oversight by credit-reporting agencies and loopholes in federal laws allow debt collectors to ruin the credit of unwitting consumers.

* Sunday: Strong-arm tactics
* Today: Courts complicit
* Tuesday: Medical debt

Where to find help

The Consumer Protection Section of Ohio Attorney General Mike DeWine's office encourages consumers to report errors in their credit reports or problems with debt collection. The office can help mediate disputes.

Complaints may be submitted:

* Online: ohioattorneygeneral.gov/consumercomplaint
* By phone: 1-800-282-0515.
* By mail: Ohio Attorney General Consumer Protection Section, 30 East Broad St., 14th Floor, Columbus, OH 43215.

Contact information for other states' attorneys general can be found on the National Association of Attorneys General website, www.naag.org, under AG Fast Facts.

GRAPHIC: Photo and Graphic

Skip Peterson / For the Dispatch Chris Draper, who works out near Dayton, is fighting a disputed bill for a gym he joined seven years ago -- six weeks before it closed.

LOAD-DATE: October 8, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

October 7, 2012 Sunday

SECTION: NEWS; Pg. 17A

LENGTH: 568 words

HEADLINE: CREDIT SCARS; Primer on debt collectors;

BODY:

Types of debt collectors

* Third-party debt collectors: Seek repayment of a debt that they did not originate.

* Debt buyers: Purchase large portfolios of delinquent debt, typically from credit-card, medical, utility, telecommunication and auto-loan transactions, for pennies on the dollar and then attempt to collect from consumers.

* Collection attorneys: Seek judgments to collect unpaid debt through court-ordered wage or bank-account garnishment.

Trade organization

ACA International was founded in 1939 and represents more than 5,000 third-party collection agencies, debt buyers, collection attorneys and creditors. It's based in Minneapolis.

* 2011 campaign contributions: $222,129

* Top recipients: David McKinley, R-West Virginia, $14,000; Spencer Bachus, R-Alabama; John Boehner, R-Ohio, $7,500

* 2011 lobbying: $830,000

* Key issue: Advocating for a bill that would have allowed debt collectors to contact consumers on their cellphones. The bill eventually was withdrawn by its sponsors.

The industry at a glance

* Collected $55 billion in delinquent debt in 2010

* Employed 148,272 people with a payroll of $5 billion

* Donated $85.2 million to charitable causes

Regulatory troubles

In 2011, the Federal Trade Commission issued a record number of enforcement actions against debt collectors for violating federal laws. Those receiving the most severe penalties were:

* West Asset Management, Inc., with offices in 13 states, was fined $2.8 million for calling consumers multiple times a day, often about debts that did not belong to them.

* Asset Acceptance, of Warren, Mich., was fined $2.5 million for attempting to collect debts that were too old to be legally enforceable.

Sources: ACA International, the Federal Trade Commission, Sunlight Foundation

Laws governing debt collectors

The Fair Debt Collection Practices Act was passed in 1977 and prohibits debt collectors from using abusive, deceptive and unfair debt-collection practices. It also prohibits collectors from:

* Calling consumers before 8 a.m. or after 9 p.m. and informing employers about a consumer's debt. Consumers also can insist that collectors cease further contact.

* Harassing consumers, threatening violence, using obscene language, or annoying consumers with repeated phone calls.

* Misrepresenting who they are and the legal status of the debt. They also cannot imply nonpayment is a crime.

* Trying to collect the wrong amount of debt or adding unauthorized fees, interest or other charges.

Debt collectors must provide consumers with a written notice that includes the amount of the debt and the name of the owner of the debt. Consumers have 30 days to dispute the debt, and collectors much stop all contact until they can prove consumers owe the debt. The law does not spell out debt-verification procedures.

The Fair Credit Reporting Act, enacted in 1971, regulates agencies that compile credit reports and those who report consumers' loan and payment information, such as debt collectors. Credit-reporting agencies and "furnishers" -- those who provide information about consumers -- are required to meet a standard of "maximum possible accuracy" and to investigate consumers' claims of errors. If a debt cannot be verified, the credit-reporting agencies are required to delete the information permanently. The act, however, does not spell out how an investigation should be conducted.

Source: National Consumer Law Center

LOAD-DATE: October 7, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

October 7, 2012 Sunday

SECTION: NEWS; Pg. 16A

LENGTH: 403 words

HEADLINE: CREDIT SCARS; Take fast action if a debt collector comes calling;

BODY:

Consumer advocates say that people facing a collection notification should talk to a lawyer. Some debt collectors are trying to collect payments on accounts that shouldn't be in collection, such as debts discharged in bankruptcy or debts generally older than 71/2 years. Consumers can further harm their credit reports and credit scores by paying those debts without legal assistance.

But the National Association of Consumer Advocates says that consumers need to be aware of the following:

What types of debts are covered by the Fair Debt Collection Practices Act?

Personal, family and household debts, including money owed on a personal credit-card account, an auto loan, a medical bill and a mortgage.

How can I stop debt-collecter contacts?

Send a letter by certified mail that says "you are hereby notified to cease and desist all further communication with me in regard to the referenced debt." A collector can make further contact only to notify consumers that a lawsuit has been filed against them.

Can a debt collector contact anyone else about my debt?

They can contact a consumer's attorney to discuss the debt. They can contact friends, relatives, neighbors and co-workers only to gather the consumer's address, home phone number and place of employment.

What does the debt collector have to disclose about the debt?

Every collector must send a written "validation notice" explaining how much is owed within five days after the first contact. The notice must include the name of the creditor and how to dispute a questionable debt.

What happens if a debt is disputed?

Send a letter within 30 days of the validation notice asking for verification of the debt.

Can a debt collector garnish bank accounts or wages?

Debt collectors can sue to collect an unpaid debt. If they win, the court will enter a judgment against the consumer allowing the collector to retrieve the balance through bank accounts or wage garnishment. But they can't garnish several federal benefits, including Social Security disbursements.

What if a debt collector is suspected of breaking the law?

The law allows consumers to sue a collector in a state or federal court within a year of the violation.

What should consumers do if sued by a debt collector?

Respond to the lawsuit either personally or through a lawyer, by the date specified in the court papers to preserve your rights.

For more information:

www.naca.net/issues/debt-collection-abuse

LOAD-DATE: October 7, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

October 7, 2012 Sunday

SECTION: NEWS; Pg. 17A

LENGTH: 304 words

HEADLINE: CREDIT SCARS; First 'Credit Scars' series brings action;

BODY:

They can look like harmless errors: A misspelled name. A transposed number. A paid debt listed as past due.

But mistakes on credit reports can inflict widespread damage. And because there are insufficient rules on how credit-reporting agencies must correct them, Americans are left virtually powerless to erase the mistakes.

In the first installment of its ongoing Credit Scars series, The Dispatch presented a four-day series documenting the plight of thousands of Americans who, through no fault of their own, have been harmed by flawed credit reports. Their stories were documented in nearly 30,000 complaints filed with the Federal Trade Commission and attorneys general in 24 states that the newspaper collected and analyzed.

The series, published May 6-9, drew swift response -- bipartisan calls for reforms and investigations at the state and federal level.

Ohio Attorney General Mike DeWine has recruited other attorneys general to investigate and take action. Members of Congress called for a legislative fix. And President Barack Obama expressed concern and said his new Consumer Financial Protection Bureau would make it a priority to address problems created by the Fair Credit Reporting Act.

In July, the consumer agency, headed by former Ohio Attorney General Richard Cordray, announced that it would use its new regulatory powers to investigate the three national credit-reporting agencies. The agency also held a national public hearing in Detroit to take testimony from advocates, experts and consumers on the widespread problems within the credit-reporting industry.

DeWine has been particularly critical of the way the credit-reporting agencies handle mistakes.

"These credit agencies act like they're God; they think they're God, and they lord it over people," he said.

Read the full series at Dispatch.com/credit.

LOAD-DATE: October 7, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 9, 2012 Wednesday

SECTION: NEWS; Pg. 1A

LENGTH: 2086 words

HEADLINE: DISPATCH INVESTIGATION; BAD JUDGMENTS;
The mysterious process by which court records end up in credit reports allows for errors that are among the most damaging and difficult to resolve

BYLINE: Jill Riepenhoff and Mike Wagner, THE COLUMBUS DISPATCH

BODY:

Anne Vitale wasn't alarmed when she first discovered a court judgment for an unpaid payday loan on her credit report. She thought, "I can fix this."

All that was needed was a little common sense to see that the debt was not hers. Also in her favor: She's a lawyer who knows her way around the legal system.

But neither could help her repair her damaged credit report. Judgments, which are court-ordered repayments of debts such as medical or utility bills, can destroy a pristine credit score, the number used to decide who receives a loan and how much they will pay in interest.

When credit-report errors come from court records, they can dash dreams of homeownership, like the dream Anne Vitale had.

And judges and other court officials have no standing to correct the problems. The credit-reporting agencies won't accept their word that a mistake was made.

Court records contain the most damning financial information -- judgments, tax liens, foreclosures and bankruptcies. They are financial scarlet letters that can scar consumers for at least seven years by barring them from access to credit or costing them high fees to obtain loans.

Yet the process by which court records land on credit reports is mysterious and ripe for errors, a Dispatch investigation found.

With information about credit cards, mortgages and other types of consumer loans, the credit-reporting agencies act as repositories. They receive and store information given to them by lenders.

But in the case of court records, the credit-reporting agencies hold dual roles as both gatherers and keepers of information. Experian, Equifax and TransUnion, the three major credit-reporting agencies in the United States, hire vendors to collect the information for them and then disseminate it. The specifics of how that process works, though, are largely unknown by consumer advocates and industry observers.

Nearly 15 percent of the 6,035 consumers who complained to the federal government said the mistakes involved their own court records. They filed complaints with the Federal Trade Commission over a 30-month period beginning in 2009 about account-related errors in their credit reports.

Additionally, nearly a quarter of the 1,094 people who said they found accounts that did not belong to them on their credit reports identified the mistaken debts as a judgment, tax lien, foreclosure or bankruptcy.

Among those who complained was an attorney who found a judgment on his credit report. He said he was not the debtor but the attorney who filed the lawsuit seeking repayment of a long-overdue debt.

Dozens of fathers and sons separated only by a "Sr." or "Jr." at the end of their names found tax liens on their reports that belonged to the other.

One homeowner said his house had been paid off, but it showed on his credit report as a foreclosure.

At least 80 consumers discovered bankruptcies that did not belong to them. A single person in Florida found seven.

A man in Texas said he couldn't persuade the credit-reporting agencies to remove a tax lien that did not belong to him. As a result, he had to pay an extra $4,000 in fees when he bought his house.

A California woman said an errant tax lien appeared on her report. "They report false information with ease, needing nothing but my name and an address," she wrote in a complaint to the Texas attorney general that was obtained by The Dispatch through a public-records request. "This monopoly of three -- Experian, Equifax and TransUnion -- needs to have oversight and accountability. ... They are obstructing my right to fair credit reporting."

Part of the problem rests in the court records. To shield against identity theft, court documents accessible to the public are stripped of Social Security numbers and, at least in Ohio, birth dates. That leaves only two bits of information to match court cases to consumers: names and addresses.

"This is how you introduce errors," said Chi Chi Wu, staff attorney at the National Consumer Law Center, which advocates for consumer rights and protections. "Name-only matches should be prohibited."

Last month, her office issued an extensive report on errors found in criminal-background checks, which also rely on court records.

Civil and criminal records change constantly. Cases are dismissed or settled, but those changes aren't always reflected in credit reports. And that doesn't account for how judgments are assigned to innocent bystanders' credit reports.

"There certainly should be a higher standard" for reporting court records, Wu said.

Industry spokesman Stuart K. Pratt says research shows that less than 1 percent of credit reports contain errors. His association, the Consumer Data Industry Association, funded that study.

Pratt suspects that the vast majority of errors in court records are caused by court clerks or attorneys who file the cases. He also said the credit-reporting agencies are hamstrung by decisions to remove Social Security numbers from public court records, making matching more challenging.

"We are obligated to take the record and associate it with a (credit) file," Pratt said.

If there is an error reported by a consumer, the credit-reporting agencies sometimes will check court records on their own, said Norm Magnuson, the association's vice president of public affairs.

The federal law that governs credit reporting does not require the agencies to collect court records but allows them to, if they so choose.

Former industry insider John Ulzheimer said that court records are important pieces of information that lenders need, because they show that the potential borrower has an elevated risk of default.

"By and large, the vast majority of public records are correct. They are connecting the public record with the correct consumer," said Ulzheimer, president of consumer education at SmartCredit.com. He formerly worked at both Equifax and Fair Isaac, the company that developed the most widely used credit score, called FICO.

"I don't know how it could be 100 percent correct 100 percent of the time," he said.

But even when the credit-reporting agencies assign debts to the correct consumers, errors exist.

In state and federal complaints, many said that debts discharged in a bankruptcy were listed as active debts. Tax liens and judgments that had been paid in full showed as unpaid.

In some cases, consumers won the court cases and weren't obligated to pay the debt, yet the credit reports showed otherwise.

Consumers faced with inaccuracies that they can't erase essentially have two options: live with it or file a lawsuit.

Anne Vitale chose a lesser-known path.

In August 2009, she received a certified letter at her Columbus apartment near Grandview Heights from the Franklin County Courthouse notifying her that she faced a civil lawsuit over the nonpayment of a payday loan.

Vitale, now 33, knew there had been a mistake. She has never used a payday lender. She called the attorney who filed the lawsuit, who agreed she was not the right Anne Vitale.

The correct Anne Vitale had a different Social Security number and lived on Columbus' East Side.

The Grandview-area woman thought the matter had seen settled. But as she prepared in the winter of 2010 to buy her first house with her soon-to-be-husband, John Lang, she learned that the problem was far from over.

The judgment appeared on her credit reports.

"I was all fired up," Vitale said. She called the attorney. "You told me this was taken care of," she said to him.

He told her she would have to contact the credit-reporting agencies to correct the mistake.

She filed disputes with Experian and TransUnion. Her report from Equifax didn't show the judgment. She included documents with her Social Security number and a copy of her application to the Ohio State Bar that listed, among other personal information, every address where she had lived dating to childhood. That application is a sworn, legal statement.

"Three days later, an email came back saying it will remain on my credit report," she said.

She called the credit-reporting agencies wanting to know specifically how they determined this debt was hers. She received no answers.

She drafted a letter to the credit-reporting agencies for the attorney to sign saying that she was not the Anne Vitale with the bad debt. He ignored her repeated calls.

She called small-claims court. An employee there said, "This has nothing to do with us. There are people with laptops who check the records all day long," Vitale recalled. They are the vendors hired by the credit-reporting agencies to peruse court records.

She filed a motion with the court to have her address removed from the lawsuit, hoping that could separate her from the bad debt. But the judge wouldn't sign it without notification to the attorney who was ignoring Vitale.

"It just sucked up so much time," she said.

Vitale works as a staff attorney for the Ohio Department of Public Safety. At the time she was dealing with the credit-reporting agencies, she was serving on a multi-state agency committee examining issues related to identity theft.

She happened to mention her plight to an assistant attorney general also on the committee. That attorney directed Vitale to the Ohio attorney general's consumer-protection department.

Once the attorney general's office intervened, the credit-reporting agencies acted quickly to cleanse Vitale's record.

"Finally," Vitale said, "we think it was cleared up."

In March 2010, Lang proposed to Vitale at Trevi Fountain in Rome. They decided it was time to house hunt.

Within a month, Vitale found the house she wanted on Columbus' Northwest Side. It had a great yard and kitchen.

Soon after the couple applied for the mortgage, the loan officer called. There was a problem on Vitale's Equifax report. It was a judgment -- the other Anne Vitale's judgment.

Vitale explained what had happened. Though sympathetic, the loan officer said he couldn't give them a mortgage with that judgment on her record.

He told her how to file a dispute. Vitale and Lang feared that they would lose the house and the chance at receiving an $8,000 federal tax credit because they had only days before the deadline.

Once again, she gathered her packet of proof -- which by then included letters from the attorney general's office -- and faxed them to the agency.

To her surprise, that effort worked, and Equifax removed the judgment.

"Why can't this be simple?" said John, now Anne's husband. "It was black and white."

Vitale keeps handy a file of all the documents she collected through the months-long ordeal. "I worry this will come back to haunt me."

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CREDIT SCARS: PART 4 OF 4

Credit reports affect all aspects of life. The agencies that create them are largely unregulated, and consumers are virtually powerless to erase errors in their reports.

Sunday: Marred by mistakes

Monday: Mixed reports

Tuesday: Stolen identities

Today: Courthouse chaos

Credit Scars ... a four-part series

Credit reporting affects all aspects of life, and the agencies that produce the reports are largely unregulated. Consumers are virtually powerless to erase errors from credit reports. This Dispatch investigation highlights the problems.

* Today: Marred by mistakes. When consumers discover errors on their credit reports, there are no true investigations. The federal law governing credit reporting leaves consumers with few options to fight against erroneous information. Essentially, you must live with it or file a lawsuit. President Barack Obama and key lawmakers are calling for reform. A group of attorneys general from several states is launching an investigation.

* Monday: Mixed reports. The way the credit-reporting agencies match consumers to accounts sometimes results in assigning the debts to the wrong people. Victims of mistaken identity have lost jobs, their homes and their financial reputations. Some have been wrongly labeled as terrorists.

* Tuesday: Stolen identities. Thieves have hijacked the identities of thousands of children, some at birth. The victims face foreclosures, bankruptcies, and huge debts years before they are old enough to apply for their first credit card.

* Today: Courthouse troubles.

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(1) SHARI LEWIS / DISPATCH Because of a court judgment mistakenly assigned to Anne Vitale Lang's credit report, she and her husband, John, almost were denied a mortgage for the house they had set their hearts on -- and nearly lost an $8,000 federal tax credit. (2) MANUEL BALCE CENETA / ASSOCIATED PRESS Stuart K. Pratt, spokesman for the credit-reporting industry, suggests court clerks and attorneys are at fault for most of these errors. (3) Jill Riepenhoff (4) Mike Wagner

LOAD-DATE: May 9, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 8, 2012 Tuesday

SECTION: NEWS; Pg. 1A

LENGTH: 2327 words

HEADLINE: Dispatch investigation; Youngest victims;
Kids are increasingly targets for ID thieves who can spend years running up big debts in their names, ruining their future credit

BYLINE: Mike Wagner and Jill Riepenhoff, THE COLUMBUS DISPATCH

BODY:

By the time Kimberly Dean was in eighth grade, she had a mortgage, dozens of credit cards and enough debt to fill six pages on a credit report.

The Columbus girl's financial life was in ruins -- but she didn't know it.

Not until she was a college freshman and denied a JCPenney credit card would Dean learn that someone had stolen her identity when she was 14. That she supposedly owed debts of $150,000. And that this would haunt her for decades.

A terrified Dean could find no one to fix the problem, including the big three credit-reporting agencies, Experian, Equifax and TransUnion.

She was referred to a local judge who signed and stamped an affidavit saying the debts didn't belong to the teenager. He warned her that she should always carry the piece of paper so that no one would identify her as a deadbeat or criminal.

"It was like living in a foreign country, always having to prove who I was," said Dean, now 39. "This started when I was a kid, and it still haunts me today. It's like the junk drawer in the kitchen or the dirty rug in the garage that no one ever cleans up."

Identity theft remains a growing threat to all consumers, but children more than ever have become a favorite prey for criminals. Parents are almost powerless to prevent the crime, because there is no way of knowing when an identity is stolen, and the credit-reporting agencies won't conduct searches using only a Social Security number, mainly because of privacy issues.

For some, it gets worse when they discover the problem.

A Dispatch analysis of nearly 30,000 federal and state consumer complaints showed that two-thirds of people who said they were victims of identity theft also complained that the credit-reporting agencies failed to remove fraudulent accounts, names and/or addresses from their files. Some complained that the credit-reporting agencies would not accept police reports as proof that they had been victimized, the first step toward clearing fraudulent accounts.

By comparison, a recent survey by the Federal Trade Commission of 3,000 identity-theft victims showed that a little more than half of the victims said the false information had been corrected or removed.

"The credit agencies and creditors don't do real investigations. They just don't do it," said Leonard Bennett, a Virginia-based consumer-law attorney who has testified to Congress about credit-reporting problems. "Most people complain about identity theft because they can't get it corrected."

When a case of child identity theft is detected, parents often have to seek help outside the credit-reporting agencies. One resource has been AllClearID, a California-based company that offers identity-theft protection services and will cleanse a child's credit history.

Studies done by the company found that the identities of more than 10 percent of the children in its system had been hijacked by someone using Social Security numbers.

The children who are in its database largely are there because their confidential information was compromised when a computer was hacked, stolen or lost. The children's identities had been used to open more than 17,000 accounts, including credit cards, mortgages, car loans and utility services. Alarmingly, most of the damage had happened long before the data breaches pointed to it, although it's not certain how.

The study identified a girl in Florida with more than $1.5 million in debt tied to her. A 17-year-old from Arizona had $725,000 in loans and credit. A 14-year-old in Kentucky had a $605,000 California house in foreclosure. The Social Security number of an Ohio teen was tied to a dozen different people who used it to obtain credit and jobs.

"These kids' Social Security numbers are particularly valuable to thieves because they can go years without detection," said Bo Holland, chief executive of AllClearID. "Because of privacy restrictions, the credit bureaus can't share with parents what they find in their (child's) files. So they don't know who is using the Social number or what accounts were opened."

Foster children especially are vulnerable to ID thieves.

Last year, Los Angeles County found that 5 percent of its foster children who were 16 or 17 years old had credit histories.

The Dispatch investigation has prompted Ohio Attorney General Mike DeWine to launch an investigation into whether any of Ohio's 11,850 foster children have been victimized by identity theft.

Stuart K. Pratt, president and chief executive of the Consumer Data Industry Association, which speaks for Experian, Equifax and TransUnion, said the agencies are working to develop more programs and protections for children.

"It's a tragedy. There is not a single American that thinks we should shrug our shoulders," Pratt said. "No one wants any child to be a victim."

From scary story to reality

The newspaper story he had read about a 17-year-old girl having her identity stolen was keeping David Martin, the father of three, awake one night.

The man from Cuyahoga Falls, near Akron, decided to add his entire family to his paid credit-monitoring service, and he soon learned the newspaper story had become a frightening reality for his 11-year-old son, Tanner.

Someone had been using his son's identity to pay for bills at a medical center in Florida for more than a year. Tanner suffered from a serious liver disease and was treated at a local hospital, but he had never been to Florida.

Martin soon would discover that his son's Social Security number and identity had been stolen from three separate entities. He received form letters from a local hospital, a brokerage firm and the state of Ohio, all telling him that a CD containing his son's information had been lost or stolen.

"You just keep thinking, 'How can this happen?' " said Martin, 49, who works for Goodyear. "You do everything you can to protect your children, and then this happens."

While parents or family members are occasionally the culprits in child identity theft, there are plenty of other criminals who find ways to access a child's Social Security number or other personal information.

Children are especially vulnerable when massive databases at schools and hospitals are lost or stolen.

Since 2005, schools and health-care providers experienced more than 40 percent of all data breaches in Ohio, compared with 6 percent nationally. That's according to data compiled by the Privacy Rights Clearinghouse and analyzed by The Dispatch.

The California-based nonprofit agency combs media reports, government websites and blogs to track breaches of sensitive, personal information. Ohio is one of about 40 states that do not require statewide tracking of data losses.

Nearly 5 million records have been compromised because of data breaches in Ohio since 2005.

And it's those breaches that leave families such as Martin's vulnerable to identity theft.

After struggling for more than a year with the credit-reporting agencies and other entities, his son's financial history was cleared with help from AllClearID in 2010.

Still, the father worries that the theft could somehow come back to haunt Tanner, now 14 and healthy.

"We shred everything that we don't need now, and we still worry about Tanner's info," Martin said. "We don't know if there is anything else lurking in the system."

A fear that never ends

The caseworker didn't directly accuse Dorie McLemore of stealing her 1-year-old daughter's identity, but the tone of her voice made the mother feel more like a suspect than a victim.

McLemore had been denied government medical insurance for her two children because California state records showed that her daughter Kenna already had an income. Someone had stolen the little girl's Social Security number.

For the next six months, McLemore and her husband, Bryan, filed complaints with the police and government officials, but no one seemed too concerned that a 1-year-old already had a job.

"The police just kept saying, 'Well, they didn't steal anything,' " said McLemore, now 36 and the mother of three living in Dallas. "I tried very hard to get to the bottom of it then, but no one seemed to take it seriously or want to do anything to fix it. So I just figured it would work itself out and tried to forget about it."

Identity thieves often count on their victims to forget about it. Once identity theft is suspected on a credit report, the criminal hopes the grueling, time-consuming process of cleansing a credit history will wear down a consumer.

Adults can at least check their credit reports to guard against more trouble, but children remain vulnerable because they are invisible in the financial system.

McLemore never truly forgot about the identity theft involving Kenna, now 9. It was a chance encounter that likely saved her daughter from financial hardship when she goes off to college.

At a children's birthday party near their new home in Dallas, McLemore met a woman who worked for AllClearID. After hearing McLemore's story, the woman checked on Kenna's history and discovered thieves had racked up more than $34,000 in debt. It remains unknown how her identity was stolen, and no one has been arrested.

AllClearID helped the family deal with the creditors and credit-reporting agencies to straighten out the mess, but the family still isn't sure the ordeal is truly over.

"It's a mess of a system," McLemore said. "You can't assume it's ever going to be truly fixed."

Financial shadow

Kimberly Dean looked at the piece of paper the judge had signed -- the one she carried for 10 years to prove her identity -- crumpled it, and threw it away.

In her mind, she had done everything in her power to clean up the financial mess some crook created for her when she was 14. She had spent hundreds of hours pleading with the credit-reporting agencies and creditors to correct her credit history.

She applied for and was granted a new Social Security number and assumed that creating a new identity would solve the problem.

But creditors kept calling and accusing her of owing them thousands for furniture, clothing and food bought by the thief.

"Back in the early 1990s, no one really understood ID theft that well," said Dean, a single mother of four who lives on Columbus' East Side. "I didn't think to go to the police, because I thought the credit agencies were the police of this system. I couldn't afford a lawyer. Eventually, I just gave up."

Some identity-theft victims never truly receive the help they need. Some try to fight through the mess alone and don't succeed. Some don't know who to call or where to file a complaint. Some are intimidated by the system. Others assume it will just go away.

Dean still doesn't know how she became a victim or whether her credit problems will ever disappear.

She did learn in 2009, more than 17 years after she first realized that her identity had been stolen, that her old Social Security number was still being associated with her name.

That explained why the credit reports she received looked accurate, but those seen by creditors still were filled with the crook's debt.

"I don't even request my credit reports anymore," Dean said. "You just get tired, you know? You just get tired."

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CREDIT SCARS: PART 3 OF 4

Credit reports affect all aspects of life. The agencies that create them are largely unregulated, and consumers are virtually powerless to erase errors in their reports.

* Sunday: Mistakes abound
* Monday: Mixed reports
* Today: Stolen identities
* Wednesday: Courthouse chaos

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Guard against ID theft

Anyone can be a victim of identity theft, regardless of age. Millions of people are affected each year, and in 2010, identity thieves caused $54 billion in damage, according to the Identity Fraud Survey Report. Experts offer these tips to help protect yourself and your children:

FOR Your CHILDREN

* Watch your mail for offers of credit in your child's name.
* Warn children about sharing sensitive information online.
* Do not ever use your child's Social Security number to open utility or credit accounts.
* Do not carry their Social Security cards in wallets or purses.

FOR YOU

* Use a credit card for online purchases. Debit cards can expose your checking account to thieves.
* Contact each credit-reporting agency and all creditors when a loved one dies.
* Online, create passwords with at least eight characters with a mix of capital letters, numbers and symbols.
* Never divulge personal information when solicited by phone or email.
* Do no leave outgoing bills in an unattended mailbox. Shred all canceled checks.

For more information, visit www.allclearid.com/child or www.idtheftcenter.org.

Sources: AllClearID, Identity Theft Resource Center

Credit Scars ... a four-part series

Credit reporting affects all aspects of life, and the agencies that produce the reports are largely unregulated. Consumers are virtually powerless to erase errors from credit reports. This Dispatch investigation highlights the problems.

* Sunday: Marred by mistakes. When consumers discover errors on their credit reports, there are no true investigations. The federal law governing credit reporting leaves consumers with few options to fight against erroneous information. Essentially, you must live with it or file a lawsuit. President Barack Obama and key lawmakers are calling for reform. A group of attorneys general from several states is launching an investigation.

* Monday: Mixed reports. The way the credit-reporting agencies match consumers to accounts sometimes results in assigning debts to the wrong people. Victims of mistaken identity have lost jobs, their homes and their financial reputations. Some have been wrongly labeled as terrorists.

* Today: Stolen identities.

* Wednesday: Courthouse troubles. When credit-report errors come from court records, judges and other court officials have no standing to correct them. Court records contain the most damning financial information -- judgments, tax liens, foreclosures and bankruptcies -- and are ripe for errors.

GRAPHIC: Photo and Graphic
(1) Shari Lewis / Dispatch Kimberly Dean, of the East Side, didn't realize until she was 18 that her identity had been stolen when she was 14. The chaos it created in her credit report has haunted her for 20 years, and she now tries to avoid both looking at her credit report and borrowing money. (2) Lawrence Jenkins / For the Dispatch The identity of Dorie McLemore's daughter Konna was stolen when she was 1 year old. The problem has plagued the family for years, and the Dallas residents still aren't confident that it is resolved.

LOAD-DATE: May 8, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 8, 2012 Tuesday

SECTION: NEWS; Pg. 7A

LENGTH: 851 words

HEADLINE: Credit scars: Stolen Identities; Thief stole her identity, dreams;

BYLINE: Mike Wagner, THE COLUMBUS DISPATCH

BODY:

Dateline: CATLETT, Va.

While Suzanne Sloane was giving birth to her second child, a contract worker in the hospital's accounts-payable department was stealing her identity.

During the next six months, the thief took out dozens of credit cards, loans and cash advances using Sloane's personal information, and went on a wild spree, spending $30,000.

Sloane had no idea, until one day she opened a piece of mail from a debt collector saying she owed money from a credit card that didn't belong to her. The card was issued to Shovana Sloan -- the woman who worked at the hospital.

That night, Suzanne Sloane typed her Social Security number into the website for Equifax, one of the three major credit-reporting agencies in the United States, and discovered that her report was littered with 20-plus pages of the other woman's accounts.

"I had just put the kids to bed, my husband wasn't home, and I was panicking when I saw that name," said Suzanne, now 45 and a charter-school principal. "You're in disbelief in the beginning. I thought it must be a typo or some kind of mistake."

Suzanne spent months working with local and federal authorities, calling creditors and dealing with Equifax. The thief, who had a previous conviction for identity theft, confessed to stealing Suzanne's information at the hospital and later was sentenced to 18 months in prison.

Suzanne thought the ordeal was finally over.

Like so many others who suffer through an identity theft, Suzanne soon realized that restoring her previously excellent credit would consume her life.

Her struggle to fix her credit report would threaten her financial life and nearly cost her something even more valuable.

Suzanne and her husband, both teachers at the time, had built the family life they had always wanted. Part of it came from the sweat and time they put into fixing up one house, selling it and buying a nicer one. The couple had made

the home improvements together and decided it was a good time for her husband to follow his dream, quit teaching and make a living restoring and selling homes.

They found several homes that were perfect to get their business started. They went to arrange financing but knew it was bad news when they saw the look on the mortgage broker's face. To make matters worse, the broker was one of her husband's former students.

Suzanne's credit report was still carrying the debt of the identity thief, lowering her credit score 200 points, into the 500s. They were denied a loan – and their dream.

"I felt like I killed his dream," Suzanne said.

She previously had been turned down for a car loan for the same reason, but she thought her credit report was now clean.

She had done everything possible to fix her credit history. She repeatedly wrestled with creditors and Equifax by phone and in letters, but she never got the help she needed.

Equifax, however, mailed her a form letter offering to sell her protection against identity theft. The letter was addressed to the thief, Shovana Sloan.

Then the problem began to affect Suzanne's marriage.

Shortly after she and her husband were denied the loan, Suzanne overheard a conversation between him and his father. The two were discussing going into the housing business as partners.

Suzanne was hurt and felt betrayed. The couple argued long into the night, and tension only grew worse during the summer. They were sleeping in different bedrooms and considered separation.

"He just wanted the fallout from the identity theft to go away," Suzanne said. "He started blaming me for what happened and for not being able to fix it. I was losing my husband over this."

While vacationing with family, the couple found time at a quiet ocean-side restaurant to be alone and talk through their troubles. They agreed they weren't going to allow the flawed credit-reporting system to destroy their family. They would keep working together to rebuild Suzanne's financial life.

Eventually, she hired a consumer-law attorney and sued Equifax. The legal dispute continued for almost two years. It included an exhausting trial during which Suzanne described to a jury how the crime and its lingering effect on her credit history nearly destroyed her family. Equifax argued that Suzanne hadn't followed proper procedures when disputing the false information on her report.

The jury sided with Suzanne and then awarded her financial damages, which later were cut in half by a judge. Suzanne declined to discuss the award based on the advice of her attorney. An official for Equifax's lobbying group said the company doesn't comment on active or closed legal cases.

"No, I didn't get rich, and I am still working," Suzanne said.

She and her husband are now both school principals and remain unsure about whether the problem will return. In fact, just three weeks ago, Suzanne received a call from a creditor who wanted information about Shovana Sloan.

"I still feel like this robbed my husband of his dream," she said. "No one should ever have to go through something like this. But when it happens, it should be fixed instead of anchoring down your life for months or years."

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GRAPHIC: Photo
Pete Marovich / For the Dispatch Suzanne Sloane of Catlett, Va., struggled for years to correct her credit records after a thief stole her identity and spent $30,000. The thief was convicted, but that didn't fix things. Sloane and her husband had to give up a plan to start a business, and the stress almost broke their marriage.

LOAD-DATE: May 8, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 7, 2012 Monday

SECTION: NEWS; Pg. 1A

LENGTH: 2766 words

HEADLINE: Dispatch investigation; Mixed and marred;
When credit-reporting agencies blend your files with others', the financial damage can be devastating

BYLINE: Mike Wagner and Jill Riepenhoff, THE COLUMBUS DISPATCH

BODY:

Judy Thomas crumpled in her seat as the banker behind the big wooden desk said she couldn't refinance her home. The nurse from northern Ohio was rejected for the loan because, in the financial world, she was also Judith Kendall from Utah who had bad credit.

Barbara Sowers tossed a rejection letter for a government loan onto a pile with so many others. The disabled central Ohio woman -- living in a 200-year-old house with holes in the ceiling and rotting walls -- couldn't get a loan to make repairs because credit reports confused her with her daughter, who has a similar name.

Brenda Campbell was certain she would be fired by the Missouri governor if he learned that a collection agency was going to garnish her wages. The personal financial records of the state's director of senior and disability services were mixed with those of two other women named Brenda Campbell.

The smallest error on a credit report can cause hardship. But when a consumer's file is mistakenly mixed with one from someone who has questionable credit, whether a stranger or even a family member, the consequences can be devastating.

Suddenly, through no fault of their own, they assume another person's financial identity and personal history. Those new identities can label them as a financial deadbeat or even a felon.

"It nearly destroyed my life, and then fixing the problem consumed my life," Campbell said. "And it's not just about money. There is so much time spent dealing with the fear and anxiety of how much damage this is going to cause you."

A yearlong Dispatch investigation found that thousands have been scarred by errors on their credit reports, but no one is hurt more than those whose credit histories are blended with another's, because they can take years to untangle. And in some cases, a lawsuit is required to separate the files. In the time it takes to clear it up, the consumer's credit score and financial life suffer.

The mistaken identity can cause the consumer to lose out on credit cards, home and car loans, jobs and helping their kids pay for college.

Dispatch investigation; Mixed and marred; When credit-reporting agencies blend your files with others', the financial damage can be devastating The Columbus Dispatch (Ohio) May 7, 2012 Monday

When consumers request their credit report, they must provide at least their full name, Social Security number, date of birth and address.

But creditors don't have to follow the same rules when they request consumers' reports. They can simply search for account information by name only, or maybe just by a Social Security number.

That's how the mixed-file nightmare begins and how Melissa became Lisa, Myra became Maria and Angela morphed into Angelina, as seen in federal complaints and lawsuits filed against credit-reporting agencies. The credit-reporting computers do not recognize gender, so the files of one woman named Robin, for example, were mixed with a man's named Robin.

In an extreme case, a man from Virginia with good credit was mixed with a financial deadbeat who shared his name, lived in the same town and had a similar Social Security number. After a futile two-year battle to clear his name, the man crafted a letter to his family explaining that credit reporting had "destroyed his life." He then committed suicide. His survivors detailed the man's ordeal in a lawsuit.

About 6 percent of nearly 21,500consumers who complained to the Federal Trade Commission during a 30-month period beginning in 2009, and nearly 8 percent of 1,842 who complained to state attorneys general in 2009 and 2010, said that their credit reports had been mixed with another person's.

In an unprecedented review of consumer complaints to the FTC, The Dispatch learned that consumers' files had been merged with those of their mothers, fathers, brothers, sisters, in-laws and neighbors. They were mixed with strangers with the same name, a similar name, a similar Social Security number or no known similarities whatsoever.

Of the 1,252 people who told the FTC that their files had been mixed with other consumers', 30 percent also complained that the credit-reporting agencies failed to correct the mistakesafter being asked. The others did not indicate whether they had sought to have the information corrected.

No one outside Experian, Equifax and TransUnion, the three major credit-reporting agencies in the United States, fully understands how computer formulas used by the companies match up information. The formulas are closely guarded industry secrets.

In 2004, the FTC ruled against requiring the agencies to use stricter matching criteria, such as all nine digits of a Social Security number, to assign accounts to consumers. The commission admitted that mismatching errors are costly to consumers; but it ultimately decided that it was best to protect lenders' interests. Tighter standards could increase the number of cases in which no data are found when creditors request reports.

Consumers with mixed credit files are treated no differently from someone with a misspelled name when they attempt to correct errors. The dispute system is highly automated and does not involve a true investigation by humans.

Experts say the mixed-file problem is a long-standing issue.

"The FTC signed consent decrees with the three credit-reporting agencies in 1991 because of mixed-file problems. Twenty years later, we have the same problem," said Evan Hendricks, editor and publisher of the newsletter "Privacy Times" and author of the book Credit Scores & Credit Reports: How the System Really Works, What You Can Do.

"The credit-reporting agencies say their computers are so sophisticated that they only mix a few files," Hendricks said. "If it's so few, why can't they recognize and diagnose? The answer is nobody's told them to do it. And it's bad to mix the file. It's worse to unmix it."

Stuart K. Pratt, president and chief executive of the Consumer Data Industry Association, also the spokesman for Equifax, Experian and TransUnion, said those agencies are constantly looking for methods to eliminate the mixed-file problem.

"There is an attitude that, file by file, we want to get it right and that's important," Pratt said. "They literally have scientists that deal with this question of matching (data). Year by year and month by month, they are learning, gathering data, storing data, auditing data, looking for pattern changes and looking at software and hardware technologies for improvements to the system."

Powerless to fix mix-up

After spending her days dressed in emergency-room scrubs, nurse Judy Thomas decided it was time to treat herself to a pretty dress.

To save an additional 10 percent on the purchase, she signed up for a credit card at the women's clothing store that day in 1999.

But Thomas, who always had excellent credit, was rejected and didn't know why.

The resident of Elyria, near Cleveland, called the credit-reporting agencies and learned that her file had been mixed with that of a Judith Kendall who lived in Utah. And there were two Social Security numbers other than hers listed on her report.

"I didn't know how bad it would be for me to fix it at that time," said Thomas, now 51 and nursing manager at two medical facilities. "But man, would it get worse."

For about six months, she wrote letter after letter to the credit-reporting agencies and sent personal information trying to clear her financial identity. The agencies responded with their own letters saying they would correct the problem. At other times, they simply confirmed that the false information from the Judith in Utah was still on Thomas' report.

Thomas then tried to buy a car, but she was rejected for the loan. Her credit report continued to be weighed down by the other woman's unpaid debts and bad credit.

Thomas was rejected for a loan again when she tried to refinance her home. But this time, a banker did her a favor by leaving the credit report on the edge of a desk and walking away, so Thomas could get a look at what was in it.

"It was just riddled with errors and debt," she said. "I tried calling all of them myself and straightening the mess out, but I had no luck."

Thomas started receiving letters and phone calls from numerous creditors across Utah, pressuring her to pay debts that weren't hers.

"I would say, 'Hey, listen, I have never even been to Utah, so how could I have a mortgage there for $147,000?' " Thomas said. "And they would continue to tell me things like, 'You are Judith Kendall, and you are 53 years old with a heart condition, and you owe us $14,000.' "

When Thomas requested her credit report, it was clean. It didn't show her being mixed with Judith. But when creditors pulled Thomas' reports, they found Judith's debts there, too.

This is not uncommon. When consumers request their reports, they receive only information that exactly matches their name, Social Security number, birth date and address. But when creditors ask for reports, the standard is different. Close is good enough.

Thomas never came close to solving the problem on her own.

Five years after she had been denied the credit card while buying the new dress, the credit-reporting agencies still hadn't fixed the problem.

It reached a boiling point when Thomas applied for her daughter's college loan online and was told she couldn't be a co-signer because of the debt on her credit report – debt that she knew wasn't hers.

So she hired Sylvia Goldsmith, a consumer-law attorney from the Cleveland area, in 2005 and sued Equifax and TransUnion.

Goldsmith spent a year battling the credit-reporting agencies before they agreed to a confidential settlement with Thomas. Representatives said the credit-reporting agencies do not comment on pending or resolved cases.

"No one would help me with this for all those years before Sylvia," Thomas said. "So many people told me this wasn't that big of a deal, but it was the hardest thing I've dealt with in my life. And how do you fix something if no one really understands something is seriously wrong?"

Credit void, credit problems

The cracks in the upstairs bedroom are almost big enough to look down and watch the television in the living room below.

Water damage from cracked pipes rotted parts of some walls, exposing insulation and wiring.

Dispatch investigation; Mixed and marred; When credit-reporting agencies blend your files with others', the financial damage can be devastating The Columbus Dispatch (Ohio) May 7, 2012 Monday

Barbara Sowers' nearly 200-year-old home has been on structural life support since 2005. That's when the woman who has endured 13 surgeries for crippling arthritis was first denied the government loans for repairs.

Barbara Jean Sowers had been mixed with her daughter Barbara Louise Sowers in the credit-reporting world. And her daughter's credit history was troubled.

Barbara Sowers, 67, was virtually invisible to the credit-reporting agencies because she never borrowed money. But to computer formulas that match people to accounts, she looked like her daughter. Their names are similar and they had shared a post-office box.

"The credit agencies were nice, but they just kept telling me I should get a credit card so it would be easier to straighten out," said Sowers, who lives in Homer, northeast of Columbus in Licking County. "My parents taught me not to buy anything unless you had cash, so that's what I did my whole life. I guess that came back to haunt me."

Sowers did everything in her power to convince the loan administrators that she wasn't her daughter. She begged them to check the Social Security numbers, but it did no good. One agency even accused her of having a phony number.

Every time the credit-reporting agencies looked for Sowers' real credit history, they found nothing because she had no established credit.

"It was hard to fix something for me that didn't really exist," Sowers said.

Finally, in 2009, Sowers' niece filed a complaint with the Ohio attorney general's office, and about a year later, the mess was straightened out.

Sowers' old house and her peace of mind finally started receiving the repairs they needed this year.

It's a start for the disabled woman who can't carry in her own groceries and counts on neighbors and church friends to make it through each day.

"Me and this place are both falling apart, but it's mine," she said of the house. "I don't like owing anybody money, but maybe it's a good thing I do."

It can happen to anyone

Brenda Campbell returned to her office after an exhausting day in the Missouri State Capitol and saw the note from the personnel department on her desk.

A debt-collection company had filed paperwork to garnish the wages of Campbell, the state's director of senior and disability services.

"It's not me," she told them. "It's not me."

Campbell knew there was something wrong with her credit report because a few months back when she bought a Jeep, a credit check found debt that didn't belong to her. And she had been rejected when she applied for a new credit card.

Up to that point in May 2007, the mix-up had been mostly an annoyance. But suddenly, it was threatening her livelihood. Campbell went home after the meeting with the personnel department and wept.

"I was appointed to my position by the governor, and I was certain I was going to be fired," said Campbell, 55, who lives in Nixa, Mo., and has since retired. "Even though this wasn't my fault, I thought the governor's people wouldn't want the publicity of an appointee having her wages garnished. I was terrified this would take everything from me."

On that same night, Campbell did her own research online and found the Brenda Campbell that the debt collector was looking for. The other Brenda lived a few counties away, had criminal charges pending against her and had actually agreed to pay off her debt.

Campbell assumed someone would conduct a similar investigation and her problems easily would be solved.

But she was wrong.

She eventually discovered that her credit report contained three other Social Security numbers, and by that time, her information had been mixed with two other Brenda Campbells'. It was unclear who the third number belonged to, but it was likely entered into the system incorrectly.

Dispatch investigation; Mixed and marred; When credit-reporting agencies blend your files with others', the financial damage can be devastating The Columbus Dispatch (Ohio) May 7, 2012 Monday

For the next eight months, Campbell couldn't persuade the collection company or the credit-reporting agencies to remove the false information from her account. She feared that her co-workers would find out about the mess and not believe her story. She even was afraid to drive into another county on a work trip, fearing she would be pulled over and then mistaken for the Brenda Campbell who had a warrant out for her arrest.

She managed to avoid having her wages garnished, but the burden of the credit mix-up became too much to bear alone.

Like Judy Thomas, Campbell hired Goldsmith, the consumer-law attorney. She sued Equifax, Experian, TransUnion and the debt-collection company. The legal battles lasted more than two years. Campbell was forced into a grueling trial on one of the cases before settlements were reached with all four by the spring of 2010.

To this day, Campbell does not know how the other Brendas were linked to her. Consumers rarely learn how the errors begin unless they can discover it themselves.

"The burden of fixing this problem was all mine, and no one in the credit agencies would help me," Campbell said. "No one seemed to care that this was destroying my life."

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CREDIT SCARS: PART 2 OF 4

Credit reports affect all aspects of life. The agencies that create them are largely unregulated, and consumers are virtually powerless to erase errors in their reports.

Sunday: Mistakes abound

Today: Mixed reports

* Tuesday: Stolen identities

* Wednesday: Courthouse chaos

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Credit Scars ... coming this week

Credit reporting affects all aspects of life, and the agencies that produce the reports are largely unregulated. Consumers are virtually powerless to erase errors from credit reports. This Dispatch investigation highlights the problems.

* Sunday: Marred by mistakes. When consumers discover errors on their credit reports, there are no true investigations. The federal law governing credit reporting leaves consumers with few options to fight against erroneous information. Essentially, you must live with it or file a lawsuit. President Barack Obama and key lawmakers are calling for reform. A group of attorneys general from several states is launching an investigation.

* Today: Mixed reports.

* Tuesday: Stolen identities. Thieves have hijacked the identities of thousands of children, some at birth. The victims face foreclosures, bankruptcies and huge debts years before they are old enough to apply for their first credit card.

* Wednesday: Courthouse troubles. When credit-report errors come from court records, judges and other court officials have no standing to correct them. Court records contain the most damning financial information -- judgments, tax liens, foreclosures and bankruptcies -- and are ripe for errors.

GRAPHIC: Photo and Graphic
(1) Eric Albrecht / Dispatch Judy Thomas of Elyria kept detailed records of errors in her credit report that developed after her information was mixed with that of a woman from Utah. Getting the problem fixed was a frustrating process that took more than five years and a lawyer's help. (2) Barbara Sowers rolls a bucket of water from the kitchen of her Licking County home to the bathroom so she can flush a toilet. The plumbing doesn't work in part because she couldn't

get a remodeling loan after her credit report was mixed up with her daughter's report. (3) Bruce Stidham / For the Dispatch Brenda Campbell of Missouri

LOAD-DATE: May 7, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 7, 2012 Monday

SECTION: NEWS; Pg. 9A

LENGTH: 1082 words

HEADLINE: CREDIT SCARS: MIXED REPORTS; Car-buyer flagged as terrorist;

BYLINE: Mike Wagner, THE COLUMBUS DISPATCH

BODY:

Sandra Cortez went to buy a new car on her lunch break, and about an hour later, the Denver dealership staff was threatening to call the FBI to haul her away as a suspected terrorist.

The dealership's routine check of Cortez's credit report turned up something unusual on that day in 2005. It was an alert indicating that the woman was on a government list of suspected terrorists, international drug traffickers and others associated with weapons of mass destruction.

Cortez, now 68, was really just an accountant who wanted a new silver Subaru to better navigate the mountain roads she traveled to reach her favorite hiking trails.

The credit report Cortez had seen long before she walked into the dealership was clean. She had excellent credit, and she had no inkling that she was linked to a Colombian woman with a similar name wanted for drug trafficking. But like so many other consumers, Cortez didn't realize that the credit reports issued to businesses are not the same as those given to consumers.

The ordeal engulfed the grandmother for the next five years. Her many attempts to fix the problem with TransUnion and the federal government on her own all failed. Cortez pleaded with the credit-reporting agency to correct her credit history but received no help.

She eventually hired Jim Francis, a consumer-law attorney in Philadelphia, and sued TransUnion. Cortez endured a grueling legal battle that included a trial and years of appeals. She originally was awarded $750,000 by a jury, but that later was reduced to $150,000. And the government took about a third of it in taxes.

Officials for TransUnion's lobbying group, which speaks for the company on all matters, declined to comment on the case. Current owners of what was then the John Elway Subaru dealership were unfamiliar with the case and declined to comment.

But it was that day in the auto showroom that Cortez realized how powerless Americans are to defend themselves against significant flaws in the credit-reporting system.

"I thought I would be driving my new car back to work after lunch," said Cortez, who is now retired and living in La Mesa, Calif. "I couldn't imagine what would happen next."

Here's how it unfolded on March 31, 2005:

1 p.m. -- Cortez turns into the Subaru dealership parking lot in her old, red Ford Taurus. The Ford had been good to her, but it was no match for snow-covered roads in Colorado. A friendly saleswoman greets Cortez and tells her the new silver Subaru Forester will be ready shortly. They just need to go through the financing process.

Cortez is expecting a good interest rate on the $18,000 vehicle because she had checked a week earlier and her credit score was 761.

1:45 p.m. -- Cortez is sitting in the finance manager's glass-walled office wondering why it's taking so long for him and the saleswoman to return. Her lunch hour is passing quickly.

2 p.m. -- The finance manager returns, and this time, there is no friendly greeting -- only a stern look for the customer born in Chicago. Then a series of strange questions:

"Were you born in the United States? Have you always lived in the U.S.? When is the last time you left the country?" the manager asks.

Cortez is laughing. She thinks it is a joke -- until the manager tells her that the TransUnion credit report indicates that she is on the U.S. Treasury Department's Office of Foreign Assets Control list, which tracks specific individuals or regimes suspected of being terrorists. TransUnion's "OFAC Advisor" service had mixed Cortez with a Sandra Cortes Quintera. Businesses use such services because the Patriot Act, passed shortly after the Sept. 11 attack in 2001, prevents lenders from loaning money to anyone suspected of being affiliated with terrorists.

"I am not that woman," Cortez pleads to the manager. "I have my credit report, and there is nothing like that on it."

2:10 p.m. -- The finance manager tells Cortez that they are calling the FBI if her name matches that OFAC list.

3 p.m. -- Cortez sits alone in the sterile office and waits for FBI agents. She expects them to burst through the lobby doors with guns drawn. She trembles and imagines what it would be like to be handcuffed and taken away in view of other customers and the sales staff.

3:30 p.m. -- People are looking into the glass-windowed office where Cortez is sitting. She knows that word has spread around the dealership that they may have caught a terrorist. Cortez tells the finance manager that she is hungry and is feeling lightheaded, but he asks her to stay a little longer. The dealership has possession of her Ford keys.

4 p.m. -- Cortez is given her car keys by a front-desk employee, but the finance manager asks her to wait a little longer. He then says again that they are going to call the FBI. Cortez sits back down in the dealership lobby and again waits for federal agents to arrive. She could leave, she thinks, but she doesn't want them to think she has reason to run.

5:30 p.m. -- She is hungry, exhausted and afraid. But she thinks that if the FBI really wants her, agents could just as easily pick her up at home. Cortez finally drives away from the dealership in her old Ford Taurus as snow begins to fall.

6 p.m. -- Upon arriving at home, she immediately calls her daughter and tells her of the ordeal. She is still convinced that she will be arrested at any minute and tells her daughter that she might need legal help.

"They won't believe me," she says. "They just won't believe me. Everyone there thinks I'm a terrorist."

6:45 p.m. -- Cortez calls the dealership and is transferred to its top manager.

"We think there has been a mistake," he says. "We would like to apologize."

7:15 p.m. -- Cortez arrives back at the dealership and is now treated like a VIP. Everyone is apologizing, offering her $100 in free gas and dinner for her and her family wherever they want to go. Cortez feels as though she was kept hostage for the day, but even so, she just wants her new car. And the only thing Cortez asks them to throw into the deal is a copy of the credit report they received from TransUnion. Cortez isn't sure if they ever really called the FBI.

She finally got the new car, but a five-year struggle to clear her name had just begun.

Cortez is still driving her 2005 Subaru -- and still stinging from the experience of buying it.

"Most people think if you pay your bills on time, you will be OK in the credit world," she said. "But that's not how it always works. And sometimes, the mistakes can be paralyzing."

mwagner@dispatch.com

GRAPHIC: Photo
John Gastaldo / For the Dispatch When Sandra Cortez tried to buy a Subaru Forester at a dealership in Denver, an error on her credit report led to the innocent accountant being mistaken for an international drug-trafficking suspect from Colombia. Cortez spent five years trying to repair the damage.

LOAD-DATE: May 7, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 7, 2012 Monday

SECTION: NEWS; Pg. 8A

LENGTH: 426 words

HEADLINE: CREDIT SCARS: MIXED REPORTS; Good defense is best offense for credit problems;

BODY:

Check your credit reports

Consumers are entitled to a free credit report every 12 months from each of the three national credit-reporting agencies. You also can receive a free report if you have been denied credit within the past 60 days, are unemployed and job hunting, receive public assistance or are a victim of fraud. The National Consumer Law Center offers tips on what to check in your credit report: www.nclc.org/images/pdf/older_consumers/creditrepair.pdf.

Get access to your free reports at AnnualCreditReport.com

Reports sponsored by the credit-reporting agencies can mislead consumers into purchasing unwanted information. Free reports also can be obtained by phone at 1-877-322-8228 or by writing to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. In each case, you must provide your full name, birth date, Social Security number and addresses from the past five years.

Review credit-card offers that arrive in your mailbox

Name misspellings and other incorrect personal information in unsolicited offers of credit can be a sign that something is amiss in a consumer's credit report.

Dispute credit-report errors by mail, keep copies for yourself

Send by mail all documents and supporting evidence to each of the credit-reporting agencies reporting inaccurate information and keep a copy for your records: Equifax, P.O. Box 740241, Atlanta, GA 30374-0241; Experian, P.O. Box 2104, Allen, TX 75013-0949; and TransUnion, P.O. Box 1000, Chester, PA 19022.

Beware of credit-repair scams

Consumers who have accurate but derogatory accounts on their credit report can repair the damage they have caused themselves by paying bills on time and only taking on additional debt when absolutely necessary. Some companies claim they can remove bad debts, but it is impossible to remove legitimate debts. The Federal Trade Commission (www.ftc.gov) offers a host of tips to improve your credit standing: www.ftc.gov/bcp/edu/pubs/consumer/credit/cre13.shtm.

Where to find help

The Consumer Protection Section of Ohio Attorney General Mike DeWine's office encourages consumers to report errors in their credit reports. The office can help mediate disputes.

Complaints may be submitted:

* Online: www.ohioattorneygeneral.gov/ConsumerComplaint.

* By phone: 1-800-282-0515.

* By mail: Ohio Attorney General Consumer Protection Section, 30 East Broad St., 14th Floor, Columbus, OH 43215.

Contact information for other states' attorneys general can be found on the National Association of Attorneys General website, www.naag.org, under AG Fast Facts.

LOAD-DATE: May 7, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 6, 2012 Sunday

SECTION: NEWS; Pg. 1A

LENGTH: 3488 words

HEADLINE: DISPATCH INVESTIGATION; Credit scars;
Credit-reporting agencies' failure to address damaging errors plaguing thousands of Americans prompts call for swift action

BYLINE: Jill Riepenhoff and Mike Wagner, THE COLUMBUS DISPATCH

BODY:

They can look like harmless errors: A misspelled name. A transposed number. A paid debt listed as past due.

But mistakes on credit reports can inflict widespread damage. And because there are insufficient rules on how credit-reporting agencies must correct them, Americans are left virtually powerless to erase the mistakes.

The Dispatch documented the plight of thousands who, through no fault of their own, have been denied the chance to buy a home or a car, take out a loan for college, rent an apartment, land a job, join the Armed Forces, receive medical care or even open a checking account.

Elected officials, including President Barack Obama, suspect that the problems plague millions of Americans and are calling for reform after reviewing a summary of the newspaper's findings.

The federal law that governs credit reporting is fraught with loopholes and obstacles that make correcting mistakes difficult, if not impossible, the newspaper found.

During a yearlong investigation, The Dispatch collected and analyzed nearly 30,000 consumer complaints filed with the Federal Trade Commission and attorneys general in 24 states that alleged violations of the Fair Credit Reporting Act by the three largest credit-reporting agencies in the United States -- Equifax, Experian and TransUnion.

Industry observers say it is among the most comprehensive reviews ever conducted of complaints against credit-reporting agencies.

The complaints document the inability of consumers to correct errors that range from minor to financially devastating. Consumers said the agencies can't even correct the most obvious mistakes: That's not my birth date. That's not my name. I'm not dead.

Nearly a quarter of the complaints to the FTC and more than half of the complaints to the attorneys general involved mistakes in consumers' financial accounts for credit cards, mortgages or car loans. Houses sold in bank-approved "short sales," at less than the value of the mortgage, were listed as foreclosures. Car loans that had been paid off were reported as repossessions. Credit cards that had been paid off and closed years earlier showed as delinquent.

DISPATCH INVESTIGATION; Credit scars; Credit-reporting agencies' failure to address damaging errors plaguing thousands of Americans prompts call for swift action The Columbus Dispatch (Ohio) May

More than 5 percent complained to the FTC and more than 40 percent to the attorneys general that their reports had basic personal information listed incorrectly: names, Social Security numbers, addresses and birth dates. An Ohio man said his report identified him as having been a police officer since 1923. He was born in 1968. A woman in her 60s said that her credit report listed her as 12 years old.

More than 5 percent complained to the FTC that their reports contained an account that did not belong to them. Many of those accounts involved debts that had been turned over to collection agencies. A woman in Georgia complained about a medical-collection account on her report. It was for treating prostate cancer.

Nearly 200 people told the FTC that their credit reports listed them as deceased, cutting off their ability to access credit.

More than half of all who filed complaints with the FTC said that despite their best efforts, they could not persuade the three major credit-reporting agencies to fix the problems.

"This is just a sliver of the people who have been impacted by these problems," said U.S. Rep. Steve Stivers, a Columbus Republican on the House Financial Services Committee whose assessment of the gravity of the problem was echoed by a bipartisan mix of lawmakers and industry observers. "It sure seems like we need to turn the system on its head."

Shortly after seeing results of the Dispatch investigation, Ohio Attorney General Mike DeWine asked other attorneys general to join a multistate investigation into the credit-reporting system.

"What you found is stunning and infuriating," said DeWine, a Republican. "This is something the average citizen can't control and can't fix."

Obama said in a written statement to The Dispatch that his administration will make regulating the credit-reporting agencies a priority.

"The one thing we can't afford is to go back to the system we had before -- a system where risky and irresponsible practices on the part of a few could put our entire economy in danger," said Obama, a Democrat. "We must continue to fight for an economy where everybody plays by the same rules, where consumers are protected."

Obama chose former Ohio Attorney General Richard Cordray to lead the new Consumer Financial Protection Bureau, which has been assigned unprecedented authority to regulate the credit-reporting industry. Cordray is not calling for reform at this point, but his office is expected to release a plan in July that spells out how it will oversee the credit-reporting agencies.

"This is something that affects potentially every adult American," Cordray said. "I think if there are systematic and significant errors in people's credit files, that is of great concern because of all the ramifications credit files mean for people now."

The credit-reporting agencies speak through their trade group, the Consumer Data Industry Association, in Washington, D.C., which also is their congressional lobbying arm. Association president and chief executive Stuart K. Pratt questioned the validity of conclusions drawn from self-reported complaints.

He said the credit-reporting agencies estimate that at least a fifth of complaints are from people trying to game the system by having negative but accurate information removed.

"The FTC makes clear (that) they are unverified complaints, and that is important to us," Pratt said. "You don't know what happened on the back end. ... You don't know what actually was resolved."

Equifax, Experian and TransUnion strive to get it right every day, Pratt said. "That's our goal: Keep what is accurate, and get rid of what should stay out of the pot."

But mistakes happen, and banks, credit-card companies and other creditors that collectively send 4 billion account updates each month to the agencies share the blame for generating inaccurate information, Pratt said.

The Social Security Administration also hampers accuracy because it will not share with the credit-reporting agencies its database linking names to Social Security numbers, Pratt said.

Credit-reporting errors do not discriminate. They happen to men and women, blacks and whites, the young and the old, the rich and the poor.

The system is voluntary for businesses that extend credit; they can choose to report none, some or all pieces of information related to a consumer's account. The system is mandatory for consumers; there is no way to opt out.

Despite numerous studies, the accuracy rate of credit reports largely is unknown. Estimates of those hit by errors range from less than 1 percent from a study funded by the industry to a high of 25 percent by consumer advocates.

But some say that even a 1 percent error rate is alarming, because that affects about 2 million people in the United States.

"If 1 percent of all cars failed and caused horrible accidents, would we say, 'That's OK?' " said Chi Chi Wu, staff attorney with the National Consumer Law Center, based in Boston, which advocates for consumer rights and protections.

The Fair Credit Reporting Act does not require error-free credit reports but rather a standard of "maximum possible accuracy."

The law requires that the credit-reporting agencies conduct an investigation when consumers alert them to errors, but it does not spell out how such an inquiry should be handled.

Short of hiring a lawyer and filing a lawsuit, consumers are virtually powerless to fight a system in which they are presumed to be at fault.

Consumer always wrong

Credit-card offers in the mailbox tipped off Robert Circle that something was amiss. They were addressed to Robert Cirlle.

He pulled a credit report in 2010 and found Cirlle listed as an alias. He thought a simple phone call would clear up the problem. But he reached only an automated phone system. So he sent a letter to the credit-reporting agency and included documents to prove his identity.

"They never got back to me," said Circle, 38, who lives in Piketon in southern Ohio.

After three months of hearing nothing, he filed a complaint with the Ohio attorney general's office, which persuaded Equifax to correct the mistake.

"It was probably an errant keystroke. We all make mistakes," Circle said. "But once it's in the (credit-reporting agency) computer, the computer is not wrong."

In 2007, Paul Pierce began receiving phone calls at his Daytona Beach, Fla., home from an agency trying to collect a $2,563 cellphone debt belonging to Paul Louis of New York.

"You've got the wrong number," he told them.

But the calls and letters demanding payment kept coming. Then, in 2010, Pierce discovered that the unpaid debt had found its way onto his credit report. He said his credit score -- the number derived by a secret formula that indicates credit risk -- plummeted from excellent (806) to below average (688).

Thus began a frustrating months-long battle to prove that he wasn't Paul Louis.

He followed the dispute process and sent a letter to Experian.

"No, that's your debt," he said the agency told him.

He sent more letters. Nothing changed.

"They say they will investigate, but they don't investigate," said Pierce, 51. "It's the wrong name. It's not even close. What do they think?"

Then he contacted the Florida attorney general's office. "Within four months, it magically disappeared," he said.

James Glaze received a letter in 2009 at his Monroe, Wash., home notifying him that because of a significant drop in his credit score, the limit on his credit card would be reduced from $12,000 to $500.

Glaze discovered that his credit report contained another person's name, unfamiliar addresses and dozens of unpaid tax liens and accounts in collection.

He filed a written dispute. Within weeks, Equifax responded by saying that it had investigated and had removed the incorrect information.

Glaze pulled his credit report to confirm, and he found that the information he disputed had been removed only to be replaced with new errors.

"There's no quality control. There's no lights that go, 'ding, ding, ding -- something's wrong,' " Glaze said.

The cycle of removing and replacing inaccurate information continued for months.

Glaze couldn't fathom how such a grave mistake could be made. He found his answer in a bill sent to his house in the name of James Smith. That bill showed Smith's Social Security number. It was nearly identical to Glaze's except for the middle two digits. Glaze's were 46, and Smith's were 64.

He shared that information with the credit-reporting agency and still nothing changed.

Finally, after more than a year, Glaze contacted the Washington attorney general's office. With its intervention, Glaze's report was cleansed.

"You feel so violated," said Glaze, a 60-year-old prison guard. "It's a personal assault on your good name."

Birth of credit reporting

Credit reporting began more than a century ago to help local merchants gauge the risk of extending credit to customers.

By the late 1960s, as scores of regional credit-reporting agencies operated in towns big and small, consumers began complaining that information in their reports was wrong.

The late U.S. Sen. William Proxmire, a Democrat from Wisconsin, heard the pleas from Americans and called for a law to protect consumers.

"Perhaps the most serious problem in the credit-reporting industry is the problem of inaccurate or misleading information. ... Even if it's 99 percent accurate -- and I doubt that it's that good -- the 1 percent inaccuracy represents over a million people," Proxmire said at the time. "Moreover, the composition of the 1 million persons is constantly shifting. Everyone is a potential victim of an inaccurate credit report. If not today, then perhaps tomorrow."

He crafted the Fair Credit Reporting Act as a consumer's bill of rights. But what became law in 1971 was far friendlier to the industry than to consumers, critics say.

Since then, Congress has changed the law twice. Both times, consumers' issues about credit-report errors were largely overlooked with one exception: The 2003 amendment gave them access to a free credit report every 12 months.

The purpose of the free credit reports was to make consumers watchdogs of their own information. Still, six years after the change took effect, not everyone takes the opportunity to review the reports.

For example, more than 15 percent of 1,333 registered voters who participated in a Dispatch Poll in 2010 said they never had seen their credit report.

For those who have checked their reports, the 2003 amendment has created a new set of frustrations, The Dispatch found.

More than 21 percent of people who complained to the FTC and more than 38 percent who contacted an attorney general said that they were denied access to their credit report. Records show that nearly 900 people complained that they had been tricked into buying a credit report when they attempted to obtain a free one. The only source for the government-mandated free report is AnnualCreditReport.com.

Consumers also complained that they couldn't reach anyone by telephone at the credit-reporting agencies to help them.

A man in Florida said he is blind and couldn't reach anyone to help him understand something in his credit report. An Oklahoma mother couldn't reach anyone to find out what to do about the letter she received from a creditor about her deceased son.

DISPATCH INVESTIGATION; Credit scars; Credit-reporting agencies' failure to address damaging errors plaguing thousands of Americans prompts call for swift action The Columbus Dispatch (Ohio) May

The FTC has cracked down on the credit-reporting agencies several times, through settlement agreements in the past decade, for poor customer service and deceptive practices involving the free credit reports. The agencies promised to be more responsive, yet the problems persist.

Industry spokesman Pratt said the credit-reporting agencies want to help consumers.

"The kind of data I have seen suggests these are isolated problems," Pratt said. "They are employing the right technologies to respond to consumers and respond to consumers with a live person. These are not unsophisticated systems."

For the first time ever, the industry faces intense scrutiny by a government regulator: the consumer-protection agency led by Cordray. The Dodd-Frank Wall Street Reform Act gave the agency powers that the FTC has never had -- the ability to gain access to the inner workings of the national credit-reporting agencies without legal action.

"This is sort of a shadowy operation that no one quite knows about," said U.S. Sen. Sherrod Brown of Ohio, a Democrat who has asked Cordray's office to investigate. "The government needs to look at them."

Loopholes vs. obstacles

Ohio Attorney General DeWine likens the credit-reporting industry to Oz's mysterious wizard behind the curtain, because few outside the agencies truly know how their systems work.

Much of what is known has been learned through lawsuits consumers filed against the agencies.

The law itself is partly to blame for the mystery because it fails to define accuracy or reinvestigation, the official term used to describe the highly automated process by which credit-reporting agencies determine the validity of a consumer's dispute.

The Fair Credit Reporting Act "operates under a 1960s conception of a credit report. You literally had a file -- a card paper file," said Chris Hoofnagle, who is a lecturer at the University of California-Berkeley School of Law and an industry critic who calls the credit-reporting agencies necessary evils. "The law has not kept up with the technology."

Today, all information flows in and out of a credit-reporting agency by computer. When a consumer reports an error, the nature of the mistake is converted to a numeric code, mostly by contract employees overseas, and sent electronically to the creditor.

Except in rare cases, no human investigates the consumer's evidence, which typically is not shared with creditors, either.

"They don't investigate. They compare," said Evan Hendricks, editor and publisher of the newsletter "Privacy Times" and author of the book Credit Scores & Credit Reports: How the System Really Works, What You Can Do.

If the information is inaccurate in the creditors' database, it will remain inaccurate in credit reports, and consumers will receive a letter saying that the inaccuracy has been verified as accurate.

"The credit bureaus see it as their duty to put on your report what the creditors tell them. They see themselves as a library," Hendricks said. "That's going to trump how you tell them that you spell your name."

The credit-reporting agencies naturally are suspicious of documents they receive from consumers because anyone with a computer can create an official-looking record, said Norm Magnuson, vice president of public affairs for the industry association.

But even creditors say they sometimes have difficulty correcting inaccuracies through the automated system.

A North Carolina collection agency tried numerous times to correct an error through the automated system. It had incorrectly assigned a $312 pathology bill in collection to a woman in Washington.

"We have made three attempts ... to have the credit bureaus correct this matter and to place the account on the correct credit report," the company wrote in a letter in 2009 to the Washington attorney general's office. "All three attempts have been unsuccessful."

The industry says a study on credit-report accuracy by the Policy and Economic Research Council, a public-policy research group in North Carolina, proves that the system works effectively and that reports of widespread errors are unfounded.

Pratt's association paid for the study, which included consultation with representatives of Equifax, Experian and TransUnion. Four thousand consumers were asked to review their credit reports for inaccuracies. Those reports involved 81,000 accounts, of which errors were found in less than 1 percent, researchers said.

The study also tracked consumers through the dispute process and determined that 95 percent were satisfied with the outcome.

But other sources tell a different story.

Nearly a third of respondents to the 2010 Dispatch Poll said they had found errors on their credit reports. Nearly two-thirds of them, however, never attempted to have the errors corrected.

Critics of the system say the deck is stacked against consumers, whose only recourse often is to file a lawsuit. Under current law, credit-reporting agencies face no penalty for reporting inaccurate information.

"It's extremely important to reduce the errors in the system. It's like the beginning of the AIDS crisis, where we were screening every drop of blood because it could be fatal to people. Well, these errors in the credit-reporting system can be fatal to people's lives," said Lucia Dunn, an economics professor at Ohio State University. "There has to be a better way to police this. Our dependence on credit is why the big three (credit-reporting agencies) have so much power."

Pratt said the agencies have plenty of checks and balances, both internally and from outside oversight. Creditors frequently test the accuracy of the information they provide to the agencies.

"Our members always have been driven by accuracy," he said.

But not all consumers would define accuracy in the same terms as does the credit-reporting system.

In an internal industry memo obtained through a lawsuit and shared with The Dispatch, one insider explained accuracy this way: "We don't have to be perfect. We don't even have to be right. We just have to have reasonable procedures."

Americans scarred by errors say the system is quite unreasonable.

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Credit Scars: Part 1 of 4

Credit reports affect all aspects of life. The agencies that create them are largely unregulated, and consumers are virtually powerless to erase errors in their reports.

Today: Mistakes abound

* Monday: Mixed reports

* Tuesday: Stolen identities

* Wednesday: Courthouse chaos

***

Credit Scars ... coming this week

Credit reporting affects all aspects of life, and the agencies that produce the reports are largely unregulated. Consumers are virtually powerless to erase errors from credit reports. This Dispatch investigation highlights the problems.

* Monday: Mixed reports. The way the credit-reporting agencies match consumers to accounts sometimes results in assigning debts to the wrong people. Victims of mistaken identity have lost their jobs, their homes and their financial reputations. Some have been wrongly labeled as terrorists.

DISPATCH INVESTIGATION; Credit scars; Credit-reporting agencies' failure to address damaging errors plaguing thousands of Americans prompts call for swift action The Columbus Dispatch (Ohio) May

* Tuesday: Stolen identities. Thieves have hijacked the identities of thousands of children, some at birth. The victims face foreclosures, bankruptcies and huge debts years before they are old enough to apply for their first credit card.

* Wednesday: Courthouse troubles. When credit-report errors come from court records, judges and other court officials have no standing to correct them. Court records contain the most damning financial information -- judgments, tax liens, foreclosures and bankruptcies -- and are ripe for errors.

GRAPHIC: Illustration and Photo and Graphic
(1) Charlie Zimkus / Dispatch (Cover illustration) (2) Pete Marovich / For the Dispatch Richard Cordray, director of the Consumer Financial Protection Bureau, testifies before the U.S. House Financial Services Committee about recent accomplishments of the new federal agency he leads. The agency will have unprecedented authority to regulate credit-reporting agencies.

LOAD-DATE: May 6, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 6, 2012 Sunday

SECTION: NEWS; Pg. 6A

LENGTH: 427 words

HEADLINE: CREDIT SCARS: MISTAKES ABOUND; Good defense is best offense for credit problems;

BODY:

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Consumers are entitled to a free credit report every 12 months from each of the three national credit-reporting agencies. You also can receive a free report if you have been denied credit within the past 60 days, are unemployed and job hunting, receive public assistance or are a victim of fraud. The National Consumer Law Center offers tips on what to check in your credit report: www.nclc.org/images/pdf/older_consumers/creditrepair.pdf.

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Dispute credit-report errors by mail, keep copies for yourself

Send by mail all documents and supporting evidence to each of the credit-reporting agencies reporting inaccurate information and keep a copy for your records: Equifax, P.O. Box 740241, Atlanta, GA 30374-0241; Experian, P.O. Box 2104, Allen, TX 75013-0949; and TransUnion, P.O. Box 1000, Chester, PA 19022.

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GRAPHIC: Photo
istockphoto.com

LOAD-DATE: May 6, 2012

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The Columbus Dispatch

The Columbus Dispatch (Ohio)

May 6, 2012 Sunday

SECTION: NEWS; Pg. 7A

LENGTH: 526 words

HEADLINE: CREDIT SCARS: MISTAKES ABOUND; Leaders in both parties want better regulation;

BODY:

President Barack Obama

"One of the reasons I fought for Wall Street reform was to protect consumers from deceptive and damaging financial practices. By creating a new agency whose sole job is to look out for American consumers -- and by appointing experienced consumer advocate and native Ohio son Richard Cordray to lead that agency -- we've taken big steps toward this important goal. This agency will provide important oversight of non-bank financial institutions like credit-reporting agencies. In fact, the Consumer Financial Protection Bureau is already hard at work bringing the nation's large credit-reporting agencies under federal supervision for the first time in history.

"The one thing we can't afford is to go back to the system we had before -- a system where risky and irresponsible practices on the part of a few could put our entire economy in danger. We can't allow for the law that created America's consumer watchdog and provided authority to oversee financial players like credit-reporting agencies to be weakened or watered down. We can't afford to go backwards, and we must continue to fight for an economy where everybody plays by the same rules, where consumers are protected and where we can prevent financial crises like the one we've been through from ever happening again."

U.S. Sen. Sherrod Brown, a Democrat from Cleveland

"It's almost as if consumers are guilty until proven innocent. This is a time when the private sector has overreached. They are under-regulated. The government needs to look at them."

Ohio Attorney General Mike DeWine, a Republican

"We started looking at this as an investigation. I've reached out to other attorneys general. It's clear to me there's interest. It might result in legislation. We could reach a settlement (with the credit-reporting agencies), or it could be a lawsuit. And these three are not mutually exclusive. Clearly, something has to be done."

U.S. Rep. Pat Tiberi, a Columbus Republican

"It's pretty alarming. The agencies aren't following the law, or the FTC wasn't doing its job."

U.S. Rep. Steve Stivers, a Columbus Republican on the House Financial Services Committee

"I don't see this as partisan. We all want to look out for accuracy. We need to make sure protections are really there for consumers. We don't need paper protections. It sure seems like we need to turn the system on its head."

The late Sen. William Proxmire, a Democrat from Wisconsin, speaking in 1969

"Perhaps the most serious problems in the credit-reporting industry is the problem of inaccurate or misleading information. There have been no definitive studies made of just how accurate is the information in the files of consumer-reporting agencies. Even if it's 99 percent accurate -- and I doubt that it's that good -- the 1 percent inaccuracy represents over a million people.

"While the credit industry might be satisfied with a 1 percent error, this is small comfort to the 1 million citizens whose reputations are unjustly maligned. Moreover, the composition of the 1 million persons is constantly shifting.

"Everyone is a potential victim of an inaccurate credit report. If not today, then perhaps tomorrow."

GRAPHIC: Photo
(1) Obama: "We can't afford to go backwards." (2) DeWine: "Clearly, something has to be done." (3) Stivers: "We need to turn the system on its head." (4) Proxmire: "Everyone is a potential victim." (5) Tiberi: "It's pretty alarming." (6) Brown: "The private sector has overreached."

LOAD-DATE: November 13, 2012

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. "But that has changed now."

The reason is that the portion of the bill that patients owe has become a larger percentage of medical practices' and hospitals' revenue, said Mark Rieger, chief executive of National 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."

Medical Bills Can Wreck Credit, Even When Paid Off

Associated Press by Carla K. Johnson – Sunday, March 4, 2012

CHICAGO (AP) — Mike and Laura Park thought their credit record was spotless. The Texas couple wanted to take advantage of low interest rates, so they put their house on the market and talked to a lender about a mortgage on a bigger home in the Dallas-Fort Worth suburbs.

Their credit report contained a shocker: A $200 medical bill had been sent to a collection agency. Although since paid, it still lowered their credit scores by about 100 points, and it means they'll have to pay a discount point to get the best interest rate. Cost to them: $2,500.

A growing number of Americans could encounter similar landmines when they refinance or take out a loan. The Commonwealth Fund, a private foundation that sponsors health care research, estimates that 22 million Americans were contacted by collection agencies for unpaid medical bills in 2005. That increased to 30 million Americans in 2010.

Surprisingly, even after the bills have been paid off, the record of the collection action can stay on a credit report for up to seven years, dragging down credit scores and driving up the cost of financing a home. An estimated 3.4 million Americans have paid-off medical debt lingering on their credit reports, according to the Access Project, a research group funded by health care foundations and advocates of tougher laws on medical debt collectors.

Among them are Nathen and Melissa Cobb of Riverton, Ill., who tried to refinance their home last year. They didn't qualify for the loan because of $740 in medical bills that had been sent to a collection agency. The Cobbs were surprised because the bills — nearly a dozen small copayments ranging from $6 to $280 — had been paid before they tried to refinance. The collection action took their credit score from good to mediocre and is likely to mar their credit report for years.

"I'm not one of those people trying to ditch out on my bills," 34-year-old Melissa Cobb said. "I'm really frustrated."

Medical bills make up the majority of collection actions on credit reports, and most are for less than $250, according to Federal Reserve Board research.

The Parks had no idea a billing error they'd sorted out a year earlier — they never actually owed the $200 — could affect their credit. They didn't know the bill for a copayment on a PET scan Mike needed had been sent to a collection agency.

"We've prided ourselves in having impeccable credit. We worked hard to establish that," said Laura Park, a 51-year-old office manager married to a 53-year-old firefighter. They are going ahead with the home purchase while trying to fix their credit report.

"I'm very upset," Park said. "It's going to be a nightmare and who knows how long this is going to take to resolve."

Matt Ernst, a vice president at Mortgage Lenders of America in Overland Park, Kan., said medical collections frequently turn up on credit reports.

"We see a ton of them," Ernst said. They have an impact on financing, he said, but even he didn't realize how much until he learned that someone with a FICO score of 680 — which is considered good, but not excellent — will see their score drop up to 65 points because of a medical collection.

"I didn't know a medical collection would hammer it that hard," Ernst said. "Our investors require a 620 to even get a loan."

It's a problem for insured and uninsured alike. Outright billing mistakes, confusion over whether a claim will be paid by insurance and disputes between insurance companies and doctors — all can lead to medical bills being sent to collection agencies.

Congress is considering legislation — the Medical Debt Responsibility Act — that would require credit agencies to delete paid-off medical debt from credit reports within 45 days.

"We're not talking about somebody buying a big screen television and not having the ability to pay. This is debt incurred because of a health condition. That makes medical debt unique," said bill co-sponsor U.S. Rep. Don Manzullo, an Illinois Republican.

The bill has bipartisan support in the House, said co-sponsor U.S. Rep. Heath Shuler, a North Carolina Democrat. Shuler said the health care industry sends delinquent bills to debt collectors quicker than any other industry.

"If it wasn't an industry that sent it straight to collections, we wouldn't be having this conversation," Shuler said. A Senate version was introduced last week.

For Illinois breast cancer survivor Lisa Lindsay, a $280 medical bill led to state troopers showing up at her home and taking her to jail in handcuffs.

Like the Parks in Texas, she, too, said it started as a billing mistake. Her hospital told her the radiology bill would be covered because she qualified for a charity care program. But the radiology doctors' office sent the bill to a collection agency and, despite Lindsay's protests and the paperwork she kept sending, the matter ended up in court.

Lindsay believed that eventually the documentation would catch up with the bill and be settled. She went to court and told a judge her story. Later, she missed a court date — she said she was never informed of it — and that's when the state troopers showed up. Lindsay, a 46-year-old teaching assistant from Herrin, Ill., ended up paying more than $600 because legal fees had been added to the original amount.

"I paid it in full so they couldn't do it to me again," Lindsay said. She recently testified at a hearing on aggressive debt collection practices in Illinois.

Refinancing a home loan can be affected too by unpaid medical bills — or the appearance of unpaid medical bills.

Iraq veteran Steve Barnes and his wife, Tara, were refinancing their home through a VA program when they found out from their mortgage banker that nearly $600 in unpaid medical bills had brought down their credit scores. It means they'll have to pay an extra $1,700 in additional fees to the lender to get the lowest interest rate.

Bills for treatment last fall related to his wife's cancer had been turned over to a collection agency while Barnes was still talking with his insurance company about what would be covered, he said.

"We pay our bills," said Barnes, 33, the postmaster in Nocona, Texas. "As soon as they were brought to our attention, we paid them." But the collection could stay on their credit reports for seven years, even though it's now paid.

Debt collectors support the legislation in the House, according to ACA International, a trade association. A key foe of an earlier bill was another group representing the nation's credit bureaus. The Consumer Data Industry Association, which hasn't taken a position on the revised bill, said that lenders need to see a consumer's patterns of behavior over time and even paid-off medical debt is relevant to whether the consumer is a good risk.

Most hospitals and physician groups use collection agencies to go after late bills after 60 or 90 days, rather than hiring more staff. It makes financial sense to share the amounts collected with an agency. "If you don't collect anything, it's worth zero," said Richard Gundling of the Healthcare Financial Management Association.

Hospitals started relying on debt collectors in the 1980s, said Chicago-based health care consultant Jim Unland.

"When the numbers of uninsured started to grow significantly, hospital financial staffs had the perception they were getting overloaded" with delinquent bills, Unland said. "It became easier to turn these bills over to collection agencies."

The Affordable Care Act, President Barack Obama's health care law, bars tax-exempt hospitals from using "extraordinary collection actions" until it has made "reasonable efforts" to determine whether a patient qualifies for financial assistance. But it's still unclear how that will be interpreted and whether reporting late bills to a collection agency would be considered extraordinary, Unland said.

Barnes, the Texas veteran, said he and his wife have learned something: how quickly medical bills are sent to debt collectors. "It will really happen in a blink of an eye and you won't even know it."