

**CREDIT REPORTS: WHAT ACCURACY
AND ERRORS MEAN FOR CONSUMERS**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, AND INSURANCE

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 7, 2013

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

82-373 PDF

WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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ONE HUNDRED THIRTEENTH CONGRESS

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CREDIT REPORTS: WHAT ACCURACY AND ERRORS MEAN FOR CONSUMERS

TUESDAY, MAY 7, 2013

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY, AND INSURANCE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:33 p.m. in room SR-253, Russell Senate Office Building, Hon. Claire McCaskill (Chairman) presiding.

OPENING STATEMENT OF HON. CLAIRE McCASKILL, U.S. SENATOR FROM MISSOURI

Senator McCaskill. I want to welcome everyone today to the first subcommittee hearing in the Subcommittee on Consumer Protection, Product Safety, and Insurance and Athletics. We're going to talk today about credit reports, what accuracy and errors mean for consumers. I want to welcome my ranking colleague, Senator Heller from Nevada. I think we're going to have a great working relationship during this Congress trying to do our very best work in the area of protecting consumers primarily.

I will bring this hearing to order. This is the first hearing. This Congress, this subcommittee will use our hearings to serve as a watchdog for consumers, with particular focus on misleading and deceptive marketing to consumers and practices of the financial products industry. I look forward to working with Ranking Member Heller and other members of the Subcommittee to hold scammers and others who prey on consumers accountable, as well as ensuring that regulators are doing their job.

Today's hearing will focus on the important role of credit reports and what it means for consumers when errors occur. America's credit reporting system plays an important role in our economy and a critical role for consumers. From a business perspective, credit reports promote access to responsible credit for consumers.

Right now, the nationwide consumer reporting agencies—Equifax, Experian, and TransUnion—have files on more than 200 million Americans, which represents a great deal of opportunity. From a consumer perspective, though, credit reports can quite literally change lives. They are the deciding factor in determining whether individuals can obtain credit cards, mortgages, or car loans, as well as how much they will pay for those loans. Credit reports are also often used as part of non-credit decisions about

consumers that are no less important, such as whether an individual can rent an apartment or even obtain a job.

The credit reporting industry is also unique. Unlike most industries, where consumers can walk away if they don't like the deal, most Americans are trapped and cannot avoid having a credit history and have no say as to whether or not their information is part of this system.

Given the huge impact that credit reports have, it's imperative that credit reports are accurate, and if they aren't that consumers can easily and successfully dispute errors in their credit reports. Errors can mean the difference between obtaining a car loan or not, or paying a higher price for a mortgage. Errors can result in credit issuers, like a small town bank, declining credit to a potentially valuable customer, or issuing credit to a riskier customer than intended.

Recently there have been a number of troubling reports about the accuracy of credit reports, as well as consumers' inability to correct errors when they find them. In February 2012, the FTC released a study finding that 5 percent of consumers had significant errors on at least one of their three major credit reports that could lead to them being denied or paying more for their access to credit.

The FTC isn't the only one raising these concerns. Also in February 2012, *60 Minutes* aired a segment about the credit reporting industry that depicted disturbing levels of inaccurate information on credit reports, as well as an industry dispute system for consumers that is best described as Kafka-esque. This news report told stories of consumers who had all the right documentation, who even had lawyers to help them, spending years of their lives to resolve obvious errors in their credit reports, with little success.

One of those consumers is here with us today to share her story. Judy Thomas of Ohio first learned of errors in her credit report in 1999. The credit bureaus had mistakenly included information belonging to Judith Kendall of Utah on her reports, what is referred to as a "mixed file." Ms. Thomas filed her disputes and expected this mistake to be quickly corrected. But what should have been a simple fix instead became a nightmarish process for Ms. Thomas, who is still fighting to fix these inaccuracies today.

We also have a statement from one of my constituents, Brenda Campbell of Nixa, Missouri, who unfortunately could not be with us today, but provided written testimony. I ask unanimous consent that Ms. Campbell's statement be included in the hearing record.

[The information referred to follows:]

PREPARED STATEMENT OF BRENDA FAITH CAMPBELL, NIXA, MISSOURI

I accessed my credit for the first time knowing there was a problem; I had been denied a *Discover* credit card and had been told that there was a "Midland" judgment on my report that affected my credit rating when I applied for a car loan. I was approaching retirement age and knew that life changes were coming up that would make my credit important.

I began researching the credit report process and what to do with incorrect information before I even saw my credit report for the first time. When I finally obtained my *free* credit report, it was a mess! There were so many companies, names, addresses and a lot of information that was unfamiliar to me. I couldn't believe what I was seeing! Most upsetting was the fact that one report contained three Social Security Numbers (in addition to mine) and a personal statement in the comment section that suggested someone else had been in my credit report. I was shocked to

think that someone was using my personal information and terrified at what that would mean.

Immediately, I contested all of the inaccurate information on-line with the Credit Bureaus in an effort to get the report straightened out. Despite my efforts—following the on-line instructions for resolution—incorrect information remained on my reports. I was contesting incorrect addresses and places of employment because I KNEW they were not mine. In no time at all, I determined that contesting with the Credit Reporting Agencies on-line was not going to successfully remove the inaccurate information from my report. I began sending Certified Letters with return receipts with all my requests to the CRAs in effort to get an investigation completed. Upon further research, I found that a company reporting and/or verifying inaccurate information [or a company inquiring with incorrect information] would keep inaccurate information on my file. I was horrified!

In April 2007, I personally spoke to TransUnion regarding their continued refusal to remove the Midland Credit Management (MCM) trade line and judgment. They told me that MCM verified the account information as mine and told me that I would have to contact MCM directly to resolve the issue. Research suggested that all business with debt collectors should be handled using Certified Mail—with a return receipt requested. The hurricane of activities that resulted from my acting on this advice is unbelievable even to me—and I lived it!

I sent MCM a debt validation request (in accordance with the FDCPA) for information regarding the account that they had verified as mine. I expected that they would either validate by giving me the information (*i.e.*, copy of account information and judgment) or by removing the information from my report. This is what the Federal Law requires. About two weeks later, I was served papers (May 2007) by the Cole County Sherriff at work!! It appeared to me that MCM answered my demand with a writ of sequestration to garnish my wages. Although I can only surmise, I would liken the emotional impact of reading this garnishment to be what a victim of any crime-against-the-person experiences. I felt violated; it was an intrusion of my privacy; and as I read the writ again, my hands were shaking. I was terrorized!

Frustrated that the “system” designed to help was not helping at all, I spent the weekend searching the Internet in an attempt to figure out how this could happen and any information about this company. I was able to find a case filed by Midland against another Brenda Campbell in Greene County posted on *CaseNet* (MO based court system). The judgment had been issued in September of 2006. The record showed that the defendant, Brenda Campbell, personally appeared and agreed to make payments on the judgment. The uneasy feelings I had the Friday I had been served only escalated over the weekend when it was obvious that I was able to find this information through public websites –put two and two together– and figure out whose problem this was. I felt that MCM had taken advantage of me because I had asked them to give me information regarding this judgment or get it off of my credit report. Instead of following the duty (according to FDCPA), they were taking steps to take my wages!

Very late that Sunday night, I wrote to the Circuit Clerk at the Greene County Court to let the Judge know, “You have the wrong person”. As a matter of fact, the day I was served papers, the actual defendant was in court before the same Judge. On Monday, the Judge’s secretary called to tell me any action needed would have to be initiated by an attorney (of course). In response to my questions, it was determined that there were several attorneys attached to the case (varying among on the writ, court case, filing, etc.) and contact information included addresses in Kansas City, St. Louis and Springfield. When I contacted one of the offices of the law firm representing MCM, I was directed back to the judge—and told the judge would have to vacate the order. I spoke with the court and the law firm several times over a two-day period and was pushing up against the payroll deadline.

My job was a gubernatorial appointment requiring personal integrity and sound character. The threat of legal action on my record was causing me to fear for my job. I was further concerned that if the Greene County Court attached even one paycheck, the garnishment on my record might never get removed and I would have to fight to get my money back. Fearing that any kind of legal action that called my integrity into question could result in a decision to end my appointment, I believed I had no choice but to hire an attorney. I needed to ensure I could prevent the garnishment because my job was on the line. The law firm was able to get the sequestration dismissed in the 11th hour based on the verification that I provided to my attorney. Sadly, as a last act regarding the garnishment, the MCM attorney mailed the court document releasing the garnishment—not to me—but to the [actual] Brenda Campbell who lives in Willard, MO.

I opened a credit report from TU in July 2007 to find a new Washington Mutual credit card had been issued in my name in June. The garnishment papers (served on me in Jefferson City in May) included my SSN. I am unshaken in my belief that this error is what alerted another Brenda Campbell to my existence; a person with the same name/different SSN and who had already been mistaken once to be “her”. Using her identifiers and my SSN, she applied and received a credit card which was maxed out according to my report. Coincidence? I don’t think so!

- Once I found the Brenda Campbell that was having financial difficulties, I was able to monitor activity occurring on several bad-check cases pending in the Greene County Court via the Internet. I pulled it up frequently to see what was going on—if anything. After each of the dates that she was scheduled to appear in court, I would review the activity. On more than one occasion, failure to appear resulted in arrest warrants being issued until she appeared and/or made payment. Her cases were deleted some time in March 2008 for reasons that were presumably related to impending identity theft charges—but it made me nervous because I can no longer see what is going on with her.
- Late in August 2007, *Brenda* missed a court date and a warrant issued for her arrest was outstanding when a business meeting took me through Greene County. I was apprehensive and had to explain the situation to my Deputy (who was traveling with me) and put my husband on alert. I felt it was reasonable to assume that if we were *pulled over for any reason or had an accident in Greene County*, it would likely result in me being incarcerated in the Greene County jail. The feeling was very disconcerting and for the entire trip to Joplin, the possibility of being mistaken as her never left my mind.

During the two-year battle, I learned a lot regarding the credit reporting process. Despite the enormous importance of credit information, I would never have anticipated how difficult it would be to try and clean up or correct your report, resolve issues, or communicate with Credit Agencies and/or Debt Collectors. As a result of my experience, I have little respect for the Credit Reporting Agencies and absolutely no regard for debt collectors. If I owned a company that extended credit, the last piece of information I would consider trustworthy would be an individual’s credit report!

The traumatic impact of this experience was intensified when, at about seven months into the turmoil, I realized that *shouldering the burden of fixing this problem was mine*—even though the problem essentially was the lack of action and/or communication between several large companies—it became mine to carry. It was clear that none of these entities had any interest in me as a person. All of these companies are okay leaving me with never knowing the truth about what actually happened—and are certainly not interested in explaining their role in causing the problem. All along, I felt the attitude with which they responded to me made it apparent that they did not care just how much my life was ruined over this.

- The *system* requires that these entities talk among their selves about whether or not what I am saying about ME is true. In the end, however, the very person continuing to report (false) information has the power to make the final determination as to what stays and what goes off of my report! You would think there would be no better expert on the truth about me than me. In the credit report world, however, that is simply not true.
- Incorrect information including Social Security Numbers that were not mine continued to be on my Experian credit report until we entered the Federal court house. No doubt, numerous letters were believed to be lying on someone’s desk to be “investigated” by an electronic machine that does not lend itself to be bothered by reality and is oblivious to personal pleas.
- I hired a second team of excellent attorneys to help me figure out how to fix the issues, what the problems are and how to fix information on my report. During this process, I learned a lot about how information travels among companies, what investigations are really like, etc. It was obvious that there was not a way—short of a law suit—that these issues would have been resolved.
 - One CRA, Experian had not deleted any credit lines nor attempted to fix my credit report. This initial report was especially concerning as it contained two other SSNs from two other Brenda Campbells. I knew that if I had their SSNs, they likely had mine.
 - During a deposition for court in Kansas City, it was explained to me that I was sending the CERTIFIED LETTERS WITH RETURN RECEIPT REQUESTED to the wrong Experian address. The address (which was from the website named “Customer Care”) was not the official address for filing disputes.

- As I heard this information for the first time—far into the lawsuit—my blood pressure skyrocketed!! The point of sending certified letters is to assure that the letter is received by the addressee; in this case addressed to Experian. Every letter was signed as received and there was NEVER any communication to me telling me to use another address!! Are we talking mail fraud? A subsidiary of Experian? The entity in the lawsuit—the official Experian LLC—was not responsible for one of their “divisions”? So the crux of the reason that all of this information was still on my report—

- ◆ Information put there by someone else;
- ◆ Contested by me twice using THEIR on-line dispute process;
- ◆ Contested twice via certified letter to an Experian address;
- ◆ Certified letters accepted twice by Experian;
- ◆ Letters containing copies of my social security card, driver’s license and utility bill as proof of address;
- ◆ Letters NOT returned as being sent to wrong address;
- ◆ Letters that had no follow-up to my requests for investigation;

. . . was because *I* had sent the letters to the wrong address!!! Because of this, it was my fault that my credit report was a mess. I was furious at the audacity of this CRA calmly *explaining* to me that I messed up.

I can’t imagine working for a company that has a policy that if you SIGN for a certified letter. . .and find it requests actions outside of your responsibility; you can ignore the contents therein. Apparently, however, that is the policy of this CRA!

Although the lawsuits ended in settlements, I still have consequences from this nightmare. I was very committed to my responsibilities as State of MO Division Director, Senior and Disability Services. My job generally required me to work from 50–70 hours per week. When the time required to conduct personal research began to interfere with my thoughts and work, I would stay up all night trying to get everything done. My life during these months consisted of hours and hours of research. . .deciding what to do next. After all, I had followed the process and found myself immersed in a lie against which I could find no relief. My problem spiraled out of control because I had asked for verification or removal of incorrect information to fix my report.

Work schedules were always busy and mine was an enormous responsibility. At one time, I wondered what would have happened if I had left the reports in chaos. It certainly would have been less intrusive. I was challenged to reconcile the overwhelming feelings of inadequacy. Occasionally I would cry for no apparent reason. . . I could only say that I felt personally violated, disrespected and expendable.

The personal life of a credit report victim who—without having contributed in any way—wakes up in the middle of a nightmare such as this becomes entrenched in the games and rules dictated by an industry that has little or no value for seeking out the truth. Furthermore, the rules aren’t for public consumption. Had I not had an excellent attorney, this would likely still be an issue for me. It is very intimidating to know that the very Bureaus that gather personal information for those with a business need to know, has little—if any—interest in what one says about their own, very personal, information. I have been a public servant for just shy of 30 years. I have always trusted that any business—profit or not-for-profit—has an inherent responsibility to care more about their customers than that. But as I came to know, I was a commodity—not a customer. The customer was the business feeding incorrect information about me and lying about information that was not mine.

The behavior that results in the feeling of personal violation by Credit Reporting Agencies is devastating because their only line of business is handling *my information*. Yet, there I was two years later. . .still living in a state of helpless desperation, at the mercy of their decisions.

- I secured an ongoing service (for which I paid monthly) to let me know when derogatory information was added to my report. I continued to receive reports of new derogatory information and wondered how long I will continue to receive these. I presumed I would never be able to stop this service. I thought this was intrusive until I filed the lawsuit and was denied access to the reports and notices that I was paying to see!
- I have an older daughter that is married (with a surname other than Campbell) that lives in Union, MO with her husband and two young daughters. She received this message late in 2009: “Brent Brown, wanting to ask some questions

about Brenda Campbell". She never returned the call . . . and instead called us. I assured her that her daddy and I are fine.

- As it turns out, I had spoken to Brent Brown in January 2008. I assured him that I was not the Brenda Campbell for whom he is searching on behalf of Chase regarding a defaulted vehicle loan. That day in January he understood—but today, in the midst of his "*skip-tracing activities*" I am his main target—again. I know it goes in vicious circles and the experience is so humiliating. All I can do is tell the world, I am not able to stop this insanity!

When I tell my story, and I used to do that quite often, I find that most people are in awe. It is a twilight-zone kind of story when you think that something that would appear so easily verifiable went on and on uncorrected for no apparent reason! I cannot make sense of what has happened and why there isn't some sense of urgency to fix the problem. The tendency to abort the mission was even stronger as we found ourselves incurring over \$17,000 in attorney fees to stop the sequestration—yet the issues with the CRs remained unresolved. It became blatantly obvious that it was going to take thousands of dollars and a full press through the legal system to generate any possible hope in recovering what is left or in repairing my now dishonored professional and personal character profile.

I find coming to terms with this entire experience extremely difficult. Needless to say, living with this kind of continuous anxiety, constant fear, and worry leaves you with some unspeakably bad days. At times, I found it difficult to function—yet always impossible to discuss. It is a kind of void that you simply can't explain to anyone. My experience has led me to conclude that the system that houses credit reports is very broken.

Any intent by Congress to offer citizens the tools they need to keep information secure has been overshadowed by fact that large corporations that buy and sell information as a commodity ultimately own and control the processes through which one would think integrity would be crucial. I found fighting Credit Bureaus and Debt Collectors to be an impossible feat. There is nothing that requires the "system-machine" to yield to *common sense* when any reasonable person with value in the integrity or honesty of another human being would have given pause to at least attempt to define the problem. I would ask anyone who felt stripped of this inherent thread of decency afforded all men—how would you feel?

I made it through those years without using counseling, sedatives or an official breakdown and subsequent hospitalization. Drawing from an inner-strength that is grounded in the grace of God and the support I received from my husband and family, I was able to talk through circumstances without any immediate scarring. Although without a doubt, this "drama" consumed most of our life and family discussions over two years. It changed me though—and was a detriment to my confidence and self-esteem.

- In 2005, Mark and I began country partner dancing. We joined and were active in a local club where I served a year as President. Additionally, we generally attended dances approximately 30 miles from home each Saturday evening. By the summer of 2007, we had all but quit dancing. Two years later, we were maybe dancing once per month and attending club activities twice per year. I didn't want to go anywhere where there were a lot of people. Mark worried about this . . . and I didn't know what to tell him.
- Although eligible, I was exhausted but felt I was not in the position to take advantage of an early retirement. In the process of seeking new employment or moving "home", I felt it would be necessary to relay this entire disgusting story—which I found personally degrading. Given the fact that telling the story would be necessary, I felt that employers may not be interested in an employee that comes with "baggage" in the form of any *story that must be told*. It is despicable to think that after 30 successful years of employment, my personal life was negatively impacted to such a degree that I question my ability to retire, relocate, and seek new career opportunities.
- In cleaning up my reports, I had lost years of credit history. Today, my credit history is six years. I am uncertain why all my past credit and information was removed, but it appears that I just financially arrived on the scene.

I could ramble on about the daunting impact that this experience has had on me. What about my future? Will I ever be safe? I don't believe that I will ever feel safe enough to remove the fraud alert from my credit report. I can't reclaim my SSN from this lady; she will always have it—it can't be taken out of her memory. I am haunted by the fact that even now, though the lawsuit cleaned up errors, another lady and the companies that refuse to pay attention to the details of their own busi-

ness will ultimately control the date and time that we will play this game again. If there is ever a problem with my credit report, will I be able to communicate the problems or am I flagged as the problem in their “system”?

I know that I will have to find a way to deal with the unknown—the threat of fraud, forgery or falsification that may befall me any day—since not doing so will surely result in a slow decline of my mental health. I pray, however, that as the years pass, there may come a time when I am not looking over my shoulder wondering if another bad-mark has been documented against me or another credit application has been granted using my SSN.

- For the first time since the lawsuits settled, I accessed my credit reports as I prepared this statement.
 - Although I was initially in my Equifax report, within minutes I was told I could not access my report on-line and must request a copy in writing.
 - I was unable to access any information on the TransUnion report. I was told I would have to request by phone or mail.
 - I was able to view and print my Experian report which once AGAIN contains the address of the Brenda Campbell that lives in Willard, MO. Not sure how or why it is back on my report. . .but I will once again begin the process of disputing this information.
- Although it would seem likely that someone like me would want to see my report often, the experience has had the opposite effect on me for two reasons:
 - It terrifies me to think that my checking these reports could start this nightmare over again; and
 - I learned that the information consumers are allowed to see/review/dispute/correct is NOT all inclusive of the information that is provided to “customers” that get a copy of my credit report for a specific purpose. The truth is . . . when a potential employer, insurance company, creditor, etc. requests my credit report, I WILL NOT KNOW what information is included in my report nor do I have an opportunity to correct that information.

My personal information—my character if you will—in which I have vested a lifetime of hopes and dreams as well as my financial security, will forever be at risk. Any attempt to keep my identity separate from another who has in the past used my information illegally will be an ongoing battle that I will have to fight without the help of the Credit Reporting Agencies. I am faced with the reality that the information I once believed was so personal . . . will never again be mine and mine alone.

Senator McCASKILL. Ms. Campbell has also had a mixed file with the credit bureaus. They had placed information belonging to numerous other Brenda Campbell’s in her file, including multiple Social Security numbers. The real Ms. Campbell tried to correct these obvious mistakes using the credit bureaus’ dispute processes, but was unsuccessful. She had trouble obtaining credit, received calls from collection agencies, and at one point, with her hands shaking, received a notice of wage garnishment—all because the wrong Brenda Campbell’s information was in her file and no one would help her.

She ultimately had to hire a lawyer and sue to get this fixed. But it took quite literally years and tens of thousands of dollars to do it.

I know that the industry takes issue with some of the figures used to highlight this problem and I’m interested to hear what they have to say. In fact, the industry commissioned its own study through the Policy and Economic Research Council, which found that more than 99 percent of credit reports are error-free. It would be easy to use this hearing to argue about that number and the prevalence of errors in consumer credit reports. But at the end of the day, both studies show errors exist. Whether you trust the 1 percent figure, the 5 percent figure, or something in between, it

might sound like a small number, but in real terms we're talking about anywhere from 2 to 10 million Americans with errors in their credit reports that could impact whether they can obtain credit or how much they will have to pay for it.

We are talking about 2 to 10 million people who have to turn to a dispute process that I think most of us have serious concerns about. We are talking about Judy Thomas and Brenda Campbell times millions. That is simply too many.

As Brenda put it, consumers are not the credit reporting agencies' customers; they are their commodity. Things need to change.

This hearing will explore the prevalence of errors and whether the credit reporting industry's existing dispute procedures meet consumers' needs. We will also examine whether the current system complies with existing laws and regulations, namely the Fair Credit Reporting Act, commonly known as "FCRA," and what the FTC and Consumer Financial Protection Bureau, CFPB, are doing to ensure the industry is meeting its legal obligations. Finally and most importantly, we will hear about the real impact these errors have on real people's lives and what the current dispute system is really like from a consumer's perspective.

I thank the witnesses all for being here and I look forward to their testimony, and I will defer now to Senator Heller.

**STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA**

Senator HELLER. Madam Chairwoman, thank you very much, and it's a pleasure to serve with you. Thank you very much for this opportunity. Thanks for holding this hearing today.

Thank you to the witnesses for being here and those in the audience that are concerned as much as we are about this particular issue.

Credit is a critical issue for the nation because it fuels the economy. Nothing's more important to the state of Nevada, especially Las Vegas, than fueling our economy. As some of you may know, the economic collapse hit my state particularly hard, especially at the southern end in Las Vegas. Tourism to Las Vegas fell dramatically and thousands of jobs were lost. In fact, we led the nation in unemployment for 2 years and currently hold that title.

The ripple effect from this also caused home values to plummet and since 2008 we've experienced more than 400,000 foreclosures. While there are many small signs of recovery, much more needs to be done, and responsible credit lending is one of the tools that we need to get more positive—we need to get to get more positive economic growth in the state.

We simply cannot have economic growth without lines of credit being issued. The credit reporting agencies play a vital role by collecting information on consumers furnished by the private sector and producing a score on creditworthiness. Ensuring that this information is accurate is needed so that responsible decisions can be made by both borrowers and lenders.

But the fact is we're looking at over 200 million Americans who have three credit reports each. Any significant errors could have an impact on the score you receive and subsequently the amount of in-

terest you will pay or whether you qualify for a loan at all. That is why I'm pleased we're having this discussion today.

My office, like Senator McCaskill's, routinely hears from individuals who are frustrated with their credit score and feel that their credit report is inaccurate or unfair. For example, one constituent from Las Vegas wrote that his credit score has always been mixed with his father's. They have the same first and last name and their middle names both start with the letter "J," but those middle names are different. He has told my office that the three credit bureaus have never been able to figure this out. Because of this, he has to go back and forth with the agencies and fight for them to fix the mistakes they have made. I don't think this should happen.

The Federal Trade Commission's report to Congress last December touched on these types of issues and highlighted the percentage of times when errors were found and the impact these errors have on credit scores. The report shed valuable light on credit reports and how well consumers are and are not being served by them.

I hope the hearing today will provide the Committee some answers to the things credit reporting agencies are doing on a proactive level to try to eliminate errors. When you have so many records and you do not control the data furnished to you, I know that reaching 100 percent perfection may be impossible. But understanding how we can continue to improve is important, and I look forward to the hearing today.

So, Madam Chairwoman, thank you very much. I appreciate you calling this hearing today.

Senator MCCASKILL. Thank you.

I welcome our other colleagues here and we're glad to have you.

Our first witnesses are: Ms. Maneesha Mithal—am I saying that correctly?

Ms. MITHAL. Perfect.

Senator MCCASKILL. She is the Associate Director for the Division of Privacy and Identity Protection at the Federal Trade Commission; and Mr. Corey Stone, who is Assistant Director of Deposits, Cash, Collections, and Reporting Markets at the Consumer Financial Protection Bureau. Welcome to both of you and we look forward to your testimony.

Ms. Mithal.

**STATEMENT OF MANEESHA MITHAL, ASSOCIATE DIRECTOR,
DIVISION OF PRIVACY AND IDENTITY PROTECTION,
FEDERAL TRADE COMMISSION**

Ms. MITHAL. Thank you. Chairman McCaskill, Ranking Member Heller, and members of the Subcommittee: I'm Maneesha Mithal with the Federal Trade Commission. I appreciate the opportunity to discuss credit report accuracy today.

An array of businesses buy data from credit bureaus to make critical decisions about consumers, including whether they can get credit, insurance, employment, and housing. Complete and accurate credit reports allow these businesses to make informed decisions, thereby benefiting both consumers as well as creditors. On the other hand, errors in these reports can result in consumers being denied credit and other benefits or paying a higher price for

them. In today's tough economic times, we all need to do what we can to make sure that credit reports are as accurate as possible.

In my oral statement I will address three topics: first, how the law promotes accuracy of credit reports; second, what our recent study shows about the rate of accuracy; and third, what we're doing to improve accuracy.

First, what are the legal requirements? The Fair Credit Reporting Act contains several important protections. First, credit bureaus must undertake reasonable efforts to assure maximum possible accuracy of credit reports. Second, they must allow consumers to access their credit reports for free at least once a year, so that consumers can check their reports and spot errors. Third, they must allow consumers to dispute and correct information in their credit reports. Fourth, those who provide information to credit bureaus, such as banks and other lenders, have certain obligations to make sure information they report is accurate. And finally, if a creditor uses a report to deny credit or charge a higher rate to a consumer, the creditor must provide the consumer with an adverse action notice explaining that their credit report was used to make an adverse credit decision. This way the consumer has an opportunity to check their credit report and if information is inaccurate to correct it.

The second topic I'd like to discuss is our recent study on the accuracy of credit reports. The study involved obtaining the reports and credit scores of over a thousand consumers. Trained study associates worked with the participants to review their credit reports, and if they found errors participants were encouraged to file disputes with the relevant credit bureau.

The study tracked the percentage of consumers that found material errors and the number of errors that were corrected. We also worked with the Fair Isaac Corporation, the company that develops scoring models, to score the initial report that consumers received and to rescore the report as corrected. This helped us determine the degree to which any error had affected the consumer's credit score.

So here's what we found. One in four study participants found a material error in one of their credit reports and filed a dispute with at least one credit bureau. One in five consumers had a credit bureau make a change to their credit report in response to the dispute. 13 percent had a change made to their credit report that caused a change in their credit score, and 5 percent of the study participants had their credit risk tier decreased as a result of having errors corrected. So in other words, one in 20 of the study participants had an error that lowered their credit score to a degree that the error likely made getting credit more expensive.

So that brings me to the third topic: What are we doing to improve accuracy? The FTC focuses its efforts on two main areas, enforcement and education. On the enforcement front, we've recently undertaken several actions to police the accuracy requirements of the FCRA. For example, we sued an employment background screening company for its failure to reasonably ensure the accuracy of its consumer reports. We also sued a debt buyer for providing stale information about delinquent consumer accounts to credit bu-

reaus despite the fact that the debt buyer didn't have a reasonable basis to believe the information was accurate.

In addition, there are many companies that compile credit or employment-related information, but may not believe they're covered by the FCRA. We seek to educate these types of companies and inform them of their obligations to make sure the information they maintain is accurate. Just today we announced that we issued warning letters to ten data brokers that appeared willing to sell consumer information for FCRA-covered purposes without complying with the FCRA's accuracy and other requirements.

Finally, we seek to educate consumers and businesses about credit reports, credit scores, and their rights and obligations under the FCRA. We've issued publications designed to explain to consumers how to obtain their free credit report and how to dispute any errors. Through our legal services collaboration we disseminate these and other educational materials to local organizations and pro bono clinics so they can help some of our nation's most vulnerable consumers. We also offer publications to businesses on how to comply with the FCRA.

We appreciate your holding this important hearing and thank you for your time, and I'd be happy to answer any questions.

[The prepared statement of Ms. Mithal follows:]

PREPARED STATEMENT OF MANEESHA MITHAL, ASSOCIATE DIRECTOR, DIVISION OF
PRIVACY AND IDENTITY PROTECTION, FEDERAL TRADE COMMISSION

I. Introduction

Chairman McCaskill and members of the Subcommittee, my name is Maneesha Mithal, and I am the Associate Director for the Division of Privacy and Identity Protection at the Federal Trade Commission ("Commission" or "FTC").¹ I appreciate the opportunity to appear before you today to discuss the Commission's most recent Report to Congress under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), concerning the accuracy and completeness of consumer credit reports.²

The FACT Act was enacted in 2003 to provide consumers with several new rights and protections related to their credit reports.³ Consumer credit reports, which contain data compiled and maintained by consumer reporting agencies ("CRAs"), are used to make critical decisions about the availability and cost of credit, insurance, employment, and housing. The FACT Act amended the Fair Credit Reporting Act⁴ ("FCRA"), a statute enacted to (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of credit reports; and (3) promote the efficiency of the Nation's banking and consumer credit systems.

Today, data compiled and maintained by CRAs is used to make critical decisions about the availability and cost of various consumer products and service, including credit, insurance, employment and housing. Credit reports are often used to evaluate the risk of future nonpayment, default, or other adverse events. For example, complete and accurate credit reports enable creditors to make informed decisions, benefitting both creditors and consumers. Errors in credit reports, however, can cause consumers to be denied credit or other benefits, or pay a higher price for them, and may lead credit issuers to make inaccurate decisions that result in the issuers declining credit to a potentially valuable customer or issuing credit to a customer who otherwise would not have been approved. Therefore, the FCRA serves

¹ While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

² Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159.

³ Among other things, the FACT Act allows consumers to place fraud alerts with the CRAs, notifying potential creditors that they may have been victims of identity theft (§ 112), to obtain free annual credit reports from the national CRAs (§ 211) and to dispute information on their credit reports directly with information furnishers (§ 312).

⁴ 15 U.S.C. §§ 1681-1681x.

the vital goals of promoting informed decision-making by lenders and protecting consumers from credit-related determinations based on erroneous information.

The FCRA, as modified by the FACT ACT, imposes numerous requirements to improve the accuracy of credit reports, including that CRAs make reasonable efforts to assure the “maximum possible accuracy” of credit reports,⁵ and maintain procedures through which consumers can dispute and correct inaccurate information in their consumer reports.⁶ In addition, the FCRA imposes obligations on those who furnish information about consumers to CRAs (“furnishers”) and on users of credit reports, such as entities extending credit. For example, if a furnisher determines that information it provided to a CRA is incomplete or inaccurate the furnisher must promptly notify the CRA and provide any corrections that are necessary to make the information complete and accurate. In addition, if a user of a credit report takes an adverse action against a consumer based on information in a consumer report—such as a denial of credit or employment—the user must provide an adverse action notice to the consumer, which explains that the consumer can obtain a free credit report from the CRA that provided the report and dispute any inaccurate information in the report.⁷

In order to assess the accuracy of credit reports, and pursuant to Section 319 of the FACT Act, the FTC has been conducting an ongoing study of the accuracy and completeness of consumer credit reports.⁸ In December 2012, the Commission submitted to Congress its fifth interim report pursuant to this provision. This testimony describes the FTC study and its results. It then discusses the Commission’s efforts, through law enforcement and consumer and business education, to improve the accuracy of credit reports.

II. The FTC Study

The Commission’s accuracy study was the first national study designed to engage all the primary groups that participate in the credit reporting and scoring process: consumers, lenders, data furnishers, the Fair Isaac Corporation (“FICO”), and the CRAs. The FTC contracted with a research team, including members from the University of Missouri, St. Louis (“UMSL”), the University of Arizona (“UA”), and FICO. UMSL and UA interacted with consumers through study associates, who were trained to review consumer reports. The study called for randomly-selected consumers to review their credit reports with a study associate, who helped them identify potential errors.

Ultimately, 1,001 consumers reviewed a total of 2,968 credit reports (approximately three per participant). All study participants gave their permission to have study associates access their credit reports from each of three national CRAs as well as their FICO credit score. Then, each participant engaged in an in-depth review of his or her credit reports with a study associate. The review focused on identifying potential errors that could have a material effect on a person’s credit standing. Any participant that identified a potentially material error on his or her credit report was then encouraged to use the FCRA dispute process to challenge any potentially erroneous information.

After the dispute process was complete, study participants’ credit reports were drawn again and reexamined. If changes had been made to the reports, then the errors were treated as confirmed and a new FICO score based on the changes was obtained. This process allowed a determination of which reports contained confirmed errors and the degree to which any error had affected the consumer’s credit score.

The study found that of the 1,001 consumers who participated in the study, 262 (26 percent) reported a potential material error in one or more of their three reports and filed a dispute with at least one CRA. Most of the errors reported by participants resulted in at least some modification to their credit reports, which, as noted, the study treated as confirming the errors. Of the 262 participants who reported an error, 206 (79 percent) were successful in having some change made to their report in response to their dispute, which corresponds to 21 percent of all of the study participants.

In addition to examining how many consumers had confirmed errors on their reports, the study also looked at what effect those errors had on consumers’ credit scores. One hundred and twenty-nine consumers, or 13 percent of the total study participants and nearly half (49 percent) of those that reported a potential material error, had an error on their credit report that resulted in a change in their credit score. The main types of confirmed material errors found in this study were errors

⁵*Id.* § 1681e(b).

⁶*Id.* § 1681i (a)–(d).

⁷*Id.* § 1681m(a).

⁸Pub. L. No. 108–159, § 319.

involving the consumers' credit accounts with businesses, such as incorrect balances or late payments, and past-due accounts referred to collection agencies. Such errors can potentially produce significant differences in consumers' credit scores. Indeed, the study found that five percent of the study participants had their credit risk tier decreased as a result of having errors corrected. In other words, one in 20 of the study participants had an error on his or her credit report that lowered the credit score to a degree that the error likely made getting credit more expensive. For example, consumers with errors of this magnitude would likely pay higher interest rates on auto loans or mortgages than the rates to which their accurate credit score would normally entitle them.

The study focused exclusively on identifying the level of accuracy in the credit reporting system and its impact on consumer credit scores. Under the FACT Act, the Commission's final report to Congress on credit report accuracy is due in 2014.

It is important to note that CRAs cannot guarantee 100 percent accuracy; however, existing law requires credit bureaus to have reasonable procedures to assure "maximum possible accuracy" of credit reports.⁹ The Commission is committed to ensuring that obligation is met.

III. FTC Efforts to Increase Accuracy of Consumer Credit Reports

The Commission recognizes the importance of accurate and complete credit reports, both to businesses that use them to make decisions and to the consumers who are affected by those decisions. The FTC focuses its efforts to improve credit reporting accuracy on two main areas: enforcement and education.

A. Enforcement

Vigorous enforcement of the FCRA is a high priority for the Commission. In the last decade, the Commission has brought over 30 actions to enforce the FCRA against CRAs, users of consumer reports, and furnishers of information to CRAs. It has recently undertaken several actions to enforce the accuracy provisions of the FCRA. The Commission recently sued and obtained a stipulated final judgment and order against HireRight Solutions, Inc. (HireRight), an employment background screening company that provides consumer reports containing information about prospective and current employees to companies nationwide.¹⁰ The Commission charged that HireRight failed to take reasonable steps, such as expunging criminal records, to ensure that information in the reports was accurate and reflected current updates. In addition, the Commission alleged that HireRight failed to prevent the same criminal offense information from being included in a consumer report multiple times, failed to follow reasonable procedures to prevent obviously inaccurate consumer report information from being provided to employers, and in numerous cases included the records of the wrong person. The FTC alleged that these failures led to consumers being denied employment or other employment-related benefits. The FTC's stipulated order imposed a \$2.6 million civil penalty against the company and enjoins HireRight from violating the FCRA.

The Commission has also taken action against a company that provided inaccurate information to CRAs. Last year, the Commission sued and obtained a consent decree against Asset Acceptance, LLC¹¹ ("Asset Acceptance"), one of the Nation's largest debt buyers. Asset Acceptance buys unpaid debts from credit originators such as credit card companies, health clubs, and telecommunications and utilities providers and attempts to collect them. Asset Acceptance has purchased tens of millions of accounts for pennies on the dollar. It targets accounts that other collectors have pursued and are more than a year past due, and in some cases attempts to collect on debts that are over ten years old. The Commission alleged, among other things, that Asset Acceptance was providing information to CRAs that it knew or had reasonable cause to believe was inaccurate. The Commission's consent order imposed a \$2.5 million judgment for Fair Debt Collection Practices Act and FCRA violations and prohibits the company from violating the FCRA or the Fair Debt Collection Practices Act.

The FTC also takes proactive steps to help ensure that companies are aware that they are functioning as CRAs and are subject to the FCRA. For example, the Commission staff conducted "test shops" of dozens of information brokers to see if they would be willing to sell consumer information for employment, credit, or insurance

⁹ 15 U.S.C. § 1681e(b)

¹⁰ *United States v. HireRight Solutions, Inc.*, No. 1:12-cv-01313 (D.D.C. filed Aug. 8, 2012) (stipulated final order), available at <http://www.ftc.gov/opa/2012/08/hireright.shtm>. See also *In re Fiquarian Publishing, LLC*, FTC File No. 112 3195 (May 1, 2013) (consent order), available at <http://www.ftc.gov/opa/2013/01/fiquarian.shtm>.

¹¹ *United States v. Asset Acceptance, LLC.*, No. 8:12-CV-182-T-27EAJ (M.D. Fla. filed Jan. 30, 2012) (stipulated final order), available at <http://www.ftc.gov/opa/2012/01/asset.shtm>.

purposes, in which case they would then fall within the definition of a CRA, and be subject to the FCRA. As announced earlier today, the Commission has issued warning letters to ten companies that appeared willing to sell their consumer information for these FCRA-covered purposes without complying with the FCRA's requirements, including the accuracy and dispute requirements discussed above.¹² The letters to the companies describe the FCRA's requirements and urge the companies to review their business practices to ensure their compliance with the law.

Similarly, last month the Commission issued warning letters to the operators of six websites that share information about consumers' rental histories with landlords. The letters informed the website operators that they may be subject to the requirements of the FCRA.¹³ Among the requirements cited in the letters are the companies' obligation to protect the privacy of tenants whose information they collect, including by ensuring that those requesting information about tenants have a legitimate reason to acquire it. The letters reminded the companies of their obligation to ensure that the information they provide is accurate, to give consumers a copy of the information about them on request, and to allow consumers to dispute information they believe is inaccurate. The letters also noted that the companies must notify landlords of their obligations if using the data to deny housing to a tenant, and to notify the sources of their information of the requirement that they provide accurate information.¹⁴

B. Consumer and Business Education

In addition to bringing enforcement actions against CRAs and information furnishers, the FTC works to educate consumers and businesses about consumer reports, credit scores, and their rights and obligations under the FCRA.¹⁵ Consumers are often in the best position to determine whether their credit reports are accurate, and it is important that they regularly obtain and review their free annual credit reports. If consumers find errors in their reports, they may dispute those errors with either the CRA that reported it or the furnisher that provided the information. The Commission has produced a number of publications to assist consumers through this process.

For example, the Commission's publication, *Disputing Errors on Credit Reports*,¹⁶ explains the importance of accurate credit reports in determining the price and availability of credit. This publication instructs consumers on how to obtain their free annual credit reports, advises them of other times they may be entitled to free credit reports, and provides detailed instructions on how to dispute any errors found, including a sample letter to be used. Another publication explains how credit scoring works and how it is used by lenders and insurance companies.¹⁷ The Commission also offers videos directing consumers to annualcreditreport.com to obtain their free annual credit reports.¹⁸ Finally, through the Commission's Legal Services Collaboration,¹⁹ the agency is disseminating consumer education materials to some of our nation's most vulnerable consumers.

Business education is also a priority to the FTC. The Commission has developed and distributed free guidance relating to compliance with the FCRA, including *Credit Reports: What Information Providers Need to Know*,²⁰ which informs businesses that provide information to CRAs about their obligations to provide accurate information and to update and correct previously submitted information. This publication, as well as other business education materials, are available through the FTC's Business Center website, which averages one million unique visitors each month.²¹

¹² Available at <http://www.ftc.gov/opa/2013/05/databroker.shtm>.

¹³ Available at <http://www.ftc.gov/opa/2013/04/tenant.shtm>.

¹⁴ Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, the FTC now shares enforcement authority with the Consumer Financial Protection Bureau ("CFPB") with respect to credit report accuracy requirements. In addition, last year, the CFPB issued regulations that allow it to supervise CRAs with more than \$7 million in annual receipts from consumer reporting activities, which includes the authority to examine issues relating to credit report accuracy.

¹⁵ See generally <http://www.consumer.ftc.gov/topics/credit-and-loans>.

¹⁶ Available at <http://www.consumer.ftc.gov/articles/0151-disputing-errors-credit-reports>.

¹⁷ *How Credit Scores Affect the Price of Credit and Insurance*, available at <http://www.consumer.ftc.gov/articles/0152-how-credit-scores-affect-price-credit-and-insurance>.

¹⁸ See generally <http://www.consumer.ftc.gov/media>.

¹⁹ Through this program, the FTC is working with legal services providers to distribute consumer education materials and gather complaints about pernicious practices affecting at-risk and indigent communities.

²⁰ Available at <http://business.ftc.gov/documents/bus33-credit-reports-what-information-providers-need-know>.

²¹ See generally <http://business.ftc.gov>.

The Commission also hosts a Business Center blog,²² which has featured topics related to credit reports, including a post on the *HireRight* case that discusses CRAs' obligations to ensure maximum possible accuracy in their credit reports.²³

III. Conclusion

Thank you for the opportunity to discuss the Commission's study on the accuracy of consumer credit reports. We look forward to continuing to work with Congress and this Subcommittee on this important issue.

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

Mr. STONE. Thank you, Senator. Chairman McCaskill, and Ranking Member Heller, 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 to our economy. It promotes access to credit that consumers can afford to pay. Without credit reporting, many consumers likely would not be able to get credit.

Credit reports are also often used in a number of non-credit decisions about consumers. They can be used to determine whether a consumer is offered a job or rental housing or what rates a consumer might pay for insurance.

The CFPB is the first Federal agency to supervise both credit reporting companies and the largest furnishers of consumer credit information. This responsibility is a priority for us. In 2011 and 2012, the CFPB published reports to Congress on credit scores—the three-digit numbers used to summarize consumers' creditworthiness. Last year we published a Consumer Advisory about credit reports. And last July, the CFPB adopted a rule to extend its supervision authority to cover larger participants in the credit reporting market.

The Fair Credit Reporting Act sets out an ambitious goal to ensure that credit reporting companies meet, “the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer.” In this context, we are exercising our supervisory and enforcement authorities to make sure that the consumer financial laws are being followed. And 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 families 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.

So this past December, the CFPB issued a report based on information provided by the three credit reporting companies—Equifax,

²² See generally <http://business.ftc.gov/blog>.

²³ Where *HireRight Solutions went wrong*, available at <http://business.ftc.gov/blog/2012/08/where-hireright-solutions-went-wrong>.

Experian, and TransUnion—and their industry association. Our report characterizes the three key processes that affect credit report accuracy. These are: how creditors, debt collectors, and other parties furnish consumer information to the credit reporting companies; how these companies screen incoming consumer data and match it to a consumer file in their databases; and how the credit reporting companies and furnishers handle consumer disputes about the accuracy of information in consumers' credit reports.

Our report, along with the latest study of credit report accuracy from the FTC, represents a significant step in advancing understanding of this industry and making it more transparent for consumers and users of credit reports. Some key findings from our report:

First, more than three-quarters of the trade lines in the credit reporting companies' databases come from the top 100 furnishers of information. These are largely the large bank and non-bank financial services providers that fall under the CFPB's supervision. This means that, 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 reporting companies themselves.

Another finding: More than one-third of consumer disputes relate to collection items.

Another: Only a relatively small percentage of consumers—approximately 20 percent—look at their credit reports each year. This is a shame as it is likely that many additional consumers could identify and correct inaccuracies if they reviewed their credit reports.

Another finding: Most complaints to the CRAs are forwarded 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.

Our report's three areas of focus—accuracy of the information received from creditors and other furnishers, how the credit reporting companies assemble and maintain the information, and the processes that govern error resolution—are just a start. They are the obvious and essential basics. As we learn more about the credit reporting system from consumers, from the supervised firms, and from others, we will adapt and adjust to ensure that the system meets the FCRA's aspiration of treating consumers fairly and equitably.

Thank you for inviting me to testify today. I look forward to answering your questions.

[The prepared statement of Mr. Stone follows:]

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

Chairman McCaskill, Ranking Member Heller, 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 con-

sumers 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 non-credit decisions about consumers. They can be used to determine whether a consumer is offered a job or rental housing, or what rates a consumer might pay for homeowner's, renter's, or auto insurance.

The CFPB is the first Federal agency to supervise both credit reporting companies and the largest furnishers of consumer credit information. This responsibility is a priority for us. In 2011 and 2012, the CFPB published reports to Congress on credit scores—the three-digit numbers used to summarize consumers' creditworthiness. Last year, we published a Consumer Advisory about credit reports. And last July, the CFPB adopted a rule to extend its supervision authority to cover larger credit reporting companies.

The Fair Credit Reporting Act sets out an ambitious goal to ensure that credit reporting companies meet “the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer.” In this context, we are exercising our supervisory authority to make sure that the consumer financial laws are being followed. And 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 families 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.

So this past December, the CFPB issued a report based on information provided by the big three credit reporting companies—Equifax, Experian, and TransUnion—and their industry association. Our report characterizes three key processes that affect credit report accuracy. These are how creditors, debt collectors, and other third parties furnish consumer information to the credit reporting companies; how these companies screen incoming consumer data and match it to consumer files in their databases; and how the credit reporting companies and furnishers handle consumer disputes about the accuracy of information in consumers' credit reports.

Our report, along with the latest study of credit report accuracy from the FTC, represents a significant step in advancing understanding of this industry and making it more transparent for consumers and users of credit reports.

Some of the key findings in our report are that:

- *More than three quarters of the trade lines in the credit reporting companies' databases come from the top 100 furnishers of information.* These are largely the large bank and non-bank financial services providers that fall under the CFPB's supervision. This means that 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 reporting companies 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 as 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.* 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.

Our report's three areas of focus—accuracy of the information received by the credit reporting companies, how they assemble and maintain that information, and the processes that govern error resolution—are just a start. They are the obvious and essential basics. As we learn more about the credit reporting system from consumers, from the supervised firms, and from others, we will adapt and adjust to ensure that it meets the FCRA's aspiration of treating consumers fairly and equitably.

Thank you for inviting me to testify today. I will be happy to answer questions you may have about my testimony.

DECEMBER 2012

Key Dimensions and Processes in the U.S. Credit Reporting System:

A review of how the nation's largest credit bureaus manage consumer data

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Purpose and Executive Summary

This paper describes the credit reporting infrastructure at the three largest nationwide consumer reporting agencies (NCRAs)—Equifax Information Services LLC (Equifax), TransUnion LLC (TransUnion), and Experian Information Solutions Inc. (Experian)—with a special focus on the infrastructure and processes currently used by the NCRAs to collect, compile, and report information about consumers in the form of credit reports.

Credit reports play an increasingly important role in the lives of American consumers. Most decisions to grant credit—including mortgage loans, auto loans, credit cards, and private student loans—include information contained in credit reports as part of the lending decision. These reports are also used in other spheres of decision-making, including eligibility for rental housing, setting premiums for auto and homeowners insurance in some states, or determining whether to hire an applicant for a job.

As the range and frequency of decisions that rely on credit reports have increased, so has the importance of assuring the accuracy of these reports. These three NCRAs occupy the hub of what can best be described as a national credit reporting system. They, the entities who report information about borrowers to them (furnishers), providers of public records information, and consumers all play roles which affect the accuracy of the information reported in consumer credit reports.

In its supervision of large banks, the Consumer Financial Protection Bureau (CFPB) has already begun examining the processes institutions use to assure accuracy when furnishing information to the NCRAs and when responding to consumer disputes about information contained in their credit reports. On July 20, 2012 the CFPB published its larger participant rule permitting it to supervise companies with annual receipts from “consumer reporting,” as defined in the rule, of over \$7 million. Prior to the rule’s effective date, the CFPB’s Office of Deposits, Cash, Collections and Reporting Markets (DCCR) consulted existing reports, industry, and public sources in order to be able to depict key dimensions of, and processes in, the reporting and disputing of information in the U.S. credit reporting system.

This paper summarizes learnings from DCCR’s research and analysis. It is intended as a public service to provide basic descriptions of, and statistics regarding, the underlying processes by which consumer data is reported, matched to consumer files, and reviewed when consumers dispute its accuracy. The CFPB has not sought to verify information contained in this paper through its supervisory authorities. Nor does the paper represent any learnings or conclusions about whether any specific market participants are in compliance with particular statutes or policies pertaining to consumer reporting.

This paper depicts the types of information movements and processes that are most essential to the compiling of credit reports and to the management of credit report accuracy. The Fair Credit Reporting Act (FCRA) and its implementing regulations impose legal duties both on NCRAs and on data furnishers relating to the accuracy of credit report information.¹ All parties to the credit reporting system

¹ See, e.g., 15 U.S.C. 1681e(b) (requiring consumer reporting agencies to “follow reasonable procedures to assure maximum possible accuracy of the information concerning an individual about whom the report relates”); 15 USC 1681i (requiring a consumer reporting agency to re-investigate upon receiving a consumer dispute); 15 U.S.C. 1681s-2(a)(1)(A) (prohibiting a furnisher from furnishing information that it “knows or has reasonable cause to believe that the

Continued

have a vital interest in achieving accuracy in credit reports. Those who use these reports to make decisions rely upon the accuracy of the information they receive. To the extent the information is inaccurate, that can lead to incorrect decisions to the detriment of decision makers and consumers alike.

Key Learnings

- *The U.S. credit reporting system encompasses a vast flow and store of information.* The NCRAs each maintain credit files on over 200,000,000 adults and receive information from approximately 10,000 furnishers of data. On a monthly basis, these furnishers provide information on over 1.3 billion consumer credit accounts or other “trade lines.”
- *Furnishing credit information to the NCRAs is a highly concentrated activity, both by institution and by product.* The 10 largest institutions furnishing credit information to each of the NCRAs account for more than half of all accounts reflected in consumers’ credit files. Likewise, retail and network-branded revolving credit cards account for nearly 60 percent of all trade lines.
- *The NCRAs have designed a number of processes to standardize, automate, and perform quality controls on incoming data.* The NCRAs report that before accepting information from data furnishers, they perform certain background and quality control checks on would-be-furnishers. Most furnishers—and all new furnishers—provide consumer credit information electronically to one or more NCRAs using a standardized format called Metro 2 that the Consumer Data Industry Association (CDIA) developed and refined over time. When data files are received, the NCRAs also perform quality checks prior to adding the data to credit files.
- *The “matching” process by which the NCRAs assign incoming trade line data to consumer-specific credit files represents the central step in the organization of credit data to permit the creation of credit reports on individual consumers.* The NCRAs manage this process through unique data architectures each has developed and which vary from each other. The challenge of accurately matching trade line information to the correct consumer is made complex by the absence of any objective, third party source of information, by similarities in consumers’ names and addresses (particularly among family members), and by limitations, colloquial variations, and inaccuracies in the personally identifying information provided by consumers and furnishers that occur when consumers first apply for credit products.
- *Inaccuracies can enter into credit reports in a number of ways.* Inaccuracies can occur if consumers provide inaccurate data when applying for a loan or if the creditor who furnishes data to the credit bureau inputs consumer information to its systems inaccurately. Inaccuracies can occur when the bureaus match information about a consumer from a particular data furnisher to the wrong individual consumer’s file. Inaccuracies can also come from errors or the lack of identifying information in government records. Inaccuracies can occur when consumers have become victims of identity fraud or identity theft.
- *The extent to which credit reports contain material inaccuracies is uncertain.* There have been conflicting reports on this issue. The Federal Trade Commission (FTC) is expected to release results from its decade-long study on credit report accuracy later this year.
- *Consumers’ right to dispute information contained in their credit reports under the FCRA—and furnishers’ and the NCRAs’ obligation to respond—provide important checks on inaccurate credit reports.* Among other protections, consumers also have the right to obtain a copy of their credit file and to receive notice of adverse actions involving credit reports with a resultant right to a free disclosure. These disclosures are one way for consumers to dispute information in their file they believe is not accurate or complete. The CFPB estimates that at least 40,000,000 consumers obtain a copy of their credit file from one or more of the NCRAs annually.
- *The NCRAs received approximately 8 million contacts from consumers in 2011 to initiate disputes about the accuracy of one or more items on their credit files.* In total, these 8 million contacts resulted in 32–38 million disputed items on consumers’ credit files. The rate at which the credit account information de-

information is inaccurate”); 15 U.S.C. 1681s–2(a)(1)(B) (prohibiting the furnishing of information where the consumer has notified the furnisher that the information is inaccurate and the information is in fact inaccurate).

picted in credit files is disputed varies widely based upon the type of data furnished.

- *Collections items are a major source of disputes.* Items reported by collection agencies reportedly have the highest dispute rates, averaging 1.1 percent of the trade lines they furnish in a given year. Almost 40 percent of disputes handled by the NCRAs on average can be linked to collections items.
- *The NCRAs have created an automated system for handling consumer disputes and forwarding them to data furnishers.* Through this automated system—called e-OSCAR—the NCRAs provide furnishers with one or two numeric codes indicating the nature of the consumer’s dispute and in a minority of cases (26 percent), explanatory text. At present, the NCRAs generally do not forward documentation that consumers submit with mailed disputes or provide a mechanism for consumers to forward supporting documents when filing disputes online or via phone. The NCRAs resolve an average of 15 percent of trade line disputes internally (without furnisher involvement) and refer the remaining 85 percent of the disputes they receive from consumers concerning trade lines to data furnishers through e-OSCAR. The furnisher of the disputed data is then required by the FCRA to investigate the dispute and report back to the NCRA.
- *The NCRAs’ reliance on furnisher responses as the principal means of resolving disputes is a source of controversy.* The NCRAs report that in seeking to maximize accuracy and in resolving disputes, they rely on furnishers meeting their obligations under the FCRA to report information accurately and to respond to disputes appropriately. Consumer advocates have argued that the NCRAs have an obligation to monitor and manage furnisher practices as part of their broader obligation to achieve credit report accuracy.
- *While the measurement of credit report accuracy and the level and causes of inaccuracies present challenges, periodic measurement of credit report accuracy holds promise for establishing baseline accuracy levels and measuring improvements over time.*

1. Introduction

In most of the markets for consumer credit, including credit cards, auto loans, mortgages, and student loans, lenders use credit reports as part of their evaluation of a consumer’s application for credit. Companies use credit reports and credit scores derived from the information in credit reporting files to assess a consumer’s likelihood of repaying the loan. Credit reports and scores can be delivered in real time, permitting instant decisions at retailers, auto showrooms, or online. Lists of consumers derived from credit reports are used to make offers of credit. Underwriting processes stipulated by the FHA, VA, Fannie Mae, and Freddie Mac require mortgage lenders to obtain credit reports from a nationwide credit reporting agency (the NCRAs) before these Federal agencies and government-sponsored enterprises will insure, guarantee, or purchase their loans. For each of these forms of credit and origination channels, credit reports are used by lenders to help set interest rates and other key credit terms, or determine whether the consumer is offered credit at all. Of 113 million credit card and retail card accounts, auto loans, personal loans, mortgages, and home equity loans originated in the United States in 2011, the vast majority of approval decisions used information furnished by credit reporting agencies.²

Credit reports also are used in spheres of decision-making beyond eligibility for credit. These include eligibility for rental housing,³ setting premiums for auto and other property and casualty insurance where permitted by law,⁴ and establishing (along with prior account history) eligibility for checking accounts.⁵ When an individual applies for a job, a prospective employer may examine his or her credit report

² Experian—Oliver Wyman, *Comprehensive Consumer Credit Review, Experian-Oliver Wyman Market Intelligence Report*, at 7 (2011 Q4).

³ See, e.g., Experian ConnectSM, available at <http://www.experian.com/connect/landlord.html>.

⁴ Federal Trade Commission, *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance, A Report to Congress* (2007), available at http://www.ftc.gov/os/2007/07/P044804FACTA_Report_Credit-Based_Insurance_Scores.pdf.

⁵ Marcie Geffner, *Banking and your credit score*, Bankrate.com (Mar. 17, 2011), available at <http://www.bankrate.com/finance/savings/banks-checking-credit-scores-more-often-1.aspx>.

Banks may retrieve a credit report from a credit bureau as part of a review of a bank account application. A bank may also contact a specialty consumer reporting agency, like ChexSystems, a subsidiary of FIS, to see if the consumer has history of bank-initiated account closures or other negative activity in connection with previous checking accounts.

upon the individual's authorization.⁶ A recent survey by the Society for Human Resource Management of its membership database found that almost 60 percent of its member employers used credit reports to screen applicants for at least some of their positions.⁷

Because of the widespread use of credit reports—often along with credit scores derived from them—in major personal financial decisions, the accuracy of reports has remained an ongoing policy concern. In a 2007 report on credit scores used in lending decisions, the Federal Reserve Board noted the importance of accurate credit reports: “for the full benefits of the credit-reporting system to be realized, credit records must be reasonable, complete, and accurate.”⁸ Credit scoring models depend on the credit information contained in consumers' credit files to be accurate to effectively predict a consumer's relative risk of delinquency. Inaccurate credit information may cause credit scoring models to understate or overstate a consumer's credit risk to lenders. Accurate credit information helps decision makers predict certain risks effectively, while inaccurate credit information in credit reports has the potential to compromise the effectiveness and consistency of decisions that rely on them, and the potential to cause material harm to affected consumers. Ultimately, consumer and business confidence in decisions based on credit reports and scores derived from them depends on confidence in the accuracy of the credit information they contain.⁹

When the FCRA passed in 1970, key provisions of the law focused on assuring the accuracy of credit reports. These key accuracy provisions of the FCRA remain as important today as when the law first passed. They address the quality of data in credit files by requiring credit reporting agencies to establish “reasonable procedures to assure maximum possible accuracy” of their credit reports.⁹ The FCRA also includes a number of other provisions that relate to the information in consumer reports such as limits on the period of time during which certain pieces of adverse information can generally be included in a consumer report.¹⁰

Credit report accuracy relies on an ongoing ecosystem involving the interaction of NCRAs and other consumer reporting agencies, furnishers of information, public record repositories, users of credit reports, and consumers. An understanding of how this ecosystem operates—including the basic “plumbing” of data flows, the various participants involved, and the economic incentives each group of participants may bring to their respective roles—is foundational knowledge in considering technical and policy options for improving and assuring credit report accuracy.

This paper focuses on the databases of the three largest NCRAs—Equifax, TransUnion, and Experian. It seeks to depict technical processes involved in the collection, screening, and correction of credit information and their broad impact on the accuracy of information provided in credit reports from these NCRAs. It does not seek to characterize or quantify either the general *level* of accuracy of credit report information, or the harms that may result to consumers affected by credit report inaccuracies. Additionally, the paper does not attempt to weigh the costs and benefits that might be involved in improving the accuracy of credit reports beyond their current levels.

⁶The FCRA allows for the sharing of credit reports for employment purposes. See 15 U.S.C. § 1681b(a)(3)(B).

⁷Forty-seven percent of firms used credit checks for select job candidates, while thirteen percent used credit checks for all job candidates. The Society for Human Resource Management, *SHRM Research Spotlight: Credit Background Checks*, Society Human Resource Management (2010). Small, medium, and large employers were contacted as part of the survey. http://www.shrm.org/Research/SurveyFindings/Articles/Documents/CCFlier_FINAL.pdf. The CFPB, along with all other Federal agencies, use credit reports in their employment screening process (specifically to check for any debts owed to the Federal government).

⁸Federal Reserve Board, *Report to Congress on Credit Scoring and its Effects on the Availability and Affordability of Credit* (August 2007) (Board Credit Scoring Report), available at <http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf>.

⁹The issues raised in this discussion of credit report accuracy also generally apply to consumer reports from consumer reporting agencies as defined under the FCRA. Besides the NCRAs, there are other consumer reporting agencies including the nationwide specialty consumer reporting agencies with rental information databases, check writing/bank databases, medical information databases, insurance claims databases, employment databases, and background screening databases. Each of these specialty databases has its own sources of consumer information. There are also consumer reporting agencies that are not nationwide.

⁹15 U.S.C. § 1681e(b).

¹⁰15 U.S.C. § 1681c.

2. Credit Bureaus, Credit Files, Credit Reports, and Credit Scores

2.1 Credit Bureaus

The consumer reporting system enables creditors and other providers of consumer services to pool information about their respective customers and use that pooled information to inform their credit and other risk decisions about new applicants and existing customers.

Credit bureaus first emerged in the United States in the late 1800s to support merchant lenders who extended credit to local businesses and individuals.¹¹ At that time, the “credit bureau” consisted of a list of individuals who had not repaid their debts as agreed and were therefore deemed poor credit risks. Prior to the use of such lists, local merchants extended only very small amounts of credit, and these credit decisions depended largely on the merchant’s direct personal knowledge of the individual borrower’s personal character.

The credit reporting industry grew steadily with growing interest on the part of both consumers and merchants in using credit in purchase transactions. In the 1920s and again in the 1950s, credit bureaus experienced particularly rapid growth with the introduction of retail installment credit and revolving credit accounts,¹² in the 1970s and 1980s with the growth of bank credit cards, and in the 1990s with the automation of mortgage underwriting. By the early 1970s, the industry comprised over 2,250 firms, most with local or regional coverage. As the 1970s progressed, the industry began to consolidate.¹³ With the development of computer databases, nationwide credit card issuers, and automated underwriting, the threshold of technological investment required to distribute credit reports increased, as did the importance of offering nationwide coverage. Many of the local bureaus sold their records to the major national bureaus. Today, the consumer reporting landscape includes large national bureaus like the NCRAs; bureaus with credit information such as payday loans, utility and telephone accounts, and other credit relationships; a number of specialized consumer reporting agencies with medical information, employment history, residential history, check writing history, checking account history, insurance claims, and other non-credit relationships; as well as a few hundred resellers of credit reports.

By 2011, the NCRAs generated U.S. revenues of about \$4 billion,¹⁴ including revenues from several ancillary businesses such as the sale of lists and non-credit consumer information for marketing purposes, the sale of credit monitoring services directly to consumers or through resellers, and analytical services that provide credit scores and other modeling tools to creditors.

2.2 The Contents of Consumer Credit Files

For purposes of this paper, credit reports are a form of “consumer report” as defined by the FCRA. Consumer reports generally are communications by a consumer reporting agency “bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living” used or expected to be used in determining a consumer’s eligibility for credit or insurance, for employment purposes, or other permissible purposes listed in the statute.¹⁵ As defined by the FCRA, the “file,” when used in connection with information on any consumer, means “all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.”¹⁶ This paper refers to “credit files” as the information about a consumer that is contained in the databases of the NCRAs.

2.2.1 File Components

Credit files have some or all of the following components.

1. **Header/Identifying Information:** The header of a credit file contains the identifying information of the consumer with whom the credit file is associated including an individual’s name (and any other names previously used), current and former addresses, Social Security number (SSN), date of birth, and phone numbers. Not all credit files contain all of these identifying elements.¹⁷

¹¹ Evan Hendricks, *Credit Scores and Credit Reports: How the System Really Works*, at 157 (2004).

¹² *Id.* at 158.

¹³ *Id.*

¹⁴ Based on CFPB calculations of industry publicly reported revenues.

¹⁵ 15 U.S.C. § 1681a(d).

¹⁶ 15 U.S.C. 1681a(g).

¹⁷ Identifying information in credit files is derived from furnisher supplied data and from public records. Furnisher supplied identity information often comes directly from the consumer, and

2. **Trade lines:** Trade lines are the accounts in a consumer's name reported by creditors such as auto lenders, mortgage lenders, or credit card issuers. For each trade line, creditors that furnish information to consumer reporting agencies (referred to as "furnishers" under the FCRA) generally provide the type of credit (*e.g.*, auto loan, mortgage, credit card), the credit limit or loan amount, account balance, the account payment history including the timeliness of payments, whether or not the account is delinquent or in collection, and the dates the account was opened and closed. If more than one consumer is listed as a borrower on a given credit account, the trade line information will appear in both consumers' credit files ordinarily with information as to the relationship of the consumer to the account, such as authorized user. Trade line information may contain indicators such as whether the account is individual or joint, the account is involved in a bankruptcy filing, the device for accessing the account (*e.g.*, a credit card or PIN) was lost or stolen, and, if closed, the reason for closure (*e.g.*, paid off, closed at the consumer's request). Credit files do not contain certain terms of the loans or credit lines such as interest rates, points, or fees and do not contain certain performance history such as purchases made using the account or payments made on the account. Additionally, credit reports do not contain information on a consumer's income or assets.
3. **Public record information:** The NCRAs' files include public record data of a financial nature including consumer bankruptcies, judgments, and state and Federal tax liens. Records of arrests and convictions generally do not appear on a consumer's credit file, but other types of consumer reporting agencies, such as employment background screening agencies, include them. Other public records that do not appear in credit reports are marriage records, adoptions, and records of civil suits that have not resulted in judgments.¹⁸
4. **Collections:** Third-party collection items, reported by debt buyers or collections agencies on behalf of a creditor, are considered a separate category on a credit report by at least some of the NCRAs.
5. **Inquiries:** A consumer's credit file is required to list every entity that accessed the file in the last two years for employment-related uses and for at least the last year for credit uses and most non-employment uses (*e.g.*, tenant screening, insurance, government licenses or benefits).¹⁹ Some of the NCRAs go beyond legal requirements and list credit inquiries for two years. The NCRAs have two major classifications of inquiries: "soft" inquiries and "hard" inquiries. Hard inquiries are typically the product of consumer-initiated activities such as applications for credit cards, to rent an apartment, to open a deposit account, or for other services. In contrast, soft inquiries are generally user-initiated inquiries like prescreening.^b Only hard inquiries will appear in credit reports obtained by creditors and other users.

A consumer's file also has information on whether the consumer has initiated a security freeze, fraud alert, active duty alert, or filed a consumer statement on his or her file.

2.3 Credit Reports

Credit reports are consumer reports provided by NCRAs or other CRAs to lenders and other users. Credit reports generally contain information in the consumer file that is reportable to the end user.

The FCRA limits with some exceptions how long a credit bureau can communicate certain adverse information in a credit report.²⁰ Many adverse items including

may vary depending on the identity information consumers provide on their applications and how comprehensively the consumer and furnisher provide updates when such things as marital status, address, or phone number change. Identity information supplied in public records can also vary.

¹⁸John Ulzheimer, *Public Record Information and Credit Reports: What's There?*, Smartcredit.com, (March 3, 2011), available at <http://www.smartcredit.com/blog/2011/03/03/public-record-information-and-credit-reports-whats-there/>.

¹⁹15 U.S.C. § 1681g(a)(3)(A).

^bThe NCRAs treat other types of inquiries as soft inquiries based on business rules—certain insurance inquiries, utility, and government inquiries relating to licenses or government benefits may be categorized as soft, depending on the business rules for that entity. Employment inquiries are commonly placed in the soft inquiry section. Each listed inquiry will include the date and type of inquiry (*e.g.*, by consumer, review of existing account, for pre-screening). Federal Trade Commission and the Federal Reserve Board, Report to Congress on the Fair Credit Reporting Act Dispute Process, at 4 (August 2006).

²⁰The FCRA's time limits on the reporting of derogatory information do not apply to certain large financial transactions, namely (1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more; (2) the underwriting of life in-

records of late payments, delinquencies, or collection items typically stay on a credit report for up to seven years.²¹ Likewise, civil suits and civil judgments typically stay on the report for no more than the longer of seven years or the governing statute of limitations, while paid tax liens typically cannot be reported more than seven years after the date of payment.²² Credit reports generally cannot list bankruptcies for more than 10 years after the order for relief or date of adjudication, except that repayment plans are only reported for seven years.²³ There are also restrictions on communicating a medical service provider's name, address, and telephone number pertaining to medical debts in a credit report.²⁴

Users vary in how they evaluate credit reporting information. For users who view reports for employment purposes, the NCRAs provide a modified credit report, which removes birth date and other information that is sensitive in the employment context and does not include credit scores. Financial services users rely on credit reports as well as proprietary or third-party algorithms—"scoring" models—to interpret the information in a credit report. These algorithms use variables or "attributes" derived from the credit report.

2.4 Credit Scoring

The NCRAs deliver credit reporting information to users in standardized electronic formats so that lenders' underwriting systems can use reports from more than one bureau interchangeably and so that analytical credit risk models used by the lenders can identify and retrieve relevant pieces of information. More often than not, a credit bureau will also deliver a credit score calculated from the information in a credit report along with variables derived from the credit report (often called attributes).²⁵ The lender will pay the bureau a fee for the credit report information and an additional amount for the score. The model used to generate the credit score is selected by the lender as the user.

Lenders use credit scoring systems to assess the relative risk of consumers going delinquent on a loan. For most credit scoring models in use today, the higher the numerical value of a credit score, the lower the credit risk of a consumer. Consumers with very high scores thus are likely to get more favorable interest rates and other more favorable loan terms. In contrast, consumers with lower numerical scores present higher risks of default and may only be able to get loans at higher interest rates or other less favorable terms, if lenders are willing to lend to them at all.

Large national lenders have widely used credit scoring since the 1970s to inform their loan underwriting.²⁶ The NCRAs did not start providing credit scores based on credit bureau data until the late 1980s. In the late 1980s, one bureau built a bankruptcy prediction model. Models supplied by Fair Isaac Corporation (FICO) for use with credit bureau data appeared in 1990 and 1991. Today, scores using models supplied by FICO account for a substantial majority of third-party generic credit scores purchased with credit reports by financial institutions for loan origination decisions.²⁷ In 2006 the NCRAs formed a joint venture, VantageScore, which offers competing scoring solutions. Additionally, the NCRAs and other third-party development companies develop both generic and custom scoring models. Many lenders also develop and use proprietary scoring models derived from credit report information.

The most common credit scores rank the relative probability that a consumer will become 90 days delinquent on a new loan within two years. There are a wide vari-

insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more; or (3) the employment of any individual at an annual salary which equals or which may reasonably be expected to equal \$75,000 or more. 15 U.S.C. § 1681c(b).

²¹ 15 U.S.C. § 1681c(a)(4)–(5).

²² 15 U.S.C. § 1681c(a)(2)–(3).

²³ 15 U.S.C. § 1681c(a)(1). As discussed *supra*, in note 20, reports may be exempted from these time restrictions in certain circumstances. In practice, the NCRAs do not utilize these exemptions, and cease reporting negative information after the standard time limits have elapsed.

²⁴ 15 U.S.C. § 1681c(a)(6).

²⁵ A credit score is a defined term in the FCRA which generally means "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 . . ." See 15 U.S.C. § 1681g(f)(2) for full definition.

²⁶ Board of Governors of the Federal Reserve System, Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit: Submitted to the Congress Pursuant to Section 215 of the Fair and Accurate Credit Transactions Act of 2003 (Aug. 2007), at O-4.

²⁷ One industry observer estimates that FICO had over 90 percent of the market share in 2010 of scores sold to firms for use in credit related decisions. Consumer Financial Protection Bureau, *The impact of differences between consumer-and creditor -purchased credit scores: Report to Congress*, at 6 (July 19, 2011).

ety of credit scores offered by the NCRAs that vary by score provider, by model, and by target industry.²⁸ FICO, alone, has 49 different scoring models.²⁹ Regardless of the version, credit scoring models tend to share common “attributes” derived from credit reports, such as a consumer’s bill paying history (*e.g.*, on time, delinquent, in collections), the number and type of credit accounts a consumer has (*e.g.*, bank cards, retail credit cards, installment loans), the amount of available credit that a consumer is using, how long a consumer has had a credit account, and recent credit activity, including inquiries.

Creditors use credit scores to enhance the efficiency and consistency of credit decisioning.³⁰ Credit scores may also reduce the possibility of subjective decision making by lenders based on impermissible factors under fair lending laws such as the Equal Credit Opportunity Act (ECOA), like marital status, age or national origin. The Federal Reserve noted in its 2007 study on credit scoring, “By providing a low-cost, accurate, and standardized metric of credit risk for a pool of loans, credit scoring has broadened creditors’ access to capital markets, reduced funding costs, and strengthened public and private scrutiny of lending activities.”³¹

Some have argued that credit scores derived from credit reports have the potential to reinforce the effects of discrimination. They argue that where lending discrimination occurs, minority and other disadvantaged borrowers can wind up in credit products that make default more likely. As a result of higher default rates, their credit reports and scores depict them as bad credit risks, when in fact they would have performed better if they were in better, less expensive products.³²

NCRAs can deliver credit reports and scores (using proprietary or third-party models) to those authorized to access a credit report instantly upon request. This makes it possible for lenders to grant instant credit in venues where obtaining credit is often an important part of a consumer’s purchase decision, such as at an auto dealer or a department store. Additionally, incorporating the use of credit scores as a factor in underwriting has enabled the government-sponsored entities, Fannie Mae and Freddie Mac, to introduce automated underwriting systems that allowed mortgage originators to streamline the mortgage underwriting process and provide rapid mortgage approvals.

Because credit scores are derived from the information in credit reports, inaccuracies in credit report information can affect consumers’ credit scores. Some inaccuracies matter more than others. An error in a consumer’s address, the misspelling of a maiden name, or other errors in the consumer’s identification information are generally unlikely to have an impact on a consumer’s credit score or perceived credit worthiness by lenders. However, a public record that inaccurately indicates a consumer is subject to a tax lien, or a trade line that incorrectly states a consumer had a severe delinquency, could cause a lender to deny credit to a consumer altogether, or to treat a consumer it would otherwise consider eligible for a loan at prime interest rates as only eligible for sub-prime rates, costing the consumer thousands of dollars in interest.

Below is a table showing how credit scores may be affected when specific adverse information appears in a credit report using different starting scores from VantageScore and FICO, two credit score providers. FICO scores generally have a range of 300 to 850, while Vantage scores range from 501 to 990. It is worth noting that these score impacts are hypothetical, and that the impact of an adverse event in any individual’s case varies by the unique characteristics of that consumer’s credit history, including the number and timing of such events.

Figure 1: Example Score Impacts

Financial Data	Score Impact Range			
	Consumer with 900 Vantage Score	Consumer with 760 Vantage Score	Consumer with 780 FICO Score	Consumer with 680 FICO Score
<i>Bank card—30 days delinquent</i>	70–90 point drop	60–80 point drop	90–110 point drop	60–80 point drop

²⁸For more detailed information on the variety of credit score models sold to lenders and to consumers, see CFPB, “Analysis of Differences between Consumer-and Creditor-Purchased Credit Scores,” (September 2012).

²⁹New York Times, “Why you have 49 different FICO Scores,” available at <http://bucks.blogs.nytimes.com/2012/08/27/why-you-have-49-different-fico-scores/>.

³⁰See *supra* note 26 at O–5.

³¹*Id.*

³²Deirdre Swesnik and Lisa Rice, National Fair Housing Alliance: Discriminatory Effects on Credit Scoring on Communities of Color, Prepared for the Symposium on Credit Scoring and Credit Reporting [forthcoming].

Financial Data	Score Impact Range			
	Consumer with 900 Vantage Score	Consumer with 760 Vantage Score	Consumer with 780 FICO Score	Consumer with 680 FICO Score
Mortgage charge-off or foreclosure	130–170 point drop	80–110 point drop	140–160 point drop	95–115 point drop
Filing bankruptcy	350+ point drop	200+ point drop	220–240 point drop	130–150 point drop

Sources: *VantageScore*: Sara Davies, Introduction to the VantageScore Model, Ways Consumer Credit Scores Are Impacted and Methods for Score Improvement, Presentation at the Symposium on Credit Scoring and Credit Reporting at Suffolk University Law School (June 6, 2012). *FICO*: http://www.myfico.com/crediteducation/questions/Credit_Problem_Comparison.aspx.

Other than credit scores, the NCRAs also provide lenders with analytical models using credit report data. These include models that predict the likelihood of accepting a credit offer, of future account utilization, of consumers leaving an existing account, or of collectability on an outstanding debt.

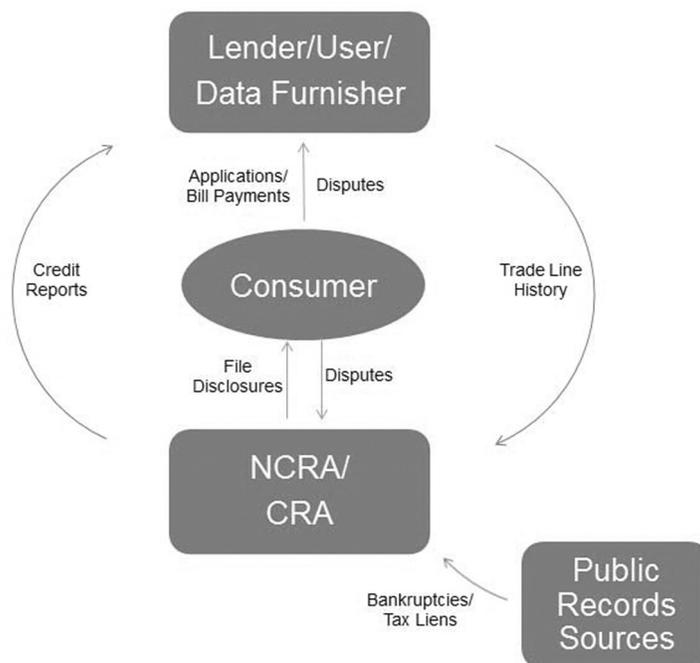
3. Furnishers and Users

In addition to the NCRAs and other CRAs, the most important participants in the credit reporting system are *furnishers*, *users*, and *consumers*. All of these participants have defined roles with specific obligations under the FCRA.

Most furnishers of credit information to NCRAs are creditors who are also users of credit reports. Public records (*e.g.*, judgments, bankruptcy filings, tax liens) are also important sources of information for NCRAs.

Figure 2 below is a simplified diagram of the information flows in the credit reporting system.

Figure 2: The Credit Reporting System



Source: CFPB 2012.

3.1 Trade Line Furnishers

Each NCRA has a consumer database with over 1.3 billion active trade lines.³³ Financial institutions furnish the bulk of these trade lines. Approximately 40 percent of all trade lines of an NCRA's files are bank card trade lines. Of the remaining trade lines, 18 percent came from banks that issue retail cards, 13 percent are ac-

³³ Industry figures.

counts in collection reported by collections agencies and debt buyers, 7 percent from the education industry,^c 7 percent from sales finance providers (*e.g.*, closed-end loans including auto loans), 7 percent from mortgage lenders or servicers, 4 percent from auto lenders, and 4 percent from other unspecified creditors.³⁴

While the NCRAs receive trade lines from approximately 10,000 furnishers, a small number of very large institutions (typically with multiple lines of business) supply a majority of trade lines. For the NCRAs, the top 10 furnishers provide approximately 57 percent of the trade lines, the top 50 furnishers provide 72 percent of the trade lines, and the top 100 furnishers provide 76 percent of the trade lines in their databases.³⁵ The institutions' credit offerings can include bank credit cards, retailer credit cards, auto loans, student loans, and mortgages.³⁶ Other furnisher industries, such as collections agencies, tend to be more fragmented.³⁷

Furnishers typically report trade line updates monthly in batch files transmitted electronically to one or more of the NCRAs. Most of the largest furnishers report all or nearly all of their trade lines to each of the largest NCRAs.^d These updates generally include changes in balances owed, whether or not payments were received, changes in available credit lines (in the cases of revolving credit card accounts), and the status of the account (*e.g.*, current, 30+ days late, 60+ days late). The NCRAs provide a standardized data format, called Metro 2, which most of their furnishers use to submit data.^e

3.1.1 Furnisher Incentives and Disincentives

Reporting to credit bureaus and other consumer reporting agencies by creditors is voluntary and historically has been. Not all creditors report information about their borrowers. Some creditors report information about users of some of their credit products, but not others. For example, credit card issuers who issue revolving credit to consumers usually report trade line information monthly on consumer cards but are less likely to report on small business cards even when these are owed by, and underwritten based on, the personal credit history of the business owner. Furnishers have multiple incentives to contribute data to the NCRAs. Individual contributors recognize that the cross-company, cross-industry visibility into credit risk offered by a credit bureau depends on widespread creditor participation. If a company elects not to contribute data, it runs the risk that its peers will not contribute data, thus reducing a common resource from which creditors benefit. As indicated above, most furnishers of trade line information to the NCRAs are also large users of credit reports.

A second reason creditors furnish information on their accounts is to maintain an incentive for their borrowers to make timely repayments. Consumers are more likely to repay creditors if they are aware that a creditor may report late payments or delinquent accounts to the NCRAs, which could negatively affect their credit history and/or credit score. Consumers also get the benefit of having their timely payments reported, which will positively impact lenders' views of their credit worthiness.

There are also disincentives for creditors to report on their borrowers to the NCRAs.³⁸ For example, the names of individuals who borrow and make loan pay-

^c Education furnishers are comprised of furnishers from business education schools, colleges, private educational lenders, technical education universities, vocational and trade schools, and government furnishers including the Department of Education and Federal student loan servicers.

³⁴ Industry figures.

³⁵ Industry figures. It is likely that the NCRAs do not uniformly define an institution as a furnisher in the same way (*e.g.*, some large, complex institutions may be treated as a single furnisher by one NCRA but as multiple furnishers by another); hence estimates cited in this report from industry sources about the number of furnishers and shares of tradelines by furnishers and industries are approximations.

³⁶ Industry information.

³⁷ The 2007 Economic Census provides the most comprehensive recent assessment of industry revenue concentration. The survey identifies 4,506 collection agencies. The largest of these firms (those with over \$100 million in annual revenue) take in a minority proportion of overall industry revenue (32 percent). See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table# (scroll to NAICS code 56144).

^d The NCRAs do have some variations in their source data. Some smaller banks and many debt collection agencies do not send information to all three of the largest NCRAs. See Federal Trade Commission and Federal Reserve Board, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, at 5 (August 2006).

^e Innovis, a credit bureau, also is a participant in the Metro reporting system. It offers portfolio management solutions, fraud solutions, and authentication solutions, among other services.

³⁸ Historically, some furnishers have declined to provide certain fields. For example, omitting credit limits prompted the inclusion of I(b)(2) (iii) in App. E to the Furnisher Rule. 74 Fed. Reg. 31484 (July 1, 2009), available at <http://www.gpo.gov/fdsys/pkg/FR-2009-07-01/pdf/E9->

ments on time may be included in prescreened lists that NCRAs and other CRAs sell, providing these borrowers with account offers from competing lenders. Reporting to one or more of the NCRAs may require investment in specialized information systems. Further, data furnishers must follow FCRA requirements such as investigating disputes submitted directly³⁹ or indirectly through the NCRAs. Since furnishing data is voluntary, furnishers must consider whether the overall benefits of furnishing data outweigh its costs.

3.1.2 Reporting Format

CDIA developed the Metro 2 guidelines in 1997, on behalf of the NCRAs and Innovis, as their standard for the electronic reporting of consumer trade line information. Metro 2 replaced the original Metro format developed in the late 1970s.⁴⁰ The format forms the basis by which furnishers provide updates on their borrowers' account status in bulk file submissions to one or more of the NCRAs, generally on a monthly basis. An obvious benefit of a shared data format is that all furnishers can report trade line information the same way. This simplifies the creation of standardized credit files by each of the NCRAs and simplifies the interpretation of credit information into risk-based credit scores.

Each Metro 2 electronic file submission has a furnisher header record, a series of base records on each borrower, supplementary records describing updates to the furnished trade lines, and a trailer record. A description of the various types of record segments and the information that Metro 2 allows furnishers to provide is offered below.

- *Metro 2 Header and Trailer Records:* Header and Trailer records form the bookends of a Metro 2 file submission. The header record is the first record provided in the Metro 2 file submission and is used to identify the furnisher and the activity period. It also contains the furnisher's unique identifier at the NCRA receiving the file, the activity date, name, address, and other contact information for the furnisher. Note that this type of header record should be distinguished from the header record on a consumer file maintained by an NCRA that has the consumer's personal identification information. The trailer record, meanwhile, is the last record in a furnisher's Metro 2 submission. It includes the sum totals of all the base and supplementary segments submitted.
- *Base Segment:* The Base segment is used to identify the primary borrower and to provide relevant account information for each trade line. Identification information for the borrower includes first, middle, last name, suffix, generation code, phone number, address, SSN, and date of birth. Account information includes account type (e.g., revolving, installment, mortgage), credit limit, highest credit or original loan amount, duration of credit extended, frequency with which payments are due, account status,[†] stage of delinquency, date of first delinquency, and date the account closed and conditions under which it was closed (e.g., closed by consumer, paid full amount due, closed by creditor and paid less than full amount). Additionally, the Base segment contains up to 24 months of the consumer's payment history on the account. Contrary to a frequent assumption, the Metro 2 format does not contain fields for interest rate information on particular loans or revolving accounts.
- *Supplementary Segments:* Depending on the furnisher and the type of trade line, the furnisher may have additional data segments to supplement the data in the base segment. These include:
 - *Associated Consumer Segment:* Contains information on consumers who are associated with a credit account besides the primary user, including name, SSN, date of birth, telephone number, and the relation of the consumer to the

³⁹ 15323.pdf. The Furnisher Rule is now codified in 12 C.F.R. pt. 1022. 76 Fed. Reg. 79308 (Dec. 21, 2011). The practice of some furnishers of omitting account opening date and other fields also prompted the Federal banking agencies, the National Credit Union Administration (NCUA), and the FTC to issue an advance notice of proposed rulemaking focused on whether furnishers should be required to provide this information, 74 Fed. Reg. 31529 (July 1, 2009), available at <http://www.gpo.gov/fdsys/pkg/FR-2009-07-01/pdf/E9-15322.pdf>.

⁴⁰ 74 Fed. Reg. 31484 (July 1, 2009). This rule was required by section 623(e) of FCRA, as added by section 312 of the Fair and Accurate Credit Transaction Act of 2003.

[†] Industry information.

[†] Account status reflects the current or final disposition of the account. If the account is delinquent, Metro 2 allows furnishers to report the level of delinquency such as 30–59 days past due, 60–89 days past due, and up to 180 days or more past due. Where the account is closed, a furnisher can report whether the account closed with a zero balance, was a voluntary surrender, closure surrender, repossession, charge-off, or entered into foreclosure.

account. Associated consumers can include authorized users, guarantors, persons with joint contractual liability, or others.

- *Original Creditor Name Segment*: Has the name of the original credit grantor, which is necessary to link a consumer debt to the original creditor even after it is outsourced to a third-party collection agency.
- *Segment for Accounts Sold to/Purchased from Another Company*: Used to report the name of the companies which respectively bought and sold a portfolio of consumer debt.
- *Mortgage Information*: Used to report any Fannie Mae or Freddie Mac loan number associated with a mortgage account.
- *Specialized Payment Information*: Has information on deferred payments or balloon payments, if applicable.
- *Account Number/Identification Number*: Used to report new identification or account numbers.
- *Employment Segment*: Contains employment information on the primary borrower, which may come from the consumer's application for credit or from employment information that the creditor obtained in approving the account.

The Metro 2 format specifies that base segments be reported for each account submitted. Supplementary segments are reported when relevant to the particular trade line or other data that is furnished.

3.2 Public Record Collection

While the NCRAs rely on a multitude of furnishers to supply creditor trade line information, they also receive public records including bankruptcy records, civil court monetary judgments, and government tax liens from publicly available government sources. They obtain these records primarily through LexisNexis Risk Data Retrieval Services LLC (LNRDRS). The use of LNRDRS followed the NCRAs' decisions to move from direct collection from hundreds of sources and suppliers to a single data retrieval vendor. The NCRAs report they do not use criminal records in their credit reports. Rather, the NCRAs utilize public records representing derogatory items in their credit files. Derogatory is defined as negative information that will likely hurt a consumer's credit (*e.g.*, late payments, collection accounts, foreclosures, civil judgments).⁴¹ While each NCRA has its own criteria, public records are generally removed from credit reports once the reportable event becomes obsolete (between seven and ten years depending on the type of information and the applicable statute of limitations).

3.2.1 LNRDRS Data Retrieval

LNRDRS retrieves and sends to each of the three NCRAs between 10 and 20 million public record events per year (roughly one third of which are bankruptcies, tax liens, and civil monetary judgments respectively).⁴² All bankruptcy records are pulled electronically from the PACER system, an electronic public access service that allows users to obtain case and docket information from Federal appellate, district and bankruptcy courts. Monetary judgments and tax liens are obtained from 10,000 to 12,000 state and local courts and county and state government offices. LNRDRS reports it obtains information on 30 percent of judgments and liens electronically. For the remaining 70 percent, LNRDRS deploys a network of independent contractors who manually access public records at government sources and type the local records into a proprietary software system, which screens for duplicates and minimizes typographical errors. A single record collector can typically record approximately 200 events in a day.

In retrieving records for the NCRAs, LNRDRS provides the data in its "raw" form. The NCRAs undertake the responsibility of assigning records to particular consumer files, and adjusting matching criteria for possible errors. Assignment of a court record to a particular consumer can be challenging for the NCRAs because, according to one estimate, SSNs appear on court records only 3 percent of the time.

4. Furnisher and Data Screening

The NCRAs employ a number of methods to screen furnishers and incoming information for inaccuracies and anomalies. This section examines the vetting and approving of furnishers and various quality screens performed on data files received

⁴¹ Credit Advice from The "Ask Experian" Team, available at <http://www.experian.com/ask-experian/20120118-what-derogatory-means.html>.

⁴² Industry figures.

from furnishers. These methods focus on identifying formatting errors, logical errors, internal inconsistencies, and anomalies.

4.1 New Furnisher Screening

The NCRAs' data quality processes start with their screening of new furnishers.

The NCRAs report that a prospective furnisher can initiate a relationship with them by sending a letter of intent to furnish. Due to the resource and economic costs associated with adding a furnisher, the NCRAs will generally require prospective furnishers to report a minimum of 100 to 200 active accounts per month.⁴³ Each NCRA reportedly puts prospective furnishers through an initial security screening. Screening generally includes an inspection of features of each business such as its physical headquarters, phone number, website, and business license, as well as company records such as annual reports. Individual NCRAs also may hire third-party investigation services to screen for illegal or unethical business history. Sole proprietorships and new businesses (*e.g.*, in business less than a year) may receive more specialized screening. An NCRA may require the furnishers to submit test files which it will examine to make sure they are Metro 2 compatible. Approved furnishers are trained on Metro 2.

After these initial inspections, NCRA policies may trigger reinspections after risk events such as consumer complaints, suspicious trade lines, variations in data submissions, odd anomalies, and changes in company ownership. At least one NCRA has policies to reinspect new furnishers six months after they start submitting data to assess for data quality and fraud risk.

The NCRAs report that they continue to monitor for data quality and fraud once a furnisher starts contributing live trade line data. One example of furnisher fraud is when a supposed credit repair organization represents itself as a furnisher and attempts to boost the credit scores of consumers with bad credit by reporting fictitious trade lines that the consumers purportedly used and paid back on time.

Overall, the objective of furnisher screening is to reduce the risk of fraud or of poor data quality by screening out furnishers whose systems are not able to report accurate data on customers or report it in the Metro 2 format.

4.2 Checking Furnished Data

Having passed this initial screening, furnishers can start providing data. Furnishers generally provide monthly trade line updates through data file transfers that conform to the Metro or Metro 2 format and contain trade line updates on all of the furnishers' active accounts. All new furnishers are being added under the Metro 2 format, which was first introduced in 1997. Data submitted by a furnisher to an NCRA generally goes through a multi-stage process to identify data irregularities.

Typical data quality checks will identify issues such as blank fields or logical inconsistencies in the data—both at the level of the data file and at the individual consumer's trade line. If a furnished account is reported as closed, and then in a subsequent data feed the furnisher reports a new account balance, the NCRA might flag that inconsistency. Other inconsistencies might be account balances higher than the maximum credit line, duplicate instances of information on the same account being furnished, or data patterns inconsistent with the furnisher's historical pattern of transactions. It is not uncommon for furnishers' bulk files to be initially rejected by the NCRAs.⁴⁴ The NCRAs report that furnishers tend to correct most of the problems causing the file rejection, leaving only a small percentage of files permanently rejected. Some data rejections might not result from an error in the data but from format incompatibility when the furnisher uses the wrong codes to update accounts, or the furnished data shows unfamiliar formats because of system changes at the furnisher.

Within file submissions, individual consumer base records and tradeline updates are similarly screened for formatting errors, logical errors, internal inconsistencies, and anomalies. The rejection rates for incoming trade line data from furnishers appear to vary across multiple dimensions (*e.g.*, by individual furnisher, by furnishing industry, by the NCRA receiving the data). For example, submissions from collections agencies tend to have a higher rejection rate than rejections for credit card trade lines.⁴⁵

While the NCRAs' data screens do find errors by identifying anomalies and inconsistencies, these checks rely on underlying furnisher data to be valid. The NCRAs do not conduct independent checks or audits to determine if the data is accurate,

⁴³ Industry figures.

⁴⁴ Industry information.

⁴⁵ Industry figures.

such as contacting a consumer to ask if she is properly associated with an account or if the balance reported on an account is true, or checking the record-keeping practices of a furnisher. The NCRAs generally rely on furnishers to report information on consumers that is complete and accurate.

4.3 The Furnisher Rule

In 2009, the Federal Trade Commission, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision issued a joint rule (“Furnisher Rule”) implementing the accuracy and integrity and direct dispute provisions for furnishers mandated by the Fair and Accurate Credit Transactions Act (FACTA).⁴⁶ The CFPB has since restated this rule.⁴⁷

As a result of FACTA and the Furnisher Rule, furnishers have enhanced obligations to supply accurate data. Each furnisher is required to “establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies.”⁴⁸ The procedures should address “deleting, updating, and correcting information in the furnisher’s records, as appropriate, to avoid furnishing inaccurate information.”⁴⁹ The procedures must be appropriate to the “nature, size, complexity, and scope of each furnisher’s activities.”⁵⁰ Appropriate procedures include using standard data reporting formats, maintaining records for a reasonable period of time, providing appropriate oversight of service providers (*e.g.*, companies that provide core processing systems or software used for recordkeeping and account management), furnishing information in a way that prevents re-aging,⁵ duplicative reporting, association of information with the wrong consumer, and providing sufficient identifying information about consumers.⁵¹

5. Compiling Credit Files: “Matching”

Once the NCRAs have received trade line information from a furnisher they must assign it to a specific consumer’s identity. Each of the NCRAs has over 200 million active files on individual consumers which are non-duplicative within the particular NCRA.⁵² The average credit file contains 13 past and current credit obligations, including nine bank and retail cards and four installment loans (*e.g.*, auto loans, mortgage loans, student loans).⁵³ In a typical month, an NCRA receives updates on over 1.3 billion trade lines.⁵⁴ With this much information included in and added to their databases, the NCRAs face technical and operational challenges in attributing information to the proper consumer’s file.

5.1 Identifying the Correct Consumer

To locate and identify a consumer, NCRAs will use various combinations of personal identifying information such as name, address, phone number, date of birth, address, and SSN. A given trade line reported by a furnisher may not contain all of this identifying information. Typically, the furnisher reports the personally identifying information that was provided by the consumer in the consumer’s original application for credit or through updates (such as for current address or married name) that a consumer may provide in the course of his or her relationship with the furnisher.

The fact that many consumers have the same or similar personal identifiers presents further challenges when a credit bureau tries to match an incoming trade line with the correct consumer’s file. In the United States, according to 2000 census figures (the most recent to have last name statistics available), there are more than 2.3 million Americans with the last name of Smith, 1.8 million Americans with the last name of Johnson, 1 million Americans with the last name of Davis, 850 thou-

⁴⁶ 74 Fed. Reg. 31484 (July 1, 2009).

⁴⁷ 76 Fed. Reg. 79308 (December 21, 2011).

⁴⁸ 12 C.F.R. § 1022.42, (2012).

⁴⁹ 12 C.F.R. pt. 1022, Appendix E, III(h) (2012).

⁵⁰ 12 C.F.R. § 1022.42(a) (2012).

⁵ Re-aging in this context refers to erroneously extending the reporting period of derogatory consumer information by creating a new, later start date when the derogatory event occurred, thus pushing back the clock for removing the derogatory item from the credit report.

⁵¹ 12 C.F.R. pt. 1022, Appendix E, III (2012).

⁵² Industry figures.

⁵³ Ben Woolsey and Matt Schulz, *Credit card statistics, industry facts, debt statistics*, available at <http://www.creditcards.com/credit-card-news/credit-card-industry-facts-personal-debt-statistics-1276.php> (updated February 28, 2012).

⁵⁴ Industry figures. Since there are 1.3 billion trade lines updated every month and 200 million consumers in each of the NCRA databases, each consumer appears to have, on average, 6.5 active trade lines.

sand Americans with the last name of Garcia, and 600 thousand Americans with the last name of Lee.⁵⁵ As one example, consider the matching challenges posed by relatives with same first and last name, but different middle names, who reside at the same address, and who do not regularly use their middle name when applying for credit.

Adding to the complexity, millions of individuals change how they identify themselves over time or between furnishers. Each year, a sizeable number of Americans change their name through marriage and divorce. Separately, consumers do not necessarily refer to themselves consistently in credit applications. For example, a woman named Elizabeth may use her full name on one application and then refer to herself with a nickname “Betty,” “Beth,” “Liz,” or “Eliza” on another credit transaction. Finally, creditor practices may vary as to the personally identifying information they require in their loan or credit applications, with the result that the criteria one creditor uses to identify a consumer in a trade line update may vary from how another creditor identifies him or her.

5.2 Posting and Organizing Account Information in Consumer Files

Once a trade line has passed the NCRAs’ initial vetting and screening, the NCRAs assign or post that trade line to the credit file of a specific consumer if they believe there is a match. As discussed below, inaccuracies may result from this process.

The manner in which each NCRA posts incoming data to a consumer’s file, and the way its files are organized, depends on the particular structure of its database, or its unique “data architecture.” The NCRAs take two different approaches to organizing personal data in their data networks: (1) flat file system and (2) “PINning” technology.

5.2.1 Flat File Systems

At least one NCRA organizes its database like a traditional flat filing system so that each consumer is linked to one file.⁵⁶ Consumers’ files are distinguished through matching logic using a consumer’s personal identifiers such as name, address, SSN, and date of birth. Multiple or fragmented files can occur for a single person when information is reported with different identifying information such as a different last name. Fragmented files on the same consumer will remain distinct until the NCRA receives new information about the fragments (*e.g.*, a unifying name, address, phone number) that indicates they should be combined. In some cases, matching algorithms will assign the trade line to a file that, according to the algorithm, represents the best match even when all of the identifiers do not match up perfectly, or when only a limited number of identifiers are contained with the trade line.

5.2.2 PINning Technology

Another method uses a unique personal identification number (PIN) to organize consumer files.⁵⁷ Instead of having a single file for each consumer, it uses the consumer’s assigned PIN to link information on the consumer from multiple databases including inquiry, trade line, employment, public record, and address databases. Each furnished trade line data element, inquiry, or public record is entered into the network with an associated PIN in a relational database. PINs are assigned to trade lines based on algorithms that find the consumer that best matches the personal (header) information accompanying the trade line. When a consumer report is requested by a creditor or a consumer requests a credit report, the NCRA assembles the consumer report in real-time using the PIN as the central link to the different databases.

In this system, matching algorithms are used to assign a new incoming trade line or public record to the PIN that represents the best possible fit based on the personally identifying information associated with the trade line.

The CFPB has no data on the relative accuracy of flat-file vs. PIN-based architectures.

6. Inaccuracies in Credit Files and Credit Reports

Given the volume of data handled, the challenges of matching tradelines to the correct consumer files, and the number and variety of furnishers, inaccuracies in some credit files inevitably occur. Inaccuracies in credit files and credit reports can occur where information that does not belong to a consumer is attached to his or

⁵⁵ Genealogy Data: Frequently Occurring Surnames from Census 2000. United States Census Bureau. Available at <http://www.census.gov/genealogy/www/data/2000surnames/index.html>.

⁵⁶ Industry information.

⁵⁷ Industry information.

her file, where information belonging to a consumer is omitted from the file, or where there are factual inaccuracies in trade line or other information in the consumer's file. Some of these inaccuracies can be attributed to matching challenges in assigning a trade line to a consumer's file. Other causes of inaccuracies include data and data entry errors, NCRA system or process inaccuracies, furnisher system or process inaccuracies, identity fraud, or time lags.

6.1 Types of Inaccuracies in Credit Files and Reports

The following are among the types of inaccuracies that appear in credit files and the reports derived from them.

- *Inclusion of accounts or records in a credit file that do not belong to the consumer, commonly called a mixed file:* Credit reports can contain trade lines or public records about a consumer other than the one who is the subject of the credit report.
- *Omission of accounts or records belonging to the consumer:* A credit account or public record that belongs to the consumer's file can be erroneously placed in another consumer's file, leading to a mixed file, as described above.⁵⁸ Alternatively, credit bureau matching algorithms or gaps in data can lead to a consumer trade line being kept separate from the rest of the consumer's file.
- *Trade line or record inaccurately represents information pertaining to the consumer's account with the creditor:* A credit file can inaccurately depict the terms and status of a valid account such as inaccurately depicting the date an account was closed, the credit limit for the account, or whether a trade line is delinquent. Similarly, a collection item on the report may inaccurately reflect the payment status of the debt or the amount of money owed.

It is worth noting that in some cases consumers are mistaken about the presence of inaccuracies in their account. For example, a consumer may believe he or she paid a bill when it was not paid. A consumer may believe that paying an item in collection removes the collection history from one's credit report, which it does not. A consumer may believe he or she paid an account on time, when under the terms of the account, it was late. Or a consumer may simply not recognize a trade line even though it is legitimate.

6.2 Causes of Credit File Inaccuracies

The inaccuracies identified in Section 6.1 can come from a variety of causes.

- *Data and data entry errors:* Furnishers can input accurate consumer information incorrectly or make typographical mistakes (*e.g.*, transposing two digits in an SSN, misspelling names, transposing first and middle names).⁵⁹ Consumers (when applying for a loan) can provide inaccurate data to furnishers. For both of these types of inaccuracies, the credit bureau could pass along the inaccuracy to the consumer's file.

Data errors can also lead to file matching problems by causing the bureau to put the trade line into a separate or "orphan" file distinct from the consumer's original credit file, and thus not include it in the consumer's credit report. Alternatively, data inaccuracy could cause a consumer's trade line to be mixed in with another consumer's file (*e.g.*, when the mistake causes the consumer's header information to match or resemble the identity of another consumer).

- *Bureau file matching inaccuracies:* Inaccuracies can occur when a bureau assigns a trade line to a consumer's file or when it determines the credit file that matches the consumer named in a creditor inquiry. A matching error can occur for a variety of reasons.
 - Matching errors may result from creditor inquiries and trade lines that contain a limited set of identifiers relating to the consumer. For example, a lender inquiry may omit information such as date of birth or SSN.
 - Family members with similar identity information such as fathers and sons with common names (*e.g.*, Jr., Sr.) can experience commingling of files, especially if they reside at the same addresses and distinguishing information is not provided.

⁵⁸Federal Trade Commission, Report to Congress under Section 319 of the Fair and Accurate Credit Transaction Act of 2003, at 9 (December 2008).

⁵⁹For a discussion of common credit reporting errors, see Richard J. Hilman, *Consumer Credit: Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers*, Statement for the Record Before the Committee on Banking, Housing, and Urban Affairs, General Accounting Office at 11 (July 31, 2003).

- Unrelated individuals with similar names and identity information get linked together because a name or SSN is incorrectly inputted.

In some cases, when a consumer changes personal information (*e.g.*, his or her name) the bureau will be unable to match the new trade line to an existing file until the bureau has confidence that the new information belongs to the existing consumer. A common example occurs when a consumer changes names after getting married or divorced. Until the bureau can link the individual pre-and post-name change, that individual's information might reside in two different files.

- *Bureau process errors*: An example of a process error would be if a credit bureau failed to prevent the reappearance in a consumer's credit report of inaccurate data that was removed as a result of a consumer dispute reinvestigation. Such errors can occur despite the bureau maintaining procedures to permanently remove or suppress identified inaccuracies as required by the FCRA.⁶⁰
- *Identity fraud/theft*: Identity thieves can compromise a consumer's credit history by creating new credit, utility, or health care accounts in the consumer's name and then letting them go unpaid. As these accounts go delinquent and are pushed to collections, the consumer victim's credit rating can plummet. Fraudsters may also take over existing consumer accounts, often disguising the account theft by changing the billing address of the applicant with the lending institution, or making purchases over the Internet. Additionally, fraudsters can create synthetic identities using an innocent consumer's SSN or other identifiers like last name and birthdate.⁶¹
- *Furnisher system or process inaccuracies*: Inaccuracies can occur because of limitations in the processes furnishers and public records providers use in handling consumer transactions. Examples include:
 - Attributing ownership to an account on which an individual is only an authorized user;
 - Failing to post a payment;
 - Assigning a payment to the wrong account;
 - Failing to update records (*e.g.*, tax liens or other judgments that are still listed as open even though they have been paid or resolved);
 - Failing to permanently change records when a consumer successfully disputes an inaccuracy, with the result that faulty information is re-reported;
 - Listing closed accounts as open;
 - Reporting an incorrect credit limit; and
 - Transferring loans from one owner or servicer to another owner or servicer with different record-keeping systems can result in lost data or lost payment records.

Furnishers and consumers can disagree on the status of credit accounts (*e.g.*, whether a payment was late). These disagreements can be addressed, if not always resolved, through the dispute processes that consumers have the right to initiate under the Fair Credit Billing Act (*e.g.*, for billing disputes involving credit cards, department store accounts, other open-end credit accounts)⁶² or the FCRA.

Additionally, certain trade lines may be reported by multiple furnishers over time. Examples include trade lines reported by a debt buyer that were previously reported by a creditor from whom the debt buyer acquired the accounts, or mortgage loans for which the servicing rights were sold from one servicer to another. In these cases, the bureaus not only match the trade line with the correct consumer's file, but may also determine when the incoming trade line reflects the continuation of a previously reported trade line in the consumer's file. To facilitate correct depiction of such trade lines over time, the Metro 2 policy is for furnishers who are new account owners to list the name of the original creditor in file updates. Omission of this information by a furnisher who has bought the debt, and/or failure by account sellers to acknowledge when accounts have been sold, may result in duplicate trade lines in a consumer file.

⁶⁰ 15 U.S.C. § 1681i(a)(5)(C).

⁶¹ In 2011, the FTC reported 279,156 complaints alleging identity theft, which was the largest single complaint category of consumers to the FTC. Federal Trade Commission, *Consumer Sentinel Network Data Book for January—December 2011*, at 6 (February 2012). See <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2011.pdf>.

⁶² 15 U.S.C. §§ 1666–1666j.

- *Time lags*: Differences can occur due to time lags between a consumer transaction and its reporting to a credit bureau file (e.g., paying a past due bill or opening a new account). Time lags are a significant issue in the updating of public records. According to one industry source, it takes some state courts, on average, two months to transcribe a court judgment into a written court decision.⁶³

6.3 Consumer Impact of Inaccuracies

Each of these types of credit report errors may affect how a creditor or a credit score assesses the credit worthiness of a consumer. Trade line errors can both hurt or help a consumer's credit score. An omitted current trade line, for example, may lower a credit score. Likewise, a credit score may be unfairly reduced by a negative trade line that belongs to another consumer, or by duplicate trade lines that are treated as two separate credit relationships. On the other hand, if a delinquent trade line was inadvertently assigned to another consumer's file or if a furnisher incorrectly marked a delinquent trade line as current, the error could help the consumer's score.

7. Disputing Credit Report Errors

Recognizing the possibility of inaccuracies, the FCRA gives consumers the right to dispute information they deem inaccurate with an NCRAs, a furnisher (in cases covered by the Furnisher Rule), or both. The FCRA requires NCRAs and furnishers to "reinvestigate" information contained in a consumer's credit file when the consumer disputes its accuracy.⁶⁴ Further, the statute gives consumers several mechanisms for obtaining the information contained in their credit files in order to review them for possible inaccuracies. Consumers can get a free credit report, that is, obtain a file disclosure for free, (i) once every 12 months from the NCRAs and nationwide specialty consumer reporting agencies,⁶⁵ (ii) in connection with risk-based pricing and adverse action notices,⁶⁶ (iii) if they are unemployed and intend to apply for employment within 60 days,⁶⁷ (iv) if they are recipients of welfare assistance,⁶⁸ (v) if they have reason to believe their credit file is inaccurate due to fraud,⁶⁹ (vi) in connection with requested initial or extended fraud alerts,⁷⁰ or (vii) if permitted by state law. Consumers can also review their credit files by purchasing them directly or when they receive their credit files as part of a paid credit monitoring service subscription. Consumers sometimes also receive information from reports or copies of reports from a user such as a bank, mortgage broker, or landlord.

The CFPB estimates that as many as 44 million consumers obtained copies of their consumer file disclosure annually in 2010 and 2011—either as a result of obtaining free annual file disclosures through annualcreditreport.com (15.9 million);⁷¹ through one of many various credit monitoring services (26 million);⁷² obtaining disclosures directly from the NCRAs after receiving adverse action notices or risk-based pricing notices (approximately 1 million);⁷³ or from lenders directly or through fraud alerts, requests based on unemployment or welfare status, and where free under state law (approximately 0.5 million for this catch-all category).⁷⁴

In 2011, the NCRAs received approximately 8 million consumer contacts disputing the completeness or accuracy of one or more trade lines, public records, or credit header information (identification information) in their files.⁷⁵^h Based on these contacts, the number of credit-active consumers who disputed one or more items with an NCRAs in 2011 ranges from 1.3 percent to 3.9 percent. On average across the NCRAs, consumers filed 42 percent of their disputes online, 44 percent by mail, and

⁶³ Industry figures.

⁶⁴ 15 U.S.C. § 1681i.

⁶⁵ 15 U.S.C. § 1681j(a) (requiring NCRAs and nationwide specialty consumer reporting agencies to provide free annual reports upon request if they have been providing consumer reports to third parties on a continuing basis with respect to consumers residing nationwide for the last 12 months).

⁶⁶ 15 U.S.C. § 1681j(b).

⁶⁷ 15 U.S.C. § 1681j(c).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 15 U.S.C. § 1681j(d).

⁷¹ Consumer Financial Protection Bureau, *The Impact of differences between consumer-and-creditor-purchased credit scores: A Report to Congress*, at 9 (July 19, 2011).

⁷² *Id.* at 10.

⁷³ Industry figures.

⁷⁴ Industry figures.

⁷⁵ Industry figures.

^h This estimate counts contacts made by a single consumer to multiple NCRAs as multiple contacts.

13 percent by phone. The remainder of consumers communicated their disputes by fax, walk-ins, or other methods.⁷⁶ Many of these consumers disputed information about more than one tradeline or other item in their file, leading to approximately 32 to 38 million dispute reinvestigations.⁷⁷ This volume has declined significantly since 2007 when consumers were more active in applying for credit, particularly in the mortgage market. In 2007, a high volume year, the NCRAs received disputes on 47 to 53 million items.⁷⁸

The number of consumer dispute requests (8 million) appears high relative to the total number of consumers who see their credit files (44 million). However, the CFPB is unable to estimate a dispute rate for consumers who see their files for several reasons. First, no data is available on the overlap of disputes by consumers among the three largest NCRAs. Thus the range of unique consumers who filed complaints could be up to 8 million or substantially less if high volumes of consumers filed complaints with multiple NCRAs. Second, it is unclear how many consumers obtained copies of their credit reports or file disclosures by more than one means in a given year. Additionally, an unknown number of consumers may initiate disputes without their reports after being advised by lenders of specific negative items appearing on their reports.

7.1 Credit Bureau and Furnisher Disputes

Consumers can elect to dispute the completeness or accuracy of their credit file through the NCRA or other bureau that provided their report, directly with the furnisher who provided the disputed trade line (in cases covered by the Furnisher Rule), or both. The nature and timeframes for responses to disputes are specified in the FCRA.

Under Section 611 of the FCRA, if a consumer disputes the completeness or accuracy of his or her credit file, the credit bureau has an obligation to conduct a reasonable reinvestigation.⁷⁹ The bureau must generally complete a reinvestigation within 30 days, in which it must consider all the relevant information supplied by the consumer.⁸⁰ Moreover, it has five business days to forward the dispute to the relevant furnisher.⁸¹ The credit bureau notification to the furnisher shall include all relevant information received from the consumer.⁸² If the reinvestigation determines that the consumer's data is inaccurate, incomplete, or cannot be verified, the bureau must delete the disputed data.⁸³ Furnishers have independent obligations under the FCRA, after receiving notice from a CRA of a consumer dispute, pursuant to Section 611 to conduct an investigation into the disputed information, to review all the relevant information provided by the CRA, and to report the results of the investigation to the CRA.⁸⁴

As stated above, consumers can also dispute the accuracy of information directly with the furnisher of the information. Under the Furnisher Rule, a furnisher must conduct a reasonable investigation of a consumer's dispute about his or her liability for a debt to the furnisher, the terms of the debt, the consumer's performance concerning the account at issue, or "other information contained in a consumer report regarding an account or relationship with the furnisher that bears on the consumer's credit worthiness, credit standing," or other credit reporting factors.⁸⁵ The furnisher also must "review all relevant information provided by the consumer" and complete an investigation and report the results back to the consumer in the same time frame as if the dispute was sent to a consumer reporting agency.⁸⁶ If the investigation finds furnished information was inaccurate, the furnisher must promptly notify each CRA that received the information of its determination and provide corrected information.⁸⁷

7.2 Trade Line Dispute Rates

The NCRAs see variations in dispute rate by furnisher, account status, and industry. The dispute rates for the active trade lines among the 100 largest furnishers

⁷⁶ Industry figures.

⁷⁷ Industry figures.

⁷⁸ Industry figures.

⁷⁹ 15 U.S.C. § 1681i(a)(1)(A).

⁸⁰ 15 U.S.C. § 1681i(a)(1)(B)–(C) and (a)(4).

⁸¹ 15 U.S.C. 1681i(a)(2)(A).

⁸² 15 U.S.C. 1681i(a)(2)(B).

⁸³ 15 U.S.C. 1681i(a)(5).

⁸⁴ 15 U.S.C. § 1681s–2(b); 12 C.F.R. pt. 1022, App. E.2b

⁸⁵ 12 C.F.R. § 1022.43(a).

⁸⁶ 12 C.F.R. § 1022.43(e)(3).

⁸⁷ 12 C.F.R. § 1022.43(e)(4).

generally fall within a range between 0.05 percent and 2.0 percent.⁸⁸ The dispute rate reported by the NCRAs on delinquent trade lines not yet in collections is approximately 1.1 percent.⁸⁹ Dispute rates for specific industries vary widely as well. Some of this variation may be due to variations in data quality controls at individual furnishers. Other differences may simply be due to the fact that some trade lines and industries, by their nature, are likely to generate more disputes from consumers than others. One would expect, for example, that consumers would be more likely to challenge trade lines with reported delinquencies or collections actions than trade lines that only reflect positive information. Likewise, one would expect higher dispute rates in credit categories where delinquency rates are high (*e.g.*, on subprime loans as opposed to prime loans).

Figure 3 describes the average trade line dispute rates for different types of furnishers.⁹⁰

Figure 3: Dispute Rates By Industry Type

Industry Type	Disputes/Year per Active Trade Line
Bank Card and Retail Card	0.17%
Finance Companies ⁹¹	0.19%
Mortgage	0.21%
Auto	0.27%
Student Loans	0.29%
Collection/Debt Buyers	1.06%

Collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines—four times higher than auto and five times higher than mortgage dispute rates. Collections and delinquent trade lines also reflect a disproportionate percentage of all accuracy disputes by consumers with the NCRAs. Almost 40 percent of all consumer disputes at the NCRAs, on average, can be linked to collections.⁹²

Multiple factors likely converge to generate a high volume of collections item disputes. First, in contrast to other types of trade lines, 100 percent of collections trade lines correspond to negative information on a consumer's credit record. Consumers have a greater incentive to dispute information in a credit file that harms their credit record than information that favorably reflects their ability and willingness to pay back a loan.

Both the discontinuous nature of consumers' relationships with debt collectors (the collector has limited interest in a long-term relationship with the consumer) and the collections industry's data management practices also may contribute to increased disputes.⁹³ Collections debt can be placed with third-party collection agencies or sold to debt buyers multiple times. With each assignment or sale there are risks of account data being compromised or lost, and with multiple transfers, the risk of errors may increase. Debt buyers and debt collectors may lack the original documentation (*e.g.*, consumer applications, statement showing last payment made, charge-off statement) underlying a debt, contributing to mistakes. Additionally, other than the sale of mortgages, consumers generally are not required to be notified when debt is sold or assigned to a collection agency, so they may not associate the entity reporting negative trade line information with the name of the original creditor account.⁹⁴ While the industry's standard Metro 2 data furnishing format has a field for debt collectors to report the originating creditor associated with the debt, collectors may not always report the field. Separately, some consumers may knowingly (or with the encouragement of certain credit repair organizations) dispute valid collection items or judgments in the hopes of removing them from their credit files and increasing their credit scores.

Below, Figure 4 contains the average dispute rates of the top 100 furnishers to two NCRAs in 2011 by furnisher size.

⁸⁸ Industry figures.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Finance companies, also known as personal finance or sales finance companies, are non-depository institutions that generally provide loans to higher risk borrowers, often to purchase retail items. An example might be a company that partners with a home retailer to provide a loan to a consumer to purchase bedroom furniture.

⁹² *Id.*

⁹³ See The Federal Reserve, *An Overview of Consumer Data and Credit Reporting* (2003), at). 69. See also Jennifer Steinhauer, "Money & Medicine; Will Doctors Make Your Credit Sick?" *The New York Times*, February 4, 2011.

⁹⁴ See 12 C.F.R. § 1026.39 (2012).

Figure 4: Trade Line Dispute Rates By Furnisher Size

Furnisher Size	Average Percent of Trade Lines Disputed per Year
Top 10	0.20%
Top 11–25	0.26%
26–50	0.35%
51–100	0.47%

Source: Industry statistics.

As indicated earlier, the Top 10 furnishers provide a majority of each of the NCRAs' trade lines. These furnishers are multi-line banks and financial services providers with high proportions of prime borrowers. Higher dispute rates among the smaller furnishers (ranked by the number of trade lines each furnisher reports) may reflect that more of them are collection agencies (a fragmented industry including many small firms) or have proportionately larger subprime lending portfolios (accounts that are more likely to be delinquent and to generate consumer disputes).ⁱ

At present, the NCRAs do not appear to regularly measure dispute rates of furnisher trade lines at the industry or individual furnisher level and they do not all measure dispute rates in a consistent fashion.

7.3 Resolving Trade Line Disputes: The e-OSCAR System

The NCRAs handle most consumers' trade line disputes they receive through an electronic information network called e-OSCAR (the Online Solution for Complete and Accurate Reporting). The e-OSCAR network began in 1993 as a system run by the Associated Credit Bureaus, now the CDIA. Four companies built and still own e-OSCAR—Equifax, Experian, Innovis, and TransUnion. The current Internet-based system was created in 2001; the CDIA created the Online Data Exchange (OLDE) in 2006 to independently operate the system. In 2011, 16,000 furnishers connected to these companies through e-OSCAR.⁹⁵

In the last three months of 2011, 33 percent of e-OSCAR disputes related to claims by a consumer that an account in their file did not belong to them, either because of error or identity theft. In another 15 percent of disputes, consumers claimed the information on a trade line was inaccurate. About 4 percent of consumer disputes involved the reporting of a consumer's current account balance, and another 4 percent of disputes involved collections items about which consumers claimed not to be aware.⁹⁶

7.3.1 The Dispute Process

According to the NCRAs, trade line disputes handled by them pass through five steps.

1. *Consumer initiates a dispute and reason codes are assigned:* The process starts with a dispute by a consumer to one of the NCRAs. Consumers can initiate a dispute online, by phone, by mail, by fax, or in person. When a consumer initiates the dispute online the consumer may provide a narrative description of the nature of the dispute and why the consumer believes the information contained in the credit report to be in error. The consumer must also select one or two reason codes from a list of 29 different codes that characterize the nature of the dispute.⁹⁷ In mail and phone disputes, NCRA representatives will assign the dispute codes they deem appropriate and may occasionally supplement the dispute code with a narrative statement.
2. *NCRA internally reviews dispute:* The NCRA then investigates the dispute request using proprietary decision rules to see if it can resolve the dispute internally without having to forward the dispute to the furnisher. For example, the NCRAs will internally resolve disputes they consider frivolous such as resub-

ⁱIt should be possible to identify furnishers who are disproportionately responsible for tradeline disputes relative to furnishers of similar type and size. For example, using a common measure of disputes per 1000 trade lines reported, a credit card issuer's dispute rate could be compared to the average dispute rate for credit card issuers, and an overall dispersion of dispute rates. Furnishers who are outliers (*i.e.*, have high dispute rates) in industries that have a high dispute rate dispersion among furnishers may be appropriate targets for a process review that may yield sources of reporting inaccuracies, data omissions, or billing errors that result in a high level of credit bureau disputes. Helping to identify and address these furnishers' root causes of disputes might yield a reduction in disputes and improvements in credit file accuracy.

⁹⁵Industry figures.

⁹⁶*Id.*

⁹⁷*Id.*

mitted but previously resolved disputes where no new information is provided.^j Separately, an NCRA may resolve a dispute in a consumer's favor under certain circumstances, such as if the documentation provided by the consumer "can be reasonably verified as authentic."⁹⁸ Disputes over the consumer's identifying information (*e.g.*, name, address, SSN) also tend to be resolved internally. In such cases, an NCRA may simply adopt the consumer's correction or use internal or external identity verification tools to evaluate the consumer's claim. The NCRA's resolved or rejected an average of 15 percent of the disputes they received in 2011.⁹⁹ The CFPB does not know what percentage of these resolutions was in the consumer's favor.

3. *Dispute sent to furnisher:* If the dispute cannot be resolved internally, the NCRA will forward the dispute through e-OSCAR to the appropriate furnisher with dispute codes through an electronic form called automated consumer dispute verification (ACDV). Supplementing the dispute code(s), the ACDV can provide up to 255 characters of consumer-supplied text describing the dispute in a free-form text field. In 2011, free-form text was added, on average, to 26 percent of the NCRA's e-OSCAR transmission, although the percentage varies from NCRA to NCRA based, in part, on whether the online form contains a text field. Consumers can provide supplementary documentation (such as billing or other records or letters to and from creditors) regarding a dispute via mail to an NCRA, but it appears the NCRA's generally do not pass these documents along to furnishers.
4. *Furnisher investigates and responds:* The data furnisher investigates the ACDV request and routes back the response through e-OSCAR to the requesting NCRA. This typically involves a furnisher representative reviewing the furnisher's electronic records of the disputed account and then selecting a response that reflects what the furnisher's records have shown. In e-OSCAR, furnishers can make four different types of responses: (a) verify account as accurate, (b) modify account/trade line information as indicated, (c) delete account, or (d) delete account due to fraud.

The CDIA reports that in a recent 120 day period in 2012, 22 percent of furnisher responses indicated that the initial data was accurate (rejecting the consumer's claim), 61 percent modified a trade line or other piece of information, 13 percent deleted a trade line or other piece of information, and 0.5 percent deleted a trade line or other piece of information due to fraud. The NCRA's deleted or modified, as indicated by the consumer, 4 percent of disputed trade lines because the furnisher did not provide a response within the statutory time frame.¹⁰⁰ The high percentage of furnishers who modify disputed data should be qualified by noting that many larger furnishers will automatically update a trade line with the latest account information (*e.g.*, a new balance) upon receiving a dispute, regardless of whether the furnisher deemed reported information to be inaccurate; thus, a modification may not necessarily reflect concurrence with the consumer's dispute.¹⁰¹

As revealed in Figure 5 below, these figures are similar to those reported by the CDIA to the FTC and the Federal Reserve Board for the first five months of 2004 in those agencies' 2006 study on the FCRA dispute process and in GAO testimony to Congress in 2003.¹⁰² The most significant change has been that the percentage of trade lines that were deleted as a result of furnishers not responding to disputes within 30 days has dropped from 16 percent in 2002 to 4 percent in 2011.

^jOne NCRA reported that approximately 16 percent of disputes do not result in an e-OSCAR transaction because the consumer had previously submitted an identical dispute and the NCRA had recently forwarded the dispute to the furnisher, who had investigated and verified the data.

⁹⁸The Federal Trade Commission and the Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, at 14 (August 2006).

⁹⁹Industry figures.

¹⁰⁰Industry figures.

¹⁰¹The Federal Trade Commission and the Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, at 24 (August 2006).

¹⁰²Stephen J. Hill, GAO Director of Financial Markets and Community Investment, Statement for the Record before the Committee on Housing, Banking, and Urban Affairs, U.S. Senate, "Consumer Credit: Limited Information Exists on the Extent of Credit Report Errors and their implications for Consumers, GAO-03-1036T (July 31, 2003).

Figure 5: Dispute Results

Result	Percent of Disputes		
	2011 (120 Day Period)	2004 (First 5 months)	2002 (First 3 quarters)
<i>Data modified per furnisher's instructions</i>	61%	54%	27%
<i>Information verified as reported</i>	22%	22%	46%
<i>Data deleted per data furnisher's request</i>	13%	18%	10.5%
<i>Data deleted due to no furnisher response</i>	4%	6%	16%
<i>Trade line removed due to fraud</i>	0.5%		

Sources: For 2011: Stuart Pratt, President, CDIA; For 2004: The Federal Trade Commission and the Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*; For 2002: Richard Hillman, GAO-03-1036T.

5. *Referral*: If an account is modified or deleted, the furnisher is supposed to send copies of its modification to each CRA with whom the data furnisher has a reporting relationship. This way all the NCRAs can meet their responsibilities to update the consumer's credit files, where applicable.

The CFPB has been unable to estimate the volume of disputes filed directly with furnishers. To date, the NCRAs report little impact from the Furnisher Rule on their volumes of consumer disputes.¹⁰³

7.3.2 Limitations of the e-OSCAR Process

Consumer advocates have raised compliance concerns with respect to the adequacy or completeness of these transmissions to furnishers, which are principally dispute codes along with supplementary text added in a minority of cases. The FCRA requires NCRAs to send the data furnisher a notice that includes "*all relevant information regarding the dispute that the agency has received from the consumer.*"¹⁰⁴ The NCRAs argue that most disputes can be fairly and completely summarized using the e-OSCAR numeric codes. The e-OSCAR system currently does not permit documents provided by consumers, such as statements or letters from creditors, to be forwarded to furnishers as attachments. Industry sources cited technological limitations, challenges evaluating the authenticity of consumer documents, and privacy concerns as impediments to adding such attachments.

Consumer advocates further argue the NCRAs have a systemic bias that defers to furnishers' records in determining whether or not disputed information is accurate.¹⁰⁵ They note that if a furnisher verifies previously reported information as accurate, the NCRAs will generally accord such a response greater weight than the consumer's claims that the information is inaccurate. Likewise, when the furnisher responds that the account should be modified, deleted, or deleted due to fraud, the NCRAs generally implement these responses as received. The advocates argue that NCRAs do not independently validate information contained in furnishers' records.

However, the NCRAs have had occasion to adopt policies to suppress information that is subject to high levels of disputes. For instance, one NCRA developed special policies to address problems with certain disputes about small dollar collection items.

7.4 Public Record Disputes

Consumers' disputes regarding the accuracy of public records in their personal credit files are not investigated through the e-OSCAR system. The NCRAs initiate their investigation of a public record dispute by again collecting the public record directly from the government source or, at their election, contracting for LNRDRS to conduct this re-checking of the record. LNRDRS collects a combined 1–2 million public records annually at the NCRAs' request.¹

When forwarding a dispute verification query to LNRDRS, the NCRAs provide the company one of up to 24 reason codes explaining the consumer dispute. In about 60 to 70 percent of the requests that LNRDRS receives from the NCRAs for

¹⁰³ In-person briefing for CFPB staff on e-OSCAR with David Vaughn, General Manager, Central Source LLC and Stuart Pratt, President, CDIA (December 5, 2011).

¹⁰⁴ 15 U.S.C. § 1681i (a)(2)(B) (emphasis added).

¹⁰⁵ National Consumer Law Center, *Automated Injustice: How a mechanized dispute system frustrates consumers seeking to fix errors in their credit report*, at 23 (January 2009).

¹ It is not known how many consumers generate these 1–2 million public record reviews as the average number of disputes per consumer file is unknown. It is also possible that consumers dispute the same public record with multiple NCRAs.

verification, the consumer asserts that the public record is not his/hers. In another 20 to 25 percent of the disputes, a consumer asserts that he or she has paid the judgment or lien.¹⁰⁶

In response to a dispute verification query related to the status of a public record, LNRDRS will typically send a data collector to the public record source to re-check the record and look for updates. LNRDRS will then report one of three statuses back to the NCRA: (1) status has changed (*e.g.*, lien paid off); (2) status is unchanged (*e.g.*, current record remains most accurate); or (3) unable to verify. LNRDRS does not verify the content of the underlying public record as accurate or determine if an NCRA appropriately linked the record to a consumer. In the case of public records, the NCRA retains responsibility for determining whether a public record should or should not be attached to a consumer's file.

According to LNRDRS, it performs public record re-checks at the request of the NCRA, typically within five business days. LNRDRS reports that in 99.5 percent of all dispute verification queries it handles on behalf of the NCRA, it is able to locate the record at issue, re-check it, and respond to the request. Time lags are a factor in many public record complaints as it reportedly can take, on average in some state courts, two months between the time of a judgment and its transcription into a public record.¹⁰⁷

8. Monitoring and Measuring Credit Reporting Accuracy

In consideration of the importance of data accuracy to consumers and to decision makers using credit reports, there have been several recent initiatives to measure credit report accuracy.

8.1 *The FTC's National Study of Credit Report Accuracy*

The FTC is expected soon to complete a decade-long study on credit report accuracy that the agency was mandated to undertake in FACTA. At the end of 2012, the FTC expects to issue its fifth interim report of its "National Study of Credit Report Accuracy." The FTC expects to issue a final report in 2014. It will attempt to estimate the proportion of credit files that contain material errors, identify the main types of errors and their frequency, as well as their impact on consumers' credit scores and hence the errors' impacts on affected consumers' access to and cost of credit. To accomplish this, the study has recruited 1,000 consumer participants randomly selected from across the country who have reviewed their reports from the NCRA with experts who help them understand their report, identify errors, and distinguish material from non-material errors (in terms of potential impact on the consumers' credit scores). Identified errors have been submitted to the respective NCRA as disputes for resolution. Reinvestigation resolution results will be indicative of the overall error rate of trade lines and public records, and the percentage of credit reports containing corrected errors will indicate the overall rate of credit report accuracy. Further, credit reports containing corrections will be re-scored and differences between credit scores pre-and post-correction will provide an indication of the materiality of the credit report errors.

8.2 *Industry Research*

In May 2011, the Policy & Economic Research Council (PERC) published a report commissioned by the CDIA, which generally followed the FTC's planned methodology, with significant differences in sample selection. Further, compared to the FTC study, the participating consumers in the PERC study were not provided in-person coaching to identify errors. The PERC study found that a sample of 2,338 consumers viewing their credit reports identified potential errors in 19 percent of credit reports.¹⁰⁸ Of the potential inaccuracies, 37 percent were about "header" information that would not affect a consumer's credit score.¹⁰⁹ Consumers chose to dispute one or more pieces of trade line information for 7.4 percent of credit reports.¹¹⁰ In 45 percent of the consumer disputes, the consumers' trade lines were modified. In another 41 percent of the consumer disputes, the disputed trade lines were deleted.¹¹¹ The study defined corrections leading to a 25 point or more change in the consumer's VantageScore as a material correction that could shift the consumer's score into a different pricing tier. The resultant CRA corrections in the relevant trade line information resulted in credit score increases of 25 points or more in 0.93 percent

¹⁰⁶ Industry figures.

¹⁰⁷ *Id.*

¹⁰⁸ Michael A. Turner, PhD *et al.*, *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts*, the Policy & Economic Research Council (PERC), at 33 (May 2011).

¹⁰⁹ *Id.* at 37.

¹¹⁰ *Id.* at 38.

¹¹¹ *Id.* at 39.

of credit reports examined or 10 points or more in 1.78 percent of the credit reports examined.¹¹² Extrapolating to one estimate of the U.S. credit-scoreable population, approximately 3 million Americans would experience score increases of 10 points or more if they reviewed and disputed inaccuracies in their credit reports.¹¹³

8.3 Consumer Advocate Sponsored Research

A consumer group-sponsored study produced different results. A 2004 survey by the U.S. Public Interest Research Group (PIRG) of its own members concluded “twenty-five percent (25 percent) of the credit reports surveyed contained serious errors that could result in the denial of credit, such as false delinquencies or accounts that did not belong to the consumer.”¹¹⁴ The results of the survey must be qualified considering the small sample size (154 respondents) and the potential biases in the selection of the respondents (surveys were filled out by PIRG staff, coalition partners, friends and family).¹¹⁵

8.4 Future Accuracy Measurement and Related Metrics

Ongoing efforts to measure credit report accuracy will likely continue to rely on consumers to identify potential inaccuracies in their credit reports and to rely on the dispute resolution system to validate that inaccuracies have occurred. Because information contained in credit files originates from diverse sources such as furnishers, consumers (who respond to lender applications with certain personal information), or public records providers, there is no single source of comprehensive and reliable data regarding the precise identities of consumers or the status of their credit relationships. For this reason, efforts to measure overall credit report accuracy have necessarily involved review of credit reports and individual trade lines by consumers themselves who are most likely to know when information reported about them is correct or incorrect, although consumers may not always interpret their reports correctly.

Further, the consumer dispute process will not identify or ameliorate certain types of errors that may be associated with the NCRA matching processes. For example, it is difficult for consumers to identify when their personal information is diverted to an “orphan” file because consumers wouldn’t see such information in a file disclosure. Additionally, trade lines inaccurately associated with a consumer’s files due to mismatching of consumers with similar identifying information have high likelihoods of being confirmed as accurate by furnishers. Finally, to the extent matching processes used to compile credit reports yield different results in reports provided to users from file disclosures provided to consumers (*e.g.*, because lenders and other users may provide more limited consumer-identifying information in their inquiries) it is possible that consumers and users may not always receive the exact same information.

On July 20, 2012 the CFPB published its larger participant rule permitting it to supervise companies with annual receipts from “consumer reporting,” as defined in the rule, of over \$7 million. That rule became effective on September 30, 2012. In announcing the Bureau’s new authorities, Director Richard Cordray indicated that the agency would treat as its initial priorities in examining consumer reporting agencies for compliance with the FCRA and other consumer financial protection laws “accuracy of the information received by the credit reporting companies, their accuracy in assembling and maintaining that information, and the processes that govern error resolution.”^k The CFPB is also now accepting consumer complaints about credit reporting, giving consumers individual-level complaint assistance for the first time at the Federal level with consumer reporting agencies. Finally, as part of its supervision of large financial institutions, it is examining the consumer reporting practices of the furnishers that are responsible for a preponderance of information contained in credit reports. These efforts will give the CFPB an opportunity to further evaluate the potential roles of credit report accuracy measurements and of metrics related to the NCRAs’ and furnishers’ various business processes in improving overall accuracy in the U.S. credit reporting system. As appropriate, the CFPB

¹¹² *Id.* at 43.

¹¹³ This calculation assumes that 200 million Americans have credit reports, and of these, 32 million have files that are too thin to score. Information Policy Institute, *Giving Underserved Consumers Better Access to the Credit System: The Promise of Non-Traditional Data*, at 7 (July 2005).

¹¹⁴ Allison Cassady and Edmund Mierzwinski, *Mistakes do Happen: A Look at Errors in Consumer Credit Reports*, National Association of State PIRGs, at 4 (June 2004).

¹¹⁵ *Id.* at 16.

^k <http://www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-on-credit-reporting/>.

may consider the development and implementation of data quality and accuracy metrics to reduce risk to consumers and assure compliance with FCRA obligations.

Glossary

CDIA—Consumer Data Industry Association. The CDIA is an international trade association that represents consumer data companies including the nationwide consumer reporting agencies.

Consumer Report—Reports provided by consumer reporting agencies to lenders and other users. The FCRA defines a consumer report as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 604 [of the FCRA].” The FCRA provides a limited number of exclusions to this definition.

Consumer Reporting Agency—The FCRA defines a consumer reporting agency (CRA) as “any person, which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.”

Credit File/Consumer File—The information about a consumer that is contained in the databases of credit reporting agencies. According to the FCRA, the term “file,” when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how that information is stored.

Consumer File Disclosure—Information provided to a consumer when that consumer requests a copy of the information in his or her file at the NCRA.

Credit Report—Popular term for consumer reports used or purchased by lenders.

Credit Reporting Agency/Credit Bureau—Popular term for consumer reporting agencies in the business of providing consumer reports to lenders.

ECOA—Equal Credit Opportunity Act.

e-OSCAR—The Online Solution for Complete and Accurate Reporting. Web-based computer software system used by Equifax, TransUnion, Experian, and Innovis to communicate with furnishers about consumer disputes.

FCRA—Fair Credit Reporting Act.

Furnisher—Generally refers to an entity that provides information relating to its own transactions or experiences with consumers to one or more consumer reporting agencies for inclusion in consumer reports.

Inquiry—A request for a consumer report.

Metro 2[®]—The industry standard format for furnisher data contributions created in 1997 by the CDIA on behalf of Equifax, TransUnion, Experian, and Innovis.

NCRA—Nationwide consumer reporting agency. For the purpose of this paper, an NCRA means Equifax, Experian, or TransUnion.

Public Record—Generally, a record that a governmental body is required to maintain, and which must be accessible to scrutiny by the public. Definitions of public records can vary by federal, state, or local jurisdiction.

Reinvestigation—An investigation by a consumer reporting agency or a furnisher into the accuracy or completeness of information in a consumer’s credit file in response to a consumer dispute of such information.

Trade Line—Information furnished by a creditor to a consumer reporting agency that reflects the consumer’s account status and activity. Trade line information includes the name of companies where the applicant has accounts, dates accounts were opened, credit limits, types of accounts, balances owed and payment histories.

Appendix

e-OSCAR Dispute Codes

The 29 e-OSCAR dispute codes are as follows:

- Not his/hers
- Belongs to another individual with same/similar name
- Not aware of collection
- Late due to change of address—never received statement
- Settlement or partial payment accepted

- Claims paid the original creditor before collection status or paid before charge-off
- Credit limit and/or high credit amount incorrect
- Included in the bankruptcy of another person
- Claims account closed
- Claims account closed by consumer
- Contract cancelled or rescinded
- Account included in bankruptcy
- Claims active military duty
- Insurance claim delayed
- Account involved litigation
- Claims victim of natural or declared disaster
- Claims account deferred
- Not liable for account (*i.e.*, ex-spouse, business)
- Account reaffirmed or not included in bankruptcy
- Claims true identity fraud, account fraudulently opened
- Claims account take-over, fraudulent charges made on account
- Disputes dates of last payment/date opened/date of first delinquency/date closed
- Disputes present/previous account status/payment history profile/payment rating
- Disputes special comment/compliance condition code/narrative remarks
- Disputes account type or terms duration/terms frequency or portfolio type disputed
- Disputes current balance
- Claims company will change
- Claims company will delete
- Consumer states inaccurate information

Senator McCASKILL. Thank you.

I'm going to start a tradition on this committee. Because I'm thrilled that other members of the Committee have come, I'm going to defer my questioning until after all the members have had an opportunity to question, following the lead of Senator Nelson in his Committee on Aging. He's doing the same thing, and I thought that was a good example he set for all of us.

So I will turn to Senator Heller first for questions.

Senator HELLER. Madam Chairwoman, thank you.

Mr. Stone, I have a couple questions for you regarding the amount of information that you guys collect, basically in real time, and that your examiners are going to financial institutions and are asking for customer files, purchasing credit reports, asking banks to submit consumer accounts, and on a voluntary basis they're collecting data when a consumer files a complaint with the CFPB.

Here's my question: when the CFPB purchases credit reports and when they ask banks to submit customer accounts, what is the CFPB doing to ensure that this information does not become identifiable?

Mr. STONE. There are two different processes at work here. We purchase a set of anonymized credit report data, as do the Federal Reserve and the New York Fed, for research purposes. It's a sample of consumers who we can track over time who are representative of the general population, and so we can see how consumers are doing. There is no information about the individual consumer, such as name or address, so there is no way that that information could be traced back to the individual consumer.

We have separate databases, which we obtain through supervision, such as one that is also used by the OCC to track the credit card industry. That database is similarly anonymized. It does provide account-level data, but we don't know who the individuals are.

Senator HELLER. It's also my understanding that the CFPB collects all this consumer data and assigns a unique number to that file, and obviously connected with that file would be an individual's American Express card, Mastercharge card, Visa card, student loan accounts, checking accounts, mortgages, and, frankly, your credit report.

So with all that information that's contained in these accounts and the amounts, is it easy to identify these individuals?

Mr. STONE. We have done everything we possibly can to not be able to identify them. So the unique number is simply to allow us to track the existence of a particular person for data analysis purposes so when new trade lines come in or other data is appended to that data set we can marry them to the same individual. We never see information that would allow us to identify the individual, and we never receive information that would identify their card or other accounts.

Senator HELLER. What keeps the agency from sharing this information with other government agencies?

Mr. STONE. In the case of the first type of database, we have the information under license solely for research purposes, and we would only share findings from the analysis of this information; our license agreements with the providers prohibit sharing of the underlying data. In the case of data collected through supervision, we accord these the protections we place on all confidential supervisory information.

Senator HELLER. Thank you.

To the other witness: Thank you for being here also. When you have credit histories for over 200 million people—you touched on this a little bit in your testimony about what an individual can do—we sit here and ask what the agencies can do—to make sure that these reports are accurate. Explain again what an individual can do and what it would take?

In other words, I don't think the average American today knows that they can check on their credit history or that they have influence with the CRAs out there. Please explain again, what's the best step a consumer can take to protect their credit records?

Ms. MITHAL. Several steps. First, we recommend that they go to *annualcreditreport.com*. Each of the three major credit bureaus must provide a copy of their free annual report to each consumer once a year. So we think that's the best way to proactively take a look at their credit report, try to spot any errors, and if they see any errors they should dispute those errors with the credit bureau.

Senator HELLER. Is there an expense to that?

Ms. MITHAL. No. No, there's no expense to that.

One of the things that we try to do at the FTC is we try to educate consumers about that process. So we have a lot of materials on our website about how to file disputes. We have sample dispute letters. And as I mentioned in my testimony, we try to get out to local organizations so that people on the ground who are really try-

ing to help consumers will be able to have those tools and help consumers that need the help.

Senator HELLER. What can we do more? What can we do more to let consumers know that they have access to this kind of information?

Ms. MITHAL. I think we can do more outreach. I think we can always do a better job of reaching out to community organizations, financial institutions, and others to try to get the word out to consumers, so that—currently only 20 percent of the consumers may be checking their credit reports regularly and we need to get that number higher.

Senator HELLER. I agree, I agree.

Thank you, Madam Chairwoman.

Senator McCASKILL. Senator Schatz.

**STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you, Chair McCaskill.

Good afternoon. Thank you for testifying.

Mr. Stone, it's not clear to me at all that consumers have any degree of control over the information that's gathered about them, how it's used and how it's shared. And even with the right to a free annual credit report, consumers seem to lack the basic knowledge of how this information is going to be used by lending institutions, employers, landlords, and insurance companies.

If a consumer had access to his or her credit report, would the consumer be able to tell what his or her credit score is?

Mr. STONE. Right now the FCRA gives the consumer the ability to purchase a score, but you don't automatically get a score when you obtain your free annual credit report at *annualcreditreport.com*.

Senator SCHATZ. So given the sort of lack of basic understanding among the general public about the implications of having flaws on your credit report and therefore a lower credit score, doesn't it make sense to have this as an annual free package, a credit report with your score, so you can better understand how creditworthy you are and how to remedy whatever problems there may be?

Mr. STONE. I can certainly say that having a credit score is helpful and there is a nice piece recently from the Federal Reserve Bank of Boston that showed that people who knew their credit score were able to make better decisions about credit.

As far as having access to a credit score be free as part of the package, I think right now that's a legislative issue that I really can't comment on.

Senator SCHATZ. Thank you.

Another question for you, Mr. Stone. As you outlined in your testimony, the CFPB report identified several flaws in the credit dispute procedures that CRAs have in place. As you mentioned 85 percent of consumer disputes to data furnishers—excuse me. CRAs automatically send 85 percent of consumer disputes to data furnishers without conducting any investigation themselves. Second, CRAs accept the determination of the furnisher without requiring any documentation or evidence.

I understand CFPB has a successful mechanism for handling consumer complaints with respect to mortgage lending and credit cards. Perhaps you could briefly explain how that process works and whether it might be applicable to credit reports?

Mr. STONE. Sure. Thank you, Senator. We rolled out a process for accepting credit reporting complaints in October of last year that is working essentially on the same platform as our complaint-taking in mortgage and credit cards. The way that system works now is we receive the complaint, we verify that the consumer has a bona fide relationship with the entity about whom the complaint is, and then forward it to that company. So we do that now with credit reporting complaints.

As of the end of April, we've received over 10,000 credit reporting complaints and we've obtained resolutions on most of those. There's about a 60-day lag that we allow for resolutions.

Senator SCHATZ. OK. Talk to me about these specialty CRAs that compile and share consumer data without sufficient oversight? I understand both FTC and CFPB have begun the process of, would it be correct to say, inventorying who they are and how they're operating? Maybe both of you could articulate what the process is going to be to kind of inventory who these institutions are, how they're operating, and how they're going to fit into either the existing or future regulatory framework?

Mr. STONE. Sure. Shall I start? There are a number of so-called nationwide specialty consumer reporting agencies that maintain national databases on things other than credit. An example would be auto driving records. Another would be checking accounts. Another would be tenant rental history.

Senator SCHATZ. Excuse me. Does the consumer have any right to know what this information is or who it's being transmitted to?

Mr. STONE. All of the same rights that are accorded consumers with respect to the credit reporting agencies also are accorded under the Fair Credit Reporting Act to these others. So it includes the right to dispute, it includes the same right to obtain a free copy each year of your consumer report. In fact, last year the CFPB published a list of who these national specialty consumer reporting agencies are, where to go to get their free annual reports, and how to dispute. Also, we sent letters to a few of those companies that did not appear to be adhering to all of the requirements to make the free reports available or to make it clear how to dispute. So we certainly treat those as part of our FCRA oversight responsibilities.

Senator SCHATZ. Thank you.

Ms. MITHAL. I'll just add one thing. We actually do treat the nationwide specialty CRAs very similarly to how we treat the big three. So for example, last year we sued a CRA that was engaged in employment background screening, and they were providing employers with inaccurate information. So for example, it might look like I have a criminal record, but that record had actually been expunged and they hadn't reported the expungement to the employer. So we sued that company and we were able to get \$2.6 million in civil penalties.

We also issued warning letters to data brokers that engage in tenant screening. So they compile information about rental histories and sell it to landlords. We sent them letters saying that

they were likely subject to the FCRA and if they weren't maintaining accuracy of this information and allowing dispute rights they were likely violating the FCRA.

Senator SCHATZ. Thank you.

Senator McCASKILL. Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chairman. Thank you for holding this hearing. I've actually heard a trail of tears in my state about this problem. I met with a number of the victims. We've had anyone from a math teacher who's gotten ripped off to a small town jewelry store owner who actually started with a credit report that reflected that she'd missed three mortgage payments. It was completely inaccurate. And then what happened was that it affected her interest rates on her credit cards, her auto insurance went up, and it ultimately affected her business.

Our office has personally been handling a number of these cases where people unbeknownst to them have an error on their report and then it affects them in their rates. Many of them, it takes a year or 2 years to actually get back to where they were.

So it's a ridiculous situation for my mind, in this day of technology and accountability, that shouldn't be happening. I appreciate your work on this. I've actually a few months ago sent a letter to the CEO's of the major credit reporting agencies asking them to fix this. We're still working through this with them. I appreciate the updates today, but clearly this isn't still solved.

Mr. Stone, you mentioned in your testimony that CFPB has adopted a rule just last July extending the supervision authority to cover large credit reporting companies. Your testimony noted that there are three key factors impacting credit reporting accuracy: one, information provided to the companies; two, how the credit reporting companies process it; and then, three, how they handle customer disputes.

Have you started this supervision program in this market of the credit reporting agencies, and which of these three factors do you think needs the most improvement?

Mr. STONE. I would like to point out we actually started examining non-CRA's prior to the creation of our larger participant rule. So we actually have been looking at furnishing practices, the first of those three legs, for some time and have actually found some practices that we've obtained corrections for.

The other two obviously are part of something that the consumer reporting agencies cover and our supervision program in this market is under way.

Senator KLOBUCHAR. So is it going on right now and you're identifying what the problems are? What's happening?

Mr. STONE. Yes.

Senator KLOBUCHAR. OK. And then what happens next? Are you going to put out some best practices or find out if people are violating the rules?

Mr. STONE. Each of these processes—and I can talk maybe a bit about the dispute process—has a number of components associated with them. The dispute process involves both the CRAs and fur-

nishers, and consumers can file a dispute with both the CRA and directly with the furnisher. We want to make sure that both all of the relevant information that the consumer provides, is being forwarded on to the furnisher when it's a furnisher issue, and that the furnisher does conduct a thorough investigation.

Senator KLOBUCHAR. How about when an error is found? Is the agency doing something to help them get back on their feet? I know there are lawyers in my state that are starting to create practices around this because of the errors, so that they can get reimbursement for these people.

Mr. STONE. One of the key things to look for is when an error is found, to make sure that the system of recordkeeping inside the creditor, servicer, or whoever the furnisher is, maintains the correction. Sometimes in the past a correction is reported, but the underlying recordkeeping system didn't include the correction, and so the next time, the next month when the data's refreshed, it can go back. So we definitely want to look for a thorough incorporation of the correction in the records of the furnisher.

Senator KLOBUCHAR. Thank you.

Is it "MITH-al" or "Mith-ALL"?

Ms. MITHAL. "MITH-all."

Senator KLOBUCHAR. "MITH-all," very good. I've got a harder name than that, so don't worry about it.

In your view, are the credit reporting agencies doing enough right now? That was what my letter was about? One of the common complaints is that when consumers do dispute an error, they will take it in, the credit reporting agencies just take it in, but then we don't even know if they're doing any real investigation. Do you think that's a real problem?

Ms. MITHAL. I think, in answer to your first question, I think we all could be doing more to improve accuracy of credit reports. I think credit reporting agencies need to make sure that they're living up to the standards under the law of maintaining maximum possible accuracy of credit report information. I think furnishers need to do a good job of ensuring that they're only providing information when they have a reasonable basis to believe it's accurate. I think we as policymakers can do a better job of educating consumers.

I think, to your second question, if the consumer reporting agency is not doing a reinvestigation, if they're not passing on the information to the furnisher, if they're not promptly reporting back to the consumer and correcting the error, then they would be in violation of the law and we'd certainly want to hear about a company that was doing that.

Senator KLOBUCHAR. OK, very good.

Thank you to both of you. I'm sure you'll be hearing more about this. I've assured—I just told the people in my State we're not going to keep letting this go. So thank you.

Senator McCASKILL. Senator Nelson.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Madam Chairman.

Well, I can give you a personal example about the excellent questioning of my colleagues here. Lo and behold, when I was going to do some refinancing a couple of years ago on a home, I suddenly found that I had purchased a refrigerator in Wisconsin and hadn't paid on it for over a year. Well, of course, you know, that held up the financial transaction. We got it all straightened out, but it took some haranguing to get it—

Senator KLOBUCHAR. Madam Chair, there are a lot of Nelsons in the Upper Midwest.

Senator NELSON. That's true, probably a lot of Bills as well. [Laughter.]

Senator NELSON. Then about a year later, I'm getting ready to purchase and getting the financing on another home that Grace and I had moved in, and we're ready to close and, lo and behold, the same thing that was eliminated by—it was one of the three. Do we know the name? One of the three credit reporting agencies. They never had taken it off, and there it is and we're ready to close.

Of course, not paying on a bill for over a year is going to drastically affect your credit score, even though I'd cleared it up a year ago that this wasn't me. It was a mistake in identity.

So I want you—if this is happening to me, what is it doing to the average citizen out there on the street that doesn't know how to go about straightening out something like this?

I want to ask you about something else. Under the Fair Credit Reporting Act, all credit files should be reported accurately; isn't that correct?

Mr. STONE. That's correct.

Senator NELSON. OK. If a person goes into foreclosure, someone—indeed, that will be noted and it will affect their credit, will it not?

Mr. STONE. Absolutely.

Senator NELSON. Then I would ask both of you all as the regulators, why are people who don't go into foreclosure, but go into a short sale, which the government, this government, under law that we have passed, actually encourages and even encourages with some tax incentives, why is a short sale being coded in the credit reporting agencies the same as a foreclosure? And it's happening in my State right now. Why?

Mr. STONE. Short sales is a relatively new phenomenon and it is important that it be reported accurately because Fannie, Freddie, the GSEs, and the FHA treat those differently in their underwriting system. So if they can't distinguish between a short sale and a foreclosure, somebody who's had a short sale will be treated as if they had a foreclosure.

The coding of this information is coming into the three credit bureaus from furnishers in identical files, but it's our understanding that the problem lies somewhere between how the different bureaus code this information in their reports and how the GSEs' underwriting systems interpret these reports. This is something we've talked to the Consumer Data Industry Association about and you can ask Mr. Pratt, the next witness, a little bit more.

Senator NELSON. I don't know what you just said. My question was, why is a short sale being coded the same and you all as the

regulators are allowing it to be coded the same as a foreclosure, which is a completely different breed of horse?

Mr. STONE. Right now there is a special treatment for short sales that does code them differently, but not in the same way that other kinds of ends of loans are coded. This is a technical aspect that I think Mr. Pratt will be able to shed more light on. But right now some of the credit reporting agencies do report this information accurately from the information they receive, but in other cases—

Senator NELSON. They haven't been in Florida. And you're the Consumer Finance Protection Bureau. You're supposed to be protecting consumers. You're supposed to be seeing that fair trade is going on. Here we have a new phenomenon. We have a lot of mortgages under water. People still want to sell their homes. You get into a State like mine where 40 percent of all the mortgages in the State are under water, and you want commerce to continue. You want to get the economy to recover.

So why then penalize the poor person—and we've seen this over and over in Florida. Why penalize them because they've done something we've encouraged and then they have their credit completely blown, and they can't refinance?

Mr. STONE. We agree with you, Senator, that foreclosures and short sales should be clearly distinguished in credit reports. We've become aware of this problem and we're trying to track down exactly how to fix it. And we'll have to be back to you on how we progress.

Senator NELSON. Here's what I would encourage you to do, since you're supposed to be protecting the consumer, and so are you, too. I have just called this attention to your respective chairmen, Mrs. Ramirez and Mr. Cordray, and I would appreciate it if you all would stop this nonsense and get it coded correctly so that our people are not being penalized. Thank you very much.

Ms. MITHAL. Thank you.

Senator MCCASKILL. What I want to get at is this free credit report problem that we thought we'd solved. Sitting here, I thought I would pull up *freecreditreport* on my handy-dandy little Apple gadget here. Of the 15 responses to "free credit report" on my Google search, 8 of them represented one company, owned by one of the three credit reporting agencies.

What was really disconcerting about this is what they've clearly done is they've gone from marketing primarily *freecreditreport.com*—that's the company that's owned by Experian, I believe—they've gone from marketing that to now marketing "free credit score," to get around us telling them, you can't do this any more, you can't rip people off and act like you're giving them something free when you're not, when in reality they can really get it for free.

So I don't know why this is legal, this page, because it says "Get your free credit report delivered in two days." So when I was up in my office a few minutes ago, I tried to do that. Well, they want my e-mail address. They won't process my request to get my free credit report without my e-mail address. I don't remember saying in the law that you had to give your e-mail address to be able to get a free credit report.

Then you have to wait 2 days for it. But if you want to pay them a dollar, you can get your credit report and score right now.

So I started filling out to get my free credit report in 2 days with Experian's company and found out when I checked their ad targeting policy that of course they want you to get your free credit report through them because they're going to get your Social Security number, and their ad targeting policy means that they can sell your information to whoever they want, including third parties.

So what was supposed to be an effort to allow consumers to access their credit report free, they have now discombobulated into a new marketing scheme to either grab your data, which is very valuable, and sell it or sign you up for \$19.99 a month or \$14.99 a month. And by the way, there was like seven different entries on this Google page, all going back to the same company.

Now, there were a couple that did the right thing. Equifax, when you pull it up it actually says you're entitled to a free report at *annualcreditreport.com*. One of them, Credit Karma, said, well, the government is limited to how much they can give you, so you need to give us your money every month because we can track everything bad that's happening to you.

What are we going to do about this? What do we need to do to shut this down? Because this is not what we wanted to have happen. We wanted everyone to have clear, disclosable information that they understood, that they didn't have to pay anybody squat to get their credit report. And these people are continuing to use this to mislead people, and I want to know what you guys can do about it.

Ms. MITHAL. If I could just make two points in response. I think the first is the rule—I know that Congress was aware of this problem and Congress passed a law to try to address it. The rule implementing that law says that if you sell free credit reports that are bundled with other products that the consumer has to pay for, then you have to have a disclosure saying that the consumer should be referred to *annualcreditreport.com*. As you point out, there are a lot of things that companies have done to try to get around this requirement.

I think that brings in the second point, which is a broader point that we've made at the FTC, which is about getting people's personal data without informing them of what's happening. So we issued a privacy report in March of 2012 basically saying that all companies, not just credit bureaus but all companies, should be transparent about their data collection practices and should provide consumers with choices, and they should also limit the amount of data they collect to a purpose that's appropriate for what they're trying to do for the consumer.

So I think one of the things that we recommend in our privacy report was general privacy legislation implementing those principles. So I think that might help. But I understand your concern, Senator, and we share it.

Senator MCCASKILL. Shouldn't this—shouldn't we have—you need to let us know how we need to correct the legislation to stop this, because this is what we were trying to stop in the first place and they're still doing it. This hasn't had any impact, and obviously they're the big dog. They've got eight of the searches out of the 15

on the page is one company. They're "Free Credit Report," they're "Free Credit Score." They've got five or six different names, but it all is the same company and it's all one of the big three.

They know exactly what they're doing, and they got their lawyers to figure out how to get around the rule to avoid the exact purpose that we passed the law in the first place.

You're telling me you don't have the tools to stop this right now; is that correct?

Ms. MITHAL. That's correct.

Senator MCCASKILL. Do you believe the same thing is true, Mr. Stone?

Mr. STONE. I don't at this point. I will say that the fulfillment of the obligation to make a free credit report available by a CRA is something that falls under our supervision program. If there are practices that mislead a consumer into thinking they're getting the report to which they're entitled, those are something that we're going to look at quite hard.

I think one of the hard things about this particular practice is you can encode it in a word, like "free credit report," and you can migrate to "free credit score" and you've avoided the rule. So there may be room for a broader principle here.

Senator MCCASKILL. Mr. Stone, do you have jurisdiction over FICO, the company that does FICO?

Mr. STONE. Our larger participant rule pertains to any company, or larger participant, that either compiles or analyzes consumer information for purposes of providing it to a third party for making a decision.

Senator MCCASKILL. OK, so you do? That was a yes?

Mr. STONE. Our larger participant rule does those things.

Senator MCCASKILL. OK. I've got to give you courage. That was a yes.

OK. So there are other smaller companies, just like the specialty CRAs, that are also doing credit scores, right?

Mr. STONE. There are, but we're not aware of credit scores or scorers in that realm like checking accounts or drivers performance that have any kind of consumer market, where consumers are actually paying money for them. There are scores that are based on that kind of data, but they're primarily used by businesses.

Senator MCCASKILL. I'm following up on Senator Schatz's question. Do you see any reason why we shouldn't include a free credit score with the free credit report? Is there any good reason not to do that for consumers? Because, frankly, having one without the other is a little bit like having a car without wheels.

Mr. STONE. And consumers often conflate the two.

Senator MCCASKILL. Right.

Mr. STONE. They think of a score as a report and a report as a score.

Senator MCCASKILL. Right.

Mr. STONE. I think the challenge—one challenge is that there are multiple credit scores out there, so which score do you mandate? These are all privately developed algorithms.

Senator MCCASKILL. Just like there are multiple credit reports.

Mr. STONE. Exactly. Providing "the score" or "a score," it raises an interesting question. There's no question that it helps con-

sumers to know where they stand with respect to a spectrum of creditworthiness, and a score is a great simplification tool.

Senator MCCASKILL. We're not going to solve this problem of people getting ripped off by these companies, buying these services, if we don't solve the score problem, too, because you can see what they're doing. The minute we try to close off their ability to sell a credit report that consumers should get for free, they're going to start selling the score.

And by the way, most of the scores they're selling on here are not the FICO scores. They're somebody else's they're using, that they're selling. And they put a little-bitty disclaimer down there: By the way, this may not be the score your lender gets; we're just going to give you one. So it's not even fully disclosed to them that they may be getting a score that their banker says, well, we don't use that one, we use FICO.

Mr. STONE. That's right.

Senator MCCASKILL. OK, I've gone over my time. I apologize. Anybody else would like another question for these witnesses?

[No response.]

Senator MCCASKILL. Thank you all very much for being here, and I would like input from both your agencies on how to address the clear gaps we've got in this consumer protection area.

Senator MCCASKILL. I want to thank all of the witnesses for being here. On this panel we have: Ms. Judy Thomas, who is a consumer, I believe from Ohio; we have Mr. Stuart Pratt, who is President and CEO of Consumer Data Industry Association; Mr. Ira Rheingold, Executive Director of the National Association of Consumer Advocates; and Dr. Howard Beales, a Professor at Department of Strategic Management and Public Policy at George Washington University School of Business.

Thank you all for being here, and we will begin by hearing your testimony, Ms. Thomas.

STATEMENT OF JUDY ANN THOMAS, CONSUMER

Ms. THOMAS. Thank you, Chairwoman McCaskill and Ranking Member Heller and members of the Subcommittee, for inviting me here today. This is very near and dear to my heart.

I would first like to introduce myself as Judy Thomas. I am not Judith Kendall. I have fought to be Judy Thomas now for the past 14 years. I started in 1999 with impeccable, exceptional, excellent credit, except in July of 1999 I was suddenly surprised to find out that I was not creditworthy.

This had gone on—I did exactly what the credit bureaus told me to do as far as filing a dispute. I did a letter form of dispute. I did phone call disputes. I got reassured that my credit or my errors would be corrected. I was told to wait the normal 60 to 90 days to ensure that this would be corrected, only to find out after the 60 to 90 days that another error was on my report.

So this went on for quite some time. Thinking that I was going to get a simple error fixed by myself, turned into a nightmare. I couldn't finance a home. I couldn't get a loan. I couldn't even be a cosigner on my daughter's student loan. I was basically held captive by these credit bureaus, and I couldn't do a thing about it.

The problem that I had mostly was the credit report that I would receive in the mail, when you talk about this annual credit report, the free report, when I would get a report in the mail I could look at it and go: Yes, this is Judy Thomas; yes, this is my debt; yes, this is correct. However, I would go to the bank or I would go to a loan company, what was on my report was nowhere near on the report that the lending institution had.

Why there is a discord between what I'm receiving versus what the lenders are receiving, there is what I think the problem is. You can't fight disputes if you don't have them on your report. There's nothing to fight, there's nothing to dispute.

So it wasn't until that I had actually seen a report from a lending institution that I actually found out that the problem wasn't one debt; the problem was I was mixed with another individual in another—on the other side of the country, whose name wasn't even close to Judy Thomas. And there was nothing I could do.

I wrote letters. I wrote disputes. I made phone calls. I contacted my Congressman. I couldn't even get an attorney. There's no one to help you. There's no one. There's literally no one to help you.

Thankfully, I was put in contact with a consumer attorney and ended up having to file litigation, file a lawsuit, which—it doesn't need to come to that. It does not need to come to that. You need someone there who's going to look at the whole credit report, not just each individual little debt, not each little individual dispute, but look at the whole picture, look at the whole person and what's going on in the credit report, not just the error.

I hate to get emotional. It's very dear to my heart. I'm not a statistic. You talk about these percentages. I'm not a statistic. I am a consumer who had exceptional credit, who prided myself in my credit, and I had that taken away from me. Not only did you take that away from me; you have taken my identity. You have turned me into someone that, I don't even know who I am any more. And I have to carry papers around to prove that I am Judy Thomas and I'm not Judith Kendall in Utah.

I was accused of falsifying a job application. They said I falsified a job application because a credit bureau apparently sold my false information to someone who does background checks. So when I filed for a job position, they did a background check, they got this other woman's information, and accused me of falsifying documentation.

This has got to stop, please. I thank you for letting me be here. I thank you for bringing this to attention. I'm just a minor person in this whole fish pond of errors.

[The prepared statement of Ms. Thomas follows:]

PREPARED STATEMENT OF JUDY ANN THOMAS, CONSUMER, VICTIM OF CHRONIC
CREDIT REPORTING INACCURACY

I. Introduction

I would like to begin by thanking you for inviting me to testify here today. Throughout the credit reporting nightmare I have been living, a nightmare that has been going on since 1999 and which continues on in various ways today, one of the most difficult things is feeling like no one is really listening to me or cares what I am going through. I am honored to be here, speaking on behalf of myself and other consumers who have been forced into this ordeal through no fault of their own. I am encouraged and hopeful that the problems plaguing victims such as myself will

get some of the attention that is desperately needed to prevent others from suffering the same fate.

II. The Compromise of My Good Name

One afternoon, in 1999, I went into the local mall looking to buy myself a new dress. I found the perfect one and decided to take advantage of a store credit card offer to save myself 10 percent on the purchase. Much to my complete surprise, I was denied. Besides being completely embarrassed, I was also completely confused. I have always taken pride in paying my bills on time and not living beyond my means. My credit rating has always been excellent. I had no idea what was going on.

Soon after, I received in the mail the official “denial” letter saying that my store credit card application was denied because of some negative information in my credit report. I requested a copy of that credit report to see what could possibly be contained in there to justify denying me for a relatively minor credit opportunity. My credit report looked absolutely fine. I recognized the accounts that were reported, and all of them were accurately showing that I am very responsible with my use of credit.

What I did not know at the time, and what would take me years to uncover, is that my personal information was beginning to mix together with that of someone with similar identifying information. My name is Judy Ann Thomas and I live (and always have lived) in Ohio. There is a woman named Judith Kendall who lives in Utah. Apparently, because our first names are sufficiently similar, and our Social Security numbers are within a seven (7) of nine (9) match of each other (a fact I would only discover through Federal litigation), one or more of the national consumers reporting agencies (“CRAs”) started seeing us as the same person for purposes of placing her data in my credit report. I never could have imagined what that seemingly “minor” mistake would do to me, to my good name, to my excellent credit rating.

It took quite some time for the mixture to show itself to me on paper. I saw “clean” copies of my credit report for several months before the name “Judith Kendall” ever appeared. Little by little, however, that name, its corresponding address(es) in Utah, and the numerous delinquencies, charge offs and collection accounts rightfully belonging to somebody else, started showing up in *my* credit report. I certainly was confused by what was going on, but at least now I had something to work with; I could identify the problem and dispute the false items I now could see.

But for every dispute I made, it seemed two more problems arose. I would dispute one particular account, and maybe that account would be deleted, but then a new account that was not mine would appear. It was obvious to me that no one was looking at the bigger picture of why this information was coming into my credit report in the first place. This was never more evident to me than the day I received a credit report at my home addressed to Judith Kendall! Was anyone paying any attention to my disputes? Clearly the answer was no.

III. What It Really Means To Be A “Victim” of Chronic Inaccuracies

Even though my “credit problems” were caused by a failure of the credit reporting system, not anything I did or could have done differently, I am the one that has suffered the consequences. I have been impacted on every level: economic, emotional, mental, physical.

A. Economic Loss and/or Financial Injury

Throughout the course of my fight to regain my good name and impeccable credit rating, I was forced to suffer multiple credit denials due to false and derogatory information in credit reports circulated by one or more of the national CRAs. For instance, in 1999, I applied for but was denied a credit card from Gantos. In 2000, I applied for but was denied credit by Discover, Capital One, First Merit and Verizon. In 2003, I was unable to refinance my existing mortgage with Fifth Third Bank because of the appearance (or reappearance) of an alias and corresponding derogatory collection references.

These numerous credit denials demonstrate the repeated and seemingly never-ending cycle in which I have been thrust by the national CRAs wherein I have suffered the humiliation and frustration of being denied credit, disputed the false information with the CRAs, dared to believe that the information has been corrected, and then subjected myself to the application process again only to be humiliated by rejection *again*. This cycle has imposed significant mental, emotional and physical strain, distress and humiliation on me for which I have suffered a significant loss of trust in the system as a whole.

The vicious cycle described above has repeatedly haunted me and my ability to obtain credit at the best terms available. In 2004, I attempted to co-sign a student loan for my daughter. After much research, I discovered that Key Bank had the best rates available and so, I submitted an application. This credit application was denied due to the existence of "Charge Off/Collection" notations on my credit report. Once again, I was subjected to the utter humiliation of a credit denial, this time accompanied by the additional stress and embarrassment of the fact that this particular credit denial called into question my ability to assist my daughter in paying her college tuition. My inability to secure the student loan for her created tension between us of fear that she would otherwise be unable to attend college. It also imposed feelings of inadequacy on me in not being able to assist my daughter when my true credit rating should have been more than sufficient to secure the loan. Additionally, I was forced to approach my mother and father about possibly co-signing the loan for my daughter which absolutely mortified me, but I felt I had no choice but to do so to ensure my daughter could go to school.

The denial of the student loan application also triggered another several-month-long dispute process wherein I was forced to defend my good name and credit rating again, which involved the investment of significant time, effort and resources to attempt to explain and verify that I was not, in fact, the person whom my credit report continued to say I was. This dispute process culminated with me being hounded at work in October 2004 for verification of my employment in an effort to attempt to secure the student loan for my daughter. In addition to having to spend work-related time in an effort to do so, I suffered the humiliation of having to justify and explain my actions to my superior, as well as fear that I would be reprimanded or otherwise disciplined for doing so. Ultimately, I secured a student loan for my daughter through Bank One, but the interest rate on such loan was almost two (2) percentage points higher than the rate offered by Key Bank (for which I was denied).

By December 2004, I was advised by the national CRAs that my disputes had been resolved and, once again, they represented to me that my credit report had been cleared of any reference to any other individual or credit information belonging to anyone other than me. I hoped, trusted and believed that my ordeal had finally ended, and I looked forward to enjoying the good name and credit rating I had worked so hard to earn for myself.

However, regrettably, once I dared to believe my efforts had been successful, I learned, once again, that I was a fool for doing so. Specifically, in or around November 2005, I sought pre-approval on a new home loan through Fifth Third Bank. I selected Fifth Third Bank to apply for a potential loan because I was already a customer there, and that fact had enabled me to secure credit previously (albeit after a delay) despite the appearance of false information in my credit report. In the face of the national CRAs' previous representations that all reference to the previously-disputed, false information contained in my credit report had been removed, I learned that my credit report once again showed a false "known" alias and collection information relating to another individual. I was sickened by the reappearance of this information and did not further pursue a new home loan application at that time.

Then, in or around July 2006, my fiancé and I desired to purchase a new home, so I needed to subject myself to the application process once again. I desperately wanted my credit record to be accurate, not only so I could ensure obtaining a home loan at the best terms available, but also so that I not be forced to suffer through the pain and humiliation of another credit denial, this time in front of my fiancé. In hopes of circumventing a credit denial based on false information appearing in my credit record, I submitted to a pre-certification process instead of submitting a full-blown loan application (so as to pre-plan in case a problem arose), and I elected not to seek financing on my own but did so jointly with my fiancé so that his excellent credit rating would be considered as well. In particular, my fiancé and I submitted a joint application for pre-certification for a new home loan through Countrywide Mortgage. While my fiancé was successful in obtaining pre-certification, I was not. We decided not to proceed with a formal loan application.

Of course, with each of these denials I have been forced to suffer additional financial injury and/or loss to the extent I needed to expend an absurd amount of time, effort and personal resources (including credit report fees, telephone charges, postage, etc.) in restoring my good name and credit rating to its rightful status because of the national CRAs' failures or refusal to abide by the law. Likewise, the never-ending cycle I have been thrust into has left me paralyzed with respect to considering applying for credit, even when I need it. Thus, I have and will continue to miss out on valuable cost-saving credit opportunities because I simply cannot trust

that my credit report will accurately portray my credit history when and if I do apply for credit.

The financial impact of this ordeal has not been limited just to my inability to obtain credit on the best terms availability. In 2010, the matter reared its ugly head yet again, threatening my ability to obtain a new job. After applying for a new position, I was questioned by the potential employer about whether I really had a nursing license as I represented. Much to my horror, I learned that information about "Judith Kendall" had been returned in response to a background check on me. To this day, I have never been able to confirm exactly how this happened. The mixing of my personal information by one or more of the national CRAs has left the confines of that arena and now is floating out in the realm of public information as well. The loss of control of my personal information in this regard is devastating. The proverbial horse has left the barn and I am powerless to do anything about it.

Most recently, I was in need of refinancing my home within a specified deadline due to a court-imposed deadline relating to the ending of my relationship with my former fiancé. As the deadline approached, the now-familiar sense of dread returned but my credit reports once again looked "clean" so I was hopeful that things would go through with no problem. But then the loan officer placed before me a form that I was required to sign in order close wherein I was attesting that I sometimes go by the name "Judith Kendall." I was reduced to calling my attorney in tears.

B. Non-Economic Injuries: The Personal Toll

The financial impact of my ordeal has been significant, and I certainly do not want to under-represent the toll that has taken on me. But economic loss is something tangible, something relatively easy to see and/or understand. The personal toll, on the other hand, is much more difficult to see, and it is so much worse. Anguish, distress, embarrassment, frustration, anger, fear. All of those words have applied at one time or another for me, some all at the same time. There has also been crying, pacing, sleeplessness, headaches. I feel like there simply are not sufficient words for me to explain to you what it feels like to go through something like this, and its maddening to be faced with an attitude of "no harm, no foul" by the industry who has done this to me.

I have suffered extreme embarrassment, humiliation and disappointment in being denied credit on numerous occasions. I take great pride in having built a good name and impeccable credit rating for myself; thus, to be told that I do not qualify for the credit I need or desire is greatly upsetting and demoralizing to me. In fact, having to justify who I am on a repeated basis is extremely frustrating and embarrassing.

I have also suffered embarrassment and humiliation from having to explain myself and my actions to friends and family who have witnessed, first hand, the ordeal I have been subjected to. Despite having the love and support of these people, it is still greatly upsetting and distressing that it outwardly appears I am someone or something I am not. My mental, emotional and physical stress in this regard pales in comparison to the embarrassment, distress and fear suffered when I was forced to explain myself to my superior at work because, once again, the national CRAs reported false information about me to a potential creditor. I was utterly humiliated after being discovered by my boss crying at work, and then had to attempt to explain what was going on. Again, it is greatly embarrassing to have to discuss such personal matters with others, especially when I am faced with the fear that I may not be believed or that I am being judged for being someone or something I is not.

My mental, emotional and physical stress and distress is exacerbated by the anxiety and fear I suffer because of not being able to get credit when I need and/or want it, specifically including being unable to co-sign a loan for my daughter's education and not being able to secure sufficient financing for a new home loan on my own. The position I have unwittingly been placed in has created anger, fear, confusion, stress, worry, disappointment and frustration as to how this happened and, equally, how I am going to make things better for myself and my family. I take great pride in the good name and impeccable credit rating I have struggled to build for myself, and it devastates me that these things are being compromised and there is nothing I can do about it.

Despite being a completely innocent victim in all of this, I feel like I am fighting for my reputation against being slandered repeatedly by entities that are supposedly charged with protecting my privacy, and I resent being forced into such a position. Repeatedly having to deal with the national CRAs to defend my good name and impeccable credit rating has taken a great deal of emotional and physical energy from me. I have been left exhausted and demoralized from the ongoing process and, worse yet, I have no faith, trust or reasonable belief that I will ever be successful

in separating myself from Judith A. Kendall (and Ms. Kendall's negative credit history). I desperately want to put this never-ending saga behind me and never think about it again!

In November 2005, when I discovered that, once again, the false alias and attached negative credit information were being reported by the national CRAs, I was confused and angry, but more than that I felt thrust into an unwanted and painful reality that this ugly monster of a matter was rearing its head once again. I was forced to suffer the uncertainty, doubts and fear of wondering why I was being subjected to the return of the same problems I had worked so hard to correct over the last several years. I wondered (and worried) why I was being forced once again to deal with a matter that I believed was resolved, a matter that had already taken such a huge mental, emotional, physical and financial toll on me. This brutal reality—a reality that, once again, was imposed upon me at no fault of my own—stripped from me any remaining energy and resolve to keep fighting for my good name and privacy. Thus, I began to accept that I had no choice but to look for an attorney to institute litigation on my behalf. I resented having to do so; there is no reason why a consumer should not be able to fix such a matter by myself.

I hate remembering everything I have been forced to go through. I am angry that the national CRAs get to disregard everything learned, or at least told to them, from my disputes over a several-year battle, as well as other litigation specifically including a lawsuit involving a consumer of the *same name* suffering from the *same problem* as me. I am very anxious and worried that this problem will continue to recur and if ignored, will worsen, leaving my privacy compromised and my credit tainted forever. This mental and emotional anguish, and its resultant loss of trust, has left me reluctant to deal with everyday business matters specifically including requesting credit even when I need it.

I firmly believe that our society creates laws to prevent individuals from being damaged. Yet the national CRAs are somehow allowed to thumb their noses at these laws to my repeated anguish, disgust and dismay. Despite the enormous importance of credit information, I never anticipated how difficult and devastating it would be to try and clean up or correct my reports, resolve issues, or communicate with entities about this situation. The sheer volume of time, energy and resources necessarily devoted by me in my mostly-unsuccessful efforts is staggering.

It frustrates and maddens me that none of the entities charged with protecting and assisting me have any interest in me as a person and, seemingly, are okay leaving me in the dark as to how this all actually happened. It is apparent that they do not care just how much my life has been ruined. I find it this particularly devastating considering their only line of business is handling *my information*. Yet here I am, more than a decade later, still living with a question mark over when and where I will be hurt by this again.

All in all, my experience has led me to conclude that the system that houses credit reports is very, very broken. Any intent by Congress to offer citizens the tools they need to keep information safe has been overshadowed by the fact that large corporations that buy and sell information as a commodity ultimately own and control the process through which the integrity of information is secured. I found fighting this industry to be an impossible feat. There is nothing that requires the "system-machine" to yield to *common sense* when any reasonable person with value in the integrity or honesty of another human being would have given pause, or at least attempt to define the problem.

Perhaps most troubling is the doubts and fears that I must live with about the future. I am haunted by the fact that, even if my credit reports are clean *right now*, I no longer have control as to when and if I will be forced into this nightmare again. I did not cause the mixture of my information in the first place, and I certainly cannot control it if it happens again in the future.

The bottom line is that my good name, in which I have vested a lifetime of hopes, dreams, hard work and responsibility, will forever be at risk. I must face this reality that the information that once was so personal will never again be mine and mine alone. And this is a loss for which no one can ever fully compensate me.

Senator MCCASKILL. That's what this is about. It's about the Judy Thomas's out there. So thank you, Judy Thomas.

Ms. THOMAS. Thank you very much. Thank you for having me here. Thank you for letting me speak.

Senator MCCASKILL. Thank you.

Mr. Pratt.

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

Mr. PRATT. I would agree with that. It is about the individuals and not just about the statistics. The big picture data is a good starting point. The FTC study has given us good baseline information to work from in order to improve accuracy. We're starting at a baseline of somewhere between 95 and 98 percent of credit reports being accurate. But the CDIA's members are in fact committed to looking at that next percentage.

I think you said it well in your opening statement, Madam Chairman, and that is even if we have a good story to tell on the front end in terms of the majority, we need to focus on the minority.

So I'm glad to sit here today with Ms. Thomas, and we are glad to learn from that situation. We're encouraged by the research that has been done. We are now gathering data from the FTC and from other sources to begin a working group process to understand how we can, for example, keep a—which we should—a Kendall and a Thomas from ever showing up on the same desk in the future.

I think it was said in the first panel: The aspirational goal is always 100 percent. I think the FCRA, the Fair Credit Reporting Act, does acknowledge that there's a dispute process. The dispute process should work well.

Again, the data that we have shows that for the majority of consumers it is, and I think that's because in the majority of consumers' cases it's not a complex dispute, and this situation ended up being complex. That's not an excuse for not getting it right. But we measured consumer satisfaction and we have about a 95 percent satisfaction rate, not just with their experience, but with the results of the reinvestigation.

But our job isn't simply to focus on the 95 percent, but it's to focus on the 5 percent. So we have established this year a working group to focus on the reinvestigation process, to unpack—it's retroactive, but to unpack some of the situations like those of Ms. Thomas and those of other consumers, your constituent as well.

So the CDIA stands with consumers. Our members want to get it right. I don't have a single CEO who sits at a desk saying that this is the right result. In fact, I've had CEO's call me to talk about this situation and say, how can we find a better way forward? So we're not shying away from—we're not declaring victory because there's good baseline data that says that we're getting it right most of the time. It is a system for all consumers. We want to get it right for all consumers.

So we're happy with the 98 percent accuracy rate. We're happy with the 95 percent satisfaction rate. But we're not happy with those smaller percentages and we're going to work harder on those and focus on those today.

It is important, I think, what was said by Mr. Stone in his opening statement: it is a three-legged stool. Another leg of the stool, for example, is those who furnish information to us. When we look at the FTC report, for example, one of the efforts that we have to undertake is in fact to partner with all those furnishers of data who are sending data, about 10,000 of them in this country, updating about 3 billion data elements a month. About 88 percent of the

error types that were identified in the FTC report came from the data furnisher side of the aisle. So we have to look at the data furnishers as well to see what kind of data they're reporting to us, even as we look at our own data matching procedures to see how we then take the data and match it into the credit reporting system.

We see the FTC report as a great opportunity to learn. It's not just simply a report which validates. I think attitudinally that's where we have always been.

Just to give you an idea of where this industry has been historically, consumers were unhappy with how disputes were processed. And this goes all the way back to the 1980s. We stood up the first automated system, pre-FCRA amendments, pre-requirements of law or regulators. We stood up the first Fair Credit Reporting Act automated system for disputes, to process disputes faster. So that cut the whole dispute process in about half the time that it normally would.

When we saw that we had many data furnishers furnishing data in different formats, we established the first Metro 2 data reporting standard to standardize, improve the quality of data in credit reporting systems. That Metro 2 system exists today.

When Y2K came around, we retooled the system proactively 24 months in advance and worked with the data furnishers to make sure that this new millennium didn't have an effect on the way credit reports work.

We always want to get out in front of a problem. We always want to get out in front of a challenge. We always want to take the next right step for consumers to ensure that the success of the system that we're building on today is just that much more successful tomorrow.

So we're happy to be at this hearing. We're happy to tell you that, and pleased to tell you, that we have new working groups to focus on some of these harder questions, and we expect to have more information and more insights into some of these complexities down the road.

So, Madam Chairman, thank you for allowing me to appear before you today.

[The prepared statement of Mr. Pratt follows:]

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

Chairman McCaskill, Ranking Member Heller 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 160 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.

Credit Reports Benefit Consumers and the Economy

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

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

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

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

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

Ultimately credit reports 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. They help 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.

What’s In a Credit Report?

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

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 disclosures 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.

The Consumer Financial Protection Bureau & Credit Bureaus

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.”

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.

The Dispute Resolution Process for Consumers

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

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

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

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

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

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

The staff and systems used by our members to handle consumer requests for re-investigations of data reported to them are first-class and this is not merely an opinion. The PERC data quality study discussed in the next section of this testimony measured consumer satisfaction with the reinvestigation process and fully 95 percent of consumers were satisfied with the results. This fact offers a compelling rebuttal to the unfounded accusations offered by consumer advocates that our members' systems fail to meet consumer expectations.

Further indication of our members' success in meeting consumers' needs can be found in a 2008 report to congress regarding complaints submitted to the Federal Trade Commission. Note in the excerpt below that consumers appeared to be complaining to the FTC concurrent with the submission of a dispute directly to a consumer credit reporting agency. More than 90 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 our view that consumers will continue to grow in their understanding of this right and will more often dispute with the data furnisher.

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

The FCRA requires nationwide credit bureaus to maintain an “automated reinvestigation system.”² The FCRA also requires nationwide credit bureaus to transmit a consumer’s dispute to the lender/data source within five business days.³ This requirement of law makes sense when you consider that the FTC’s credit report accuracy study found that 88 percent of the possible errors consumers identified in their credit reports were about how collection agencies and lenders reported data to credit bureaus (and not how credit bureaus loaded these data).

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

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

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

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

Finally, though the current coding system is working well a new technology will go live later this year to enable nationwide credit bureaus to provide lenders with images of any validating documents submitted by consumers. According to the CFPB 44 percent of consumers submit a dispute in writing.

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. As an extension of this commitment, CDIA has formed a new Reinvestigation Working Group to focus on the 5 percent of consumers who were not satisfied with their results. This working group will also consider the adverse effects of fraudulent credit repair schemes on consumers and our members’ resources which are dedicated to serving consumers and quickly addressing consumer concerns.

Credit Repair Scams

It is good news that consumers’ knowledge of credit reports and how scores analyze credit report data is improving. It is also good news that the systems for submitting a dispute are working well for consumers. However it is critical that consumers remain vigilant and do not fall prey to fraudulent credit repair schemes. Fraudulent credit repair agencies have a business model built around the premise of seeking to have accurate, predictive data deleted from a consumer’s credit report and taking consumers’ hard-earned money to do something that consumers can do for themselves. 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:

¹ See page 5 of the FTC Report to Congress Submitted on December 29, 2003: <http://www.ftc.gov/os/2008/12/P044807/cracmpt.pdf>.

² 15 U.S.C. § 1681i(a)(5)(D).

³ 15 U.S.C. § 1681i(a)(2)(A).

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

Repeated Studies Confirm that Credit Reports are Accurate

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

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

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

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

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

While these studies confirm that our members and data furnishers are extraordinarily successful in maintaining accurate data, CDIA’s members are committed to learning from the FTC’s latest report on accuracy with a particular focus on the nature of the concerns of the 2 percent of consumers who may have a material error on one of their credit reports. A CDIA working group on data quality has been established to focus on improvements to data management practices and outreach to data furnishers. Fully 88 percent of potential errors identified by consumers in the FTC study were about the data reported to the credit bureau and not about how the credit bureau loaded these data.

The Role of Data Furnishers and Accuracy

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

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

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

New data furnishers—all of our members have specialized staff, policies and procedural systems in place to evaluate each new data furnisher. Common practices include reviews of licensing, references, and site visits. All apply robust tests to sample data sets and all work with the furnisher to conform data reporting to the Metro 2 data standard. Once a furnisher is approved, there may be ongoing monitoring of this data reporting stream during a probationary period of time.

The CFPB’s 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 Board⁴:

“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

⁴Comments 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.

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 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.

Conclusion

I am grateful of this opportunity to testify and for your interest in our members. They are a vital and successful part of our U.S. economy. Though 95 percent of consumers are satisfied with the results of their reinvestigations and 98 percent of credit reports don't contain a material error, our new CDIA working groups will focus on the minority of issues that persist. Our members' goal is always to improve and learn from both anecdotes and from new research.

I am happy to answer any questions.

APPENDIX I—CDIA NEWS RELEASE—FTC ACCURACY STUDY

February 11, 2013 FOR IMMEDIATE RELEASE

Norm Magnuson

FTC REPORT CONFIRMS CREDIT REPORTS ARE ACCURATE

CDIA Says Consumers Should Take Advantage of Free Credit Reports

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

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

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

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

The CDIA encourages consumers to take advantage of their right to free credit reports from nationwide credit reporting agencies by going to www.annualcreditreport.com. To convince more consumers to look at their credit reports, CDIA's

nationwide credit reporting companies have given the Association a grant to fund new public service announcements focused on connecting them with their credit reports.

“Confirmation that credit reports are accurate is a good thing,” said Pratt, “but all consumers should be aware that checking credit reports every year is fundamental to accuracy.”

About CDIA

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

Senator McCASKILL. Thank you.

Mr. Rheingold, your testimony as well.

**STATEMENT OF IRA RHEINGOLD, EXECUTIVE DIRECTOR,
NATIONAL ASSOCIATION OF CONSUMER ADVOCATES**

Mr. RHEINGOLD. Sure, my pleasure, as soon as I can figure out how to get this mike on.

Is it on? OK, thank you. Technology.

Chairwoman McCaskill, Ranking Member Heller, members of the Subcommittee: Thank you for inviting me to testify today about the consumer credit reporting industry, its failure to ensure accurate and reliable reports, and the impact that inaccurate information has on consumers’ ability to obtain much-needed credit, gain employment, or even to find a job.

This afternoon I’d like to share two key observations about our nation’s credit reporting system. First I’d like to talk about the two main reasons why I believe there are so many inaccuracies in consumer credit reports and offer ideas about what can be done to correct the problem. Second, I’ll discuss what I see as the completely unreasonable credit report dispute process and explain why it’s almost impossible for an average consumer like Judy Thomas or Brenda Campbell to navigate that system and make certain that the information in their own credit report is correct.

Our nation’s economic recovery has been slowed by consumers’ inability to access fair and reasonable credit. While there are many reasons for this tightening of credit, consumers and our general economy are significantly harmed when credit is denied to consumers based on credit reports filled with inaccurate information.

Despite the fundamental importance of accurate credit reports, systematic errors remain common in our nation’s credit reporting system. Two of the main causes of this problem are mixed or mismerged files and bad information placed in credit reports by furnishers, particularly debt collectors and debt buyers.

The problem of mixed files, which the nationwide CRAs have known about for over two decades, occurs when credit information relating to one consumer is placed in the file of another, as Judy Thomas described. This largely occurs because the nationwide CRAs do not use sufficiently rigorous criteria to match consumer data precisely, even when such unique identifiers are Social System numbers are present. Most importantly, they do not match information based on all nine digits of the consumer’s Social System number. Instead, they’ll only match information based on seven of nine digits if the consumers’ names are also similar.

Simply requiring the nationwide CRAs to match all the digits of the consumer's Social System number, which they do when they provide a consumer with her own credit report, would go a long way in solving the problem of mixed files.

Debt collectors and debt buyers as furnishers of information present their own special type of credit reporting errors. A recent CFPB report indicated that a disproportionate number of credit reporting errors involve debt collectors. The FTC issued a similar report that showed over 32 percent of the errors were related to debt collection accounts.

Typically, these credit reporting problems occur because debt buyers and debt collectors do not get any of the critical supporting documentation to establish that the consumer actually owes the debt or the amount is correct, whether there are any disputes, or even if the collector is dunning the correct consumer. Debt collectors and buyers should not be able to furnish information and the credit reporting agencies should not be accepting this information unless the debt buyers can show they have actual documentation that the debt is owed by the specific consumer.

Of course, the damage done by the inaccurate information would be significantly mitigated if the CRAs had a fair and reasonable dispute process that would allow consumers to correct inaccurate or incomplete information. Instead, despite the FCRA requiring both CRAs and furnishers to conduct reasonable investigations when a consumer disputes an item in his or her credit report, the CRAs provide a perfunctory, automated process that consists of nothing more than translating consumer disputes into a two or three-digit code, forwarding that code in a one-page electronic form to the furnisher, and parroting whatever the furnisher states in response.

Further, despite the fact that almost half of consumer disputes are written and often consist of a detailed letter with significant supporting documentation, the automated code assigned to the consumer dispute by dispute handlers is sent to the furnisher and is often communicated alone, without the supporting documentation provided by the consumer.

The failure to pass along documentation submitted by a consumer is a deliberate violation of the FCRA's requirement that a CRA include all relevant information about the dispute. This must be corrected, either through enforcement actions or through rule-making.

While the automated, impersonal dispute process created by the CRAs is problem enough, the failures of the system are further exacerbated by the nationwide CRA's bias in favor of furnishers. Time and again, CRA's unquestioningly accept the furnisher's automated response to a consumer dispute, despite being presented with evidence and documentation that contradicts the furnisher's unexamined conclusion. This systemic bias is in direct violation of the FCRA, which places the burden of proof in a dispute investigation on the furnisher, not the consumer. Simply, the Act provides that if the disputed information is inaccurate or cannot be verified it should be deleted.

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

[The prepared statement of Mr. Rheingold follows:]

PREPARED STATEMENT OF IRA RHEINGOLD, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES ALSO ON BEHALF OF NATIONAL CONSUMER LAW CENTER (ON BEHALF OF ITS LOW INCOME CLIENTS)

Chairwoman McCaskill, Subcommittee Ranking Member Heller and members of the Subcommittee on Consumer Protection, Product Safety, and Insurance, thank you for inviting me to testify today about the consumer credit reporting industry, its failure to ensure accurate and reliable reports and the impact that inaccurate information has on a consumer's ability to obtain much needed credit, gain employment or even find a place to live.

In my testimony, on behalf of the National Association of Consumer Advocates (NACA)¹ and the National Consumer Law Center's low-income clients,² I will share with you what I have learned in more than a decade of working with consumer advocates from across the country. I will describe a credit reporting system that is riddled with preventable inaccuracies including consumer files that all too frequently mix the identities of consumers and include innumerable errors and unverifiable information provided by debt collectors and other furnishers of information. I will explain how our 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. These agencies, instead of hiring trained personnel to conduct actual investigations, 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. I will look at the growth of specialty consumer reporting agencies, including background check and tenant screening CRAs, which are plagued with errors that often create even greater problems for consumers. Finally, I will offer some ideas for Congressional legislative action that can provide better accountability for the credit reporting industry and ensure that consumer information is accurate and dependable.

I. Easily Preventable Inaccuracies Plague The Credit Reporting System

Our nation's recovery from the economic meltdown created by the reckless and fraudulent behavior of many actors in the financial services industry has been slowed by many consumers' inability to access fair and reasonable credit. While there are many reasons for this tightening of credit, consumers, families, businesses and our general marketplace are harmed when credit is denied to consumers based on credit reports filled with inaccurate information. 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 decision makers, including insurers, landlords, utility providers, and employers. Consequently, a bad credit report or score can prevent a consumer from buying a car, securing a mortgage, or even getting a job.

Despite the importance of accurate credit reports and the purpose of the FCRA to promote accuracy, systematic errors remain common in our Nation's credit reporting system. Below, I will focus on a few of the most repeated and egregious errors, which are easily preventable with common-sense regulation and oversight.

A. 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

¹The National Association of Consumer Advocates (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

²The 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 with Chi Chi Wu of NCLC.

or more consumers have similar names, Social Security numbers (SSNs), or other identifiers.

Mixed and mismerged files occur largely because the nationwide CRAs do not use sufficiently rigorous criteria to match consumer data precisely, even when such unique identifiers as Social Security Numbers (SSNs) are present. Mostly importantly, they do not match information based on all nine (9) digits of the consumer's SSN. Instead, they will only match information based on seven of nine (7 of 9) digits of an SSN if the consumers' names are also similar.³

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."⁴

The nationwide CRAs have been aware of mixed file errors for decades.⁵ In the early to mid-1990s, the FTC reached consent orders with the nationwide CRAs requiring them to improve their procedures to prevent mixed files.⁶ 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.⁷ In 2011, the FTC reported 279,156 complaints alleging identity theft, which was the largest single complaint category of consumers to the FTC.⁸

Identity thieves can harm a consumer's credit history by setting up new credit or health care accounts in the consumer's name and then letting them go unpaid. As these accounts go delinquent, the consumer victim's credit rating can plummet.

The nationwide CRAs and furnishers bear a share of the blame for this ever-growing problem. The nationwide CRAs' loose matching procedures, discussed above, contribute to identity theft problems. 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. 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. Another type of common error occurs when a CRA fails to mark accounts as disputed when the consumer has a legitimate bona fide dispute with the furnisher.

Debt collectors and debt buyers as furnishers of information present their own special types of credit reporting errors. 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, whether the amount is correct, whether there are any disputes, or even if the collector is dunning the correct consumer. Another problem all too often created by debt buyers and collectors is the "re-aging" of old accounts so that they stay on the credit report past the FCRA's seven year limit.⁹

³ 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 SSN digits, to build files).

⁴ 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).

⁵ 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).

⁶ *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).

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

⁸ *Consumer Sentinel Network Data Book for January–December 2011*, at 6 (February 2012). See <http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2011.pdf>.

⁹ 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.

Not surprisingly, a recent CFPB report indicated that a disproportionate number of credit reporting errors involve debt collectors. The CFPB report found that debt collectors generate 40 percent of disputes to the nationwide CRAs, despite providing only 13 percent of the account tradeline information in credit reports.¹⁰ A recent study by the Federal Trade Commission on errors in credit reports similarly found that 32.2 percent of disputed items were collection accounts.¹¹

4. Definitive FTC indicates unacceptable error levels in credit reports

Just a few months ago, the FTC released the definitive study on the level of inaccuracies in credit reports.¹² The study, found that about 21 percent of consumers had verified errors in their credit reports, 13 percent had errors that affected their credit scores, and 5 percent had errors serious enough to be denied or pay more for credit.¹³ The FTC's study involved two pilot studies, 1,000 study participants, and was nearly a decade in the making.

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

We also note that the FTC study found that the percentage of serious errors was many greater than the percentage reported by a May 2011 industry-funded study, which had claimed that only 0.51 percent of credit reports had errors serious enough to cause the consumer to be denied or pay more for credit.¹⁴

B. Fixing the System: The Roles and Responsibilities of the Nationwide CRAs, Empowered Consumers, the FTC and the CFPB

1. 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 a very real 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.¹⁵

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."¹⁶ The FCRA requires them to have and follow "reasonable procedures to ensure maximum possible accuracy."¹⁷

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 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 relation-

¹⁰Consumer 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>.

¹¹Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2012, at 51, available at.

¹²*Id.*

¹³*Id.* at i.

¹⁴Michael Turner *et al.*, Policy and Economic Research Council, *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts*, May 2011.

¹⁵See, 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).

¹⁶See 15 U.S.C. § 1681.

¹⁷See 15 U.S.C. § 1681e(b).

ships, 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. Therefore vigorous oversight by the nationwide CRAs, or tougher requirements for accuracy are likely to drive furnishers away. The biggest impact of excluding a furnisher 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 of change to correct errors was consumers themselves who were willing to go to court to enforce their rights under the FCRA.

2. 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. 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 case citations yields over 1,500 cases. In contrast, there has been much less enforcement by Federal regulators. The FTC has only been able to bring several dozen FCRA cases, and most of them did not involve the accuracy of the nationwide CRAs.

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.¹⁸

I would urge Congress to provide consumers with the right, currently 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*¹⁹ 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.”

3. The role of the FTC

During the past four years, the FTC has significantly increased its examination, investigation and enforcement actions against credit report agencies, and in particular, the debt collection and debt buying industry that have littered consumer reports with inaccurate and unverifiable information.

For example, in an important case last January, the FTC 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.²⁰ I would hope that the FTC continues to aggressively pursue these types of actions and seek remedies that prevent the flow of inaccurate and/or unverifiable information to consumer reports. Further, despite FTC enforcement actions, the CRAs continue to willingly accept information from companies, like Asset Acceptance, that have a proven history of providing inaccurate data.

The FTC must also continue to enforce the FCRA's provisions requiring culpable CRAs to follow reasonable procedures to ensure maximum possible accuracy of information included in reports. For example, last year the FTC took action against HireRight Solutions, alleging that the CRA, HireRight Solutions, failed to follow reasonable procedures to prevent patently inaccurate consumer report information

¹⁸ See 15 U.S.C. § 1681s-2(d).

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

²⁰ Complaint, *United States v. Asset Acceptance, LLC*, Case No. 8:12-cv-182-T-27 (M.D. Fla. Jan 30, 2012).

from being provided to employers and these failures led to consumers being denied employment or other employment-related benefits. The FTC's consent order imposed a \$2.6 million civil penalty against HireRight Solutions and prohibited future violations of the FCRA. Vigorous enforcement of the FCRA, in conjunction with the CFPB, in order to maintain accuracy and fairness in the consumer reporting system must remain a top priority for the FTC.

4. The role of the CFPB

When the Dodd-Frank Act created the CFPB, Congress recognized that credit bureaus required greater oversight and there needed to be reform of the industry as a whole. Dodd-Frank gave the CFPB rule-writing, supervisory and enforcement authority over credit bureaus that were never provided to the FTC. The CFPB can write regulations to implement almost all of the provisions of the FCRA, including the provisions regarding accuracy and the dispute process. In addition, the CFPB has new supervisory authority over the "larger participants" of the credit reporting industry that have more than \$7 million in annual receipts, which includes the nationwide CRAs. The CFPB must use its supervisory authority to fully investigate whether consumer reporting agencies are complying with the FCRA and other consumer financial laws and work with the FTC to better enforce these violations.

II. The FCRA-Mandated Credit Reporting Dispute System, As Designed and Implemented by the Nationwide CRAS Provides Little Relief for Consumers

A. A Long-Documented History of Blatant Violation

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. Instead, it is a perfunctory, automated process that consists of nothing more than translating consumer disputes 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.²¹ 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."

Approximately 44 percent of consumer disputes are written.²² These written disputes often consist of a detailed letter with supporting documentation, painstakingly written by concerned and even desperate consumers. The code, assigned to the consumer dispute and generated by dispute handlers, is sent to the furnisher and is often communicated alone, without supporting documentation provided by the consumer.

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*. 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 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."²³

I 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.²⁴ And if all

²¹ 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.

²² 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>.

²³ Prepared Remarks by Richard Cordray, Director of the Consumer Financial Protection Bureau, Credit Reporting White Paper Press Call, December 13, 2012.

²⁴ See U.S.C. § 1681i(2).

relevant communication is not forwarded, the furnisher cannot comply with the FCRA's requirement to "review all relevant information" provided by the CRA.²⁵

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

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. 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 percent 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 by comparing the notice of dispute with the recorded information that is itself the very subject of the dispute. The nationwide CRAs promote "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.²⁶

D. What Needs to be Done

It is well past time for the credit reporting dispute system to be reformed. First, the nationwide CRAs must be required to have sufficiently trained personnel to actually review, and conduct real investigations of, consumer disputes. Nationwide CRAs must also be required to forward to furnishers actual copies of the documents submitted by consumers. 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."²⁷ Thus, the burden should be on the furnisher, not the consumer, when there is a credit reporting dispute.

Debt collectors must be subject to even stricter screening and oversight. There should be a flat-out prohibition against the nationwide CRAs to engage in parroting when a debt collector is involved. 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.

III. Specialty Consumer Reporting Agencies

"Specialty consumer reporting agencies" compile and maintain files relating to criminal records, residential or tenant histories, check-writing histories, employment histories, and insurance claims. These agencies are not required to be licensed or even registered, nor is there any one source identifying all of these companies. Therefore, as of today, there is no centralized location to obtain the kind of information required to determine the accuracy of the information these agencies are collecting or being used to determine the "worthiness" of consumers for employment, housing and/or insurance.

Despite the general lack of transparent information about these specialty bureaus, consumer advocates have discovered a number of troubling problems with this growing industry.²⁸ For instance, few users of the reports generated by these bureaus comply with the FCRA's requirement to provide "adverse action" notices to the consumers (or potential employees or tenants) that a report has been used against them. Therefore, many people are denied employment or housing and never know

²⁵ See 15 U.S.C. § 1681s-2(b)(1)(B).

²⁶ e-OSCAR, Automated Batch Interface, at <http://www.e-oscar.org/automated-batch-interface.aspx>.

²⁷ See 15 U.S.C. § 1681i(a)(5)(A).

²⁸ See 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.

that the reason for the denial was a background check that might have been filled with inaccurate information.

Additionally, 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, or specialty consumer/credit report.

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 future employer, insurance company, or landlord will use.

Further, dispute rights are similarly meaningless with specialty consumer reports. Even if a consumer is successful in disputing information on his or her report (in the rare instance she actually discovers a report was used), the employment or housing 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.

To address some of the problems with the specialty bureaus, consumers need, at the least, the following protections:

1. Require all consumer reporting agencies to be licensed and registered.
2. Require all consumer reporting agencies to undergo independent auditing of their data and records for accuracy.
3. The CFPB must continue to monitor and collect data regarding the larger participant consumer reporting agencies and draft regulations detailing matching criteria and ensuring that information on consumer reports is up to date.
4. The FTC and the CFPB must actively investigate and bring enforcement actions against specialty consumer reporting agencies who fail to comply with the FCRA.

IV. Other Credit Reporting Issues That Congress Must Address

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

- 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. We strongly support S. 471, which would provide consumers with access to the real credit score used by businesses passing judgement about their credit "worthiness."
- 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. 160, the Medical Debt Responsibility Act, which would remove paid or settled medical debts from credit reports. This approach will provide tremendous benefits to consumers, and indeed is probably the simplest and easiest "quick fix" available to improve the credit records of a substantial 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.

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

Senator MCCASKILL. Thank you, Mr. Rheingold.

Dr. Beales.

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

Dr. BEALES. Thank you very much, Madam Chairman. I appeared before this committee many times between 2001 and 2004 when I was the head of consumer protection at the FTC, but it's nice to have the opportunity to be back in an academic capacity.

Let me make five essential points about credit reporting that I think we have to keep in mind. One is that credit reporting is vital. Consumer spending drives the economy. It's two-thirds of gross domestic product. And that depends on the availability of affordable credit. In turn, widespread credit availability depends on an efficient system for credit reporting.

Efficient credit reporting makes possible the miracle of instant credit, which enables a consumer to visit a car dealer and arrange financing for the transaction probably in less time than it takes to negotiate the price. It enables retailers to arrange on-the-spot discounts for consumers who agree to open a new credit account with the retailer. Such arrangements offer significant benefits to both consumers and retailers and they facilitate economic activity.

Our credit reporting system also facilitates competition among lenders, to the benefit of consumers. Using credit reports, lenders can readily identify consumers who deserve a better deal. The ability to offer credit on terms that lenders find profitable and consumers find more attractive obviously benefits everyone.

Finally, efficient credit reporting is important to small businesses. Decisions to lend to a small business depend on the lender's assessment of the viability of the business, but they also depend in many instances on the personal creditworthiness of the owner of the business.

Second, risk-based pricing of credit benefits consumers. Economic efficiency requires that people who create costs must pay them. If not, they'll create excessive costs that impair economic performance. That's why it's both equitable and efficient that teenage males pay higher auto premiums than teenage females or older men. Teenage males are higher risk drivers. They should and they do pay higher insurance premiums.

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

Importantly, making loans based on objective risk assessment reduces the risk of default by 20 to 30 percent compared to lenders who simply use judgment about who deserves credit and who doesn't.

Risk-based pricing based on credit scores offers two important benefits. First, responsible borrowers, undoubtedly the vast majority, pay less for credit, as much as 8 percentage points less in one study.

Second, risk-based pricing substantially expands credit availability. In the “one size fits all” world of standardized, plain vanilla credit products, the lender’s only choice was yes or no. For marginal borrowers the answer was generally no. Risk-based pricing introduced a new alternative, yes, but at a higher price, commensurate with the additional risk.

The result was a substantial expansion in credit availability. In 1970, only 2 percent of the lowest income quintile had credit cards. After the introduction of risk-based pricing, by 1998 that had risen to 28 percent of that lowest quintile with credit cards.

Third, more information in the system leads to better performance. There’s an estimated 30 to 50 million consumers who do not have sufficient credit information in their files to qualify for mainstream credit. Instead, they’re left to rely on high-cost sources such as overdraft protections or pawn shops. Studies have shown that adding positive payment information from utilities and telecommunications providers, instead of only the negative information that most now report, could improve the credit scores of those with thin files that otherwise would not have sufficient information to support a reliable credit score.

Fourth, accuracy and completeness are both important. Credit reporting agencies face a difficult task of matching incoming information to the right file when identifying information is incomplete, as it often is in a voluntary system. It’s obviously a mistake to include information in my file that is not in fact about me. That’s the kind of error that’s the mixed file report, error, and that the FTC report examines.

More subtly, it’s also an error to leave out information that should be in my file simply because there’s some ambiguity about the match. Such errors of omission reduce the value of the credit report as a predictive tool. In some cases, the failure to include relevant information may leave a consumer with a thin file and limited access to conventional credit. Either mistake reduces the accuracy of risk assessments, and that’s the ultimate goal of the reporting system.

Moreover, the risk of a mistake depends on the quality of the information voluntarily provided by furnishers, because even the best matching algorithm can’t overcome bad data.

Finally, different risks are different. The best prediction of risk depends on the particular risk involved. Different information may be useful and different risk analytic approaches may be more useful for particular risks. That’s why there are some CRAs that specialize in particular risks to get that kind of information to enable better predictions. Almost inevitably, these CRAs are significantly smaller than the big three, however, and the regulatory compliance costs may be more significant.

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

[The prepared statement of Dr. Beales follows:]

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

Thank you very much for the opportunity to be here today. In my limited time, I want to make five key points.

1. Credit reporting is vital

Consumer spending accounts for over two-thirds of U.S. gross domestic product. The wide availability of affordable credit lubricates this spending: roughly 2.8 billion in outstanding consumer credit enables numerous transactions that would not otherwise occur.

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

Our credit reporting system also facilitates competition among lenders, to the benefit of consumers. Using credit reports, lenders can readily identify consumers who deserve a better deal. The ability to offer credit on terms that lenders find profitable, and consumers find more attractive, obviously benefits everyone.

Efficient credit reporting is also important to small businesses. Decisions to lend to a small business depend on the lender's assessment of the viability of the business, but the also depend on the personal creditworthiness of the owner of the business. Thus, credit reporting is often critical to decisions about whether to lend to the small businesses that are important elements of job creation.

2. Risk Based Pricing Benefits Consumers

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

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

Importantly, making loans based on objective risk assessment reduces the risk of default. Some studies indicate that the delinquency risk when decisions are based on scoring algorithms from credit report data are 20 to 30 percent lower than the risk of delinquency when the lender uses "judgment" to decide which consumers deserve a loan.¹ Moreover, such judgmental decisions often rely on stereotypes about which borrowers are most likely to repay—they are, in short, discriminatory.

Risk based pricing based on credit scores offers two important benefits. First, responsible borrowers—undoubtedly the vast majority—pay less for credit. The introduction of risk based pricing reduced interest rates for these borrowers by as much as 8 percentage points.²

Second, risk based pricing substantially expanded credit availability. In the "one size fits all" world of standardized, plain vanilla credit products, the lender's only choice was yes or no. For marginal borrowers, the answer was generally no. Risk based pricing introduces a new alternative: yes, but at a higher price, commensurate with the additional risk. The result was a substantial expansion in credit availability. In 1970, only 2 percent of the lowest income quintile had any credit card; by 1998, after the introduction of risk based pricing, the percentage had increased to 28 percent.³

¹Peter McCorkell, "The Impact of Credit Scoring and Automated Underwriting on Credit Availability," in Thomas A. Durkin and Michael E. Staten, eds., *The Impact of Public Policy on Consumer Credit* (2002).

²Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, Discussion Paper, Payment Cards Center, Federal Reserve Bank of Philadelphia (January 2003) at 8.

³Thomas A. Durkin, "Credit Cards: Use and Consumer Attitudes, 1970–2000," *Federal Reserve Bulletin*, September, 2000, at 626.

Thus, well-functioning credit markets are an essential component of economic prosperity. Consumer reporting has played a key role in providing U.S. consumers with rapid access to credit. The development of the consumer reporting system, with its sophisticated risk models and automated underwriting, has contributed greatly to making credit more widely, inexpensively, and rapidly available. The system also has narrowed the gap in credit availability between high and low income consumers.

3. More information in the system leads to better performance

An estimated 30 to 50 million consumers do not have sufficient credit information in their files to qualify for affordable mainstream credit.⁴ Instead, they are left to rely on such high cost credit sources as overdraft protection, short term loans, or pawn shops. Studies have shown that adding positive payment information from utilities and telecommunications providers, instead of only the negative information that most now report, can improve the credit scores of those with thin files that otherwise do not have sufficient information to support a reliable credit score.⁵ Such additional information can help to further reduce the differences in the accessibility of credit on reasonable terms.

4. Accuracy and completeness are both important

Credit reporting agencies face a difficult task of matching incoming information to the right file when identifying information is incomplete, as it often is in a voluntary system. It is obviously a mistake to include information in my file that is not in fact about me. This is the kind of error that the recent FTC report examines. More subtly, it is also an error to leave out information that should be in my file simply because there is some ambiguity about the match. Such errors of omission obviously reduce the value of credit reports to lenders, because a report that does not include all of the relevant information about a particular consumer is less likely to be predictive of future behavior. In some cases, the failure to include relevant information may leave a consumer with a thin file and limited access to conventional credit. Either mistake reduces the accuracy of risk assessments, which is the ultimate goal of the system. Moreover, the risk of a mistake depends on the quality of the information voluntarily provided by data furnishers. Even the best matching algorithms cannot overcome bad data.

5. Different risks are different

The best prediction of risk depends on the particular risk involved. Different information may be especially valuable for certain kinds of risks. Moreover, the population of consumers attracted to particular financial products is likely to differ, leading to differences in the best risk prediction model. It is for this reason that many, if not most, users of credit reports develop their own scoring models. It is also for this reason that some CRAs specialize in particular types of risks, such as the risks involved in extending short term or liquidity credit. By specializing, they can build databases that contain the right information, and the right risk assessment analytics, to serve particular markets. Almost inevitably, however, these CRAs are significantly smaller than the big three, and regulatory compliance costs may be more significant.

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

Senator McCASKILL. Thank you very much.

Senator Heller.

Senator HELLER. Thank you, Madam Chairman.

Mr. Beales, you just hit on a topic right there at the end of your statement, the fact that we have smaller reporting agencies out there, but none of them can compete really with the big three, or that their costs, of course, are substantially higher because they don't have as many reports coming through their system.

Why don't we have four or five or maybe ten large CRAs? Is there a lack of competition in this process? Or why are we limiting ourselves? I know this is a private sector effort, but for me to think

⁴PERC, Alternative Data Initiative, available at <http://perc.net/content/alternative-data-initiative-adi> (May 3, 2013).

⁵Michael A. Turner and Amita Agarwal, "Using non-traditional data for underwriting loans to thin-file borrowers: Evidence, tips and precautions," 1 *Journal of Risk Management in Financial Institutions* 165 (2008).

that there are only three—why aren't there four or five, ten, half a dozen, twelve?

Dr. BEALES. Well, as an economist, this is sort of the market outcome. There were at one point thousands of credit reporting agencies and over time they consolidated, and what we ended up with as sort of the market-determined right number of credit reporting agencies with nationwide databases and general purpose credit was three.

Senator HELLER. So the market decides?

Dr. BEALES. The market decided that. This was very much the outcome of a market process.

There are a lot of other, smaller credit reporting agencies that really have a niche sort of competitive strategy, if you will. They are competitors, but they don't try to do general credit in the whole market. They try to do payday loans or particular—or rental decisions, particular kinds of credit or credit-like decisions where they can build a better database to answer that set of questions.

Senator HELLER. I've obviously gotten my list of complaints coming through my office on CRAs. Most of them have to do with they went down to buy a car and two were fine, one was off, and they had to deal with that. But obviously Ms. Thomas's situation is far different than that. How widespread is that? Is this a unique situation for her, or are there a lot of people that find themselves in the same situation as Ms. Thomas? Anybody who wants to answer that, please.

Dr. BEALES. I don't know.

Mr. RHEINGOLD. I would say there are a lot of people in that situation. We hear stories like this all the time. It is because of the way data is matched, because of the mismerging problem, the mixed file problem, which exists in a lot of instances. That's exactly what happened. Judy Thomas, I assume because her first name is Judy and the other person's name is Judy and because their Social System number was close or something—do you know why those two things were matched? I were merged with this person because their data collection system simply doesn't do a good enough job when they provide reports. And intentionally, I might add; they intentionally merge those files because the businesses who are their customers would rather have over—would rather have more information than less. So they're not as finite as they could be in terms of creating people's consumer files.

Senator HELLER. Mr. Pratt?

Mr. PRATT. So, disagreeing just a little bit here. I know that's a shock to you. Lenders do not want any data on their desk other than the data about the right consumer. So they want the right Judy Thomas. They don't want any extra data in there any more than anybody else. There's no market incentive to do that.

We see it as, these are smaller—this is a very small percentage of all the issues that are out there, and this is why we have this new working group that we've established to focus on that, to try to unpack these and decide where these come from, or how can we resolve them quickly and get it right the first time.

So that's really the key to us. So it doesn't matter whether it's a big number or a small number because it is affecting a consumer in a very serious way.

But I will tell you that I'm looking at data from the FTC report and they're saying roughly 10 percent of consumers are saying the account's not mine. That's not necessarily a mixed file, but it's indicative of a consumer who says, I have some question about an account on my report. But that's 10 percent out of more than a couple of thousand different disputes that were going through this FTC report.

Senator HELLER. But you said in your testimony that 95 percent of consumers were satisfied with the report.

Mr. PRATT. Exactly. We're measuring—

Senator HELLER. But if that's 95 percent, you've got 200 million people that have reports.

Mr. PRATT. Those are still big numbers.

Senator HELLER. Five percent of that, that's 10 million. Are there 10 million Judy Thomas's out there?

Mr. PRATT. No, sir. I think there are 10 million consumers who are still not satisfied with the results. Now, that may come for a couple of different reasons. Something that we've dealt with in our testimony, Senator, that I think is important is that the consumer relations process is also affected by fraudulent credit repair. These are companies that will tell a consumer: I promise to delete information from the credit report that is either unverifiable or inaccurate. "Unverifiable" means they will repetitively dispute the same information until a credit union says: I give up; I'm just going to stop reporting this data, even though it's accurate, even though it's correct. So there's a credit repair industry out there. The Credit Repair Organizations Act is enforced by the Federal Trade Commission. They do a good job. States attorneys general do a good job. More needs to be done in that space. And that clogs our system. About, I'd say, 17 to 20 percent of all disputes come from credit repair, and in fact 40 percent of the written disputes come from credit repair. So that's one of the challenges we have as we're pushing disputes through the system, is to unpack those that are repetitive fraudulent versus those that are coming from honest consumers who need to have their problem resolved.

Senator HELLER. Thank you.

Senator MCCASKILL. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much.

Thank you, all of you. I'm trying to be rational here, as I think if only Ms. Thomas had a harder name she'd be fine. That just can't be our answer here.

So I was thinking about this, your numbers, Mr. Pratt, where you said: Oh, it's OK because only 2 percent of them are problems and only 5 percent are dissatisfied. Is that right?

Mr. PRATT. I didn't say anything was OK.

Senator KLOBUCHAR. No. OK, forget about that.

Mr. PRATT. I just want to be clear on that.

Senator KLOBUCHAR. But just showing these good numbers.

Mr. PRATT. You're right, big picture. Absolutely, big picture.

Senator KLOBUCHAR. And I'm trying to compare that to the FTC report, because FTC looked at 3,000 credit reports. They found that 21 percent had a confirmed material error. They found that 5 percent of the 3,000 had error significant enough to change their credit risk profiles.

Mr. PRATT. There you go, and that's the real key.

Senator KLOBUCHAR. OK. Well then, let's get into that number.

Mr. PRATT. Right.

Senator KLOBUCHAR. So 200 million Americans use credit reports, is that right?

Mr. PRATT. There are more than 200 million consumers with a credit report.

Senator KLOBUCHAR. Great. That means 40 million of them have errors that could significantly affect their reports, if you take the FTC 3,000 credit reports and extrapolate it out.

Mr. PRATT. Well, you're right, although less—it's about 98 percent of credit reports that don't contain those errors. But here's the key, and this is why we put a new group together to look at data quality, Senator. That is, when you look at the data quality the disputes that went through the system—it's boring, it may not be exciting, but this is what you have to do to get a data system to work better. I'm telling you right now, for example, about 24 percent of consumers disputed a balance. Balances oftentimes are a result of consumers—

Senator KLOBUCHAR. I want to get those numbers. If we just extrapolate them out, if its instead of 21, its 20 percent had some confirmed error, so that's how I got to the 40 million.

Mr. PRATT. Right.

Senator KLOBUCHAR. But if you go to the 5 percent, then you're still at—you're still at 10 million people.

Mr. PRATT. Right.

Senator KLOBUCHAR. Ten million people is a lot of people. And the reason—I figure we're like the canaries in the coal mine up here. So when we start having people come into our offices all over the country, you have a real problem. If it's just one person I see in a parade, fine. But when we start having dozens and hundreds of people contacting our office, then there's a problem.

So just, this number that you're throwing around on the 98 percent and the 95 percent bothers me, because we're still dealing—if banks said: Oh, guess what, 2 percent of our customers have less money than they thought they had, that would be a big scandal if their accounts were reduced by even 500 bucks and it was suddenly missing. That would be a big scandal.

Mr. PRATT. Senator, if I've said it wrong—I've said it wrong if that's the feeling you have about our industry, that's the thought, the response you have. The reason that we have new groups brought together, the best data quality experts in our industry, the best consumer relations service folks in our industry, is to look at these percentages. So it's not a victory when we say, even if we've got 95 percent of it right, we want to look at the 5 percent. That's attitudinally where we are and I just want you to know that. That's important.

Senator KLOBUCHAR. OK, great. Just to use one example here, so this is a different example than the jewelry owner. This guy pays his mortgage every time, every time on time. He saves his canceled checks. I don't think many people do that any more, but this guy did. Nevertheless, the mortgage company counted him late by mistake. This is the mortgage company.

Then he made them recognize the error and he even went so far to notify all the credit bureaus of this error, OK. However, they still showed up as late. So then he writes a letter of explanation to the credit bureau, encloses copies of his checks. Most people wouldn't have this. He encloses copies of his canceled check, other supporting documentation. The credit bureau refuses to acknowledge his case. His name's Mr. Bell. Now he cannot refinance his house at current rates.

So my point is this is just one example of one guy in Minnesota, whose name was probably Nelson. But that's what we're dealing with right now. So I guess I'd like to just hear from you, Mr. Rheingold, what you think would be the best way to go here, if we need legislation, if Mr. Pratt's right and it's these other third parties that are coming in that are trying to fix it and then they're not really fixing it, but there's probably a market there because there are so many problems?

Mr. RHEINGOLD. I think there are a lot of answers. I think the Fair Credit Reporting Act, if enforced properly, if the CRAs were kept to the standards of actually maximum possible accuracy and there was enforcement there, I think in many ways the FCRA works.

There are a couple of fixes that could be done, like a consumer like Ms. Thomas would have the right, if the law was changed, that they could seek injunctive relief, so the court can order them to fix it. That would be a really good remedy for people.

One of the—I'll leave it there, but I wanted to answer one of your other questions, which I think is really essential here. I think what we see here—and I thought the 60 Minutes report did a really good job of it in terms of how the dispute process works. They went down to Chile and met these folks who worked in the dispute process. They had to do what, 90 a day.

The dispute process is—that person, Mr. Bell who provided all that information, I think it's a pretty safe bet that all of that information went to the credit reporting agency, went to the dispute handler, looked at all that information, turned into an automated code of three numbers. That number got sent to the mortgage company, who looked at it and said, no, that looks right to us, and sent their code number back, and that's what happened.

So how—so in terms of assuring accuracy, how do we ensure that the credit reporting agencies actually provide all of the information a consumer provides to the furnisher of that information and simply does not rely on a furnisher who says, yes, that's right, we'll accept it? The law requires basically a tie goes to the consumer under the Fair Credit Reporting Act. The way the law works right now, the way the CRAs operate, the tie does not go to the consumer, and that needs to be fixed.

Mr. PRATT. Could I just add one footnote to that? The automated system does use codes, but each code comes with a full description, which is also available to the lender. So in other words, the code is merely a way to convey a standard system of disputes, which actually improves the results of disputes, because you otherwise had folks keystroking in their own view of what they thought a dispute was and that wasn't very effective back in the nineties. It was a long time ago, but it was how it worked back then.

But we have decided to go ahead and build a new technology platform that is being beta tested right now, where we will simply load the paperwork the consumer submits and transmit it and make it available, and in fact compel the lender to open up the material to be able to view that information going forward, to sort of short-circuit this potential problem that we have where a lender might respond to the standard code but not do a deeper look.

About 15 percent of the time, we are able to resolve a dispute ourselves about data coming to us, not data that we have but data coming to us from a lender, about 15 percent of the time. So we are being proactive where we can. But some folks are I think conflating the responsibility of the lender—lenders were obligated in 1986 for the first time to process a dispute and to be accurate in the data they reported. They did that because they realized that that was the other leg of the stool. You have to have a lender doing a responsible reinvestigation, just as the bureau must transfer the data, the fullness and completeness of the dispute, to the lender. So we both participate in that process at the same time.

We want to make that better. I think one of the ways we're doing that right now is this new technology platform that's coming on line this year.

Senator MCCASKILL. So, following up on that, Mr. Pratt, you're saying that by the end of the year all three of the big three will be receiving the supporting documentation that Judy Thomas and my constituent in Nixa, Missouri, tried to provide to the credit reporting agencies?

Mr. PRATT. Before the end of the year, before the end of the year.

Senator MCCASKILL. So you're going to scan the documents and that way the lender, who has absolutely no motivation other than to say no, we're leaving it the way it is—

Mr. PRATT. I think lenders are really motivated, because these are their customers. They don't want wrong information. They want good relationships. So there are market motivations for them.

But they will see the data, that's absolutely correct.

Senator MCCASKILL. We're not talking about a local bank who you have a relationship with here. We're talking about nameless, faceless people that are dealing with numbers, that are not really—clearly what happened in many, many instances is the consumer comes forward and says, you've got an error, and you all put in a two-digit code. I can't believe you're clogged up from the consumer repair, credit repair agencies, because all you do is convert it to a two or three-digit code, send it to the lender, and the lender says no and you say okay.

Mr. PRATT. No, in fact a dispute might require several different communications about the dispute. So what you have to do is, if it's paper, just as you and I would, you have to have a team of people sitting and they will unpack the paper, read through the paper, identify the various disputes that are submitted. That's the labor-intensive side of it, particularly on the paper side.

But again, our goal is to try to bring the paperwork of the consumer forward and make it available to the lender. And these are small lenders and small credit unions.

Senator MCCASKILL. That's news and that's good.

Mr. PRATT. Yes.

Senator MCCASKILL. That's good.

Why can't you match all the numbers, like Mr. Rheingold suggested?

Mr. PRATT. If we did so, we would not have a credit reporting system the way he thinks of it. So let me just give you an example.

By the way, the FTC was tasked with studying this in 2004–2005. They published a report after having brought in each of the national credit bureaus and interviewed the data quality experts on data matching and the algorithms that were used. So the FTC studied this question coming out of the FACT Act in 2003. The conclusion was a good conclusion. In other words, if I have “Stuart K. Pratt” and I have his Social with one digit transposed at the end of it, but I also have his full address, and in fact I know that there are ten other data furnishers furnishing that same address and it's been there for 10 years on the credit report, that single transposition is more likely a problem with how the application was processed than it is with the fact that this account should belong in Stuart Pratt's credit report.

If I match 100 percent, I don't get to put that proper account into the Stuart Pratt credit report.

Senator MCCASKILL. So why are you matching it 100 percent with the one you send to the consumer?

Mr. PRATT. We're using the same matching algorithm for the consumers today that we use for any lender in the country. There's no difference, so I don't know—

Senator MCCASKILL. So you're not matching all nine numbers for the consumer?

Mr. PRATT. You're matching—we are matching to deliver a report—an algorithm is always going to look at the full picture of all the data elements that are provided to us in order to deliver the report.

Senator MCCASKILL. Well, I will tell you that we've talked about percentages and numbers. We had, what, five Senators here today questioning. Senator Nelson as a U.S. Senator bought a washing machine in Wisconsin. Senator Schatz owed money to a wedding service in Hawaii. I just refi'ed, found out that Comcast had done a credit check on me last December. And I went, Why? So I looked into it. It turned out it was somebody in Houston, Texas.

Now, that's three Senators out of five that questioned today. I think you are not well served by saying you don't have a problem. You have a big problem.

Mr. PRATT. Madam Chairman, we have not said that we don't want to deal with the problem of inaccuracies. All I've said is that we have a team that's going to look into where we can improve the system. It is a system that has to be improved with those who furnish the data as well as how the data is matched. But we're not sitting here saying, because we have a 98 percent accuracy rate, which is what the report says, that somehow that's the victory and that's the final word on all of this.

If I were a marketing person selling a product, I might be happy with 98 percent satisfaction. But that's not where we are. As you said, this is a system consumers can't walk away from. We have to strive to push that number down further.

Senator MCCASKILL. So how do we make this—how do we monetize this in terms of incentivizing you to do the right thing? I know for a fact that people's credit records are threatened in disputes. A good example I can give you is a nephew of mine who believed he had his deposit due back to him from his landlord and the landlord said very simply: You want to fight me on the deposit; I'm going to turn you in to the credit reporting agency, I'm going to give you bad credit, you're going to pay more rent the next place you go.

Now, this is a kid in college. What's he supposed to do? Right? I mean, he has no leverage in that situation whatsoever.

The furnishers do not have enough leverage against them in this system. Frankly, I'm not sure you have enough leverage against your clients in terms of bad things that happen when you don't fix things for Ms. Thomas, who's been at this for 14 frickin' years. I mean, somebody should be handing her piles of money for how badly you guys screwed this up.

Ms. THOMAS. No, just fix my report.

Senator MCCASKILL. But seriously, you won't fix it if you're not going to be monetarily punished.

Mr. RHEINGOLD. I think that's exactly right. I think what we've seen—it's interesting that at this point we're finally looking to fix it again. These are problems that have gone on for 20 years. I'm glad the industry is now doing a study and fixing these problems. But they have known about it for a long time.

Fundamentally, the system they built, the automated system that turns people's stories into numbers, is a cost —Ms. Thomas's dispute is simply a cost of doing business. The money that she will ultimately receive in litigation is a drop in the bucket in terms of the money that the credit reporting agencies made.

Consumers are not their customers. The market isn't working for customers. Their customers are the furnishers of information, the credit card companies. Those are the people they're trying to satisfy, not consumers. The question is how do you build incentives so that in fact consumers are the customers.

And it's the consumers' information, for God's sake. It's our information that's being bought and sold and spindled and twisted for all sorts of purposes. Yet the system is not designed to serve their needs. The system is designed to meet the needs of companies who are offering credit.

Senator MCCASKILL. Dr. Beales, we talked about making the market work. If we wanted to make this market work, shouldn't we put something in the market that the furnishers of bad data have some kind of economic incentive to make sure that that data is correct? Clearly that is missing in this free market economic model.

Dr. BEALES. Well, it's missing, but it's missing because the provision of data is entirely voluntary. And as you pile obligations on the furnishers, what you risk is that furnishers say: Fine, I won't tell you anything. It's the equivalent of the response to the credit repair guys of the credit union says: This report's accurate, but I'm just not going to report it any more.

Senator MCCASKILL. So why are they giving the information now?

Dr. BEALES. I'm sorry?

Senator MCCASKILL. Why are the furnishers giving information now?

Mr. PRATT. There's a shared benefit to it.

Senator MCCASKILL. Of course, there's an economic incentive for them, because if their—

Mr. PRATT. Madam Chairman, there are new data sources. Professor Beales' testimony talked about the fact that there are some consumers who don't engage aggressively in the traditional credit marketplace. They don't like credit cards, they tend to go cash-based. Many more consumers are more debit-based post-recession. So there are consumers who don't have a thick credit report or even a credit report that can be scored.

So in this case, we need new data sets. So for example, there are new data sources—the device you held up, that's a credit-like transaction. Every month you make a payment for the services you receive from that smartphone. Those types of service providers don't want to report into the credit reporting system today because they already see the penalties for and the severity of what has been built into the FCRA as being too severe for them to choose to participate.

Senator MCCASKILL. You've got to be kidding.

Mr. PRATT. No, absolutely not. And in fact—

Senator MCCASKILL. You're telling me that my account with Verizon, that they are so worried—

Mr. PRATT. They are.

Senator MCCASKILL.—of the FCRA—

Mr. PRATT. Yes.

Senator MCCASKILL.—that they don't want to report my information?

Mr. PRATT. That is correct.

Senator MCCASKILL. You know, that just strains credulity, honestly.

Mr. PRATT. Oh, no. In fact—

Senator MCCASKILL. Exactly how much money has been collected against these companies through the FCRA? What is the burdens that they have had to bear?

Mr. PRATT. Let me walk through, let me walk through the liabilities. I'm always surprised when—by the way, Mr. Rheingold and I are up here. Later we're going to have to have a drink. Our sons went to school together and they texted each other this morning saying our dads are going to testify here.

Mr. RHEINGOLD. Small world.

Mr. PRATT. So I'm trying to figure out which one of us is going to pay.

But I will say that the FCRA has the following: private rights of action for the accuracy of information, so any consumer can enforce the law as a private consumer, even when they don't want to. There are AG's. Attorneys general may enforce the law. The Consumer Financial Protection Bureau may enforce the law. The Federal Trade Commission may enforce the law. There are class action penalties, as well as individual—as well as an imposed, in the case of willful violations, minimum damages.

So this is not a statute that is uncoupled from what we consider to be the self-enforcement mechanism that you would traditionally

see. So I do think the incentives are there. If the theory of incentives is just a sword of Damocles hanging over the heads of the bureaus—but it isn't. Bureaus don't want to get it wrong. Our members want to get it right. The consumer relations folks don't want Judy Thomas to ever get the result that she got. Now, that's little comfort to her at this point, but we're going to work on that going forward.

Senator McCASKILL. Senator Heller, do you have any more questions?

Senator HELLER. No.

Senator McCASKILL. Senator Klobuchar?

Senator KLOBUCHAR. I'd like to follow up and maybe Senator McCaskill will as well on this. I worked hard on the Dodd-Frank bill on the free credit report and to make sure that that was part of this, and Senator McCaskill raised some excellent questions about those free credit reports and what was happening and why it's so hard to get them. She can follow up on some of it, but I wanted to make sure that the question was asked.

What do you know about it, Mr. Rheingold, and then Mr. Pratt?

Mr. RHEINGOLD. Well, in terms of the annual credit report, there are two issues. One, obviously the industry found a pretty good way of monetizing the notion that people get credit reports. Experian created *freecreditreport.com*. They've now changed their name there.

It's a good thing that people can get an annual credit report. There's actually a bill in the Senate that—I have the number in my testimony; I don't have it in front of me right now—that was introduced this year, so that people could get the free credit report along—a free credit score to go along with their credit report, and it would be the credit score that's actually used to pass judgment on them. That's a very good bill and that would be an improvement.

What's happening in terms of that advertising, I think it's a great case for the Federal Trade Commission. I think it's misleading and I think it's a case that's something that the FTC can certainly bring an enforcement action against. And I think there's any reason why the CFPB can't pass rulemaking saying: You companies that are under my jurisdiction should not be misleading people with that type of advertising. I don't see there's any reason why both those agencies can't move forward on that issue.

Senator KLOBUCHAR. Mr. Pratt?

Mr. PRATT. I'd like to just speak more generally to the idea of a product that was built more recently and it does connect me as a consumer. To me it's similar to—I may have a home security system on my house, I may not; I may buy certain types of insurance, I may not. Some consumers have chosen to buy a service that's different than using free credit reports three times a year from *annualcreditreport.com*. Those types of services are sold and there are many consumers who are happy with them. I am notified when a change to my address occurs or I'm notified when some balance occurs. I've used products from—I've at different times used products like these just to see what they're like, and they sometimes clog up my in box with too many notices and some of them do a better job of less so.

The products themselves are good overall. Now, as to the advertising practices, I'd just say in fairness to *freecreditreport.com* it was a product that was developed before *annualcreditreport.com* ever existed. It was one of a number of direct-to-consumer products in the marketplace today. They're not all run and operated by nationwide credit bureaus. It is a broadly competitive marketplace. And consumers do buy the product and nobody's compelled to buy the product. And certainly everybody can exercise their right to the free credit report through *annualcreditreport.com*.

Senator KLOBUCHAR. I just think we have to somehow make it easier for consumers to understand that they get this credit report, and then hopefully we can add on a score to make it easier, because when there are all these errors they shouldn't have to pay to protect themselves.

When we have three out of five Senators up here who had issues—and I used that number from the FTC, which was 20 percent. Now, presumably the Senators got around this and were able to do it, so maybe this is what's called an immaterial error. Well, they are Senators and so, you know, maybe they were able to call and get this done. But it still was a hassle and it still for regular people delays them getting financing.

So my guess is the wedding dress, the refrigerator, those wouldn't have even been in the worst 5 percent. They're in the 20 percent. And that is affecting—like I've said, if you extrapolate it out, it's affecting 20 million people.

Mr. PRATT. And I think our job is to—this is why the FTC report is such a helpful new piece of research. I intend to go to the University of Missouri and actually visit with some of the researchers who conducted the work down in St. Louis as well. And we intend to root around in this data to see if we can't find better answers to some of the challenges we see, again patterns, how many times do consumers dispute balances, how many times is it a debt collection-related dispute, what other types of disputes?

The detail here is important. It's too much for this hearing, but I just want you to know we're committed to looking at it.

Senator KLOBUCHAR. I understand that. But it just—to me, I'm sure there are people with bad credit. I know that. But these are errors that appear to us to be on the rise. I'll just ask Mr. Rheingold to react, and Ms. Thomas last, if you could have the last word for my question, your reaction to all this.

Mr. RHEINGOLD. I'm sure the industry wants to get it right, just like the mortgage service industry wants to get their servicing right. The question is investing resources in doing it right and building a system that is sufficient to actually solve these errors. It's a cost of doing business. They don't want to invest the resources to make the system work properly. They haven't done it for the past 20 years. I'm glad they're undertaking some effort right now, but the fact is they may want to do it, but they're certainly not showing it with how they're investing their resources.

Senator KLOBUCHAR. All right. Ms. Thomas, what do you think of all this?

Ms. THOMAS. I'm glad that something's going to be done. I'm glad that you're looking for ways to improve the system. I sit here and I listened to you say that we're going to put things in place that

we can actually look at paperwork that's submitted by the consumers. I think that's probably one of the most beneficial things that could be done, because I actually did the legwork and submitted testimony from these collection people that this was not my debt and submitted it to the credit bureaus, only to have it sent back as verified.

So if somebody actually looks at it, I think that's a bonus. The other bonus is I truly advocate the matched Social System number. I mean, why even take that chance? Why take that chance that my information is being mixed up with someone else? I don't understand why that can't be done.

Senator KLOBUCHAR. OK. Thank you.

Ms. THOMAS. Thank you.

Senator KLOBUCHAR. Thank you, Chairman.

Senator MCCASKILL. I'm a little confused, because you just said, Mr. Pratt, that free credit report, that model happened before the change in the law to require the annual report, and that—but when you do the Google search, if you understand how Google works, the first report that comes in the top in the shaded area is paid.

Mr. PRATT. Those are advertisements, right.

Senator MCCASKILL. That's paid advertisement.

Mr. PRATT. Right.

Senator MCCASKILL. And the top report, the top one, that's huge money. You pay huge money to be number one on the Google search page. Guess what's number one? *Freecreditreport.com*, with the trademark.

Mr. PRATT. Yes.

Senator MCCASKILL. And you go there and you can't get a free credit report without giving them your data that they're going to sell to a third party. Do you think that's appropriate?

Mr. PRATT. CDIA isn't going to endorse a particular product, but I will tell you this. I know that the FTC is overseeing their consent order with this company. I know that this company's website is compliant with what the FTC has required. I guess it's a different question. I don't think they want to violate the law. They want to do business with consumers who want to do business with them, just like every other direct-to-consumer provider.

Some consumers will never choose to do business with them, just like some consumers will never buy a home security system.

Senator MCCASKILL. Do you think it's appropriate—let me ask you this question. Do you think it's appropriate you have two choices on the website? One is to get a free credit report in 2 days, and you give your mailing address, but you have to give them your e-mail. They won't send it to your mailing address unless you give them your e-mail. Or you have a choice that you can get it immediately if you pay them a dollar, and then they get your credit card information.

Mr. PRATT. I think that has to do with how the regulations operate. I can't speak to all those details. But I believe that is—that's part of the structure of their compliance that they have to go through in order to comply with the oversight of that website.

Senator MCCASKILL. Do you believe that that accurately reflects the intent of Congress as to trying to make sure that everyone un-

derstands they can go to *annualcreditreport.com* and get a free credit report?

Mr. PRATT. I think on that same website, just like others, you'll find there's also a link saying you can go to *annualcreditreport.com*.

Senator MCCASKILL. No. Nope, not there. Not there.

Mr. PRATT. I've got to pull out my device here.

Senator MCCASKILL. It's not there. Believe me, it's not there.

Mr. PRATT. I think that's part of the follow-up. But I will tell you that all of our members' websites are channels of distribution pushing consumers to *annualcreditreport.com*. All of our members want to have an honest, good relationship with the consumer in the marketplace that wants to buy their product. None of our members want—nobody wins with a product that a consumer is unhappy with.

I can tell you that there are consumers who find direct-to-consumer products an excellent way for them to manage finances and they choose to invest in it. Other consumers choose to use *annualcreditreport.com* exclusively and exercise their right to a free report.

Senator MCCASKILL. I think it's fine for consumers to have choices and buy products that they want. I think it is inappropriate for a company to continue to be less than forthcoming that what they are gathering your data for and selling it and making you wait 2 days and making you give your e-mail is something that is immediately available if they just put the information on the website for *annualcreditreport.com*. And the fact that it's not there I think violates the intent of the law, and if it's not enforceable then we need to fix it and make it enforceable, because there's a problem. If this is compliant, it's not what we intended when we changed the law. So that's why I keep harping on it.

Do you know right now if you could—and you may not want to say this and it's your right not to say it, and you probably won't want to say it. But I'm going to try to dig and find out. Where is the real money made in this business? Is the money made selling data to first party lenders, or is the money made selling reports and scores to consumers, or is the money made selling data gathered in the number two process to third parties? Where are they making the most money in this endeavor?

Mr. PRATT. A number of our members are publicly traded, so any of us can go to see where their U.S. division makes its money and how profitable it is.

Senator MCCASKILL. Are all three of them publicly traded?

Mr. PRATT. Two out of three are publicly traded.

Senator MCCASKILL. And which one is not?

Mr. PRATT. TransUnion Corporation.

Senator MCCASKILL. OK. Well then, I'll get that information and I'll be able to find out. Well, you probably know, then, if they're publicly traded.

Mr. PRATT. But let me just answer the question. The question is, assuming it's OK to make money—and I think it's OK to make money—

Senator MCCASKILL. It is. It's great to make money. I'm just curious.

Mr. PRATT.—we generally like commerce. So my answer is they make money in an honest business relationship with consumers. They make money in an honest business relationship with lenders, providing—they make money selling credit reports, they make money selling credit scores. They're not shy about that, because that's the business model that they've built.

I know it's like a dark cloud hanging over the industry because of kind of the optics of this hearing, but you know, we have everybody else in the world coming to the U.S. and saying this is by far the best system around the globe, let's export it to Tanzania, let's export it to Kenya, let's export it to other parts of the world. And in fact we do that as CDIA through an international conference.

That doesn't mean we don't want to focus on these issues. But I just want you to know that this system is working well, and they are making money, but they are doing it—

Senator MCCASKILL. I love that anybody makes money in America. I endorse heartily the free market system. But this is a system that consumers are captured by. They have no choices here. And once they're captured with bad information, it costs them money, their hard-earned money. They have to pay more when it's unfair. They have to pay more.

So this isn't just like going out and buying a widget. This is a little different because of this unique relationship you have with the consumers. And the consumers aren't in the position individually to fight you.

So we are here talking about these issues, trying to fix these for the consumers that are captured by this system. I'm glad they're all making money.

Once again, let me ask: Do you know, is the majority of their money made selling information to people who lend money, or selling scores and credit reports to consumers, or selling consumers' data to third parties?

Mr. PRATT. Well, that would be the same as the first one, because when they're selling a credit report that is a compilation of all my different lenders to a new lender then they're selling—it's a third party transaction. That's what the FCRA regulates.

Senator MCCASKILL. But when I read their targeting advertising policy, it was clear to me that they were telling me that they were—

Mr. PRATT. So that was marketing data as opposed to the data regulated under the Fair Credit Reporting Act.

Senator MCCASKILL.—right. That's what I'm asking about.

Mr. PRATT. That's two different worlds.

Senator MCCASKILL. The marketing data.

Mr. PRATT. Our members' product mixes are very different and so we really would have to go to the publicly disclosed information—

Senator MCCASKILL. OK.

Mr. PRATT.—and see how much of their revenues are derived from marketing activities versus credit reporting activities versus fraud prevention tools and so on.

I did want to respond just for the record to this question of free credit scores. Credit scores are software. They're not credit reports. They're not in credit reports. They're not just numbers that some-

body pulled out of thin air. There are many different score developers in the marketplace. Many of them are U.S.-based in terms of their headquarters, one of which is headquartered in Minnesota, at least for the time being.

Senator KLOBUCHAR. Do you know something that I don't know? Or is it my questions are going to lead them to leave?

Mr. PRATT. My point is this. Credit scores are a product. It's intellectual property. A credit bureau doesn't own, for example, a FICO product. So when somebody drops a bill in that says somehow we're going to have to give away somebody else's product or we're going to have to pay somebody else to give that product away, that's just a bad idea.

This is not part of the credit report that is my information about me, that is stored in that file. This is a third party's software technology that has been developed and invested in and that is used and sold in the marketplace for insurance companies and lenders and others who make risk-based decisions.

Senator MCCASKILL. So you can buy it and sell it to the consumers?

Mr. PRATT. Well, we build it to sell. We build it.

Senator MCCASKILL. So you own FICO?

Mr. PRATT. No. Our members own other score developing companies, and so some score developers will—but FICO partners with national credit bureaus to sell scores. But at the same time, our members also compete in that same space with scores of their own. In fact, they compete globally selling those scores. It's an export.

Senator MCCASKILL. I see. So you guys have developed your own scores and you sell them?

Mr. PRATT. As well as selling third party scores like the product produced by FICO.

Senator MCCASKILL. OK.

Mr. PRATT. So there are many scores out there.

FICO, by the way, has 49 different versions of its score. I don't know how you pick the score you're going to disclose to a consumer. I just have no clue, other than scores—disclosure of scores is an educational opportunity. It is not about trying to connect a consumer with the score used in a given transaction.

Senator MCCASKILL. Most of the lenders—I think FICO is the most commonly used score.

Mr. PRATT. It's common, but it's the same competitive issue you deal with in the Commerce Committee all the time. Emergent companies and competitors want to be the next company that beats out that larger player in the marketplace. We have to preserve the openness of that marketplace to allow those smaller players to build and encroach on that competitive position of a large player that exists currently.

Dr. BEALES. Senator, there are numerous lenders that build their own scoring models because they think they're better at it, frankly, than the conventional marketed scores. And they try to compete based on better risk assessment and better risk partitioning because they've got their own scoring.

Senator MCCASKILL. And it would be your position, Dr. Beales, that as long as the information on the underlying credit reports

were appropriate, then we should keep our big nose out of the credit scores?

Dr. BEALES. I think that's right. I would agree with that. The score is—consumers need to understand that you do not have a credit score; you have hundreds of credit scores, because every lender that you deal with may have a different credit score.

Senator MCCASKILL. Well, they don't really understand that, because they are getting bombarded with advertising that tells them they can get their credit score if they will only pay \$14.99 a month for the rest of their life. They can have a 7-day free trial, but by the way, of the 7 days only three of them will be relevant because it takes them that long to get the information in. And if they don't withdraw with 7 days, they're going to go ahead and get charged with \$29.99 for the next month.

I can read you score and verse how they do it. And the consumer believes there's one credit score. There is nothing that's in that big banner that says, you know, by the way, there are a million different credit scores and we're going to sell you one, but it's not necessarily relevant to what you need to know.

So I guess that's my problem, is that so much of this is so daunting and confusing to the consumer. It seems to me that the transparency that is needed for the marketplace to work more effectively and efficiently for the people that are putting their money in the marketplace—those are the people that are making the loans and buying the products—that we have an obligation to do that.

Nowhere does it say on any of these clearly that there are a million different credit scores and the one you're buying may not be worth squat. So it's a problem.

Dr. BEALES. In terms of what influences a credit score, what information is likely to matter in pushing it up or down, there's a lot of commonality across scores. But it's not going to be identical from score to score.

Senator MCCASKILL. Right.

Mr. PRATT. That's really important, and even the FTC did what's called a correlation analysis to look at VantageScore versus FICO, and the correlation is very high between the two. In fact, it's never going to be perfect. The only time you have a one to one correlation is when you're comparing the product to the product and you get that perfect correlation.

But I think Professor Beales is right, these scores are competing to say, we have a better way of giving you the delta between the average risk and the better risk, and you're going to get access to—you'll have a safer and sounder portfolio and reach deeper into the marketplace.

But that's the whole point. These scores are in fact educational, and I think that Dr. Beales says it right. This gives consumers a chance to understand generally what goes into a score, generally how am I affected by a lending decision in the marketplace and what can I do as a consumer to position myself effectively in the marketplace with regard to my credit report data.

Mr. RHEINGOLD. But they're more than educational, because they're being used by companies to make decisions about you. So it's not mere education that's happening here.

Senator McCASKILL. Right. I know that Senator Klobuchar has one more question. I have a question I need to ask for Senator Nelson, but you can go ahead.

Senator KLOBUCHAR. Well, I just want to followup. Senator McCaskill talked about basically following the money. We're both former prosecutors, so we get that, because I'm just trying to get at what is creating a disincentive for accuracy, basically. There's got to be something that's creating a disincentive for accuracy, because you just don't see this as much in other companies that are having to send bills out, for instance, or in banks that are having your account.

You don't see this percentage of people. The banks may be causing this, Mr. Pratt. But there's some kind of disincentive in the system that is causing this high percentage of inaccuracy. So that is what I'm trying to get at here. There is clearly a problem. That's why you now have predators, who are super-bad, who are playing on this to try to rip people off, too. But that is a secondary problem to the actual inaccuracy and why people are contacting other people to try to fix it because it's not getting fixed.

So that is what we have to figure out here to figure out how to fix it, because there has got to be a better way to do this than these stories that we've been hearing today and throughout the last year.

And also, why has it gotten worse, Mr. Rheingold? Because of course we all know back in the old days—when I first got a house, for \$115,000, I dealt with one bank that I knew, a banker that I knew. They could look at my credit report. They understood. If something was wrong—I don't remember if there was anything; I don't think there was—I could show them that I did the bill. It was a very intimate thing.

Now, years later, even just 25 years later, we're dealing with all of this problems with a faceless system, dealing with people down in Chile that are doing the credit reporting. So we have to figure out what's creating this incentive and how we fix it.

Mr. RHEINGOLD. I think there are two parts here. I think that one is easy, that's intuitive, is that the credit reporting system has become a mechanism for debt collectors, for creditors, to force people to pay. I think Senator McCaskill's point is exactly on point. Parking debt on your credit report, parking information on your credit report—how many times is a consumer going to go to closing, they'll see a debt on their closing of \$500 that they've been disputing all along—I didn't pay it; Comcast stuck that debt on my account; I'm not going to pay it—and they're sitting at closing saying: You've got to take care of it. So you pay the \$500.

So there's an incentive for companies to put that information on there because they know it's a way of collecting debt. Simple. I think that's easy, and that's intuitive.

The piece that I've never really—that doesn't make complete sense to me. I know I've been told this and I know this is true—but I think that industry would much rather have overinclusive information than completely accurate information. What I mean by that is the problem of the Social Security. One would think that if we're making judgments about people we would want it to be point-blank. We would want to make sure we have absolutely accurate information.

And it's really hard for me to say, after living through the sub-prime crisis and seeing all the credit that was offered to people who should never have received it, in ways that were completely inefficiently and wrongly priced, but I think there really, there's an effort by industry to have—they'd rather have more bad information than have completely accurate information, because they'd rather make a mistake denying people than making a mistake giving credit to people who otherwise couldn't qualify. I think that really is one of the factors here.

Mr. PRATT. That just could not be more wrong. The reason that could not be more wrong is because lenders are incented to provide their data accurately on behalf of their customers, because they want to have those customers. That same small bank is likely still there, doing business with local consumers, and they care about how they report that data.

But the bottom line is the incentives are strong today for accuracy, but they're market-based and their also based in law. But it is a system of, depending on how you do the head count, 10 to 15,000 data sources and probably more than 100,000 different fingers on various keyboards data-entering information. There's going to be a—if you had any professor come in here and talk about this, you'd find there is a likely low-grade error rate that flows into that. And then we have to do a data quality process to make sure that we exclude data we can't report.

I will say this, though. This is just so wrong—to say that we would rather be inclusive rather than exclusive. We want the right data in the right file and we don't want any information in that file other than the information that should be in there.

Senator KLOBUCHAR. But then more resources of your profits have to be put into making sure it's accurate.

Mr. PRATT. To the contrary, what we have to do is we have to work with the data furnishing community through the FTC report to better understand where we think some of the patterns lie. So it isn't CDIA members not investing. They are investing. It is about the partner process and also making sure that we can encourage other furnishers in the future so that underbanked and unbanked individuals can participate in the traditional credit process as well. But that's the key.

Dr. BEALES. Senator, if I could just briefly, I think they're both right. There is—

Senator KLOBUCHAR. It's getting late in the day. Anything is possible.

Dr. BEALES. As I said in my statement, there is a tension between accuracy and completeness. It is a mistake to put something into my file that doesn't belong there because it doesn't match me, but it's also a mistake to leave something out of my file because somebody typed the Social Security number wrong. Both of those are mistakes.

The system and the lenders care about having the most comprehensive and accurate information possible, but that is information that almost inevitably is going to have some of each kind of mistake. It's going to leave some stuff out that really belongs to my file and it's going to put some stuff in that probably doesn't.

Senator KLOBUCHAR. Just one last point that I made. I wrote a note to Senator McCaskill, because when you said, Mr. Pratt, that people have choices like for security systems, the difference here is Congress didn't mandate that people have a free security system. So in this case we have mandated that they get a free security report, and I hope 1 day a score, and so the difference is once we've mandated that it has to be very clear and understandable that they get that.

So we may have to make some other legal changes. If they don't understand that, it's not their fault. I would Google it, too, and I can't figure it out. So I think that is something that we're going to have to look into more.

Senator MCCASKILL. I have a question from Senator Nelson for Mr. Pratt: Why is a short sale being coded as a foreclosure?

Mr. PRATT. Well, they're not. But I think that Mr. Stone said it right. The short sale is a new—we've had deed in lieu of, we have foreclosures, we now have short sales. The Metro 2 task force which the CDIA administers is now looking at a new short sale code, because in fact it isn't a scoring issue in this case; it's a Fannie and Freddie issue. Fannie and Freddie are administering some programs and they need to be able to identify short sales uniquely, different from any other loan which is simply settled for less than the full amount.

So we have a code that says "Settled for less than full amount." Generally, we try to keep codes broad rather than narrow, because very narrow codes generally don't populate into the database, they don't become scoreable, they don't become useful.

So in this case we probably will have to create a short sale code, because Fannie and Freddie are looking for something like a short sale code and they want to see it uniquely and differently from any other "Settled for less than full amount" loan that's out there in the marketplace. So that's why.

Senator MCCASKILL. So you're saying prospectively you will code it differently, but now it's being coded the same?

Mr. PRATT. Lenders are coding it as a "Paid for less than the full amount."

Senator MCCASKILL. Which is the same as a foreclosure?

Mr. PRATT. No. Actually, a foreclosure is yet a different coding. If a lender is coding foreclosure on its own, then they are miscoding a short sale, which would be a data furnisher issue, which would be an issue that the CFPB can look into, just as they can look into our practices with our members.

Mr. RHEINGOLD. But that coding still has an incredibly negative impact on a consumer's ability to get credit.

I would also add that short sales have been around for a long time. I've represented homeowners for 25 years and we were doing short sales 20 years ago. So it's not a new phenomenon. Maybe the prevalence of it, but it has been around a long time.

Mr. PRATT. I think that's well said. The prevalence of it, and the relevance of it to certain new processes that Fannie and Freddie are trying to roll out in the marketplace.

Senator MCCASKILL. OK. Well, consumers are needing a cop on the beat here still. I think we're going to stay with this and continue to look. I'll follow up with CFPB and FTC about some of the

practices of these free credit scores and *freecreditreport.com*, because I think they are kind of spitting in the face of the intent of the legislation that was passed and I think that needs to be corrected.

I do want to recognize and put into the record a letter from a member of the Banking Committee, recognize the work they have done on this subject. It is one of my frustrations that in some ways the FTC has jurisdiction and so does Consumer Finance Protection Bureau, so there are two committees that actually have jurisdiction over this issue. That's why we are having this hearing today. But the Banking Committee has done great work on this, and I'll look forward to working with my colleague Senator Brown, who wrote a letter for the record to kind of document all the work they have also done in this area. And we will try to join forces and see if we can.

[The information referred to follows:]

UNITED STATES SENATE
Washington, DC, May 7, 2013

Hon. CLAIRE MCCASKILL,
Chairman
Senate Committee on Commerce,
Science, and Transportation,
Subcommittee on Consumer Protection,
Product Safety, and Insurance,
Washington, DC.

Hon. DEAN HELLER,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Subcommittee on Consumer Protection,
Product Safety, and Insurance,
Washington, DC.

Dear Chairman McCaskill and Ranking Member Heller:

Thank you for holding today's hearing on the consumer credit reporting industry. As the Chairman of the Senate Banking Subcommittee on Financial Institutions and Consumer Protection, I share your concern about the outsized and growing role of the consumer credit reporting industry.

The Senate Committee on Banking, Housing, and Urban Affairs has long maintained jurisdiction over consumer credit reporting.¹ In 1970, under the chairmanship of Senator William Proxmire, the Senate Banking and Currency's Subcommittee on Financial Institutions held hearings on and ultimately approved the Fair Credit Reporting Act (FCRA), the first legislation to regulate consumer credit reporting.² In the succeeding 40 years, the Senate Banking Committee continued its oversight of the industry in partnership with enforcement from the Federal Trade Commission (FTC) and ushered in additional essential consumer protections through the Fair and Accurate Credit Transactions Act (FACTA) in 2003.³

When Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, it reaffirmed the consumer credit reporting industry's unique and important role as part of the system of "banks, banking, and financial institutions" by transferring the vast majority of oversight functions as well as new rulemaking authority to the newly created Consumer Financial Protection Bureau (CFPB).⁴ The CFPB is charged with regulating "the offering and provision of consumer financial products or services under the Federal consumer financial laws."⁵ As required by statute, the CFPB appears before and issues reports to the Senate Banking, Housing, and Urban Affairs Committee on a semiannual basis

¹See S. R. Rule XXV (2000) (The Committee on Banking, Housing, and Urban Affairs shall be referred "all proposed legislation, messages, petitions, memorials, and other matters relating to . . . Banks, banking, and financial institutions . . . [and] money and credit[.]"); *see also id.* (The Committee on Commerce, Science, and Transportation shall be referred "all proposed legislation, messages, petitions, memorials, and other matters relating to . . . Regulation of consumer products and services . . . except for credit, financial services, and housing."). The definition of "financial institution" includes any entity that engages in an activity that is closely related to banking, *see* 12 U.S.C. § 1843(k), including credit bureau services, *see* 12 C.F.R. § 225.28(b)(2)(v).

²See Pub. L. No. 91-508 (1970).

³See Pub. L. No. 108-159 (2003).

⁴See Pub. L. No. 111-203 (2010), §§ 1002(12), 1061-67, 1081-1100g.

⁵Pub. L. No. 111-203 at § 1011(a).

to allow the Committee to conduct Congressional oversight of consumer financial products and services as provided by the Rules of the Senate.

Nearly a year ago, the *Columbus Dispatch*, in my home state of Ohio, published an impressive investigative series on the damage that flawed credit reporting has caused in the financial lives of far too many Americans. This series prominently featured one of your witnesses, Ms. Judy Thomas, who was the victim of what is known as a “mixed file” that commingled elements of her credit history with those of another consumer.⁶

In keeping with its role exercising oversight responsibilities for consumer financial products,⁷ the Subcommittee on Financial Institutions and Consumer Protection held a hearing on December 19, 2012, examining the challenges that consumers face navigating the credit reporting industry.⁸ Testifying in one of the CFPB’s now-33 appearances before various congressional committees,⁹ the witness on the first panel was Mr. Corey Stone, Assistant Director for the Office of Cash, Collections, and Reporting Markets. Mr. Stone provided his perspective on the industry based upon the CFPB’s work to date supervising larger nonbank financial market participants,¹⁰ including findings from two reports on the accuracy of consumer reports published by the CFPB earlier that year.¹¹

The second panel was comprised of the Consumer Data Industry Association (CDIA) and the National Consumer Law Center (NCLC), who provided additional insights into structure of the credit reporting industry. While it is clear that banks, employers, landlords, and even utility companies rely heavily on credit reporting agencies—especially the three largest credit reporting agencies—consumers face significant challenges fully understanding or correcting their own consumer credit information when errors arise.

The hearing raised a number of issues about the credit reporting industry, including:

- *The financial incentives of credit reporting agencies (CRAs).* Mr. Stone agreed with the subcommittee’s assessment that “the revenues for the three bureaus overwhelmingly come from the financial institutions, not from the consumer,” potentially creating a situation in which the CRAs have a greater incentive to respond to financial institutions than the consumers that depend on them.
- *Lack of information available to consumers.* The CFPB’s first report noted that sample credit scores available for purchase by consumers could vary substantially from the scores that creditors received, leading consumers to be unexpectedly rejected for credit opportunities or to underestimate their creditworthiness, as was the case for my constituent, Ms. Thomas.
- *Overly burdensome and unresponsive dispute processes that favor financial institutions over consumers.* Mr. Stone also agreed that consumers “must provide evidence” when disputing an aspect of their credit report “but that creditors are taken at their word.” This creates a system in which financial institutions could be unjustly favored over consumers, causing financial harm to consumers.
- *Insufficient systems for transmitting consumer-provided documentation regarding a dispute to a data furnisher for evaluation.* As noted by NCLC Attorney Chi Chi Wu and Mr. Stone, documents that consumers submit when disputing information are infrequently shared with data furnishers. Instead, they are distilled into two-digit codes with a limited associated text field. This system fails

⁶See Mike Wagner & Jill Riepenhoff, *Credit Scars: Mixed and Marred*, COLUMBUS DISPATCH, May 7, 2012.

⁷The Dodd-Frank Act includes in the definition of “financial product or service,” “collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service[.]” Pub. L. No. 111–203 at § 1002.

⁸To our knowledge, this was the first Senate hearing on credit reporting since FACTA was passed nearly 10 years ago.

⁹See Testimony of Richard Cordray, Director, Consumer Financial Protection Bureau, before the Senate Committee on Banking, Housing, and Urban Affairs, April 23, 2013 at 1 (“My colleagues and I are always happy to testify before the Congress, something we have done 32 times now.”).

¹⁰See Defining Larger Participants of the Consumer Reporting Market, 77 Fed. Reg. 42874 (July 20, 2012).

¹¹See 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, Dec. 2012, available at: http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-oanermdf; see also 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.

to account for consumers' substantive complaints and undermines the integrity of the consumer reporting process. It is my understanding that CDIA is already working with its members to remedy this situation by enabling the E-OSCAR reporting system to transmit consumer-provided documentation to furnishers.

These are just a few of the many issues that arose during the subcommittee's hearing.

My colleagues on the Senate Banking, Housing, and Urban Affairs Committee have continued to draw attention to the credit reporting industry, encouraged ongoing CFPB oversight of the market, and worked to correct the consumer dispute process. We are considering fundamental issues raised under the FCRA, including what constitutes "reasonable procedures" needed to ensure compliance with the law's information reporting requirements,¹² and whether reinvestigation requirements adequately protect consumers, both in law and in practice.¹³

I assure you that the Senate Banking Committee, and the Financial Institutions and Consumer Protection Subcommittee, with primary jurisdiction over credit reporting agencies, will continue to provide meaningful oversight of the consumer credit reporting industry and the CFPB's efforts to protect consumers' credit histories.

Sincerely,

SHERROD BROWN,
Chairman,
Subcommittee on Financial Institutions
and Consumer Protection,
Senate Committee on Banking,
Housing and Urban Affairs.

Senator McCASKILL. And any suggestions from you, Ms. Thomas, and we thank you very much for being here. And you, Mr. Pratt, on behalf of the people you represent. Mr. Rheingold and Dr. Beales. We don't want to screw up the free market here. On the other hand, we want to make sure that consumers are not getting unfairly handcuffed to credit scores and credit reports they don't deserve.

Thank you very much, and this hearing is adjourned.

[Whereupon, at 4:42 p.m., the hearing was adjourned.]

¹² 15 U.S.C. § 1681e.

¹³ See 15 U.S.C. § 1681i.

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL AND
HON. BILL NELSON TO MANEESHA MITHAL

Question 1. The stories we heard from Ms. Thomas and that of Ms. Campbell were both beyond belief. Both of these women have what to me seem like obvious errors: someone else's information was in their credit files. Yet these women filed dispute after dispute, sending every type of paperwork imaginable, and nothing happened. They both ultimately had to hire lawyers and have spent years dealing with these issues, all the while living with the effects of these errors. Under the Fair Credit Reporting Act (FCRA), consumer reporting agencies are supposed to have "reasonable procedures to assure maximum possible accuracy" and are supposed to "conduct a reasonable reinvestigation" to determine whether disputed information is accurate. Yet from Ms. Thomas and Ms. Campbell's examples, it does not appear the measures used by Equifax, Experian, and TransUnion meet such a reasonableness standard. Do the experiences of Ms. Thomas, Ms. Campbell, and what we saw in the *60 Minutes* report meet the FCRA's legal requirements for accuracy and dispute procedures?

Answer. I am deeply disturbed to hear stories like that of Ms. Thomas and Ms. Campbell, which demonstrate that inaccurate credit report information can take an extreme toll on people trying to go about their daily lives. I recognize that it is impossible for credit reporting agencies ("CRAs") to guarantee 100 percent accuracy of all credit reports, and given the amount of information being handled certain amounts of errors are inevitable. That being said, the law requires CRAs have reasonable procedures to assure maximum possible accuracy. A critical aspect of this standard is that the system for responding to consumer disputes must be easily accessible and effective. The CRAs should be sure that the dispute system is easy to use and that consumers who file disputes are getting a reasonable investigation of their claims. If the CRAs' dispute systems consistently fail to meet that standard, then they are not meeting the FCRA's requirements.

Question 2. How are your agencies ensuring that these credit reporting agencies are living up to the accuracy and dispute obligations under the FCRA?

Answer. The FTC has always considered the accuracy of credit reports a vitally important issue and has done many things to improve the quality of information in the credit reporting system. For example, the Commission recently brought an action against Asset Acceptance, a large debt buyer, alleging that it failed to ensure that information it provided to the CRAs was accurate. The Commission obtained a \$2.5 million civil penalty against the company. The Commission also recently settled an action against a CRA, HireRight, for failing to maintain reasonable procedures to ensure accuracy of consumer reports. The Commission obtained a \$2.6 million civil penalty in this case.

The Commission has also put a large emphasis on educating consumers about the importance of reviewing their credit reports to ensure that they are accurate. Improving the accuracy of the credit reporting system is complicated by the sheer bulk of information involved and by the number of participants in the system. The FTC study discussed in my May 7 testimony was an important step in quantifying the number of errors in the system and will serve as an important tool for our future efforts. In addition, Commission staff have and will continue to work with the CFPB, who has supervisory powers over larger CRAs, to continue to improve credit report accuracy. Commission staff will also continue to coordinate with the CFPB to avoid duplication of our efforts.

Question 3. It was shocking to learn that the consumer reporting agencies have not used consumers' supporting documentation in any meaningful way when it comes to disputes. When the consumer reporting agencies send a consumer's dispute on to a furnisher for investigation, those companies typically do not forward that supporting documentation along to the furnisher as well. During the hearing, Mr. Pratt confirmed that later this year, technology will enable the nationwide consumer

reporting agencies to give furnishers the supporting documents submitted by consumers.

Under the FCRA, consumer reporting agencies are supposed to send the furnisher “all relevant information regarding the dispute that the agency has received from the consumer.” However, for some time now, consumers like Judy Thomas have carefully compiled documents demonstrating the inaccuracy of information in their files, and this information has been ignored and replaced by a two-or three-digit code.

Do the consumer reporting agencies’ practices—specifically, the failure to forward consumers’ supporting documentation to furnishers along with their disputes—meet the obligations set forth in the FCRA? Shouldn’t “all relevant information regarding the dispute” necessarily include the supporting documentation that consumers submit to the consumer reporting agencies?

Answer. As you note, the FCRA requires CRAs to provide “all relevant information regarding the dispute that is received by” the CRAs from the consumer. In some simple disputes, the preexisting codes you describe may be sufficient to provide “all relevant information regarding the dispute.” In disputes involving unusual or complicated facts, however, this system may fail to provide the relevant information. In these cases, it may be necessary for the CRA to use some other method to provide the information to the furnisher. It is our understanding that the three nationwide CRAs will soon be implementing a system that will enable documents supplied by consumers to be provided to furnishers for disputes. This will hopefully provide a more complete picture of consumers’ disputes and will better serve consumers with difficult or complex cases. Commission staff will continue to monitor CRAs’ actions in this area.

Several years ago, advertisers flooded the market with offers of “free credit reports” that were anything but free. These companies signed people up for “credit monitoring services” and other costly products for which they had no interest. The FTC and Congress both acted and, in 2010, the FTC issued a rule requiring any company offering such “free credit reports” to clearly disclose the existence of the federal, truly free website, www.annualcreditreport.com.

However, it appears that these companies are still engaging in questionable advertising and marketing practices while skirting the intent of Congress. Now, advertisements for “free credit scores” and “\$1 credit reports” are on the rise. These products appear to have the same flaws as “free credit reports”—consumers who order them also unwittingly sign up for “monitoring services” and other products that they do not want.

Question 4. Do the advertising and marketing practices for these “free credit scores” and “\$1 credit reports” violate the Rule and/or Section 5 of the FTC Act?

Answer. Section 612(g) of the Fair Credit Reporting Act and the Free Credit Report Rule apply only to advertisements that offer “free credit reports.” In my view, if an advertisement offers only “free credit scores” or “\$1 credit reports” without offering “free credit reports” then the Rule is not violated by a failure to include the disclosure. If, however, the advertisement is otherwise deceptive, such as by failing to properly inform consumers that they are subscribing to a monthly service, then it may violate Section 5. Such advertisements need to be evaluated on a case-by-case basis to determine whether they are deceptive to consumers.

In any event, regardless of whether there is a violation of the law, I share your concern about potential consumer confusion in this marketplace. For this reason, Commission staff are exploring the creation of new consumer education materials on the topic of credit scores.

Question 5. Is Congressional action needed to stop these deceptive advertisements?

Answer. Any blanket prohibition on such advertisements or specific requirements regarding disclosures would likely require Congressional action. In the absence of such action, the Commission will continue to scrutinize offers for credit reports or scores on a case-by-case basis to determine whether such offers are unfair or deceptive under section 5 of the FTC Act.

Question 6. While access to their credit report is important information for consumers to have, we know the consumer’s credit score is an important tool used by creditors in determining a consumer’s creditworthiness. Should consumers be entitled to receive a free credit score along with their free credit report? Why or why not?

Answer. Because credit scores play an important role in many credit transactions, providing consumers with more information about their scores could be beneficial, giving them an idea of how they are viewed by lenders and an opportunity to address any issues with their scores. However, the industry uses many different credit

scores and it is not clear which score a CRA or other entity would be required to provide. When a consumer purchases a score from a CRA, it will most likely not be the score that a lender would obtain on the consumer, because there are many scores available from various sources, with different scoring models designed for specific types of lenders. Instead, consumers get scores known as “educational scores,” which give them a general sense of their creditworthiness.

There are concerns that, while these scores certainly provide some information to consumers about how they are viewed by potential creditors, a score that gives a consumer a substantially different impression of her credit risk than a score that a lender would use could confuse and possibly disadvantage consumers. Therefore, any requirement that consumers receive free credit scores will need to take these issues into account so that consumers get information that will be of use to them.

Under current law, consumers are sometimes entitled to obtain free credit scores when a particular score is used in a decision about their credit. Under the FCRA, a consumer that is denied credit based on information contained in a consumer report must be provided an adverse action notice. If a credit score was used in order to make the adverse decision, the adverse action notice must include that credit score. Additionally, consumers that apply for credit at a specific rate, but, based in whole or in part on information contained in their consumer reports, are offered credit at a higher (worse) rate, are entitled to a risk-based pricing notice and a free copy of their credit report. If a credit score was used to make the decision, the risk-based pricing notice must include that credit score. Finally, consumers applying for a mortgage are also generally required to receive copies of any credit scores obtained by the mortgage lender or broker for purposes of their application. In these cases, consumers receive the same score that was used by the lender, ensuring that they are receiving relevant and useful information.

Question 7. Should Congress consider legislation that would require companies that generate credit scores to provide a free annual credit score to consumers similar to the requirement in place for free credit reports? Why or why not?

Answer. As discussed above, credit scores play an important role in today’s credit system and allowing consumers’ free access to their credit scores could be beneficial, giving them important information about their creditworthiness. There are many credit scores available, however, and any legislation that requires the generation of a free credit score will need to address the issue of exactly what score should be provided to consumers. A general score similar to the “educational scores” sold by the CRAs today might give consumers useful information, but if it does not match the scores provided to lenders then it may mislead consumers. Commission staff would be happy to discuss any proposed legislation with you or your staff.

Question 8. If there is no single credit score, should consumer reporting agencies be allowed to market and sell consumers “their” credit score? Do those practices violate Section 5?

Answer. The “educational scores” provided by CRAs may be useful to provide consumers with a general sense of their creditworthiness, even if they are not the same scores provided to lenders.

If, however, educational scores are substantially different from ones provided to lenders, then consumers may be misled about the likelihood that they will be approved for credit. If their educational scores are significantly higher than those provided to lenders, then consumers may believe that they will obtain rates that they are not likely to receive. Consumers that receive scores lower than those that would be provided to potential creditors may fail to even apply for credit because of a misbelief that they do not qualify. Therefore, a company that markets a score that is consistently and significantly different from those provided to lenders and that fails to inform consumers of this fact, could be violating Section 5, and Commission staff would examine this issue on a case-by-case basis.

Question 9. As we discussed during the hearing, short sales, which are encouraged by the government and are an increasingly common choice for underwater borrowers are different transactions than foreclosures. Yet, they are being coded as foreclosures on people’s credit reports. Why are short sales being coded the same as a foreclosure in consumer credit reports?

Answer. Based on conversations Commission staff has had with industry, we understand that there is currently a code used to report completed foreclosures and another code stating that a mortgage has been “settled for less than the full amount,” which is used to report short sales. While these codes are all technically accurate, it seems that some underwriting systems have difficulty interpreting the codes. This inability to interpret the codes and differentiate between short sales and foreclosures on credit reports can have a detrimental effect on consumers who have undergone short sales in the past and are seeking to reenter the housing market.

Question 9a. Why is the FTC allowing short sales to be coded the same as foreclosures on consumer credit reports?

Answer. Staff has discussed the issue with industry and the Consumer Financial Protection Bureau (“CFPB”), and believes that finding and implementing the solution to this problem will require the cooperation of consumer reporting agencies and underwriters. Staff is encouraging all parties to work on ways to solve the interpretation issues, and will support these efforts in any way we can.

In the interim, Commission staff is working to prepare consumer education materials for consumers who have undergone a short sale. The education materials will highlight the potential issues consumers might face, and provide some concrete steps they can take to ensure that their previous short sales do not unduly hinder their future attempts to purchase a home.

Commission staff would be happy to discuss these issues in detail with you or your staff.

Thank you again for the opportunity to testify and for your questions. I would be happy to answer any additional questions you or your staff may have.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO
COREY STONE

Question 1. The stories we heard from Ms. Thomas and that of Ms. Campbell were both beyond belief. Both of these women have what to me seem like obvious errors: someone else’s information was in their credit files. Yet these women filed dispute after dispute, sending every type of paperwork imaginable, and nothing happened. They both ultimately had to hire lawyers and have spent years dealing with these issues, all the while living with the effects of these errors. Under the Fair Credit Reporting Act (FCRA), consumer reporting agencies are supposed to have “reasonable procedures to assure maximum possible accuracy” and are supposed to “conduct a reasonable reinvestigation” to determine whether disputed information is accurate. Yet from Ms. Thomas and Ms. Campbell’s examples, it does not appear that the measures used by Equifax, Experian, and TransUnion meet such a reasonable standard. Do the experiences of Ms. Thomas, Ms. Campbell, and what we saw in the *60 Minutes* report meet the FCRA’s legal requirements for accuracy and dispute procedures?

Answer. The errors described by Ms. Thomas, Ms. Campbell, and in the *60 Minutes* report raise important concerns about the file matching and dispute procedures at consumer reporting agencies (CRAs). The Consumer Financial Protection Bureau (Bureau) understands the significant harm to consumers that matching errors can cause, especially if dispute procedures do not work as intended. The Bureau recognizes that, as a general matter, matching the right pieces of information to the right consumer can be complex and challenging when information characterizing individuals varies widely and furnishers records may contain errors or incomplete identifying information about an individual. But this challenge only heightens the importance of adequate investigation by the CRA when a consumer disputes a particular trade line as “not mine.” The Bureau is intent on using all tools available to it, including its enforcement, research, and supervision programs, to identify the sources of these problems and protect consumers. Further, the Bureau’s Office of Consumer Response accepts complaints from individual consumers about consumer reporting agencies and the Bureau encourages consumers to file a complaint if the credit reporting agency dispute process does not result in correcting the inaccuracy.

Question 1a. How are your agencies ensuring that these credit reporting agencies are living up to the accuracy and dispute obligations under the FCRA?

Answer. The Bureau has the authority to investigate and take law enforcement actions against CRAs that violate the Fair Credit Reporting Act (FCRA), and the Bureau will use that authority, where appropriate, to protect consumers.

In addition, the Bureau’s consumer reporting supervisory program went into effect on October 1, 2012, after promulgation of a rule defining larger participants in the consumer reporting industry. As Director Cordray has noted, three early areas of focus for the supervisory program are the reliability and accuracy of information provided to CRAs by furnishers; the accuracy of information contained in consumer reports; and the difficulties consumers encounter during the dispute process.¹

¹ Richard Cordray, Director, Consumer Financial Protection Bureau, Credit Report Field Hearing (July 16, 2012), available at <http://www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-on-credit-reporting/>.

Finally, the Bureau is currently pursuing research to better understand the root causes of credit reporting inaccuracies. Improving the accuracy and responsiveness of the credit reporting system for consumers is among the Bureau's top priorities.

Question 2. It was shocking to learn that the consumer reporting agencies have not used consumers' supporting documentation in any meaningful way when it comes to disputes. When the consumer reporting agencies send a consumer's dispute on to a furnisher for investigation, those companies typically do not forward that supporting documentation along to the furnisher as well. During the hearing, Mr. Pratt confirmed that later this year, technology will enable the nationwide consumer reporting agencies to give furnishers the supporting documents submitted by consumers.

Under the FCRA, consumer reporting agencies are supposed to send the furnisher "all relevant information regarding the dispute that the agency has received from the consumer." However, for some time now, consumers like Judy Thomas have carefully compiled documents demonstrating the inaccuracy of information in their files, and this information has been ignored and replaced by a two-or three-digit code.

Do the consumer reporting agencies' practices—specifically, the failure to forward consumers' supporting documentation to furnishers along with their disputes—meet the obligations set forth in the FCRA? Shouldn't "all relevant information regarding the dispute" necessarily include the supporting documentation that consumers submit to the consumer reporting agencies?

Answer. As you note, the FCRA requires consumer reporting agencies to forward all relevant information regarding a consumer dispute to the furnisher of the information, and I believe that does mean information in documents that is relevant to the dispute should be forwarded to meet this legal obligation. For the first time, a Federal agency responsible for enforcing the FCRA has supervisory authority over larger CRAs and the ability to assess how frequently supporting documentation is submitted by consumers with their disputes, what types of supporting documentation are submitted, and whether supporting documentation not forwarded to furnishers ought to be forwarded or is otherwise being used by the CRAs in resolving disputes. A key goal of the Bureau's supervisory program—already underway—is to examine how larger CRAs are meeting their obligations under the FCRA, which include this important obligation to forward "all relevant information" to furnishers when investigating disputes. The three national credit reporting companies have announced plans to upgrade their shared dispute messaging system to enable dispute documentation supplied by consumers to be forward to furnishers. The Bureau will use its authority to ensure that these changes are implemented in a way that meets these CRAs' legal obligations under the FCRA.

Question 3. Several years ago, advertisers flooded the market with offers of "free credit reports" that were anything but free. These companies signed people up for "credit monitoring services" and other costly products for which they had no interest. The FTC and Congress both acted and, in 2010, the FTC issued a rule requiring any company offering such "free credit reports" to clearly disclose the existence of the federal, truly free website, www.annualcreditreport.com.

However, it appears that these companies are still engaging in questionable advertising and marketing practices while skirting the intent of Congress. Now, advertisements for "free credit scores" and "\$1 credit reports" are on the rise. These products appear to have the same flaws as "free credit reports"—consumers who order them also unwittingly sign up for "monitoring services" and other products that they do not want.

Do the advertising and marketing practices for these "free credit scores" and "\$1 credit reports" violate the Rule and/or Section 5 of the FTC Act?

Answer. As you note, in 2010 the Federal Trade Commission amended its Free Annual File Disclosure Rule to prevent the deceptive marketing of "free" credit reports.² The amended rule requires that certain advertisements for "free credit reports" include prominent disclosures designed to prevent consumers from confusing such "free" offers with the free annual file disclosures available through the single centralized source, www.annualcreditreport.com. The amended rule also requires nationwide CRAs to delay advertisements for products and services available through the centralized source until after consumers receive their free annual file disclosures, and prohibits other practices that may interfere with the free annual file disclosure process.³

² 16 C.F.R. § 610.4, now superseded by 12 C.F.R. § 1022.138.

³ 16 C.F.R. § 610.2, now superseded by 12 C.F.R. § 1022.136.

The Bureau is evaluating market developments in this area and is aware that the advertising and marketing of credit reporting products has evolved since 2010. In general, each advertisement or marketing practice must be evaluated on a case-by-case basis to determine if it violates the Free Annual File Disclosure Rule or the prohibition against unfair, deceptive, or abusive acts or practices (UDAAPs) under the Dodd-Frank Act. Although I cannot comment on whether specific advertisements or marketing practices violate the rule or the prohibition against UDAAPs, the Bureau will take appropriate action, including enforcement action, in cases where it concludes there is a statutory or regulatory violation.

Question 4. Is Congressional action needed to stop these deceptive advertisements?

Answer. As an independent Federal regulatory agency, the Bureau's focus is on carrying out, implementing, and complying with the laws enacted by Congress. The Bureau would defer to Congress on questions of when and whether Congressional action is needed. We continue to monitor the marketplace and oversee compliance with the Free Annual File Disclosure Rule and UDAAP standards.

Question 5. While access to their credit report is important information for consumers to have, we know the consumer's credit score is an important tool used by creditors in determining a consumer's creditworthiness. Should consumers be entitled to receive a free credit score along with their free credit report? Why or why not?

Answer. Currently, the FCRA requires the disclosure of free credit scores used by certain mortgage lenders and by other lenders in connection with the provision of adverse action and risk-based pricing notices. In other circumstances, the consumer can purchase a credit score. Requiring consumer reporting agencies to provide a consumer with a free credit score along with a free credit report could raise several issues. In addition to those discussed in response to the question below, for example, some CRAs do not generate consumer credit scores themselves.

I note that, while a consumer can get a rough indication of her creditworthiness from a credit score, her access to and review of her free credit report remains of paramount importance. Regardless of the credit scoring model used, inaccurate information in a consumer's credit file can harm the consumer's ability to get credit.

Question 6. Should Congress consider legislation that would require companies that generate credit scores to provide a free annual credit score to consumers similar to the requirement in place for free credit reports? Why or why not?

Answer. As an independent Federal regulatory agency, the Bureau's focus is on carrying out, implementing, and complying with the laws enacted by Congress. The Bureau would defer to Congress on questions of when and whether Congressional action is needed.

We note that a requirement that credit scoring companies issue free scores could raise new issues. For example, it is important to note that consumers do not have a single credit score. Multiple companies sell credit scores in the commercial market and the ranks of scoring providers continues to increase. In addition, most scoring providers offer multiple versions of consumer credit scores, including generic scores, industry- and company-specific scores, and educational scores only available to consumers. Media reports indicate that one developer, FICO, offers over 49 different credit scoring models.

Further, not all score providers base the scores they sell on their own data. Many providers would need to gain access to underlying consumer report data from some other entity in order to generate free scores. The Bureau's September 2012 report provides further information on the credit scoring market.⁴

Question 7. If there is no single credit score, should consumer reporting agencies be allowed to market and sell consumers "their" credit score? Do those practices violate Section 5?

Answer. Consumer reporting agencies sell multiple versions of commercial scores as well as educational scores. The Bureau agrees that, as a result, there is a potential for consumer confusion in the marketplace for consumer credit scores.

As we noted in the conclusion of our September 2012 report:

This study finds that 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

⁴Consumer 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.

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 of 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.⁵

The Bureau evaluates the marketing of consumer financial products and services by CRAs on a case-by-case basis, and will take appropriate action, which may include enforcement action, in cases where it concludes that such marketing involves an unfair, deceptive or abusive act or practice under the Dodd-Frank Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO
STUART K. PRATT

Question 1. When consumers search for “free credit score” on the Internet, the results are staggering. Consumers are flooded with advertisements and directed to websites operated by consumer reporting agencies that market “free credit score” and “\$1 credit report” products that have serious deficiencies—namely, consumers who order them may also unwittingly order expensive products like “monitoring services” that they do not want. Yet, unlike “free credit reports,” these websites lack the federally-mandated disclosure directing consumers to the true website for free credit reports, *www.annualcreditreport.com*. In developing these products, the consumer reporting agencies appear to be doing nothing more than taking advantage of a legal loophole in spite of Congress’ clear intent to stop these deceptive marketing practices for “free” products that are not truly free, whether they involve credit reports or credit scores.

Why don’t the consumer reporting agencies you represent include the Federal disclosure directing consumers to *www.annualcreditreport.com* on their websites that offer “free credit scores” or “\$1 credit reports”?

Answer. Our members care greatly about ensuring that consumers have a transparent experience when it comes to the products they offer. They want consumers to become long-term customers who value the full suite of services offered.

As an example of our members’ approach in the marketplace in this regard, technology allows us to identify which websites are most often pointing consumers (*e.g.*, referrals via a link) to *www.annualcreditreport.com*. Along with the Federal Trade Commission’s website, our members’ primary corporate websites, which do include product offerings for consumers to purchase, also have links to *www.annualcreditreport.com*. All are top-five referral channels for consumers wishing to obtain a free annual credit report disclosure. Our members will continue to review their transparency efforts. A recent example of this ongoing effort is the fact that one of our members has now added a link to *www.annualcreditreport.com* to an additional product site under their control as a means of ensuring full transparency for consumers. These data and actions speak well of our members’ commitment to ensuring consumers are not confused.

Our members built *www.annualcreditreport.com* with the goal of ensuring consumers had an easy-to-find and easy-to-use means of ordering their free credit report disclosures. The website is extraordinarily successful. Consider the common commercial metric for measuring the success of a website’s market position: search engine result/position. CDIA staff queried “free credit report”, “credit report” and “annual credit report” on a variety of search engines and found that the website is the #1 or #2 search result on all major search engines (where it is #2 this is only because the FTC is #1) which is good news for consumers wishing to exercise their right to a free annual credit report disclosure. Following are details of the CDIA research:

⁵*Id.* at 21.

Search Engine Results for www.annualcreditreport.com	Query: "Free Credit Report"	Query: "Credit Report"	Query: "Annual Credit Report"
Bing	#1 is official site	#1 is official site	#1 is official site
Yahoo	#1 is official site	#1 is official site	#1 is official site
Google	#1 is official site	#2 is official site ¹	#1 is official site
AOL	#1 is official site	#2 is official site ²	#1 is official site

Question 1a. Search results will also always include advertisements for products, some of which may result from our members, but also because of the offerings of other companies in the marketplace. There's no indication that consumers who are choosing to take advantage of free credit score offers are doing so because they are commonly confusing these offers with their right to obtain their free credit report disclosures through www.annualcreditreport.com. Will you and your members commit to offering such disclosures?

Answer. Our members would not want consumers to confuse free credit score offers with their right to obtain a free credit report disclosure through www.annualcreditreport.com and as discussed above, our members do include links on their corporate websites. This said, it doesn't appear to us that consumers are confused when encountering a free credit score offer which brings into question the need for a new notice. As always, however, we welcome additional dialogue on this point. Our members believe in establishing an honest and transparent relationship with consumers and these are the values which guide them as they design both their advertising and their products.

Question 2. During the hearing, concerns were raised that your members have so far failed to utilize sufficient resources to properly address consumer disputes. How many individuals do the nationwide consumer reporting agencies employ to answer the toll-free number? Are those staff members based overseas or here in the United States? What is the average on-hold time for consumers?

Answer. We are working with our members to determine whether the data requested is proprietary or has competitive implications. It is important to note that the CFPB, via its supervisory powers, can review the information you request in the context of their examination of our members, while still keeping competitive data secure from general public disclosure.

Regarding use of employees overseas, each of CDIA's nationwide consumer credit reporting agency members maintains a U.S.-based consumer relations service center. However, our members, which are global companies, also maintain operations centers around the world to meet the needs of their businesses in various markets including assigning some aspects of their U.S. consumer relations processing to service centers outside of the country. This decision brings with it many benefits including redundancy of services and also ensuring our members' service levels are maintained for all U.S. consumers even during peak service hours across all time zones.³ Regardless of where our members' service centers are located, these operations are in full compliance with the requirements of the Fair Credit Reporting Act and the extensive data security requirements imposed by rule as a result of the Gramm-Leach-Bliley Act.

Question 3. The stories we heard from Ms. Thomas and Ms. Campbell described "mixed files" that should have been fixed, yet both women used your members' dispute processes for years to no avail. In fact, those consumers, and others like them, still struggle today to get fair results from the nationwide consumer reporting agencies, and are still being stonewalled by the companies you represent. Does the existing processes to ensure accuracy and dispute errors comply with the FCRA? Are the nationwide consumer reporting agencies really acting reasonably?

Answer. Our members' have a shared commitment to ensuring that the highest quality data is reported to their databases and that consumers are well served when

¹#1 was the FTC's site which is also the top site for referrals to www.annualcreditreport.com.

²#1 was the FTC's site which is also the top site for referrals to www.annualcreditreport.com.

³ In addition to the four time zones which divide the continental United States, the U.S. has the following five additional time zones:

- Alaska Standard Time Zone
- Hawaii-Aleutian Time Zone
- Atlantic Standard Time Zone—Puerto Rico and U.S. Virgin Islands
- Samoa Standard Time Zone
- Chamorro Standard Time Zone—Guam and Northern Mariana Islands

consumers wish to dispute the accuracy of data in their credit reports. We do believe the processes to ensure accuracy and handling disputes comply fully with the FCRA.

With regard to handling consumer disputes please consider the following excerpt from our written testimony which goes into greater detail regarding our members' efforts to ensure consumers receive a consistent and high quality experience when they have disputes regarding data in their credit reports:

"The staff and systems used by our members to handle consumer requests for re-investigations of data reported to them are first-class and this is not merely an opinion. The [2011] PERC data quality study discussed in the next section of this testimony measured consumer satisfaction with the reinvestigation process and fully 95 percent of consumers were satisfied with the results. This fact offers a compelling rebuttal to the unfounded accusations offered by consumer advocates that our members' systems fail to meet consumer expectations.

Further indication of our members' success in meeting consumers' needs can be found in a 2008 report to congress regarding complaints submitted to the Federal Trade Commission. Note in the excerpt below that consumers appeared to be complaining to the FTC concurrent with the submission of a dispute directly to a consumer credit reporting agency. More than 90 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.⁴

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

With regard to accuracy of data see below the excerpt from our written testimony that summarizes the various reports and studies regarding the baseline accuracy of our members' databases. Consistent with both CDIA's written and oral statements, our members are pleased that 98 percent of credit reports are free of a material error, but they remain committed to focusing on the 2 percent of cases where a material error may affect a consumer.

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

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

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

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

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

Question 3a. Why have your members not been able to help these people?

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

Answer. It is very difficult for CDIA to speak to the details of the consumer experiences discussed during the hearing. However, our members do stand ready to assist these consumers if problems still persist and none of our members would be satisfied with the results as described by these two consumers. Ensuring that systems work for all consumers is our members' shared goal.

Question 4. I hear from my constituents that they try for months to get an error fixed and when they finally do, it re-appears six or twelve months later. Ms. Thomas has experienced the same problem, over and over again. Why do errors that have been acknowledged as such and corrected by the nationwide consumer reporting agencies continue to reappear on consumers' credit reports? The FCRA requires your members to have "reasonable procedures" to prevent the reappearance of errors in consumers' files that have been deleted. What systems do your members have in place to prevent such reoccurrences? How can they possibly be reasonable if these problems continue to persist?

Answer. Our members employ a number of strategies to prevent the reappearance of errors. For example, the fact that data is deleted due to a consumer dispute is transmitted back to the originating source of the data to ensure that the source is aware of the deletion so that it can take action on its part to not continue to re-report such data. Once data is deleted, it is maintained in a suppression file (not the consumers report) so that if a data source re-reports the same information it is blocked by our members. When a data source attempts to re-report data contained in a suppression file our members also notify the data source of this fact to again ensure that the data source can take actions to prevent downstream attempts to re-report previously deleted data.

Data may end up being re-reported where a portfolio is sold and the account numbers have been changed and the buyer is unaware of problems with the account due to mismanagement by the seller. In the context of debt collection agencies, if the client of the agency is not notified by the collector of the deletion of data due to a dispute submitted by a consumer to a consumer reporting agency when an account is returned as uncollectable and the client is unaware of the fact of a deletion of data and turns the same account over to a new agency for additional attempts to collect. This may result in an attempt to re-report the previously deleted account via the new debt collector. CDIA and its Metro 2 Task Force have issued special guidance to the data furnisher community to address debt collection practices, debt selling practices and portfolio sales practices in an effort to ensure that all data sources are aware of what must be done to prevent the re-reporting of data. Our members have significantly increased their outreach to and training (both remote-learning and in-person) of data sources in the last three years.

Question 5. Your testimony announced that later this year, Equifax, Experian, and TransUnion would begin to utilize technology that allows the supporting documentation that consumers submit to be forwarded to furnishers along with their disputes. While these efforts are encouraging, they have taken far too long to implement.

Why have your members failed to forward supporting documentation to furnishers with consumers' disputes? Under the FCRA, your members are supposed to send the furnisher "all relevant information regarding the dispute that the agency has received from the consumer." Shouldn't that include the supporting documentation that consumers submit to support their disputes? How can these practices possibly comply with the FCRA?

Answer. Our members designed the eOscar automated dispute system with the goal of serving consumers and ensuring a proper and timely transmission of the facts regarding a consumer's dispute. Making sure consumers are well-served is an important priority.

In terms of what law requires, Federal courts have reviewed the eOscar system and found it compliant. The Federal Trade Commission's July 2011 staff report on the FCRA helps clarify the approaches that may be taken under law when transmitting a dispute where it states the following with regard to the handling of "all relevant information":

" . . . a CRA may provide all relevant information received from the consumer in the notice of the dispute to the furnisher by (a) placing a description of the relevant information in the narrative field (*e.g.*, "12/15/01 ltr from S. Jones at Sears states never late" or "point-of-contact D. Smith at 203-555-1212"); and (b) employing a code that adequately and fully describes the nature of the evidence received from the consumer.

Our members want to meet consumer expectations and one measurement of the results of their efforts is the 2011 PERC study which reported that 95 percent of

consumers were satisfied with the results of the reinvestigation of the data they disputed. The new eOscar enhancement which will require images of consumer-submitted information to be viewed by lenders is a significant new technology undertaking which is driven by our members' desire for ongoing improvements that benefit consumers. While our members have chosen to build a new enhancement to the eOscar system, it is not being installed in response to a question of the current system's compliance with the FCRA.

Question 5a. Why has it taken so long to do something that seems so fundamental to the process, and so simple to do?

Answer. The timing of the decision to add an enhancement to the current system is based on a number of factors:

- We believe that with the new CFPB as our regulator we can address various legal issues that have been relevant to our discussions in the past. Questions of law have been a significant impediment to moving forward in the past.
- Since the Metro 2 data format was issued our members have actively worked with the data furnishing community (over 10,000 sources) to convert them to this new format. Only recently, and in part as a result of both relatively new rules regarding accuracy and integrity as well as the creation of the CFPB, have we seen the majority of data sources convert to furnishing data in the Metro 2 Format which is the format upon which the eOscar system is based.
- Similar to our members' experience with Metro 2 adoption rates, it has taken significant time and investment to move virtually all data furnishers onto the eOscar platform and only recently has adoption be sufficient to consider adding enhancements such as the new imaging project.

Question 6. While access to their credit report is important information for consumers to have, we know the consumer's credit score is an important tool used by creditors in determining a consumer's creditworthiness. Should consumers be entitled to receive a free credit score along with their free credit report? Why or why not?

Answer. Congress has addressed the question of under what circumstances consumers should have access to a score and also when their access should be free of charge. Consider consumer's right of access under the current Fair Credit Reporting Act as amended by the FACT Act and more recently the Dodd Frank Act:

- Free from the lender when receiving an adverse action notice.
- Free from the lender when receiving a risk-based pricing notice.
- Free from the lender when a consumer makes an application for a mortgage.
- At a fair and reasonable fee upon request of the consumer.

In establishing significant access to credit scores for consumers when purchased by lenders it has recognized that credit scores are a significant investment in software design and ultimately are intellectual property and that those who invest in the development of credit scoring software should be compensated. Congress has created a careful balance of providing free access to credit report disclosures (the data which underlies credit scores), free access to scores purchased by lenders (whether it is a credit approval or declination) and a regulated "fair and reasonable" price for credit scores otherwise obtained by consumers from consumer reporting agencies.

Question 6a. Should Congress consider legislation that would require companies that generate credit scores to provide a free annual credit score to consumers similar to the requirement in place for free credit reports? Why or why not?

Answer. No, for the reasons stated in the previous question. Congress has already ensured that consumers have access to credit scores in general and specifically in the context of many common credit transactions.

Question 6b. If there is no single credit score, should consumer reporting agencies be allowed to market and sell consumers "their" credit score? Do those practices violate Section 5?

Answer. CDIA member products which provide access to credit scores are a benefit to consumers. Our members should be allowed to market and sell their credit scores to consumers and there is no Section 5 question on the table with regard to them.

Because there is no single credit score in the marketplace all score disclosures serve the important purpose of expanding financial literacy of consumers. In fact, in 2012 the Consumer Federation of America stated that "[w]hat's most important about a score is not its absolute level, but its relation to other scores from the same

source.” In other words the disclosure of a score is educational. It helps consumers understand where they fall relative to the rest of the consumer population.

The CFPB’s reports on credit scores set the record straight with regard to making credit scores available in the marketplace. Consider the two very important points excerpted from the July 2011 report:

- “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.”
- “lenders use credit scores produced by many different scoring models.”

The CFPB’s September 2012 report made clear that credit scores of all types correlate closely with each other and thus all serve a valuable educational purpose for consumers. Consider the following excerpt from the executive summary of their report:

- “Correlations across the results of scoring models were high, generally over .90 (out of a possible one).”

It is clear that the current marketplace of credit score access is benefitting consumers and expanding their understanding of a variety of core financial literacy issues, including taking advantage of having access to free credit reports on an annual basis.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO
J. HOWARD BEALES III

Question 1. While access to their credit report is important information for consumers to have, we know the consumer’s credit score is an important tool used by creditors in determining a consumer’s creditworthiness. Should consumers be entitled to receive a free credit score along with their free credit report? Why or why not?

Answer. Consumers should not be entitled to receive a free credit score along with their free credit report. The requirement to provide each consumer with a free credit report each year is a useful mechanism to help assure the accuracy of credit reports. Consumers are often the only ones who can identify errors in their credit report, so inspecting credit reports and disputing inaccuracies increases the value of the credit reporting system for everyone. When it first supported the requirement for a free annual report in 2003, the FTC specifically pointed to this benefit of free disclosure.¹

In contrast, a credit score is an analytical summary derived from the information in a credit report. Although consumers can identify errors in the underlying credit report, they cannot identify errors in their score. Thus, unlike credit report disclosure, score disclosure would not advance the public purpose of improving the accuracy of credit reports. Moreover, because there are numerous credit scoring models in widespread use, disclosing a single score could do more to create consumer confusion than it would do to enhance consumer education.

Some credit scoring models are developed by the credit reporting agencies themselves. Others are developed by third party providers such as Fair Issac. Still others are developed by individual creditors, may be different for different types of transactions, and may incorporate information that is not available in the credit report itself. Thus, a single credit report can generate numerous credit scores, depending on the creditor and the scoring model employed. Credit reporting agencies may not even know some of these scores. They may provide third party scores as a service to their customers, but they do so under a license from the third party score developer, and would likely have to pay to give a consumer a copy of that score. Requiring any business to purchase a product from another business for the sole purposes of giving it to consumers for free is problematic at best. Although credit reporting agencies could provide their own scores, those scores may not be as widely used as other scores in making credit decisions.

Question 2. Should Congress consider legislation that would require companies that generate credit scores to provide a free annual credit score to consumers similar to the requirement in place for free credit reports? Why or why not?

Answer. No. As discussed above, providing consumers with their credit score does not serve the public purpose of enhancing the accuracy of the credit reporting sys-

¹ Prepared Statement of the Federal Trade Commission on The Fair Credit Reporting Act Before the Senate Committee on Banking, Housing, and Urban Affairs, July 10, 2003.

tem. If scores are to be provided, the logical place to do so would be to require the lender to disclose the score as part of an adverse action notice. Even there, however, the score may distract consumers from the more useful information contained in adverse action notices, particularly the key elements of their credit report that produce the largest reductions in their credit score.

Question 3. If there is no single credit score, should consumer reporting agencies be allowed to market and sell consumers “their” credit score? Do those practices violate Section 5?

Answer. Restricting the ability of participants in the credit reporting system to market credit scores, truthfully, to interested consumers would serve no useful purpose. Sellers should be clear that they are offering *a* score, and avoid creating the misimpression that the offered score is the consumer’s *only* score.

